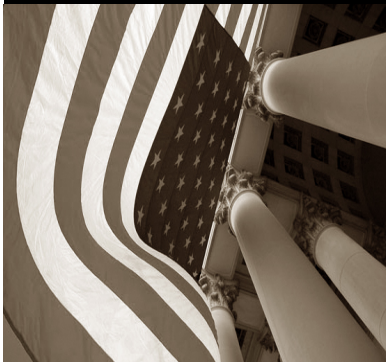


West Virginia Hospital Association

2007 *Legislative Summary*

Healthcare! It's Your Life, It's Our Passion.



Summary of

**West Virginia Healthcare
Legislation**

2007 Regular Session

May 2007

Dear Member:

Once again we pause to look back on the impact that the West Virginia Hospital Association (WVHA) and its 73 members had on the 2007 Legislative Session.

In 2007, WVHA continued its tradition of effective advocacy through its members' executives, senior staff, trustees, physicians and volunteers. The Association used its strong grassroots advocacy platform as the foundation for promoting a strong healthcare system that supports and improves the health status of the people served by West Virginia's hospitals.

Hospital Day at the Legislature once again proved to be a great success as over 150 hospital personnel from more than 30 hospitals across the state gathered in Charleston to present a unified voice for the hospital field on key healthcare issues. The day included a proclamation issued by Governor Joe Manchin proclaiming the day as Hospital Day in the Mountain State. Participants were also briefed on critical legislative issues by key legislators and WVHA staff. The Senate and House also adopted *Senate Resolution 33* and *House Resolution 28* respectively, designating the day as *Hospital Day at the Legislature*. The remainder of the day allowed participants to meet with their local legislators to discuss WVHA target issues such as Certificate of Need (CON), Medicaid; the uninsured; workforce; and protection of medical liability reform, as well as other specific bills of interest.

The pages that follow highlight the most significant action taken on these and other healthcare issues addressed during the 2007 Regular Session, including activity on the fiscal year (FY) 2008 budget and the modest gains experienced by hospitals. Altogether, there were more than 2,000 bills introduced while lawmakers convened in Charleston. More than 270 bills passed, affecting many aspects of West Virginia life, with the session predominantly focused on gaming issues and teacher pay raises. Business issues, child welfare, consumer protection, economic development and workers' compensation were also priorities for debate and dialogue. Final bill text related to these and many other issues is available online at www.legis.state.wv.us by simply entering the bill number in the space provided on the Legislature's front page.

On behalf of WVHA, we thank all those hospital representatives who contributed their time and expertise throughout the entire session to help positively influence healthcare policy in West Virginia. We particularly appreciate the efforts of those who testified, wrote letters, met with legislators and made phone calls during the 2007 Regular Session.

Again, many thanks.



Tony Gregory
Vice President, Legislative Affairs

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BEHAVIORAL HEALTH

SB 117

Relating to determining competency to stand trial – This bill updates the *West Virginia Code* relating to the procedures and standards for determining a defendant’s criminal responsibility and whether he or she has the mental capacity to stand trial. The bill relates to evaluations of a defendant’s competency, criminal responsibility, and dangerousness to themselves or others. The bill also creates standards for evaluations; minimum qualifications for the forensic psychological and/or psychiatric evaluators; establishes standards of review; requires for the release and transfer of a person from the criminal jurisdiction of the court when certain findings are made; requires periodic review of a person found incompetent to stand trial; and includes provisions relating to both evaluations of diminished capacity and dangerousness.

Effective: Passed March 10, 2007; in effect ninety days from passage – June 8, 2007

HB 3184

Relating to confidentiality, disclosure and authorization for disclosure of mental health information – This bill conforms West Virginia law to recently passed federal regulations regarding medical records, which safeguard the privacy of the records while recognizing that there are instances where the public interest outweighs the need for privacy. The bill would allow family and clergy to know if a patient is in a mental facility; will allow disclosure for law-enforcement, abuse, national security and certain research purposes, and will facilitate payments to hospitals by Medicare, Medicaid and other third party payors.

Effective: Passed March 10, 2007; in effect ninety days from passage – June 8, 2007

BUDGET/RESERVE FUND/SUPPLEMENTAL APPROPRIATIONS

HB 2007 – The Budget Bill – FY 2008

During a weeklong Extended Session following the Regular Session, the Legislature approved a budget for the fiscal year beginning July 1, 2008, that outlines \$10 billion in state spending, including \$3.7 billion from general revenue. Approximately \$73 million is earmarked for a variety of pay increases including the following:

- 3.5 percent more for teachers and school service personnel;
- \$2,000 across the board for corrections officers and juvenile service workers; and
- 3.5 percent for most other state employees

Medicaid

In terms of Medicaid, while the final budget reflects a slight decrease in general revenue funding from the current fiscal year budget, the increase in the federal matching percentage for next year

will actually accommodate a conservative 7.8 percent increase in total expenditures for next year. This figure also does **not** assume a carryover of surpluses from state fiscal year 2006 and 2007, which at present are estimated to be about \$30 million; the actual surplus to be carried forward to fiscal year 2008 won't be finally determined until the end of the current fiscal year on June 30. Including this estimated surplus funding would allow expenditures to grow by 9.4 percent for next year, which is well above historical growth in the Medicaid program.

It is important to note however that the Administration continues to seek ways to implement expense reductions and administrative changes within Medicaid to help reduce projected funding shortfalls reported to be in the range of \$100 million by 2010.

While the Medicaid budget has been growing at a faster rate than the state's budget, the department will continue to move forward with cost containment measures (such as prior authorization) to try to keep costs down. Also, the continued implementation of Mountain Health Choices (the Medicaid Redesign pilot project in three West Virginia counties) will surely be a strategic component of the agency's cost containment plan, with possible further expansion of the project throughout the State. Additional challenges facing the Medicaid program are significant changes in the drug rebate process, and implementation of the National Provider Identifier (NPI) program by May 2007.

The final budget as it relates to Medicaid also includes an additional \$3 million in general revenue funding, \$2 million of which will be used to expand the number of slots available under the State's MR/DD waiver program, which was a subject of some contention last year when the State originally sought to reduce the number of available slots due to the lack of available funding for the program. Another \$1 million is earmarked for enhanced payments to behavioral health providers.

While the full range of options to reduce expenditures within Medicaid is an on-going consideration, the Association will remain vigilant in monitoring how the Department is continuing to reduce expenditures within the program and to balance its budget in light of looming funding shortfalls.

Specific Line Items of Interest to WVHA

As for specific items of interest to WVHA members given the passage of the FY 2008 Budget, hospitals saw some modest gains in several areas.

As mentioned above, the Medicaid budget will experience a slight increase in the federal matching percentage which will accommodate some growth in expenditures. Secondly, the budget also provided \$1.5 million in new or additional funding for the existing line item related to "Tertiary/Teaching Hospitals." This additional funding will be included in the hospital enhanced payment program (PEIA/Medicaid Transfer Program) formula for distribution and matched by the federal government three-to-one. The Transfer Program itself was continued for next year and increased by \$300,000, also to be matched three-to-one.

Other Health Related Budget Items

Below is a sampling of other health related budget areas contained in the State's FY 2008 Budget:

- A total of \$789,429 in funding for State Trauma and Emergency Care System (formerly the Level 1, 2, 3 line item) with a designation that \$100,000 be used to explore the consolidation of the medical command centers throughout the State.
- An additional \$14,000 in funding for the statewide EMS Program (total \$940,286) to be used by the Office of Emergency Medical Services for general operations;
- With regard to the West Virginia Health Care Authority (HCA) budget for next year, the final budget authorizes the transfer of up to \$1.4 million from HCA's funds to fund the start-up efforts of the existing West Virginia Health Information Network. Language in the budget also authorizes the transfer of up to \$6 million in prior years' accumulated HCA surplus funds to be used to fund loans from the Authority's Revolving Loan Fund, established following the passage of **HB 3223** during the 2007 Regular Session.
- A total of \$5,663,018 for the Tobacco Education program, an increase of about \$12,000 over the current budget;
- \$170,000 in additional funding for the CARDIAC program, which is used to evaluate fifth graders and identify those who may be at risk for cardiac problems later in life;
- An additional \$1 million in State aid to local health departments; and
- An additional \$1.4 million in funding to Maternal/Child Health programs, with a portion to be used for the expanded newborn screening tests established following the passage of **HB 2583** during the 2007 Regular Session.

In an era of shrinking resources and a constricted Medicaid budget, it is heartening that the Legislature has recognized the importance of funding West Virginia hospitals and health-related programs.

In particular, hospitals will need to continue their strong grassroots advocacy to maintain adequate funding for the future of the healthcare delivery system. While there is no way to ensure adequate Medicaid funding will be available each year, the fact that the Governor and Legislature continue to support Medicaid and other health-related programs is a good sign. The challenge continues to be further making the case for long-term stable and predictable funding of governmental healthcare programs, which remains a top priority of WVHA.

Effective: Passed March 18, 2007; in effect – July 1, 2007

SB 592

Making supplemental appropriation to Interoperable Radio Project – This bill appropriates a total of \$1.5 million to the Division of Homeland Security and Emergency Management for expenditure during fiscal year 2007.

Effective: Passed March 9, 2007; in effect from passage

SB 593

Making supplemental appropriation to Board of Pharmacy – This bill appropriates a total of \$146,620 to the Board of Pharmacy for expenditure during fiscal year 2007.

Effective: Passed March 9, 2007; in effect from passage

SB 758

Supplementing and amending appropriations from federal funds to Department of Health and Human Resources - Division of Human Services – This bill changes how \$7 million from the Division of Human Services fund is classified. Originally, the money was listed as unclassified, but now the money is listed as administrative costs under medical services. The bill appropriates no new money.

Effective: Passed March 10, 2007; in effect from passage

SB 759

Making supplemental appropriation to Division of Health and Board of Examiners for Registered Professional Nurses – This bill makes a supplementary appropriation from the balance of monies remaining unappropriated in the amount of \$7,029,250 to the Department of Health and Human Resources' Hospital Services Revenue Account and West Virginia Birth-to-Three Fund and to the West Virginia Board of Examiners for Registered Professional Nurses by supplementing and amending the appropriations for the fiscal year ending June 30, 2007.

Effective: Passed March 10, 2007; in effect from passage

CHILD WELFARE

SB 148/HB 2498

Providing breast feeding not considered public indecency – This bill modifies the current definition of indecent exposure to include a mother who is breastfeeding a child in a public or private location. (*Editor's Note: After being vetoed by the Governor, provisions from this bill protecting mothers' rights were included as an exemption to indecent exposure in HB 2498.*)

Effective: Passed March 18, 2007; in effect ninety days from passage – June 16, 2007

SB 388

Relating to medical support provisions in child support orders – This bill establishes procedures for allocating the costs of medical support between responsible parties in a child support order. The bill provides guidelines for setting the medical support, including premium

costs. According to the bill, reasonably accessible health insurance coverage means that the coverage will provide payment for the primary healthcare services within a reasonable distance from the child's primary residence.

Effective: Passed March 10, 2007; in effect ninety days from passage – June 8, 2007

CERTIFICATE OF NEED (CON)

SB 278

Authorizing Department of Health and Human Resources promulgate legislative rules –

This is the Omnibus Rules Bill containing a variety of healthcare related rules including the rules filed by the WV Health Care Authority related to **CT and diagnostic centers**.

After intense negotiations with the West Virginia State Medical Association (WVSMA) throughout the legislative session, the Certificate of Need (CON) rules supported by WVHA pertaining to CT and diagnostic imaging in physician offices were approved as part of the Department of Health and Human Resources (DHHR) rules in SB 278. WVHA was successful in adding CT to the list of reviewable services provided in a physician office practice, and with the guidance of the WVHA Executive Committee, agreed to modifications to the rules pertaining to “diagnostic centers.”

The 65 Series 7 Rule approved by the Legislature requires a healthcare facility to obtain a Certificate of Need for the development of new CT services.

The 65 Series 17 Rule clarifies the tests for physician offices to be exempt from CON review relative to the definition of a "diagnostic center," and also requires a Certificate of Need for the development of CT services in a private office practice of a physician or health professional. **(The rules in their entirety are included in Appendix A.)**

Due to differing views on requiring a CON for CT services among the various physician specialties, WVSMA stood neutral on this aspect of the rules. The center of the debate with WVSMA became the definition of a “diagnostic center.” Although the 2000 rules required a CON for physician office practices performing imaging procedures on patients referred solely for tests, WVSMA strongly objected to those continued restrictions. A compromise was finally reached during a lengthy negotiation facilitated by the Governor's Office to grandfather existing practices performing imaging tests on other patients and to allow new providers to perform up to 25 percent of their imaging volume on other patients under the office practice exemption. **(See Appendix B for a summary of the Series 17 Rules.)**

Although the modified rules advanced through the Senate and House Health and Judiciary Committees, respectively, with strong legislative support, some legislators raised questions regarding competition versus regulation. On the final day of the session, the Senate adopted a study resolution (**Senate Concurrent Resolution 77 in Appendix C**) sponsored by Senators Jenkins, Stollings, Hall, McKenzie, Yoder, and Foster that would examine the effectiveness of CON versus a free-market approach to cost-containment. While the House did not take up the resolution, the issue will be debated in some form or another as state healthcare reform

discussions expand. Consequently, following the session, SCR 77 was assigned by the Joint Committee on Government and Finance, comprised of legislative leadership of both the Senate and House, to a special Select Committee D on Health for study during the legislative interims.

Effective: Passed March 10, 2007; in effect from passage

SB 447

Regulating opioid treatment centers – This bill establishes new criteria for what is required to obtain a Certificate of Need (CON) in furtherance of developing an Opioid Treatment Center (methadone clinic) and sets a moratorium date (following further study) on the creation of any new Centers. Also, new criteria are established for initial assessment prior to admission for entry into the opioid treatment program, such as an initial drug test to determine whether the individual is addicted to an opioid or receiving methadone for an opioid addiction from another treatment program.

Effective: Passed March 10, 2007; in effect ninety days from passage – June 8, 2007

E-PRESCRIBING

SB 69/SB 1001

Authorizing electronically transmitted prescription orders – This bill removes the barriers that have prohibited the electronic transmission of prescription orders from doctors to pharmacies. West Virginia is one of only four states in the nation that does not allow electronic prescribing. This bill is one of the more significant pieces of healthcare legislation in that e-prescribing will be an important part of an effective comprehensive electronic medical records system. E-prescribing also will be an important safety measure for patients (because pharmacists will not have to rely on being able to decipher handwritten physician notes). The bill also changes the expiration date for pharmacy collaborative agreements from July 1, 2008, to July 1, 2010. These agreements allow pharmacists to initiate some forms of drug therapy management, with cooperation from a patient's treating physician. (*Editor's Note: The 2007 Regular Session bill – SB 69 – was vetoed by the Governor because of a minor technical error and passed in an extended/special session in the form of SB 1001*).

Effective: Passed March 20, 2007; in effect ninety days from passage – June 19, 2007

INSURANCE

SB 18

Requiring third party reimbursement for kidney disease screening – This bill covers the costs of certain kidney testes under Medicaid, private health insurance plans and plans provided by the Public Employees Insurance Agency (PEIA). Insurance plans must now cover the costs of annual screenings for kidney disease including any combination of blood pressure testing, urine

albumin or protein testing and serum creatinine testing. Medicaid patients' tests are covered if they have been diagnosed with diabetes, hypertension or have a family history of kidney disease.

The bill was introduced upon the recommendation of kidney advocates and was amended late in the session to also include the provisions of HB 2772 requiring PEIA to maintain the medical and prescription drug coverage for Medicare-eligible retirees by providing coverage through one of the existing plans or by enrolling the Medicare eligible retired employees into a Medicare specific plan, such as the Medicare/Advantage Prescription Drug Plan.

Effective: Passed March 5, 2007; in effect ninety days from passage – June 3, 2007

HB 2578

Continuing current mental health parity laws for group insurance plans – This bill continues the mental health parity laws passed in 2002 for group insurance plans which were scheduled to sunset on March 31, 2007.

Effective: Passed March 10, 2007; in effect from passage

HB 2940

Increasing the age of dependents for health insurance coverage – This bill requires health insurance policies (including the Public Employees Insurance Agency – PEIA) to offer coverage of dependents until they reach their 25th birthday.

The legislation defines a dependent as a “qualifying child” or “qualifying relative” as defined in Section 152 of the *Internal Revenue Code*. It is important to note that the *IRS Code* defines a “qualifying child” as one who has not attained their 24th birthday. The Association has received clarification from PEIA’s general counsel that to be eligible between their 24th and 25th birthday, a student must meet the definition of a “qualifying relative,” as opposed to the “qualifying child” definition in the *IRS Code*. Accordingly, employers will need to have a process in place to ensure that a dependent to be covered meets these definitions. Particularly as it relates to the eligibility of a dependent as a “qualifying relative” (such as the taxpayer providing more than one-half of the dependent’s support during the year), failure to have such a process in place could potentially put the employee at risk for a potential tax liability, if it is discovered that they received health insurance coverage for a dependent that does not meet the *IRS Code* for qualifying individuals.

It should also be noted that while this legislation requires dependents to be covered until their 25th birthday, it does not require employers to pay any or all of the cost of covering these additional individuals, if employees opt to purchase that coverage. Hospitals may opt to pass on some or all of the additional premium costs that may be incurred by extending this coverage to dependents up until their 25th birthday.

Effective: Passed March 10, 2007; in effect – July 1, 2007

MEDICAL CARE IN REGIONAL JAILS

HB 2422

Providing cost-saving measures in connection with providing medical care in regional jails

– This bill limits payments by the West Virginia Regional Jail and Correctional Facility Authority and the state Division of Corrections (DOC) to healthcare providers to certain discounted reimbursement rates.

According to the bill, beginning July 1, 2007 (state fiscal year 2008) all outside medical providers will be paid by both the Regional Jail Authority and the Division of Corrections at a rate of 73 percent of billed charges (a 27 percent discount), except for critical access hospitals (CAH), which will be paid at a rate of 85 percent of billed charges. Beginning July 1, 2008 (state fiscal year 2009), and thereafter, outside medical providers will be paid at Medicaid rates, excluding CAHs, which will be paid at 75 percent of billed charges. These rates will only be effective if the Department of Military Affairs and Public Safety and the Department of Health and Human Resources (DHHR) establish an inter-agency agreement that will allow medical providers to process the services/claims and payments electronically through Unisys. Under the bill, reimbursement applies to all medical care services, goods, prescriptions and medication provided outside of the correctional facility.

As it was originally introduced, the bill would have allowed the imposition of minimal medical co-pays certain medical services rendered and limit payments to outside providers of medical services to amounts no greater than the reimbursement rate applicable under the Medicaid Program. The use of Medicaid reimbursement rates under the provisions of this bill would have more negatively impacted hospitals throughout the state than the final provisions in the bill.

WVHA was successful in requesting a further study of inmate medical care by the Legislature during the interim period through the introduction of House Concurrent Resolution (HCR) 54, assigned to the Legislative Oversight Committee on Regional Jail and Correctional Facility Authority. Through this study, WVHA will have an opportunity to provide further input into the process as legislators continue to study this complex issue. (See Appendix D for HCR 54.)

Effective: Passed March 9, 2007; in effect ninety days from passage – June 7, 2007

NEWBORN SCREENING EXPANSION

HB 2583

Relating to the expansion of newborn testing – This bill expands newborn screening from the current eight by adding all 29 of the newborn screenings recommended by the March of Dimes and the American Academy of Pediatrics. The additional screenings will be phased in over the next year-and-a-half. From the hospitals perspective, nothing should change from the current procedure of collecting the blood sample, filling out the State Lab slip, and sending it to the State Laboratory. The added laboratory costs for the new screenings are the responsibility of the State.

The West Virginia Newborn Screening Program, housed within the Office of Maternal, Child, and Family Health within the Bureau for Public Health, will expand newborn screening to include twenty-nine (29) disorders in order to adhere to national standards recommended by the United States Department of Health and Human Services Secretary's Advisory Committee on Heritable Disorders and Genetic Diseases. Of the twenty-nine (29) recommended disorders, West Virginia currently screens for seven (7): three (3) hemoglobinopathies, phenylketonuria (PKU), galactosemia, congenital hypothyroidism, and hearing. Newborn hearing screening is a separate program that began universally screening all newborns in West Virginia in 2000 before discharge from the hospital. The cost of newborn hearing screening is captured under the hospital's maternity DRG charge that is paid for by the insurance companies.

The newborn screening expansion plan includes two (2) phases: the first phase, beginning July 1, 2007, adds screens for congenital adrenal hyperplasia, cystic fibrosis, and biotinidase deficiency. These screens do not require the use of the tandem mass spectrometry and are not cost prohibitive. Expanding newborn screening in two phases will afford the State opportunity to build state laboratory capacity, as well as to begin billing insurance companies to recoup system costs between expansion phases.

Phase II, which is to begin July 1, 2008, increases screening for the remainder of the 29 recommended newborn disorders. This involves leasing the tandem mass spectrometry; adding courier service that will deliver the specimen from the birthing facilities to the state laboratory where newborn screening lab analysis is performed; improving genetic services capacity, i.e. counseling, medical expertise and nutritional services; increasing the availability of medically necessary supplements; completion of the WV Newborn Screening Program web site to reflect specialty medical expertise available within our borders and across the country; explore the use of telemedicine to eliminate geographical barriers to care for and assure linkage between specialists and the primary care provider; and improve capacity for tracking and follow-up within the Office of Maternal, Child, and Family Health for all children diagnosed with a disorder.

Effective: Passed March 10, 2007; in effect ninety days from passage – June 8, 2007

NURSE OVERTIME

HB 2436

Modifying the Nurse Overtime and Patient Safety Act – This bill requires hospitals to post, in one or more conspicuous places where notices to nurses are customarily posted, a notice in a form approved by the Commissioner of the state Department of Labor setting forth a nurse's rights under the current law. The notice is intended to inform nurses of their rights regarding the number of hours a nurse can work and the various restrictions to these hours.

The bill also removes the requirement that the Department of Labor notify hospitals of an alleged violation within three business days. Instead, the Commissioner of Labor is to keep each complaint anonymous until he finds that it has merit. Under the bill, the Commissioner is required to establish a process for notifying a hospital of a complaint.

The latter provision is intended to address the Department of Labor's concerns regarding the number of inquiries that are made of them but ultimately turn out to be merely questions about the law and not substantiated complaints.

Effective: Passed March 10, 2007; in effect ninety days from passage – June 8, 2007

PHARMACEUTICAL SALES TAX EXEMPTION

HB 2380

Exempting the purchase of certain drugs, durable medical goods, etc., from the consumers sales and service tax - This bill, originally submitted by the Governor, exempts the purchase of certain drugs, durable medical goods (such as wheelchairs and walkers, among others), mobility enhancing equipment and prosthetic devices from the consumers sales and service tax. The bill will enable hospitals to realize the savings from this sales tax exemption, beginning July 1, 2007, and is estimated by the State Tax Department to reduce sales tax revenue, paid by all providers currently, by approximately \$10 million per year.

During the course of the WVHA's discussions with the Tax Department on HB 2380, Association staff was made aware of a multi-state work group in which the Tax Department participates, that routinely clarifies and updates the list of items that are included under the heading of "pharmaceuticals, prosthetic devices, durable medical equipment, and mobility enhancing equipment." **Please contact the Association for a current list of items as those identified as "not defined" or "medical supply," would not be exempt from the sales tax.** In subsequent meetings with the Tax Department, the Association also clarified the following items as being exempt from the sales tax:

1. Dialysis fluids and other drugs not stocked by the pharmacy, such as IV solutions and saline syringes, are exempt under the drugs heading;
2. Implanted pacemakers and leads, spinal implants, trauma-related orthopedic implants, hip and knee implants, heart valves, vascular grafts, human bone and artificial implants, intraocular lenses, toe, finger shoulder and testicular implants, implanted devices to treat depression, and bladder implants are exempt under the heading of prosthetic devices; and,
3. Pain pumps are exempt under the heading of durable medical equipment.

For a complete listing of items that qualify for exemption, please contact the Association.

Effective: Passed March 10, 2007; in effect – July 1, 2007

PHYSICIANS/MEDICAL PROFESSIONALS

SB 573

Creating programs to monitor physicians, podiatrists and physician assistants who are recovering substance abusers – This bill authorizes the West Virginia Board of Medicine and

the West Virginia Board of Osteopathy to designate programs in which physicians, podiatrists, and physician assistants may be monitored while they pursue treatment and recovery for alcohol abuse, chemical dependency or major mental illness, and in which these persons may voluntarily enroll without being subject to disciplinary action if the person complies with the goals and restrictions of the program.

West Virginia is the only state in the country without a Physicians Health Program (PHP). While it is still to be determined what the PHP would look like and how it would be funded, those meetings can now start to occur in full now that both the Board of Medicine and the Board of Osteopathy have no legal barriers to proceed.

Effective: Passed March 10, 2007; in effect ninety days from passage – June 8, 2007

HB 2526

Allowing acupuncturists to form limited liability companies – This bill allows licensed acupuncturists to form a professional limited liability company.

Effective: Passed March 10, 2007; in effect ninety days from passage – June 8, 2007

HB 2800

Relating to the practice of medical imaging and radiation therapy – This bill makes several changes to the regulation of medical imaging and radiation therapy. Beginning July 1, 2007, the West Virginia Radiologic Technology Board will be known as the West Virginia Medical Imaging and Radiation Therapy Technology Board of Examiners. Also on that date, the Board will add two more members: a nuclear medicine technologist and a magnetic resonance imaging technologist. The Board, which will sunset July 1, 2012, will begin to license those two practices.

In addition, the bill clarifies that the Board of Medicine, with advice of the Medical Imaging and Radiation Therapy Board can promulgate rules to regulate Radiologist Assistants. Provisions in the bill also exempt dental hygienists from licensing requirements.

Effective: Passed March 10, 2007; in effect ninety days from passage – June 8, 2007

HB 3006

Limiting the number of terms a member of the Board of Physical Therapy may serve – This bill implements term limits for members of the Board of Physical Therapy. There are no current term limits but the new law establishes two-year consecutive term limits for each board member. After the board member has served for two consecutive years, he or she must sit out for two more years before being reappointed.

Effective: Passed March 10, 2007; in effect from passage

RESOLUTIONS TO BE STUDIED DURING INTERIM

Following the conclusion of the 2007 Regular Session, members of the Joint Committee on Government and Finance, comprised of legislative leadership of both the Senate and House, approved the following **new** studies that WVHA will be following during the 2007 interim period and assigned them to the various committees listed below.

Select Committee D – Health

- SCR 82 Requesting Joint Committee on Government and Finance appoint select interim committee to study health care reform options
- SCR 77 Requesting Joint Committee on Government and Finance study certificate of need review process within Health Care Authority
- HCR 14 Requesting the Joint Committee on Government and Finance to study the state of the delivery of health care in West Virginia
- HCR 53 Requesting the Legislative Oversight Commission on Education Accountability and the Legislative Oversight Commission on Health and Human Resources work with entities within state government of West Virginia to explore options to improve school health and healthy lifestyles
- HCR 58 Requesting the Joint Committee on Government and Finance direct the Legislative Oversight Commission on Health and Human Resources Accountability study re-balancing the long-term care system
- HCR 81 Requesting the Joint Committee on Government and Finance study the statistical rate of autism among this state's population and to study existing autism services in this state
- Study the Issue of access to oral health services

Legislative Oversight Committee on Regional Jail and Correctional Facility Authority

- HCR 54 Requesting the Joint Committee on Government and Finance study the provision of medical care to inmates of the Regional Jails and the Department of Corrections

Joint Standing Committee on Finance

- HCR 50 Requesting that the Joint Committee on Government and Finance study the Soft Drinks Tax

Joint Standing Committee on Judiciary

- HCR 45 Requesting the Committee on Government and Finance to conduct a study on the adequacy and the abuse of laws regulating the availability of motor vehicle parking facilities for persons with mobility impairments
- HCR 60 Requesting the Committee on Government and Finance to conduct a study of the requirements and restrictions for a license to operate a motor vehicle by individuals with impaired vision
- HCR 66 Requesting the Joint Committee on Government and Finance to study the cost efficiency and effectiveness of employers, self insured for purposes of workers' compensation coverage, who self administer claims
- HCR 86 Requesting the Joint Committee on Government and Finance to conduct a study of the criminal laws and administrative procedures relating to drunk and drugged driving on the roadways of our state
- HCR 94 Requesting the Joint Committee on Government and Finance to study the impact state law and court decisions have on insurance company practices and policies
- SCR 76 Requesting the Joint Committee on Government and Finance study laws and administrative procedures relating to improving the state's response to the problem of operating a motor vehicle while under the influence of alcohol or controlled substances
- HB 2346 Prohibiting certain employers from meeting and communicating with employees regarding the employer's political, religious, or labor organizing activities
- HCR 92 Requesting that the Joint Committee on Government and Finance authorize the study of the need for legislative review of agency rules currently exempt from legislative rule-making and review
- Study of the Administrative Expenses, Policies, and Procedures of Brickstreet Insurance Company

Joint Standing Committee on Education

- SCR 80 Requesting Joint Committee on Government and Finance study cost and benefits of daily physical education classes for students

In addition to the approval of the various committees and their studies, the Joint Committee on Government and Finance authorized the continuation of the existing interim committees of interest: **Legislative Oversight Commission on Health and Human Resources Accountability (LOCHHRA); and the Legislative Rule-Making Review Committee.**

It is important to note, that at the conclusion of last year's interims, LOCHHRA approved the **continuation** of a number of studies for the 2007 interim period. It is expected that LOCHHRA members will continue to review the following health-related issues of interest to WVHA:

- HCR 61 Requesting the Joint Committee on Government and Finance to study the state of emergency medicine in West Virginia
- HCR 75 Requesting the Joint Committee on Government and Finance study the prospect of reducing medical care costs for state employees
- HCR 79 Requesting that the Joint Committee on Government and Finance to conduct a study on the public health crisis created in West Virginia created by antibiotic resistance
- HCR 82 Requesting that the Committee on Government and Finance study the Medicaid Waiver Program for the elderly and people with disabilities in West Virginia
- SCR 88 Requesting Legislative Oversight Commission on Health and Human Resources study "money follows the person" concept

RETIREMENT

SB 129

Authorizing PEIA to transfer excess reserve funds to Retiree Health Benefit Trust Fund –

This bill expands PEIA insurance coverage eligibility to substitute employees and diversifies coverage. The bill continues insurance for Medicare-eligible retired employees and modifies the treatment of certain portions of required employer annual payments and certain employer annual required contribution provisions. Changes to the reserve fund require the PEIA Executive Director to transfer any amount that exceeds the recommended reserved amount by 15 percent to the recently established West Virginia Retiree Health Benefit Trust Fund as a way to pay down the unfunded retiree health benefit liability.

Effective: Passed March 10, 2007; in effect – July 1, 2007

HB 2717

Enacting a retirement system for Emergency Medical Services Personnel – This bill creates a new retirement system under the Consolidated Public Retirement Board for Emergency Medical Services (EMS) officers. Modeled after the Deputy Sheriff retirement system, the new system becomes effective January 1, 2008, if, by December 31, 2007, at least 70 percent of all eligible EMS officers and at least 85 percent of the eligible EMS officers who are currently active members of the Public Employees Retirement System elect to participate in this plan. Other provisions address membership for new state hires and members of local plans, among others.

Effective: Passed March 10, 2007; in effect ninety days from passage – June 8, 2007

REVOLVING LOAN AND GRANT FUND

HB 3223

West Virginia Health Care Authority Revolving Loan and Grant Fund – This bill creates the West Virginia Health Care Authority Revolving Loan Fund. This new Fund will allow the Authority Board to give loans to hospitals that submit plans to provide savings for public and private healthcare payors. The loans will assist hospitals in the rationalization and restructuring of their healthcare delivery systems.

The Board must have the application and the loan approval process completed by July 1, 2008. After the loans are given, the Authority Board is authorized to promulgate rules, and the Board is also required to file an annual report regarding the status of the program with the Governor and the Legislative Oversight Commission on Health and Human Resources Accountability (LOCHHRA).

Effective: Passed March 9, 2007; in effect from passage

RULE-MAKING REVIEW BILLS

SB 319

Authorizing miscellaneous boards and agencies promulgate legislative rules – This is the Omnibus Rules Bill containing a variety of rules previously contained in the following bills: [HB 2610](#) Osteopathy Board rule on physician assistants; [HB 2612](#) Pharmacy Board rule on ephedrine & pseudoephedrine control; [HB 2654](#) Hospital Final Authority rule on fee schedule/cost allocations for issuance of bonds; [HB 2668](#) Board of Medicine rule on licensing & disciplinary procedures; [HB 2679](#) RN rule on criteria for accreditation of schools of nursing; [HB 2680](#) RN rule on requirements for registration & licensure; [HB 2681](#) RN rule on continuing education; [HB 2682](#) RN rule on dialysis technicians; [SB 277](#) HFA rule on fee schedule/cost allocations of bonds; [SB 292](#) Board of Medicine rule on licensing & disciplinary procedures for physicians, PAs & podiatrists; [SB 301](#) Osteopathy Board rule on PAs; [SB 306](#) Pharmacy Board rule on ephedrine & pseudoephedrine control; [SB 310](#) RN rule on evaluation & accreditation of nursing schools; [SB 311](#) RN rule on continuing education; [SB 312](#) RN rule on dialysis technicians; [SB 313](#) RN rule on registration & licensure.

Effective: Passed March 9, 2007; in effect from passage

HB 2590

Authorizing the Department of Revenue to promulgate legislative rules – This is the Omnibus Rules Bill containing a variety of rules previously contained in the following bills: [HB 2662](#) Insurance Commissioner rule on individual limited health plans; [HB 2663](#) Insurance Commissioner rule on group limited health plans; [SB 285](#) Insurance Commissioner rule on individual limited health benefits plans; [SB 286](#) Insurance Commissioner rule on group limited health plans.

Effective: Passed March 8, 2007; in effect from passage

SENIOR CARE/LONG-TERM CARE

HB 2944

Enhancing the end-of-life care given to residents of nursing homes – This bill deals with palliative care in nursing homes and clarifies that all nursing homes will have to let their terminally ill residents know about the availability of hospice care, but the homes are not obligated to contract for the actual care. For example, when the health status of a nursing home resident declines to the state of terminal illness or when the resident receives a physician's order for "comfort measures only," the facility is to notify the resident with information about the option of receiving hospice palliative care. If a nursing home resident is incapacitated, the facility is to notify any person who has the authority of guardian, a medical power of attorney or healthcare surrogate over the resident, information that the resident has the option of receiving hospice palliative care. The facility is to document that it has provided this information.

Effective: Passed March 10, 2007; in effect ninety days from passage – June 8, 2007

HB 3057

Relating to programs for all-inclusive care of the elderly, known as "PACE" – This bill facilitates the organization of the federally funded Program for All-Inclusive Care for the Elderly (PACE). The program creates a locally managed healthcare delivery system that supplies primary, preventative, restorative, supportive, and end-of-life care to elderly persons certified by the state as nursing-home eligible. In order to promote the expansion of this program, this bill establishes a legislative intent to eliminate the legal, statutory, and regulatory barriers to the formation of PACE by exempting health providers that participate in the program from regulation as insurers or from regulation by the Insurance Commission.

Under this bill, the local PACE programs must be set up in accordance to a contract with the federal Department of Health and Human Services, which has been prepared in consultation with the state DHHR. By January 1, 2008, and every three years following that date, the DHHR Secretary will submit a report to the Legislative Oversight Commission on Health and Human Resources Accountability (LOCHHRA) detailing the financial status of all PACE programs, the make up of enrollee services, and other information that is formally requested.

Effective: Passed March 10, 2007; in effect ninety days from passage – June 8, 2007

SUNSET/SUNRISE LEGISLATION

The Legislature has established a system for the termination, continuation or reestablishment of state agencies and programs following a thorough review of their operation and performance. The following are state entities, which were evaluated by the Legislature prior to the 2007 Regular Session and subsequently continued for operation during the Session.

SB 172 continues the **Board of Respiratory Care Practitioners** until July 1, 2017

SB 190 continues the **Board of Examiners of Psychologists** until July 1, 2018

HB 2574 continues the **Board of Social Work Examiners** until July 1, 2017

HB 2587 continues the **Board of Optometry** until July 1, 2017

HB 2527

Revising the sunrise review process – This bill makes several changes to the sunrise review process. This process determines which professions and occupations require a state regulatory board.

The bill requires that professions looking to substantially revise or expand their scope of practice must file a new application. Second, it changes the criteria for establishing a professional board. Under the previous law, a profession had to affect the public needs in a way that required an assurance of professional or occupational competence. The new law states that a profession may be regulated if the practice of the profession or occupation requires a specialized skill that is readily measured so that examination or training requirements can reasonably assure professional or occupational competence. Finally, the bill provides a provision that the final sunrise report by the Legislature's Joint Standing Committee on Government Organization should be given considerable weight, although it is not binding.

Effective: Passed March 10, 2007; in effect ninety days from passage – June 8, 2007

TAXES

SB 749

Relating to corporation net income tax – This bill reduces the state Business Franchise Tax rate from 0.55 percent to 0.2 percent over a five-year period. The reduction process would begin in January 2009, and, when completed, will cut business taxes about \$75 million a year, according to reports. The bill also contains provisions that will establish a combined tax reporting system effective January 1, 2009.

Effective: Passed March 10, 2007; in effect from passage

HB 2992

Decreasing the health care provider tax imposed on gross receipts of providers of nursing facility services – This bill decreases the healthcare provider tax on nursing homes in order to meet new federal standards. The change is from five and ninety-five one hundredths percent to five and one-half percent by November 1, 2007.

Effective: Passed March 10, 2007; in effect ninety days from passage – June 8, 2007

TOBACCO

SB 185

Creating Tobacco Settlement Finance Authority – This bill establishes the Tobacco Finance Authority, which will have the power to acquire the state’s tobacco settlement share in order to manage the funds therein through the sale of bonds to secure the state a lump sum in place of the incremental payments received from tobacco manufacturers. The bill also gives the Governor the authority to sell West Virginia’s share of the tobacco settlement in order to pay off outstanding debts, as long as the net gain is \$800 million; totality of the money gained here will go toward paying off the debt of the Teacher’s Retirement Fund, predicted to cost the state \$700 million a year (in future years), to pay down obligations. The Governor may also sell and assign all or a portion of the state’s share to the Tobacco Settlement Finance Authority with respect to the stipulations and intentions of the Master Settlement Agreement (MSA).

In anticipation of securitizing the MSA payments, the Governor’s proposed budget transfers \$15.2 million of previously funded from the Tobacco Settlement Account to General Revenue. This includes \$5.85 million in tobacco prevention, education and cessation programs in DHHR.

Effective: Passed March 10, 2007; in effect from passage

HB 2332

Clarifying that magistrate courts have concurrent jurisdiction with circuit courts with laws prohibiting the use of tobacco by minors – This bill clarifies that magistrate courts have concurrent juvenile jurisdiction with circuit courts with regard to enforcement of laws prohibiting the possession or use of tobacco or tobacco products by minors. The bill also gives concurrent juvenile jurisdiction to municipal courts.

Effective: Passed March 9, 2007; in effect ninety days from passage – June 7, 2007

WORKERS COMPENSATION

SB 595

Revising workers' compensation statutes – This bill revises various sections of the workers' compensation statutes in light of the recent transition to a private insurance system (BrickStreet). The bill includes a number of modifications including allowing the Insurance Commissioner an exemption from purchasing rules for professional services; removing references to catastrophic risk; revising the bond language for self-insured employers and removing obsolete references to self-insured status from certain information.

Effective: Passed March 10, 2007; in effect from passage

OTHER BILLS OF INTEREST TO WVHA

SB 59

Relating to basic universal design features for certain dwellings – This bill provides immunity from civil damages to someone who, in good faith, provides services or materials without remuneration to build or install basic universal design features.

Effective: Passed March 5, 2007; in effect ninety days from passage – June 3, 2007

SB 175

Creating Clandestine Drug Laboratory Remediation Act – This bill creates the Clandestine Drug Laboratory Remediation Act and authorizes the Department of Health and Human Resources (DHHR) to promulgate rules for regulating the remediation, certification, licensing and property owner disclosure requirements for clandestine drug laboratories. Methamphetamine laboratories are the primary targets of these rules. The bill sets forth the responsibilities of the department, law enforcement and property owners and provides immunity to property owners who successfully remediate clandestine drug laboratories. Additionally, the bill provides liability for the costs of remediation of a clandestine drug laboratory.

Effective: Passed March 10, 2007; in effect ninety days from passage – June 8, 2007

SB 529

Prohibiting requirement that sexual offense victims pay costs of forensic examination – This bill prohibits any requirement that an alleged victim in a sexual offense must pay for the costs of a forensic examination. This bill clarifies that a hospital that has performed a forensic medical exam upon an alleged victim of a sexual offense submit the charges directly to the West Virginia Prosecuting Attorneys Institute which administers the Forensic Medical Examination Fund. The bill also clarifies that hospitals may seek payment from the alleged victim or his or her insurer for services rendered other than the forensic medical examination. The bill is needed to comply with the federal requirement of the Violence Against Women Act.

Effective: Passed March 10, 2007; in effect ninety days from passage – June 8, 2007

HB 2986

Providing advance notice to the public regarding the pending closure of certain public or private healthcare facilities or hospitals – This bill provides that advance notice, including ads in newspapers, must be given to the public for the upcoming closure of a hospital. Hospitals would have to give three weeks notice of their intent to terminate operations and the approximate closure date.

Effective: Passed March 10, 2007; in effect ninety days from passage – June 8, 2007

HB 3093

Providing a form for a combined medical power of attorney and living will – This bill codifies into law a common procedure currently in practice for the combined two forms for designation of a medical power of attorney and living will by a person desiring to establish an advance directive. Instead of having to fill out the two forms separately, the combined form can be executed and notarized as a single document.

Effective: Passed March 10, 2007; in effect ninety days from passage – June 8, 2007

APPENDIX A – SB 278 SUMMARY

(draft prepared by WVHA as amended)

TITLE 65 LEGISLATIVE RULE HEALTH CARE AUTHORITY

**(approved by Legislative Interim Rule Making Review, amended by House Judiciary Committee,
approved by full House and Senate in SB 267)**

SERIES 17

HEALTH SERVICES OFFERED BY HEALTH PROFESSIONALS

§65-17-1. General.

1.1. Scope. -- This legislative rule specifies which health services, major medical equipment, and/or facilities acquired, offered or developed by health professionals are subject to certificate of need review.

1.2. Authority. -- W. Va. Code, §§ 16-2D-4(a)(1), 16-2D-8©).

1.3. Filing Date. -- ~~May 5, 2000.~~

1.4. Effective Date. -- ~~July 1, 2000.~~

§65-17-2. Definitions.

As used in this legislative rule, all terms that are defined in W. Va. Code §16-2D-1 et seq. have those same meanings which are in some cases further clarified ~~herein~~ in this rule. All terms not defined in W. Va. Code §16-2D-1 et seq. have the following meanings unless the context expressly requires otherwise.

2.1. "Diagnostic center" includes any facility or private office practice, free standing or attached to another building, stationary or mobile and means:

2.1.a. Any private office practice of one or more health professionals licensed, authorized, or organized pursuant to Chapter 30 of the West Virginia Code which offers laboratory or imaging services and in which the total cost of all the equipment required to provide these services exceeds \$2,000,000; In determining whether the total cost of equipment exceeds \$2,000,000, the cost of studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition of the equipment shall be included; If the equipment is acquired for less than fair market value, the term "cost" includes fair market value; The term "cost" also includes a series of expenditures which exceeds \$2,000,000 if the State agency determines that the sum total constitutes a single expenditure subject to review under the provisions of the Health Care Authority's legislative rule, "Certificate of Need," 65 CSR 7, subdivision 3.6.a., 3.6.b., and 3.6.c.;

2.1.b. Any facility owned or operated by one or more health professionals licensed, authorized, or organized pursuant to Chapter 30 of the West Virginia Code whose primary purpose is to offer laboratory or imaging services ~~in a setting that is not ancillary to and functionally integrated with the private office practice of the health professionals, including but not limited to the offering of such laboratory or imaging services through an entity which derives more than seventy-five percent (75%) of~~

its gross revenues from such laboratory or imaging services, regardless of the cost associated with the proposal;

2.1.c. Any facility owned or operated by one or more health professionals licensed, authorized, or organized pursuant to Chapter 30 of the West Virginia Code which offers laboratory or imaging services to patients that are sent by other licensed health care professionals for the sole purpose of obtaining the laboratory or imaging services, regardless of the cost associated with the proposal. A facility shall not be deemed a diagnostic center under subsection 2.1.c. if the proportion of laboratory procedures performed on such patients does not exceed 25% of the total laboratory procedures performed by the facility, and the proportion of imaging procedures performed on such patients does not exceed 25% of the total imaging procedures performed by the facility;"

2.1.d. Any facility owned or operated by one or more health professionals licensed, authorized, or organized pursuant to Chapter 30 of the West Virginia Code which offers laboratory or imaging services to patients, and which is not organized as a sole practitioner, a partnership of licensed professionals, a professional limited liability company authorized by the appropriate licensing board pursuant to Chapter 30, or a professional corporation authorized by the appropriate licensing board pursuant to Chapter 30, regardless of the cost associated with the proposal;

2.1.e. Any facility owned or operated by one or more health professionals licensed, authorized, or organized pursuant to Chapter 30 of the West Virginia Code which offers laboratory or imaging services to patients through an entity for which any owner furnishes less than seventy-five percent (75%) of his or her total time spent on patient care services, regardless of the cost associated with the proposal;
or

2.1.f Any facility owned or operated by one or more health professionals licensed, authorized, or organized pursuant to Chapter 30 of the West Virginia Code which offers laboratory or imaging services to patients, and which facility is either licensed by the Office of Health Facility Licensure and Certification of the Department of Health and Human Resources, or accredited by the Joint Commission for the Accreditation of Healthcare Organizations, regardless of the cost associated with the proposal; provided however, that certification of a facility for any reason under Title 42 of the United States Code, including but not limited to certification of a facility as a rural health clinic under the Medicare or Medicaid programs shall not result in a facility being classified as a diagnostic center.

2.1.g. Provided, that any private office practice currently offering one or more laboratory or imaging services, including but not limited to radiology, ultrasound, mammography, fluoroscopy, nuclear imaging, densitometry, or computerized tomography, shall not be deemed a diagnostic center if:

2.1.g.1. Such laboratory or imaging services were offered in a manner that did not constitute a diagnostic center under subsection 2.1 as it existed at the time such laboratory or imaging services were first offered;

2.1.g.2. Such laboratory or imaging services were offered in compliance with any certificate of need or ruling of non-reviewability received from the Health Care Authority; or

2.1.g.3. Such laboratory or imaging services were offered by the private office practice on the effective date of this rule; provided however, that the number of laboratory or imaging procedures performed on patients who are sent to the private office practice subsequent to the effective date of this rule for the sole purpose of obtaining laboratory or imaging services must remain at or below the level performed on such patients in 2006, or the level established by calculating an annual average based upon calendar years 2004 through 2006, inclusive.

2.2. "State agency" means the West Virginia Health Care Authority which is designated to administer the certificate of need program by W. Va. Code §16-29B-11.

§65-17-3. Health Services, Major Medical Equipment and/or Facilities.

3.1. One or more health professionals licensed to practice in this state pursuant to the provisions of Chapter 30 of the West Virginia Code who wish to acquire, offer or develop one or more of the health services, major medical equipment and/or facilities listed in subsection 3.3 of this rule shall follow the procedures set forth in the Health Care Authority's legislative rule, "Certificate of Need," 65 CSR 7.

3.2. If a health service, major medical equipment and/or facility is one set forth in subsection 3.3 of this rule, the proposed acquisition, development or offering of that service, equipment and/or facility by a licensed health professional is subject to review regardless of the cost associated with the proposal, except for diagnostic centers as set forth in subdivision 3.3.i of this rule.

3.3. The list of health services, major medical equipment and/or facilities subject to review pursuant to W. Va. Code §16-2D-4(a)(1) is as follows. This list is all inclusive and may not be altered except by amendment to this legislative rule.

- 3.3.a. End-stage renal dialysis stations and home training.
- 3.3.b. Lithotripsy.
- 3.3.c. Radiation therapy.
- 3.3.d. Magnetic resonance imaging (MRI).
- 3.3.e. Proton emission tomography (PET).
- 3.3.f. Cardiac catheterization.
- 3.3.g. Birthing centers.
- 3.3.h. Ambulatory surgical facilities or ambulatory surgical centers.
- 3.3.i. Diagnostic centers.
- 3.3.j. CT (computed tomography) scanning.

§65-17-4. Batching Category.

All applications received pursuant to this rule shall be considered by the state agency in the applicable batching category as described in the Health Care Authority's legislative rule, "Certificate of Need," 65 CSR 7.

APPENDIX B – SB 278 SUMMARY

WVHA

65 CSR 17 Certificate of Need Rule: Health Services Offered by Health Professionals

Generally, the proposed rule modifies the 2000 CON rule that specifies the conditions when a private office practice of a health professional no longer qualifies for an exemption from Certificate of Need review. CT has been added to the list of reviewable services. The proposed rule as modified relaxes the 2000 rule by allowing practices to perform diagnostic tests on other physicians' patients, within certain thresholds.

- **2.1.b** Clarifies that if more than 75% of revenues within a private office practice are derived from diagnostic tests for laboratory or imaging services, the project is subject to review as a “diagnostic center”.
- **2.1.c** The House Judiciary Committee amendment clarified that a physician office practice is not to be treated as a “diagnostic center” subject to Certificate of Need review as long the volume of tests performed on patients sent by other physicians solely for lab or imaging services does not exceed 25% of the total tests performed by the practice. This rule formerly provided that when a patient is referred to another medical professional solely for laboratory and imaging studies, a Certificate of Need is required. If the 25% threshold is exceeded, the private office practice CON exemption is void and a Certificate of Need would be required to operate as an ambulatory health care facility or “diagnostic center”.
- **2.1.d** This provision is new and provides that any facility offering laboratory and imaging that is not organized as a sole practitioner, a partnership of licensed professionals, a professional limited liability company is subject to review. This change merely codifies HCA’s current practice.
- **2.1.e** This provision is new and requires if a medical professional provides less than 75% of patient care services, then this is subject to review. The purpose of this provision is to prohibit a physician from lending out his or her exemption to an organization that would otherwise be subject to CON review.
- **2.1.g.** Provides a grandfather provision for providers who were not subject to CON review. **2.1.g.3** was further modified by the House Judiciary Committee to “grandfather” physicians that are currently performing tests on patients referred by another medical professional solely for laboratory and imagining studies. This allows a physician practice to continue seeing patients sent solely for tests by other physicians without getting a Certificate of Need, as long as the current volume or three year average volume is not exceeded.
- **3.3.j.** This provision requires a CON to offer new CT services, as required for all other health care facilities.

APPENDIX C – SB 278 SUMMARY

SENATE CONCURRENT RESOLUTION NO. 77

(By Senators Stollings, Jenkins and Hall)

Requesting the Joint Committee on Government and Finance study the certificate of need review process within the Health Care Authority.

Whereas, The certificate of need review process was enacted by the West Virginia Legislature in 1977 and became a part of the Health Care Authority in 1983; and

Whereas, The certificate of need review process is intended to be a regulatory element designed to assist the Health Care Authority to control health care costs, improve the quality and efficiency of the state's health care system, encourage collaboration and develop a system of health care delivery available to all of West Virginia's citizens; and

Whereas, Unless specifically exempted, all health care providers in West Virginia must obtain a certificate of need prior to the addition or expansion of health care services, to exceed certain capital expenditures, to obtain major medical equipment or to develop or acquire a new health care facility; and

Whereas, The structure of certificate of need review varies widely from state to state and some states have either repealed or limited the scope of the certificate of need review process; and

Whereas, In some respects the certificate of need review process in West Virginia has substituted bureaucratic decision making for a free enterprise system; and

Whereas, Restructuring the certificate of need review process to better account for cost containment with attention paid to efficient allocation of scarce resources, the impact on effective delivery of health care services, a greater attention to balancing quality of care and service delivery with entrepreneurial insight and patient preference, and a focus on availability of services to the citizens of West Virginia through a more competitive free market may be needed; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study the certificate of need review process within the Health Care Authority; and, be it

Further Resolved, That the Joint Committee on Government and Finance consider an alternative framework to the certificate of need review process more centered on a free market in the delivery of medical care in health care facilities and equipment; and, be it

Further Resolved, That the Joint Committee on Government and Finance consult with experts in health care financing, West Virginia Medical Association, the West Virginia Hospital Association, the West Virginia Health Care Association and other interested parties who may offer insight into the Certificate of Need review process; and, be it

Further Resolved, That Joint Committee on Government and Finance report to the regular session of the Legislature, 2008, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

Further Resolved, That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

APPENDIX D – HCR 54 SUMMARY

HOUSE CONCURRENT RESOLUTION NO. 54

(By Delegates White, Boggs, Yost, Kominar, Reynolds, Perdue,

Barker, Tucker, Poling, M., Campbell, Klempa, Marshall

Manchin, Spencer, Iaquinta, Stalnaker, Ashley, Anderson, Carmichael, Evans, Blair, Walters and
Border)

(February 23, 2007)

Requesting the Joint Committee on Government and Finance study the provision of medical care to inmates of the Regional Jails and the Department of Corrections, the current contracts, the funding, and other costs that impact of these systems that relate to health care.

Whereas, Costs of medical care for the Regional Jail system have continued to rise and funding has not increased at the same rate causing deficits in the Regional Jail budget;.

Whereas, Costs of medical care for the Division of Corrections have continued to rise and funding has not increased at the same rate causing deficits in the Division of Corrections budget;

Whereas, It has been necessary for health care providers to file claims with the Court of Claims for payment which has a detrimental impact on health care providers;

Whereas, with healthcare costs increasing at a significant rate, the need to evaluate cost saving measures has become evident, therefore, be it

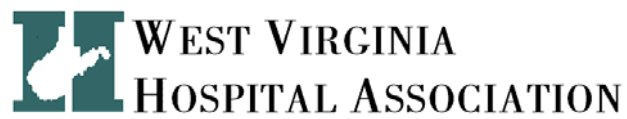
Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study the provision of health care and its impact on the Regional Jail budget and the Division of Corrections budget, the current contracts and all cost saving measures that can be implemented;

Further resolved, That the Joint Committee on Government and Finance report to the Legislature, 2008, its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations;

and, be it

Further resolved, That the expenses necessary to conduct this study, to prepare a report and to draft legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.



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