



***From the Dome***  
***An Advocacy Update From The West Virginia Hospital Association***

**March 26, 2010**

**2010 Session Completed**

The 2010 60-day Regular Session of the Legislature ended Saturday, March 13 at midnight with the passage of **219 Bills (98 House Bills, 121 Senate Bills)**. Below is a comprehensive summary of 2010 legislation that will help in understanding the actions taken by lawmakers regarding key healthcare issues that impact hospitals and the communities they serve. If you have any questions regarding these or other bills of interest, please do not hesitate to contact me at [tgregory@wvha.org](mailto:tgregory@wvha.org). *Following the legislative summary below is a brief synopsis of the FY 2011 Budget.*

Although the 2010 Regular Session has completed, it is likely that the Legislature will be called into special sessions throughout the year to deal with a variety of issues likely ranging from education to budgetary needs, including the \$8 billion debt in unfunded liability costs for state retiree health care benefits.

Along with special sessions, the Legislature will begin legislative interim meetings in April or May to begin study of a variety of issues. The WVHA will be issuing separate communications regarding the various health care topics to be examined by interim committees as soon as they become available.

**2010 Legislative Summary/Health Care Legislation of Interest**

**Behavioral Health**

**SB 122 - Increasing mental health treatment refusal age of consent-** *Passed March 13, 2010; in effect 90 days from passage*

This bill relates to voluntary hospitalization at mental health facilities. More specifically, provisions remove the requirement that the minor's consent be secured before they are voluntarily admitted to a mental health facility if the minor is 12 years of age or older. Other provisions require consent of an emancipated minor before he or she is voluntarily committed; providing that the release of any minor from a voluntary hospitalization may be conditioned on the approval of the person or persons who applied for their admission; clarifying that the state is not obligated to pay for voluntary hospitalization; and requiring a provider to release an un-emancipated minor's drug

addiction and treatment records to a parent or legal guardian without the un-emancipated minor's written consent.

**SB 604 - Extending mental hygiene procedures' sunset provision** – *Passed March 10, 2010; in effect ninety days from passage*

This bill extends the termination date of the modified mental hygiene procedures pilot project initiated by the Supreme Court of Appeals in consultation with the Department of Health and Human Resources (DHHR) and local mental health services consumers and providers in 2006.

### **Children/Child Care/Maternal Care**

**SB 349 - Requiring child care centers have written evacuation plan** – *Passed March 5, 2010; in effect ninety days from passage*

Provisions of this bill require licensed or registered child care centers to have an annually updated written plan for evacuation in the event of an emergency. The bill sets forth plan requirements and makes the evacuation plan a point of investigation before a new license is received.

**HB 4164 - Creating of a pilot program for the placement of children four to ten years of age in foster care which shall be known as Jacob's Law** – *Passed March 13, 2010; in effect ninety days from passage*

This bill creates a new section in *West Virginia Code* creating a pilot program for the placement of children four to ten years of age in foster care. Under the bill, the DHHR shall choose four regions in which to implement a two-year pilot program to address children ages four through ten immediately after removal from their homes by the Child Protective Service Division due to child abuse and neglect and who, by the nature of their removal, are in crisis. The bill sets forth program requirements including that each child be evaluated for emotional and physical trauma and other medical, educational, dental and other needs, in a timely manner.

### **Credentialing**

**HB 4176 - Relating to credentialing of health care practitioners** – *Passed March 11, 2010; in effect ninety days from passage*

This bill is the product of an Insurance Commission Advisory Committee (*authorized in statute last year*) that included WVHA and hospital representation. The bill authorizes the establishment of a single statewide credentialing verification organization (CVO) in West Virginia and includes a variety of provisions including revisions to the development of uniform credentialing application forms and the credentialing process, the state's contract with a statewide credentialing verification organization; the release and uses of information collected;

confidentiality; and immunity. The bill also includes extensive rule-making authority for the DHHR Secretary and the Insurance Commissioner in consultation with the Advisory Committee to be filed on or before June 1, 201. This date was previously January 1, 2012 in the introduced version of the bill, but was changed in the Senate Banking and Insurance Committee.

Along with the date change, various committees throughout the process modified the original introduced bill to add one additional member to the current credentialing advisory committee, bringing the total number of representatives to 14 appointed members. The representation is for the state association of licensing boards.

Another clarification suggested by WVHA states: “This article shall not be interpreted as requiring a credentialing entity as defined in this article, to grant medical staff appointment to any practitioner nor shall it be interpreted as requiring a credentialing entity to permit any practitioner to provide patient care or as requiring a payor or network to reimburse a practitioner for services.”

Finally, the House Judiciary Committee modified the bill to require the CVO contract to be competitively bid so language was added in the legislative rule-making review section which requires that the rules developed by the Insurance Commission also address: Procedures and criteria for the bidding and selection of the statewide credentialing verification organization

### **Crimes/Public Safety**

**SB 215 - Creating offense of assaulting volunteer firefighters and emergency service employees** –*Passed March 9, 2010; in effect ninety days from passage*

The bill increases penalties for malicious assault, unlawful assault, battery or assault of volunteer firefighters and emergency service employees. The bill essentially adds to the long list of protected individuals including health care workers and emergency service personnel. According to the bill, “Health care worker” means any nurse, nurse practitioner, physician, physician assistant or technician practicing at, and all persons employed by or under contract to a hospital, county or district health department, long-term care facility, physician's office, clinic or outpatient treatment facility. “Emergency service personnel” means any paid or volunteer firefighter, emergency medical technician, paramedic, or other emergency services personnel employed by or under contract with an emergency medical service provider or a state agency or political subdivision.

### **Department of Health and Human Resources (DHHR)**

**HB 4167 - Creating a special revenue fund, known as the Department of Health and Human Resources Safety and Treatment Fund** – *Passed March 11, 2010; in effect ninety days from passage*

This bill creates a new special revenue fund entitled the DHHR Safety and Treatment Fund which was previously administered by the Division of Motor Vehicles. This bill essentially transfers the authority to collect fees and spend money from the new fund to the DHHR and authorizes the DHHR to administer the fund. No additional fees are imposed nor are there any modifications to how facilities provide treatment.

**HB 4557 - Reviewing all of the Department of Health and Human Resources requests for proposals or change orders valued at over \$500,000 prior to their release – Passed March 12, 2010; in effect ninety days from passage**

This bill adds to the statutory ability of the Legislative Oversight Commission on Health and Human Resource Accountability (LOCCHRA) to review all of DHHR's requests for proposals or change orders valued at over \$500,000 prior to their release.

### **Health Care Authority and Certificate of Need (CON)**

**SB 286 - Authorizing DHHR promulgate legislative rules – Passed March 13, 2010; in effect from passage**

This is the DHHR Omnibus Rules Bill containing a variety of rules related to the following: hospital ambulatory health care facilities; Grade "A" pasteurized milk; DHHR fees for services; distribution of state aid funds to local boards of health; nurse aid abuse registry; and out-of-school time child care center licensing requirements.

Of particular note are the rules related to ambulatory health care facilities which were filed by the Health Care Authority and correspond with legislation passed last year which makes a series of modifications to the certificate of need (CON) law. There was emergency rule-making authority in the bill which required the Health Care Authority to file rules to establish a process by which the Authority may exempt from CON review, the acquisition of a physician practice by a hospital. The Authority filed the emergency rules in August 2009, and the rules filed during the 2010 session merely codify them. More specifically, the rules establish a process which requires public notice by the hospital that intends to acquire or develop the ambulatory care facility. The rule spells out that process in detail.

**SB 665 - Transferring certain Health Care Authority's duties to Insurance Commissioner – Passed March 11, 2010; in effect ninety days from passage**

The purpose of this bill is to authorize the Insurance Commissioner to develop standard forms and procedures regarding health care claims (including CMS 1500 and UB 04), and to require that all insurers, third party payers, and health care providers implement and use such standards.

The bill applies to all health care providers in the state; all health insurers, including hospital service corporations, health service corporations, medical service corporations, dental service corporations and HMOs; all third party payers; all state agencies and departments, including,

PEIA and providers of services under Medicare and Medicaid; and all entities involved in the payment of health care claims.

The Insurance Commissioner will draft legislative rules implementing standards for health care administrative forms. The rules will be drafted with the advice of an advisory group consisting of representatives of consumers, providers, payors, and regulatory agencies, including representatives from the following: DHHR; the Health Care Authority; Dental Association; Pharmacists Association; the WVHA; commercial health insurers; third party administrators; the West Virginia State Medical Association; Nurses Association; PEIA; and consumers.

Any entity violating the standards would be subject to a fine of \$1000 for each violation and, the West Virginia Health Care Authority is empowered to withhold rate approval or a certificate of need for any health care provider.

### **Insurance/Coverage**

**SB 483 - Authorizing HMOs offer point of service option** – *Passed March 13, 2010; in effect ninety days from passage*

This bill relates to health maintenance organizations and their ability to provide a point of service option. Provisions in the bill authorize the Insurance Commissioner to develop standards for point of service options through legislative and emergency rule-making. Under the bill, "Point of service option" means a delivery system that permits an enrollee to receive health care services from a provider outside of the panel of providers with which the health maintenance organization has a contractual arrangement under the terms and conditions of the enrollee's contract with the health maintenance organization or the insurance carrier that provides the point of service option.

**HB 4128 - Relating to insurance companies deemed to be in hazardous financial condition** – *Passed March 3, 2010; in effect ninety days from passage*

This bill includes various provisions all relating to determining when insurance companies are to be deemed to be in hazardous financial condition; deleting severability provisions; providing for consideration of impact on creditors; providing for entry of an order by the commissioner placing the insurer under administrative supervision; revising standards and authority for the Insurance Commissioner's identification of companies in potentially hazardous condition; providing for additional remedies; removing requirement of hearing prior to entry of order of supervision; requiring a prompt hearing and providing procedure; and revising confidentiality provisions.

**HB 4373 - Eliminating the twelve-month look-back period for certain children who have had employer sponsored insurance** – *Passed March 12, 2010; in effect ninety days from passage*

This bill pertains to the eligibility of uninsured children to receive insurance under the Children's Health Insurance Program (CHIP). More specifically, the bill eliminates the 12 month period of

potential ineligibility of an uninsured child to receive insurance under CHIP if they were previously insured by an employer sponsored insurance plan.

### **Judicial/Elections**

**HB 4036 - Establishing the Judicial Vacancy Advisory Commission** – *Passed March 13, 2010; in effect ninety days from passage*

This bill establishes a Judicial Advisory Commission to assist the Governor in filling judicial vacancies. The commission shall consist of eight appointed members. Four public members shall be appointed by the Governor for six-year terms, except for the initial appointments which shall be staggered. Four attorney members shall be appointed by the Governor for six-year terms from a list of nominees provided by the Board of Governors of the West Virginia State Bar. The Board of Governors of the West Virginia State Bar shall nominate no more than twenty nor less than ten best qualified attorneys for appointment to the commission whenever there is a vacancy in the membership of the commission reserved for attorney members. The commission shall choose one of its appointed members to serve as chair for a three-year term. No more than four appointed members of the commission shall belong to the same political party. No more than three appointed members of the commission shall be residents of the same congressional district.

**HB 4130 - Creating the West Virginia Supreme Court of Appeals Public Campaign Financing Pilot Program** – *Passed March 13, 2010; in effect ninety days from passage*

This bill would establish a pilot program that would offer public funds to candidates for the two seats up in 2012 for the five-member Supreme Court. Candidates would have to meet a fundraising threshold to qualify, and then abide by the program's rules. It would offer candidates \$200,000 initially for a contested primary and \$350,000 for a contested general election. Sizable spending by third parties or nonparticipating candidates would trigger the release of additional funding. Originally, the measure included a variety of funding mechanisms, including an increase in fees attorneys pay to file cases in circuit courts, but those were eliminated in the Senate Finance Committee. With the fees stripped out of the bill, the only funding source -- other than private donations and any appropriations future Legislatures might make -- is \$1 million a year to be transferred from a surplus revenue account in the state Auditor's Office. That drops the amount of available funds for the pilot project from an estimated \$2.3 million a year, or a total of \$6.9 million, down to a total of \$3 million.

The bill was initiated as part of the judicial reforms recommended by the Governor's Independent Commission on Judicial Reform. Last year's study of the judiciary recommended a pilot program as a way to reduce the perceived influence of campaign cash over the courts.

**HB 4352 - Authorizing the West Virginia Supreme Court of Appeals to create a Business Court Division within certain circuit court districts** – *Passed March 11, 2010; in effect ninety days from passage*

The bill authorizes the state Supreme Court to establish a business court system in certain circuit court districts of the state. The new court will handle complex cases involving highly technical commercial issues. Once signed by the Governor, the West Virginia Supreme Court of Appeals will promulgate rules for the establishment and jurisdiction of the business court divisions within its circuit court system. A business court division will be created within the circuit court of any judicial district with a population in excess of 60,000 according to the 2000 Federal Decennial Census, the bill stipulates. The bill is part of the judicial reforms recommended by the Governor's Independent Commission on Judicial Reform.

**HB 4647 - Relating to the regulation and control of elections** – *Passed March 13, 2010; in effect ninety days from passage*

This bill expands disclosure requirements on those spending money in elections to include advertising in the newspaper. A federal judge has struck down two previous attempts of the Legislature to regulate advertising expenditures in elections.

### **Legislative Rules**

**SB 286 - Authorizing DHHR promulgate legislative rules** – *Passed March 13, 2010; in effect from passage*

This is the DHHR Omnibus Rules Bill containing a variety of rules related to: hospital ambulatory health care facilities ; Grade "A" pasteurized milk; fees for services; distribution of state aid funds to local boards of health; nurse aid abuse registry; and out-of- school time child care center licensing requirements.

The rules related to ambulatory health care facilities were filed by the Health Care Authority and correspond with legislation passed last year which makes a series of modifications to the certificate of need (CON) law. There was emergency rule-making authority in the bill which required the Health Care Authority to file rules to establish a process by which the Authority may exempt from CON review, the acquisition of a physician practice by a hospital. The Authority filed the emergency rules in August 2009, and the rules filed during the 2010 session merely codify them. More specifically, the rules establish a process which requires public notice by the hospital that intends to acquire or develop the ambulatory care facility. The rule spells out that process in detail.

**SB 407 - Authorizing Department of Revenue promulgate legislative rules** – *Passed March 13, 2010; in effect from passage*

This is the Omnibus Rules Bill for various state agencies including the following: authorizing the State Tax Department to promulgate a legislative rule relating to the Consumers Sales and Service Tax and Use Tax - drugs, durable medical goods, mobility-enhancing



equipment and prosthetic devices per se exemption; motor vehicles per se exemption; authorizing the Directors of the West Virginia Health Insurance Plan to promulgate a legislative rule relating to a premium subsidy – high risk insurance plan; authorizing the Directors of the West Virginia Health Insurance Plan to promulgate a legislative rule relating to a preexisting conditions exclusion; authorizing the Insurance Commissioner to promulgate a legislative rule relating to variable life insurance; authorizing the Insurance Commissioner to promulgate a legislative rule relating to annuity disclosure; authorizing the Insurance Commissioner to promulgate a legislative rule relating to Medicare supplement insurance; authorizing the Insurance Commissioner to promulgate a legislative rule relating to coordination of health benefits; authorizing the Insurance Commissioner to promulgate a legislative rule relating to mental health parity; and authorizing the Insurance Commissioner to promulgate a legislative rule relating to the preventive care pilot program.

**HB 4108 - Authorizing miscellaneous agencies and boards to promulgate legislative rules –**  
*Passed March 13, 2010; in effect from passage*

This is the Omnibus Rules Bill containing a variety of rules related to the following health boards and commissions: State Board of Examiners for Licensed Practical Nurses legislative rule relating to policies and procedures for development and maintenance of educational programs in practical nursing; Board of Medicine legislative rule relating to fees for services rendered by the Board of Medicine including assistance to the Board-designated physician health program for physicians, podiatrists and physician assistants; Board of Osteopathy legislative rules relating to fees for services rendered by the Board, licensing procedures for osteopathic physicians, and the formation and approval of professional limited liability companies, and the Governor's Office of Health Enhancement and Lifestyle Planning (GOHELP) legislative rule relating to prescription drug advertising expense reporting.

**Long-Term Care**

**HB 4186 - Relating to the practice of nursing home administration –**  
*Passed March 13, 2010; in effect ninety days from passage*

The restructuring and reappointment of the Nursing Home Administrators Licensing Board will now be initiated from passage of this bill. The bill states that on July 1, 2010, the Governor shall remove all current members and shall appoint the new Board which will consist of five licensed administrators and two citizen members, as well as the Commissioner of the Bureau of Public Health or his/her designee as an ex-officio nonvoting member. The terms of the members will be for 5 years (initial terms staggered) with a two consecutive term limit.

**HB 4425 - Developing a Pilot Program for Unlicensed Personnel to Administer Medication in a Nursing Home –**  
*Passed March 11, 2010; in effect ninety days from passage*



The bill authorizes the West Virginia Board of Examiners for Registered Professional Nurses and the West Virginia Health Care Association to work in a collaborative effort to develop education and training standards for the Med Aide program. The standards would be reviewed by the Legislative Oversight Commission on Health and Human Resources Accountability (LOCHHRA) when completed sometime this fall, and then the pilot bill would authorize implementation of the program in early 2011. It is expected that Emergency Rules being proffered would expedite the program's start date in nursing homes by July 2011.

### **Optometry/ Ophthalmology**

**SB 230 - Relating to Board of Optometry** – *Passed March 13, 2010; in effect ninety days from passage*

What quickly became known as “the” health care bill, if not, “the” bill of the session, SB 230 Optometry Bill, completed legislative in the waning hours of the session. Below is a brief summary of the bill as filed in the conference committee report which was adopted by the Senate and House. This summary is provided to us by the **West Virginia Academy of Ophthalmology**.

- Lasers are OUT. We are very happy about this. Also, they will NOT be able to add this without another legislative battle as therapeutic lasers are listed under what optometrists are NOT allowed to do.
- Returned to current law regarding the use of the term "optometric physician". The compromise language in the House version was deleted prohibiting optometrists from using the term optometric physician. We are disappointed in the removal of this language.
- Allows use of epi-pens.
- Additional injections must be defined by Board of Optometry and approved through the Legislative Rule-making process....providing a public review process of their requests to do additional injections.
- There is a prohibition from injecting into the globe of the eye.
- Allows prescribing and dispensing contact lenses that contain and deliver pharmaceutical agents that have been approved by the Food and Drug Administration as a drug.
- Allows the Board of Optometry to add new drugs to their formulary or prescription of drugs that have "new drug indications" without going through the Legislative Rule-making process.
- Allows use of epi-pens.
- Order laboratory tests rational to the examination, diagnosis, and treatment of a disease or condition of the eye.
- Perform the following procedures
  1. Remove a foreign body from the ocular surface and adnexa utilizing a non-intrusive method;
  2. Remove a foreign body, external eye, conjunctival, superficial, using topical anesthesia;

3. Remove embedded foreign bodies or concretions from conjunctiva, using topical anesthesia, not involving sclera;
4. Remove corneal foreign body not through to the second layer of the cornea using topical anesthesia;
5. Epilation of lashes by forceps;
6. Closure of punctum by plug;
7. Dilatation of the lacrimal puncta with or without irrigation

### **Pharmacies/Prescription Drugs**

**SB 81 – Creating WV Official Prescription Program Act** – *Passed March 11, 2010; in effect ninety days from passage*

The purpose of this bill is to reduce prescription drug fraud by requiring prescriptions to be written on an official tamper-proof form. The bill also requires the Board of Pharmacy to promulgate rules establishing reporting requirements and defining terms.

**SB 362 - Prohibits providing false information to obtain controlled substances prescriptions** – *Passed March 13, 2010; in effect ninety days from passage*

The bill's purpose is to clarify that the statute also prohibits misleading or false information from being given to a medical practitioner in order to obtain another prescription for a controlled substance. The bill also increases the criminal penalties.

**SB 365 - Requiring pharmacies provide personnel online access to controlled substances database** – *Passed March 11, 2010; in effect ninety days from passage*

This bill relates to the West Virginia Controlled Substances Monitoring Program database by requiring all prescribers or dispensers of Schedule II, III or IV controlled substances to have online access to the West Virginia Controlled Substances Monitoring Program database; authorizing persons or entities with access to the database to delegate access to database to others; limiting liability practitioners for good faith reliance on database; authorizing the Office of the Chief Medical Examiner access to the database; clarifying that practitioners have no duty to access database; authorizing rules for delegation of access; and rulemaking.

More specifically, the modified bill includes provisions of [SB 364](#) permitting the Chief Medical Examiner to inspect certain controlled substances data base information. The bill now applies to all pharmacies when a controlled substances prescription is dispensed. Immunity provisions are provided for practitioners and they are not required to access the West Virginia Controlled Substances Monitoring Program database.

**SB 514 - Clarifying certain language in Controlled Substances Monitoring Act** – *Passed March 5, 2010; in effect ninety days from passage*

The purpose of this bill is to correct the reference in *West Virginia Code* provisions identifying the controlled substances that are subject to reporting in the monitoring database. The current language in *Code* references only Schedule II of the Uniform Controlled Substances Act, instead of Schedules II, III and IV as specified in other *Code* sections. The amended language makes this reference consistent with other current *Code* provisions.

**HB 2485 - Allowing pharmacy interns to vend pseudoephedrine and other chemical precursors of methamphetamine** – *Passed March 12, 2010; in effect ninety days from passage*

Provisions in this bill all relate to updating who may sell, possess or otherwise handle pseudoephedrine and other chemical precursors of methamphetamine; defining terms; and updating reporting requirements. The bill adds language specifically allowing pharmacy interns to vend pseudoephedrine and other chemical precursors of methamphetamine.

**Professions/Physicians/Medical/Nurses etc**

**SB 372 - Updating language in WV Medical Practice Act** – *Passed March 13, 2010; in effect ninety days from passage*

This bill relates to the State Board of Medicine by updating language in the WV Medical Practice Act. It is essentially a “clean-up” bill suggested by the Board of Medicine to remove outdated references. The one significant aspect is that it provides an updated definition of surgery for physicians, physician assistants and podiatrists licensed under the Board of Medicine which reads: "Surgery" includes the use on humans of lasers, ionizing radiation, pulsed light and radiofrequency devices.

**SB 584 - Relating to Center for Nursing's data collection policy** – *Passed March 10, 2010; in effect ninety days from passage*

The purpose of this bill is to detail more of the responsibilities of the WV Center for Nursing in collecting aggregate data from workforce regions of the state in the areas of vacancies, turnover rates and hard to fill positions in all applicable health care venues. The Center then will utilize this data to strategically plan for recruitment and retention initiatives by region. This bill is a result of a Legislative Audit that said that the Center was not meeting their goals in the aforementioned areas. The bill does NOT contain any penalty provisions for non-compliance of providers in submitting the requested data. The WVHA will be working with the Center to coordinate and collect the appropriate data from hospitals.

**SB 597 - Requiring women seeking abortion opportunity to see fetus ultrasound image** –  
*Passed March 13, 2010; in effect ninety days from passage*

This bill amends the Women's Right to Know Act. Under the bill, women seeking abortions in West Virginia would be asked in writing whether they wish to view an ultrasound beforehand. The bill would apply when a doctor deems a fetal ultrasound medically necessary. The woman would sign a form acknowledging the offer to view the image. As amended late in the legislative session, the measure also eliminates criminal penalties for doctors who violate the Women's Right to Know Act. Licensing boards would instead handle sanctions for any failures to provide required information to women seeking abortions.

**SB 618 - Relating to osteopathic physician assistants** – *Passed March 11, 2010; in effect ninety days from passage*

This bill relates to osteopathic physician assistants and updates definitions and clarifies the use of the term "license" in lieu of "certificate." The bill also modifies the authorization to prescribe drugs; modifies the classes of pharmaceuticals that may be prescribed by an osteopathic physician assistant and changes the amount of certain drugs that may be prescribed; and authorizing fees to be set by legislative rule. In all, the bill makes prescriptive authority the same for PAs licensed by the Board of Osteopathy as those by the Board of Medicine.

**HB 4138 - Relating to the practice of medical imaging and radiation therapy** – *Passed March 12, 2010; in effect from passage*

The purpose of this bill is to include radiologist assistants under the regulating authority of the Medical Imaging & Radiation Therapy Technology Board.

**HB 4140 - Relating to the board of physical therapy** – *Passed March 13, 2010; in effect ninety days from passage*

This bill is a "modernization" of the practice act and does not expand the scope of practice of physical therapists. It also makes no change in other professions' scope of practice. (i.e. chiropractors, physicians, occupational therapists or massage therapists. More specifically, the bill amends the *Code* to reflect the current and future physical therapy, rehabilitative and health care needs of citizens. It is consistent with the Federation of State Board of Physical Therapy Model Practice Act. The bill was developed in consultation with the WV Board of Physical Therapy and other stakeholders from across the state working with the WV Physical Therapy Association.

**HB 4143 - Relating to emergency medical services** – *Passed March 13, 2010; in effect from passage*

The purpose of this bill is to strengthen the authority of the Office of Emergency Medical Services. It requires applicants for certification to allow the State Police access to personal background information; requires certified persons to report violations and provides immunity from civil liability for reporting violations; removes automatic stay on appeal and increases criminal penalties for violations.

### **Public Employees Insurance Agency (PEIA)**

**SB 442 - Clarifying PEIA Finance Board may offset certain annual retiree premium increases** – *Passed March 13, 2010; in effect from passage*

This bill clarifies that the Public Employees Insurance Agency (PEIA) Finance Board may offset annual retiree premium increases with amounts held in the trust. The minimum annual employer payment amount calculation may include not only the retiree contribution, but the PEIA Board financial plan as well.

**SB 446 - Clarifying deceased public employees' survivors participate in comprehensive group health insurance plans only** – *Passed March 13, 2010; in effect ninety days from passage*

Provisions in the bill clarify that the surviving spouse and dependents of a deceased PEIA participant may only participate in comprehensive group health insurance coverage. The surviving spouse and dependents are not eligible for life or other insurance coverage.

**SB 449 - Relating to PEIA preexisting conditions limitations** – *Passed March 13, 2010; in effect ninety days from passage*

This bill clarifies preexisting condition limitations of PEIA. The bill limits entrance to the plan to the time of hire, annual open enrollment or upon the occurrence of a "qualifying event" under section 125 of the United States Internal Revenue Code and payment shall be made for preexisting condition expenses following those entrance events.

**HB 4299 - Providing that non-state retired employees who have worked for their last non-state employer for less than five years are responsible for their entire premium cost** – *Passed March 11, 2010; in effect ninety days from passage*

Provisions in the bill provide that retired employees who retire on or after July 1, 2010, who have participated in PEIA as active employees for less than five years and who were employed

by an employer that is not participating in the PEIA program are responsible for the entire premium cost for coverage.

### **Tobacco Prevention/Cigarettes**

**HB 2773 - Increasing the monetary penalties for selling tobacco products to minors –**  
*Passed March 13, 2010; in effect ninety days from passage*

This bill deals with underage consumers buying cigarettes and smokeless products. Those individuals could face steeper fines and more hours in community service. Under the legislation, penalties generally are doubled. Any person violating the provisions of this section shall for the first violation be fined \$50 and be required to serve eight hours of community service; for a second violation, the person shall be fined \$100 and be required to serve 16 hours of community service; and for a third and each subsequent violation, the person shall be fined \$200 and be required to serve 24 hours of community service.

### **Workers' Compensation**

**HB 4459 - Increasing the time in which a dependent may apply for Workers Compensation death benefits where occupational pneumoconiosis is determined to be a cause of death –**  
*Passed March 10, 2010; in effect ninety days from passage*

This bill relates to Workers Compensation death benefits where occupational pneumoconiosis is determined to be a cause of death; requiring notice of need to file for certain death benefits; and increasing from one year to two years the time in which a dependent may apply for Workers Compensation death benefits where occupational pneumoconiosis is determined to be a cause of death.

**HB 4615 - Authorizing political subdivisions to establish risk pools to insure their workers' compensation risks –** *Passed March 12, 2010; in effect from passage*

This bill authorizes political subdivisions to establish risk pools to insure their workers' compensation risks and provides that political subdivisions may not make application to the Insurance Commissioner to operate a risk pool until rules promulgated to regulate such programs have been made effective. The rules are to be developed by the Insurance Commissioner.

## Miscellaneous

**SB 422 - Limiting liability for non-health care provider defibrillator users** – *Passed March 13, 2010; in effect ninety days from passage*

This bill relates to limiting liability for anticipated automatic external defibrillator users who are not health care providers.

**HB 2503 - Requiring licensed tattoo artist to inform patrons, prior to performing the tattoo procedure, of the potential problems that a tattoo may cause in relation to the reading of magnetic resonance imaging** – *Passed March 11, 2010; in effect ninety days from passage*

This bill relates to requiring licensed tattoo artists to inform patrons, prior to performing the tattoo procedure, of the potential problems that a tattoo may cause in relation to the clinical reading of magnetic resonance imaging studies. The bill requires the DHHR to prepare written forms thereto; requiring an acknowledgment by the patron and specifying record keeping requirements.

**HB 3152 - Athletic Trainers Registration Act** – *Passed March 13, 2010; in effect ninety days from passage*

This bill relates to athletic trainers by providing definitions and restricting the use of certain titles. Under the bill, a person may not advertise or represent himself or herself as an athletic trainer in this state and may not use the initials "AT", the words "registered athletic trainer" or "athletic trainer", or any other words, abbreviations, titles or insignia that indicates, implies or represents that he or she is an athletic trainer, unless he or she is registered by the Board of Physical Therapy.

**HB 4281 - Replacing references to "mental retardation" with "intellectual disability"** – *Passed March 13, 2010; in effect ninety days from passage*

This bill removes references to "mentally retarded" and "mental retardation" in healthcare-related legislation and replaces those references with "intellectual disability."

**HB 4374 - Caregivers Consent Act** – *Passed March 8, 2010; in effect ninety days from passage*

Provisions of this bill all relate to establishing the Caregivers Consent Act; defining terms; setting parameters of caregiver's consent for minors health care; detailing duties of health care facilities or practitioners; stating requirements for affidavits of caregiver consent; providing for revocation or termination of consent; limiting liability for good faith reliance on affidavit; stating exceptions to applicability; creating a criminal penalty for false statement; and establishing rule-making authority.



**HB 4531 - Mandating that shackling of pregnant women who are incarcerated is not allowed except in extraordinary circumstances – Passed March 13, 2010; in effect ninety days from passage**

The purpose of this bill is to allow for the proper care of inmates in state institutions or facilities. Provisions in the bill including the following: authorizing the transfer of inmates with mental health needs; authorizing the transfer of inmates for medical reasons under appropriate supervision; providing criteria, standards and limitations relating to the proper treatment of pregnant inmates; authorizing restraint of pregnant inmates when necessary; and providing criteria, standards and limitations relating to the proper treatment of pregnant juveniles in the custody of the Division of Juvenile Services.

**FY 2011 BUDGET ACTIVITY**

The West Virginia Legislature has completed the State fiscal year (SFY) budget for July 1, 2010 to June 30, 2011. The total budget for SFY 2011 is \$11.6 billion, level with SFY 2010. Both years include ARRA funding as approved by Congress in 2009. The total general revenue budget decreased 1.5 percent to \$3.74 billion due to lower revenue projections and spending reductions.

**Medicaid Budget**

The general revenues devoted to the Medicaid budget for next year have been reduced by \$30.1 million from the SFY 2010 budget.

Once again, the reduction is offset by the additional federal dollars available due to enhance FMAP as directed in the ARRA legislation. The legislature also re-appropriated SFY 2010 surplus into SFY 2011, excluding \$14.5 million of expiring funds. The re-appropriated amounts are eligible for enhanced federal match for two quarters of SFY 2011 until December 31, 2011. The budget also provides \$6,356,000 funding for the tertiary/teaching hospital portion of the Enhanced Payment Program; \$2,596,000 for rural hospitals under 150 beds and \$6.8 million transfer from PEIA to the Medicaid program. These line items are eligible for the enhanced federal match which is currently 83.05 percent.

Total provider taxes are budgeted to decrease \$12.8 million in SFY 2011 due to the final year, of the 10 year phase out, tax on physicians.

**Other Health-Related Budget Items of Note**

The legislature approved increases for the MRDD and Senior waiver programs totaling \$23.5 million. The additional funding will add slots to both programs. In light of projected Medicaid surplus in excess of \$300 million, Delegate Don Perdue (D) Cabell advocated reducing waiting lists with the earmarked funds.

The final budget may be accessed by visiting:

[www.legis.state.wv.us/Bill\\_Text\\_HTML/2010\\_SESSIONS/RS/bills/sb213%20sub%20enr.pdf](http://www.legis.state.wv.us/Bill_Text_HTML/2010_SESSIONS/RS/bills/sb213%20sub%20enr.pdf)

*If you would like additional information regarding the bills described in the “Dome” or would like a status report on other bills of interest, please do not hesitate to contact me. Thanks.*

*Tony*

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