2017 Legislative Summary

West Virginia Hospital Association

2017 REGULAR SESSION AT A GLANCE

ceobulletin

April 27, 2017

TO: Chief Executive Officers
WVHA Member Hospitals and Health Systems

FROM: Tony Gregory
Vice President, Legislative Affairs

SUBJECT: **2017 REGULAR SESSION AT A GLANCE**

The West Virginia Legislature adjourned the regular session on April 9, after approving a state budget that was ultimately vetoed by the Governor on April 13. This marked an end to a challenging, but successful session for the West Virginia Hospital Association (WVHA) and its member hospitals.

Special Session and State Budget Update

The Governor's budget veto now sets the stage for a special session that will begin on May 4 for legislators to develop an FY 2018 state budget. The WV Constitution requires that a budget be in place by July 1, 2017. The WVHA will be paying close attention to how legislators will address a projected $500 million shortfall in next year's FY 2018 budget through possible tax reforms, revenue measures and/or other proposals or cuts to prevent current and future deficits.

Depending on how the discussions unfold in the days and weeks ahead, the budget ultimately may be a combination of scenarios illustrated by the Governor's administration, the senate and house and include elements of tax reform, revenue proposals and possibly cuts.

It's being reported in the media that the "budget compromise" (at least between the Governor and the Senate leadership), avoids cuts to higher education, DHHR, public education, the State Police and other agencies.

Setting the Stage

As the legislature and Governor return to the budget "drawing board," we want to "set the stage" for future communications that you'll be receiving in the next several weeks from the WVHA legislative team. These communications will be individual CEO Bulletins summarizing key bills passed by the legislature during the 2017 regular session and signed into law by the Governor.

Our intent is to provide you and your management team with a summary of bills that will be implemented or will face upcoming effective dates in the weeks ahead. These summaries will be highlights of the legislation passed. We advise that in some instances you may need to consult with your internal management staff for

additional guidance. However, please feel free to contact WVHA staff with any questions, concerns or comments.

"Top 5" Bills

You will be receiving further communication and details regarding the following **"Top 5"** bills that we've identified impacting hospitals and healthcare:

• HB 2459 – **Certificate of Need (CON) changes and West Virginia Health Care Authority restructuring.** This bill makes several programmatic changes to the CON statute pertaining to exemptions and other CON matters. It also makes significant changes to the structure and operations of the West Virginia Health Care Authority – *effective from passage with internal effective dates for WV Health Care Authority transition plans June 1, 2017, and transfer July 1, 2017*.

• SB 486 - **Directed Payment Program - DPP**. This bill continues the existing Medicaid Upper Payment Limit (UPL) Program for an additional year to June 30, 2018, and renames it the Directed Payment Program (DPP). The purpose of the Program is to increase Medicaid payments to eligible acute care hospitals – closer to what Medicare would pay for the same services. Beginning July 1, 2017, the current tax rate paid by eligible acute care hospitals under the Program changes from the current .74 percent to .75 percent. Other changes in the bill were made due to Medicaid's continued transition into Managed Care and the necessary compliance with federal requirements as outlined in new CMS Managed care rules – *effective July 1, 2017*.

• SB 402 – **Physician Non-Compete**. This bill states that a covenant not to compete between a physician and an employer shall be limited to one year in duration, and 30 road miles from the physician's primary place of practice with the employer. Further, the covenant not to compete shall be void and unenforceable upon the termination of the physician's employment by the employer. This bill represents a compromise that the WVHA Legislative Team negotiated with Senate Health Committee Chairman Dr. Tom Takubo. The bill as it was originally introduced prohibited non-competes and the language negotiated provides for limitations as described above – *the internal effective date states that the bill applies to any contracts between a physician and his or her employer entered into, modified, renewed or extended on or after July 1, 2017*.

• SB 578 – **Medical records copying fees**. This bill establishes a new fee structure for copies of medical records – *effective July 6, 2017*. The new fee structure is changed from a "reasonable, cost based fee", to the following:

- o A search and handling fee not to exceed $20;
- o A per page fee not to exceed 40 cents for paper copies; and,
- o Postage, if the person requested that the records be mailed, plus any applicable taxes.

Further, the bill adds a new subsection that specifies all requests for records that are stored in an electronic form will be delivered in an electronic or digital form, unless the requesting person requests a paper copy.

- o The fee for providing an electronic copy shall not exceed 20 cents per page. This fee is capped at $150 only if provided in an electronic format, inclusive of all fees, including a search and handling fee, except for applicable taxes;
- o Adds a new fee of $10 for any request for a record to be certified by affidavit;
- o Beginning October 1, 2017 and annually thereafter, the per page fee for paper and electronic copies, shall be adjusted to reflect the consumer price index for medical care services.

• HB 2431 – **Relating to offering influenza immunizations**. This bill states that hospitals shall offer to an inpatient who is 65 years of age or older an influenza immunization prior to discharge from October 1 of every year and continuing through March 1 of the following year – *effective June 13, 2017*.

Remaining bills of importance

There were other bills impacting hospitals and healthcare that completed legislative action this session. In many instances, the WVHA legislative team, with input from the WVHA Legislative Committee and senior staff, worked behind the scenes to ensure minimal impact on hospitals and healthcare delivery. Strategies included offering amendments or drafting language to narrow the scope or time-frame of impact, as well as ensuring hospital input or representation in the drafting of corresponding legislative rules or implementation of the legislation. We worked collaboratively with legislators, staff and other stakeholders on numerous bills.

Some of the remaining healthcare related bills that we'll be summarizing in the coming weeks include:

• SB 338 – Relating to medical professional liability – *effective June 29, 2017*.
• SB 333 - Requiring all DHHR-licensed facilities access WV Controlled Substances Monitoring Program Database and – *effective July 7, 2017*.
• HB 2620 - Creating the Office of Drug Control Policy within the Department of Health and Human Resources and requiring hospitals and healthcare providers to report drug overdoses and fatalities – *effective July 7, 2017*.
• SB 386 - Creating the West Virginia Medical Cannabis Act – *effective July 4, 2017 with several out-year implementation dates*.
• HB 2509 - Relating to the practice of telemedicine generally; prohibiting the prescribing of a drug with the intent of causing an abortion; and allowing a physician to prescribe controlled substances on Schedule II of the Uniform Controlled Substances Act in certain circumstances – *effective from passage*.
• HB 2522 – Nurse licensure compact – *effective July 3, 2017*.
• HB 2519 – Medicaid program compact – *effective July 3, 2017*.
• HB 2428 – Establishing additional substance abuse treatment facilities – *effective from passage*.
• HB 2301 – Relating to direct primary care – *effective June 13, 2017*.
• SB 187 – Relating to confidentiality of patients' medical records – *effective July 6, 2017*.

Defense

Playing defense to ensure that potentially harmful legislation or amendments did not become law also was an important component of our overall legislative strategy. The WVHA legislative team played a key role in keeping several bills/amendments off the table including the following:

• HB 2812 – This bill would have created an Office of Rural Health within the Center for Rural Health Development, Inc. This newly created private entity would have been duplicative of work already conducted by the State Office of Rural Health within DHHR. WVHA works collaboratively with the office on several projects to support the Critical Access Hospital (CAH) Network and rural healthcare in general. Based on comments provided by WVHA and concerns expressed by legislators, the bill failed in committee; and

• HB 2906 - This bill would have moved the Office of Emergency Medical Services from the Bureau for Public Health to the Department of Military Affairs and Public Safety, and would have provided an Emergency Medical Services Council with authority and oversight over the Office of Emergency Medical Services. WVHA expressed serious concern over this abrupt change in EMS structure and oversight. Based on the comments provided by WVHA and individuals representing HealthNet Aeromedical Services, the bill failed in committee.

If you have any questions regarding legislative issues/activity or the on-going budget discussions, please do not hesitate to contact me at the Association at (304) 353-9719 or tgregory@wvha.org.

2017 CHANGES TO CON AND WV HEALTH CARE AUTHORITY

ceobulletin

September 12, 2017

TO: Chief Executive Officers
WVHA Member Hospitals and Health Systems

FROM: Tony Gregory
Vice President, Legislative Affairs

SUBJECT: **2017 CHANGES TO CON AND WV HEALTH CARE AUTHORITY**

Changes during the 2017 Regular and Special Sessions to the Certificate of Need (CON) program, and the structure and operations of the WV Health Care Authority (including the hospital assessment and financial disclosure) are now in full effect due to the passage of HB 2459 (Regular Session) and HB 117 (Special Session). Since many of you are now experiencing some of the beneficial changes within CON and the HCA, Brandon Hatfield, WVHA General Counsel, prepared the attached summary document that will be helpful as the changes continue to be implemented.

It's worth noting that in recent legislative interim meetings, Bill Crouch Cabinet Secretary for the Department of Health and Human Resources (DHHR) provided a status report on the transition of the HCA into the DHHR structure per passage of HB 2459. He said the transition has resulted in numerous operational and physical facility changes including a reduction in workforce from 48 FTEs to 19; reduced office space and rent; and a reduction in the hospital assessment, (which WVHA advocated during the 2017 Regular Session). The Secretary also reported that the new 5-member part-time board is in place – meeting twice monthly to review Certificate of Need (CON) applications and by telephone conference for other matters as necessary.

The attached summary is not an exhaustive list of every change in each CON/HCA bill that completed legislative action and signed into law by the Governor. Rather, we wanted to provide you with the pertinent sections of law that impact member hospitals and health systems as you navigate the updated CON program and the new HCA board structure and operations.

If you have any questions regarding the recent changes, please do not hesitate to contact me or Brandon Hatfield at the Association.

TG/tlr

Summary-of-HB2459-and-HB117-Final.pdf

SUMMARY OF SB 486 – CONTINUATION OF THE ACUTE CARE HOSPITAL TAX

ceobulletin

May 12, 2017

TO: Chief Executive Officers
WVHA Member Hospitals and Health Systems

FROM: Carol Haugen
Vice President, Financial Policy

SUBJECT: **SUMMARY OF SB 486 – CONTINUATION OF THE ACUTE CARE HOSPITAL TAX**

SB 486 is effective July 1, 2017.

SB 486 impacts only eligible acute care Inpatient Prospective Payment Hospitals (IPPS). The bill excludes psych IPPS, Critical Access Hospitals (CAH), and state owned or designated hospitals.

The legislation continues the acute care hospital tax, which has been in effect since July 1, 2011 for another year. The tax proceeds are dedicated to Medicaid Supplemental payments formerly known as Upper Payment Limit (UPL) and are now converted to Directed Payment Program (DPP) payments. The UPL program was a Medicaid Supplement allowable exclusively for Fee for Service payments. WV Medicaid, effective January 1, 2017, has moved much of the Medicaid populations utilizing hospital services to managed care. With this shift, SB 486 renamed the payment to DPP for SFY 2018.

SB 486 adjusted the tax rate from the current 0.74 percent to 0.75 percent.

SB 486 also expanded the definition of taxed hospitals. Effective July 1, 2017 Non-State Government Owned Hospitals (NSGO) hospitals are subject to the tax. In previous years, the NSGO utilized an intergovernmental transfer program to participate in the UPL program. Under current rules, that funding methodology is excluded in an MCO environment.

WVHA will sponsor a conference call for DPP eligible hospitals soon. In the interim, please direct your questions or comments to me at (304) 353-9721 or by email at chaugen@wvha.org.

CH/kw

SUMMARY OF SB 402 – PHYSICIAN NON-COMPETE

ceobulletin

May 05, 2017

TO: Chief Executive Officers
WVHA Member Hospitals and Health Systems

FROM: Tony Gregory
Vice President, Legislative Affairs

SUBJECT: **SUMMARY OF SB 402 – PHYSICIAN NON-COMPETE**

One of the bills that the WVHA legislative team dealt with during the 2017 Regular Session was Senate Bill 402 relating to physician non-competes. The bill passed the legislature on April 7, 2017, and applies to any contract between a *physician* and his or her *employer* entered into, modified, renewed or extended on or after July 1, 2017.

The bill represents a compromise that WVHA negotiated with the bill sponsor Senate Health Committee Chairman, Dr. Tom Takubo. The bill as it was originally introduced prohibited non-competes and the language we helped negotiate and compromise now provides for limitations as described below.

Specifically, the purpose of the bill is to limit a covenant not to compete between a *physician* and an *employer* to not more than:

1. One year in duration; and
2. Thirty road miles from the physician's primary place of practice with the employer.

It also provides that a covenant not to compete shall be void and unenforceable upon the termination of a physician's employment by the employer.

The bill specifically defines *employer* to mean "any person employing at least one individual in the state or any agent of an employer employing at least one individual in the state."

Section three of the bill allows for the enforceability of various other contractual provisions, including a liquidated damages provision. Finally, the bill provides for two limited exemptions to the limitations set forth in the bill:

1. In the case where the physician has sold his or her business or practice in the form of a sale of assets, stock, membership interests or otherwise to his or her employer; or
2. To contracts between physicians who are shareholders, owners, partners, members or directors of a health care practice.

Based on the changes in *West Virginia Code* to take effect on July 1, 2017, we strongly suggest that each hospital review their contractual arrangements with physicians to ensure compliance with the new state law. We also urge you to please distribute this bulletin and the attached final version of the bill to the appropriate staff in your facility responsible for carrying out the new provisions.

If you have any specific questions regarding SB 402 ahead of its July 1, 2017 effective date, please feel free to contact me or WVHA General Counsel Brandon Hatfield at bhatfield@wvha.org or 304-353-9720.

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SB402-SUB1-enr.pdf

SUMMARY OF SB 578 – MEDICAL RECORD COPYING FEES

ceobulletin

May 04, 2017

TO: Chief Executive Officers
WVHA Member Hospitals and Health Systems

FROM: Tony Gregory
Vice President, Legislative Affairs

SUBJECT: **SUMMARY OF SB 578 – MEDICAL RECORD COPYING FEES**

Effective July 6, 2017, there will be new fees in *West Virginia Code* for medical record copying with the passage of SB 578 during the 2017 Regular Session. The bill applies to any licensed, certified or registered healthcare provider so licensed, certified or registered under the laws of this state.

The last time the medical record copying fees were changed was in 2014 when WVHA and other healthcare provider groups worked extensively to mirror the *West Virginia Code* with federal HITECH HIPPA rules that were implemented in September 2013. The federal rules outlined the scope of "reasonable fees" that can be charged for both paper and electronic copies under 164.524(c)(4).

The primary advocate of SB 578 during this passed session was the health information management company CIOX, which we understand some West Virginia hospitals use for the release of information. Their primary purpose of changing the law related to Class Action litigation taking exception to CIOX's billing model regarding fees for medical records. The statute, from their perspective, also was unclear as to how to calculate labor costs.

With that background in mind, SB 578 establishes a new fee structure for copies of medical records. The new fee structure is changed from a "reasonable, cost based fee," previously established in 2014, to the following effective July 6, 2017.

- A search and handling fee not to exceed $20;
- A per page fee not to exceed 40 cents for paper copies; and
- Postage, if the person requested that the records be mailed, plus any applicable taxes.

Further, the bill adds a new subsection that specifies all requests for records that are stored in an electronic form will be delivered in an electronic or digital form, unless the requesting person requests a paper copy.

- The fee for providing an electronic copy shall not exceed 20 cents per page. This fee is capped at $150 only if provided in an electronic format, inclusive of all fees, including a search and handling fee, except for applicable taxes;
- Adds a new fee of $10 for any request for a record to be certified by affidavit; and

- Beginning October 1, 2017 and annually thereafter, the per page fee for paper and electronic copies, shall be adjusted to reflect the consumer price index for medical care services.

Based on the changes in *West Virginia Code* to take effect on July 6, 2017, we strongly suggest that each hospital review its billing practice for medical records to ensure compliance with the new state law. We also urge you to please distribute this bulletin and the attached final version of the bill to the appropriate staff in your facility responsible for carrying out the new provisions.

If you have any specific questions regarding SB 578 ahead of its July 6, 2017 effective date, please feel free to contact me at the Association.

TG/tlr

sb578-enr.pdf

SUMMARY OF HB 2431 – REQUIRING FLU VACCINES UPON HOSPITAL DISCHARGE

ceobulletin

May 02, 2017

TO: Chief Executive Officers
WVHA Member Hospitals and Health Systems

FROM: Tony Gregory
Vice President, Legislative Affairs

SUBJECT: **SUMMARY OF HB 2431 – REQUIRING FLU VACCINES UPON HOSPITAL DISCHARGE**

One of the bills impacting hospitals that passed the legislature this session and signed into law was HB 2431 - requiring that seniors be offered the flu vaccine upon discharge from a hospital. The bill provides that the immunizations are voluntary and it provides for exceptions based upon availability and in cases where immunizations are contraindicated.

Fifteen states have enacted similar legislation including neighboring Ohio and Pennsylvania. The primary proponent of the legislation is Sanofi Pasteur, one of five providers of the influenza vaccine in the US. During the session, legislators emphasized the importance of requiring flu vaccines to promote public health.

Specifically, the bill states that:

- A hospital licensed pursuant to the provisions of article five-b of this chapter shall offer to an inpatient who is sixty-five years of age or older an influenza immunization prior to discharge from October 1 of every year and continuing through March 1 of the following year;
- The immunizations may not be offered in cases where the immunization is contraindicated;
- The requirements of providing the vaccine are subject to the availability for sufficient influenza immunizations; and
- Nothing in the bill may be construed to require an influenza immunization as a condition of receiving any type of service or as a condition of discharge.

WVHA did not oppose the legislation as it traveled through the legislative process since it was widely accepted and current practice in hospitals throughout the state. In terms of payment, CMS reports that hospitals are already reimbursed by Medicare outside the DRG for immunizing patients prior to discharge.

If you have any specific questions regarding HB 2431 ahead of its June 13, 2017 effective date, please feel free to contact me at the Association.

TG/tlr

SUMMARY OF SB 338 – CHANGES TO THE MPLA AND OTHER HEALTHCARE LIABILITY – RELATED BILLS OF INTEREST

ceobulletin

May 02, 2017

TO: Chief Executive Officers
WVHA Member Hospitals and Health Systems

FROM: Tony Gregory
Vice President, Legislative Affairs

SUBJECT: **SUMMARY OF SB 338 – CHANGES TO THE MPLA AND OTHER HEALTHCARE LIABILITY – RELATED BILLS OF INTEREST**

During the 2017 Regular Session, SB 338 was passed relating to changes to West Virginia's Medical Liability Practice Act (MPLA).

In total, the Legislature made three significant amendments to the MPLA in SB 338. One of the amendments applies to all healthcare providers and facilities and two apply only to long term care providers and facilities.

The first amendment added a **definition for the term "occurrence"**. In a couple of cases, plaintiff's lawyers brought multiple lawsuits on behalf of a client arising from a single event or occurrence. They then argued that the MPLA's full damage caps applied in each lawsuit; therefore, the damage caps could double, triple or quadruple depending on the number of lawsuits filed.

Occurrence is now defined as "any and all injuries to a patient arising from healthcare rendered by a healthcare facility or a healthcare provider and includes any continuing, additional or follow-up care provided to that patient for reasons relating to the original healthcare provided, regardless if the injuries arise during a single date or multiple dates or treatment, single or multiple patient encounters, or a single admission or a series of admissions." *WV Code §55-7B-2*.

The second amendment involves the **statute of limitations** for certain lawsuits. It requires causes of action against a nursing home, assisted living community or a distinct part of an acute care hospital providing intermediate care or skilled nursing care be brought within one year of the date of injury. *WV Code §55-7B-4*.

The third amendment applies to **venue**. Causes of action against a nursing home, assisted living community or a distinct part of an acute care hospital providing intermediate care or skilled nursing care must be brought in the county in which the facility is located. *WV Code §55-7B-4*.

SB 398 and SB 497

There were two other liability related bills impacting healthcare providers that passed the legislature this session and signed into law. They include:

SB 398 - ***Creating Emergency Volunteer Health Practitioners Act – Effective July 4, 2017***

This bill creates a registration system for healthcare practitioners who want to volunteer their time and service during states of emergency. This bill is based on a uniform law that was approved in 2006 by the National Conference of Commissioners on Uniform State Laws which was prompted by the difficulties during the 2005 hurricane season on the gulf coast.

The act calls for the creation of a registration system which out-of-state practitioners may use either before or during a disaster. The system may coincide with existing federal/state systems. It grants the Governor the authority to regulate volunteer health practitioners during states of emergencies. It provides for a registration system to be operated by a disaster relief organization, a licensing board or a governmental entity. The designation of who would operate the registration system is given to the Governor. Healthcare practitioners who are properly registered may practice in this state during states of emergency without the need for an additional license. The healthcare practitioner must be in good standing in his or her home state. There are specific exclusions for credentialing and privileging.

There are also limitations of liability unless the act is intentional or willful misconduct. Volunteers are also granted workers compensation coverage for death or injuries that occur while volunteering.

Specific limitations in the bill require the volunteer adhere to his or her scope of practice. The State Health Officer is given the authority to modify or restrict the services provided. The host entity as defined in the bill as the entity which relies upon the volunteer services, may also restrict the volunteer services. The DHHR is also given the power to incorporate the volunteers into an Emergency Management Assistance Compact in conjunction with an emergency. The DHHR Secretary is given rulemaking authority to help implement this new law.

SB 497 – ***Liability for healthcare providers who provide services at school athletic events – Effective June 29, 2017***

This bill provides that persons licensed, certified or registered in this state or another state to provide healthcare or professional healthcare services are subject to limited liability if they render emergency care or treatment at a public or private elementary or secondary school athletic event. The bill outlines circumstances under which liability can be limited; eliminates provisions limiting liability to the extent of insurance coverage; eliminates reference to standard of care in medical professional liability act; and establishes that acts of willful misconduct are not subject to limited liability.

If you have any specific questions regarding SB 338 ahead of its June 29, 2017 effective date or the healthcare liability-related bills passed, please feel free to contact me at the Association.

TG/tlr

SUMMARY OF HB 2620 and SB 333 – DRUG POLICY BILLS PASSED BY THE LEGISLATURE

ceobulletin

May 11, 2017

TO: Chief Executive Officers
WVHA Member Hospitals and Health Systems

FROM: Tony Gregory
Vice President, Legislative Affairs

SUBJECT: **SUMMARY OF HB 2620 and SB 333 – DRUG POLICY BILLS PASSED BY THE LEGISLATURE**

There were several bills passed by the legislature during the 2017 Regular Session dealing with the state's battle against the drug epidemic. Among the bills include: **HB 2620** – Creating an Office of Drug Control Policy within the Department of Health and Human Resources (DHHR); and **SB 333** – Relating to the Controlled Substance Monitoring Program database. Both impact hospitals and healthcare providers in various ways and below are summaries of each bill.

HB 2620 **– Effective July 7, 2017**

The purpose of this bill is to create the Office of Drug Control Policy within DHHR under the direction of the Secretary and supervision of the State Health Officer. The bill mandates a list of functions the Office of Drug Control Policy shall perform including:

- Develop a strategic plan to reduce the prevalence of drug and alcohol abuse and smoking by at least ten percent by July 1, 2018;
- Monitor, coordinate and oversee the collection of data and issues related to drug, alcohol and tobacco access, substance use disorder policies and smoking cessation and prevention and their impact on state and local programs;
- Make policy recommendations to executive branch agencies;
- Apply for grants;
- Review existing research on programs related to substance use disorder prevention and treatment and smoking cessation and prevention and provide for an examination of the prescribing and treatment history of persons in the state who suffer fatal or nonfatal opiate overdoses;
- Review the DEA and the WV scheduling of controlled substances and recommend changes that should be made based on data analysis;
- Report semi-annually to the interim Joint Committee on Health on the status of the Office of Drug Control Policy;
- Prior to July 1, 2018, the office shall develop a plan to expand the number of treatment beds in locations throughout the state which the office determines to be the highest priority for serving the needs of the citizens of the state; and

- Implement a program in which a central repository is established and maintained that shall contain information required by this article. In implementing this program, the office shall consult with all affected entities, including law-enforcement agencies, health care providers, emergency response providers, pharmacies and medical examiners.

The bill requires that the *following information* be reported to the Office of Drug Control Policy:

1. An emergency medical or law-enforcement response to a suspected or reported overdose, or a response in which an overdose is identified by the responders;
2. Medical treatment for an overdose;
3. The dispensation or provision of an opioid antagonist; and
4. Death attributed to overdose or "drug poisoning".

The following entities are *required* to report the above information:

1. Pharmacies operating in the state;
2. Health care providers;
3. Medical examiners;
4. Law-enforcement agencies; including prosecuting attorneys, state, county and local police departments; and
5. Emergency response providers.

Finally, the bill grants the Secretary of DHHR rule making authority to implement the provisions of the bill.

SB 333 **– Effective July 7, 2017**

The purpose of this bill is to amend, and add a new section to the Controlled Substance Monitoring Program database article in *West Virginia Code*. The bill:

- Replaces the word "board" with "Board of Pharmacy" throughout;
- Provides that whenever a medical services provider treats a patient and an overdose has occurred, or is suspected, as a result of illicit or prescribed medication, the medical service provider shall report the listed information to the database;
- Adds "duly authorized agents of the Office of Health Facility Licensure and Certification and regulation of health facilities" and "a dean of any medical school or his or her designee located in this state to access prescribed level data to monitor prescribing practices of faculty members, prescribers and residents enrolled in a degree program at the school where he or she serves as dean, a physician reviewer designated by an employer of medical providers to monitor prescriber level information of prescribing practices of physicians, advance practice registered nurses or physician assistant in their employ, and a chief medical officer of a hospital or a physician designated by the chief executive officer of a hospital who does not have a chief medical officer, for prescribers who have admitting privileges to the hospital or prescriber level information" to the list of entities granted access to the database;
- Amends the subsection relating to the WV Controlled Substances Monitoring Program Database Review Committee to provide that "The licensing board having jurisdiction over the practitioner or dispenser under consideration shall report back to the Board of Pharmacy regarding any findings, investigation or discipline resulting from the findings of the review committee within thirty days of resolution of any action taken by the licensing board resulting from the information provided by the Board of Pharmacy.";

The bill also adds a new section titled "Drugs of concern designation." This new section:

- Permits the Board of Pharmacy to designate certain drugs as drugs of concern which must be reported to the database;
- The designation of a drug of concern shall be reserved for drugs which have a high potential for abuse;

- Provides a list of information to be reported whenever a medical services provider dispenses a drug of concern or whenever a prescription for a drug of concern is filled by: 1) A pharmacist or pharmacy in this state; 2) A hospital, or other health care facility, for outpatient use; or 3) A pharmacy or pharmacist licensed by the Board of Pharmacy, but situated outside this state for delivery to a person residing in this state. The method for reporting will be prescribed by the Board of Pharmacy in legislative rules;
- Provides that the penalties set forth in the article shall not apply to drugs listed as drugs of concern. However, failure to report may be considered a violation of the practice act of the prescriber and may result in discipline by the appropriate licensing board; and
- Permits the Board of Pharmacy to promulgate emergency rules to effectuate the provisions of this new section.

Based on the changes in *West Virginia Code* to take effect on July 7, 2017, we suggest that each hospital review the provisions of these bills to ensure compliance with the new state laws. We also suggest you distribute this bulletin to the appropriate staff in your facility responsible for carrying out the new provisions.

If you have any specific questions regarding these bills ahead of their effective date, please feel free to contact me or WVHA General Counsel Brandon Hatfield at bhatfield@wvha.org or 304-353-9720.

TG/tlr

SUMMARY OF HB 2509 –TELEMEDICINE REGULATIONS

ceobulletin

May 03, 2017

TO: Chief Executive Officers
WVHA Member Hospitals and Health Systems

FROM: Tony Gregory
Vice President, Legislative Affairs

SUBJECT: **SUMMARY OF HB 2509 –TELEMEDICINE REGULATIONS**

Last year, the Legislature adopted *HB 4463* which permitted the practice of telemedicine in West Virginia. Prior to the Legislature's passage of this bill, there were no substantive provisions or considerations in *West Virginia Code* describing the practice.

HB 2509, which is effective from passage, builds upon the legislation passed last year by specifically addressing physician prescribing practices pertaining to certain controlled substances when using telemedicine technologies.

As background, the legislation from 2016 officially recognized telemedicine technologies as "technologies and devices which enable secure electronic communications and information exchange in the practice of telemedicine, and typically involve the application of secure real-time audio/video conferencing or similar secure video services, remote monitoring, or store and forward digital image technology to provide or support healthcare delivery by replicating the interaction of a traditional in-person encounter between a physician or podiatrist and a patient."

The bill further established a standard of care and the establishment of the physician-patient relationship. The bill gave the West Virginia Board of Medicine and the Board of Osteopathic Medicine the option to promulgate legislative rules to implement the provisions of the bill. The development of the legislative rules however has not yet materialized.

HB 2509 passed this session specifically limits the prescribing of Schedule II drugs, to only certain prescriptions for a patient with a diagnosed intellectual or developmental disability, neurological disease, Attention Deficit Disorder (ADD), autism, or a traumatic brain injury. Additionally, it prevents a physician from prescribing any drug with the intent of causing an abortion. Specifically, the *prescribing limitations* state:

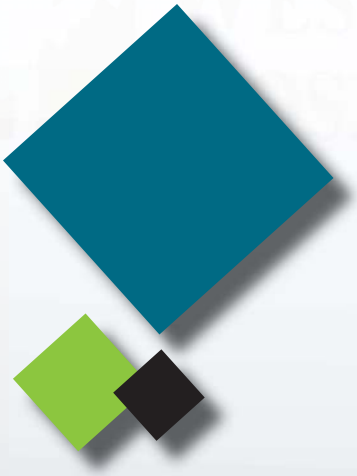
> (1) A physician or podiatrist who practices medicine to a patient solely through the utilization of telemedicine technologies may not prescribe to that patient any controlled substances listed in Schedule II of the Uniform Controlled Substances Act: *Provided*, That the prescribing limitations do not apply when a physician is providing treatment to patients who are minors , or if eighteen years of age or

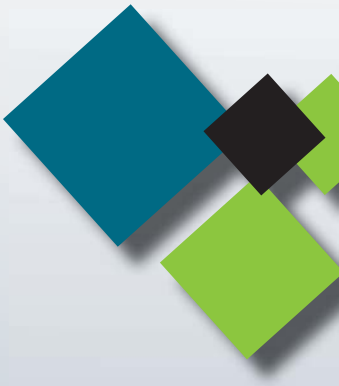
older, who are enrolled in a primary or secondary education program who are diagnosed with intellectual or developmental disabilities, neurological disease, Attention Deficit Disorder, Autism, or a traumatic brain injury in accordance with guidelines as set forth by organizations such as the American Psychiatric Association, the American Academy of Child and Adolescent Psychiatry or the American Academy of Pediatrics: *Provided, however*, That the physician must maintain records supporting the diagnosis and the continued need of treatment.

The full text of the final law which also includes provisions related to: definitions; licensure; standard of care; and patient records, among other areas, is available here.

If you have any specific questions regarding HB 2509, please feel free to contact me at the Association.

TG/tlr





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