

A photograph of the West Virginia State Capitol building, featuring a large dome and classical columns. The image is overlaid with a large, semi-transparent '2023' and the title text. The text is in a bold, sans-serif font, with 'WEST VIRGINIA HOSPITAL ASSOCIATION' in blue and 'LEGISLATIVE SUMMARY' in red.

**WEST VIRGINIA
HOSPITAL ASSOCIATION
LEGISLATIVE SUMMARY**



West Virginia Legislative Session 2023 Final Report

The first session of the 86th West Virginia Legislature ended March 11 following 60 days of debate on issues ranging from PEIA provider payments to DHHR reorganization and tax reform. In total, **333** bills completed legislative action (**203 House Bills and 130 Senate Bills**); **326** were signed by the Governor; **1** bill was vetoed, and **6** will become law without his signature.

Key bills that completed legislative action in the 2023 session are highlighted in this *Final Report*.

The WVHA continued its rich tradition having policymakers respond to its legislative agenda and its efforts to protect health care for all of West Virginia. The WVHA celebrated *Hospital Advocacy Week February 6-10* and it included a *Health Care Providers Legislative Reception* and a *Hospital Day at the Legislature* event featuring a breakfast and legislative panel discussion. There also was opportunity for members to attend Senate and House floor sessions, committee meetings, and to meet with their local legislators at the State Capitol.

Once again, the WVHA saw positive outcomes based on its legislative agenda. This included passage of [SB 268](#) to increase PEIA provider rates, among other structural changes to the state agency. The bill goes into effect on July 1, 2023. Other key bills streamline the prior authorization process for health care practitioners ([SB 267](#)), improve Medicaid payments for physicians ([HB 2759](#)) and make improvements to the behavioral health system ([HB 3166](#)), among other topics featured in this *Report*.

In addition to successfully advancing the WVHA legislative agenda, the hospital community also prevented negative legislation from moving forward. We prevented efforts to undermine the state's strong child immunization laws and kept other burdensome bills off of committee agendas like the safe harbor nurse peer review bill ([HB 2592](#)).

Once again, the success in advancing the WVHA legislative agenda began well in advance of the session. The WVHA continued its grassroots efforts to educate policymakers about the financial and other challenges faced by West Virginia hospitals. Media outreach played an important role in this effort during the interim period as the WVHA team worked to raise awareness of hospital challenges while specifically focusing on poor reimbursement by PEIA.

Advocacy is at the core of the WVHA mission to support hospitals to achieve a strong, healthy West Virginia. While most of the attention on advocacy is focused on the State Capitol during session, the reality is most of the work occurs outside the confines of the 60-day legislative session.

Efforts will continue as hospitals and WVHA will be active throughout the year continuing to build solid relationships with administration officials, legislators, and their staff, as we advocate on behalf of hospitals during interim committee meetings. Areas of focus this interim will be on working with hospital finance teams to review Medicaid payments and the various supplemental payment programs in place and revisiting legislation that did not pass such as [SB 669](#) – relating to anti-doxing and protecting our health care workers, among many other topics.

“Top 5” Hospital Bills of Interest – WVHA Legislative Agenda

SB 268

Relating to PEIA hospital and health care provider payments/other PEIA structural matters

EFFECTIVE DATE: From Passage - March 6, 2023, with payment rate increases effective July 1, 2023

This bill was a top priority of WVHA. The bill provides a series of comprehensive changes to the Public Employees Insurance Agency (**PEIA**). PEIA insures more than 230,000 state employees, local government employees and retirees including more than 31,000 non-state employees, such as municipal employees.

This bill:

- Requires PEIA to pay hospitals and other health care providers at least 110% of Medicare beginning July 1, 2023. Provisions pertaining to Critical Access Hospitals (CAHs) are based on the Medicare per diem, per day rate. To fund this increase, \$49 million is set aside in the FY 2024 Budget for PEIA provider payments.
- Sets numerous requirements for members of the PEIA Finance Board, requires a five-year analysis of potential future costs to the program and an actuarial study of the plans offered by PEIA.
- Requires PEIA to return to an 80/20 employer-employee match beginning in July, and this applies to health care in out-of-state counties contiguous to West Virginia counties.
- Changes the price of the plan for spouses of PEIA plan participants who have access to health insurance coverage to the actuarial value of the PEIA plan. PEIA has estimated this would cost plan participants an average of \$147 per month across all plan options.
- For non-state employees, changes in PEIA benefits will be determined by their sponsoring organizations (i.e., county or local government).

According to figures during legislative debate, SB 268 provides \$76 million in savings in year one and more than \$500 million in savings by 2027.

HB 2759

Expanding the Physician Payment Improvement Program

EFFECTIVE DATE: June 6, 2023, and upon approval by CMS

This is another payment related bill that was a top priority for the WVHA. This bill makes changes to the existing *Physician Payment Improvement Program*, a supplemental payment program approved by CMS in State Fiscal Year (FY) 2021. This Program is supported by a “voluntary tax” paid by certain eligible acute care hospitals. The purpose of the Program is to maximize federal matching funds to West Virginia Medicaid to enhance employed physician payments closer to the Medicare level.

Specifically, this bill allows the West Virginia Bureau for Medical Services (BMS) to reevaluate the Program’s tax rate annually, as determined and approved through CMS, to more closely align with allowable allocations available to West Virginia. Upon approval by CMS, this legislation expands the Program to more physicians practicing in hospitals. Currently only employed “W-2” employees are eligible, but this bill expands eligible providers to include physicians who are contracted by the hospital and who the hospital bills and collects for.

SB 267

Streamlining the Prior Authorization process for hospitals and health care practitioners

EFFECTIVE DATE: June 6, 2023, with several internal effective dates noted below

This bill streamlines and modernizes the prior authorization process for health care practitioners. This bill applies to PEIA, Medicaid and private insurers that are regulated by the West Virginia Insurance Commission (OIC). The effective date is January 1, 2024, with development of the electronic portal required by July 1, 2024. The bill:

- Requires all prior authorization submissions to be submitted via an electronic portal and requires health insurance plans to ensure the portal is operational by July 1, 2024;
- Expedites several timelines for review and approval, including initial review after submission, peer to peer review, and appeals;
 - Requires review decisions relating to the submission of additional information by a health care provider be within 2 business days;
 - Sets time frame for peer review process to begin within 2 business days from the day of electronic receipt, if requested by the insurer;
 - Reduces the peer to peer appeal process from 30 days to 5 business days from the date of request;
 - Sets a time frame for decisions regarding the appeal of a decision at no longer than 10 business days.
- Exempts a health care practitioner from prior authorization requirements if he or she has performed at least 30 procedures in a year and achieved a 90% prior authorization approval rate for a 6-month period during that year;
- The practitioner would be completely exempt from prior authorization submissions for those 6 months, not just for a single procedure;
- The insurer has the right to rescind this exemption if it finds substantial variances in historical utilization or other anomalies; and
- Finally, this bill gives the West Virginia (OIC) oversight for compliance of the new law, and it may levy a civil penalty for non-compliance.

HB 2993

Establishing licensure for Rural Emergency Hospital (REH) model

EFFECTIVE DATE: May 31, 2023, with legislative rules to be approved by the 2024 Regular Session

This bill establishes licensure for the new federal Rural Emergency Hospital (**REH**) model authorized with the passage of the federal Consolidated Appropriations Act of 2021. Provisions in this federal law provide an opportunity for Critical Access Hospitals (CAHs) and certain rural hospitals to be designated as an REH. The bill was introduced because state licensure is a necessary requirement under federal law to qualify for this designation.

The term “Rural Emergency Hospital (REH)” is defined in the bill and it includes Critical Access Hospitals (CAHs) as defined by federal and state law and it also states that a hospital located in an urban area (Metropolitan Statistical Areas (MSA) county), can be considered rural for the purposes of a designation as a critical access hospital pursuant to U.S.C. §1395i-4(c)(2) if it meets certain criteria spelled out in the bill. The DHHR is required to propose a rule for legislative approval to implement the licensure provisions in the bill.

HB 3166

Permitting a hospital to hold a patient experiencing a psychiatric emergency for up to 72 hours

EFFECTIVE DATE: June 9, 2023

This bill clarifies state law involving the involuntary commitment process for hospital patients experiencing a psychiatric emergency. It is an expansion of current law that allows for a 72-hour hold of an individual who presents in an emergency department experiencing a psychiatric emergency.

Under this new law, if a mental hygiene commissioner, magistrate, and circuit judge are unavailable or unable to be immediately contacted, an authorized staff physician in a hospital may order the involuntary hospitalization of a patient or an individual who is present at, or presented at, a hospital emergency department in need of treatment. This clarification is intended to also mean an inpatient in the hospital.

This step is permitted if the authorized staff physician believes, following an examination of the individual, that the individual is addicted or is mentally ill and, because of his or her addiction or mental illness, is likely to cause serious harm to himself, herself or to others if allowed to remain at liberty.

The authorized staff physician shall sign a statement attesting to his or her decision that the patient presents a harm to himself, herself or others and needs to be held involuntarily for up to 72 hours.

Nursing related bills impacting hospitals

HB 2436

Relating to the implementation of an acuity-based patient classification system

EFFECTIVE DATE: June 9, 2023, with an internal effective date of July 1, 2024

This bill requires a hospital to develop, by July 1, 2024, an “acuity-based patient classification system” to be used to establish a staffing plan for each unit. “Unit” is defined in the bill as the areas of a hospital not considered departments which provide specialized care.

The bill applies to a licensed private or state-owned and operated general acute-care hospital, an acute psychiatric hospital, or any acute-care unit within a state operated facility.

An “acuity-based patient classification system” is defined in the bill as: “a set of criteria based on scientific data that acts as a measurement instrument which predicts registered nursing care requirements for individual patients based on severity of patient illness, need for specialized equipment and technology, intensity of nursing interventions required, and the complexity of clinical nursing judgment needed to design, implement and evaluate the patient’s nursing care plan consistent with professional standards of care. The acuity system criteria shall take into consideration the patient care services provided by registered nurses, licensed practical nurses and other health care personnel.”

The bill directs each Unit Nurse Staffing Committee to annually review the facility's current acuity- based patient classification system and submit recommendations to the facility for changes based on current standards of practice.

A “Unit Nurse Staffing Committee” means a committee made up of facility employees which includes a minimum of 51 percent of direct-care registered nurses who regularly provide direct nursing care to patients on the unit of the facility for which the nurse staffing plan is developed. A direct-care registered nurse means a registered nurse, who is a member of the facility’s staff, has no management role or responsibility, and accepts direct responsibility and accountability to carry out medical regimens, nursing or other bedside care for patients.

There are provisions in the bill which require orientation, competency validation, education, and training programs in accordance with a nationally recognized accrediting body recognized by the Centers for Medicare and Medicaid Services (CMS) or in accordance with the Office of Health Facility Licensure and Certification (OHFLAC). The orientation shall include providing for orientation of registered nursing staff to assigned clinical practice areas.

Both the classification system and the staffing plans are considered confidential records as defined in [§30-3C-3](#) of the *West Virginia Code* and are therefore not subject to discovery in any civil action or administrative proceeding.

Additionally, there are no reporting requirements to state agencies in the bill and no enforcement penalties.

SB 89

Relating to sexual assault forensic examinations and requiring hospitals to have health care providers available to conduct examinations

EFFECTIVE DATE: May 22, 2023, with legislative rules to be approved by the 2024 Regular Session

This bill directs the Sexual Assault Forensic Examination (SAFE Commission) to develop legislative rules during the 2023 interim period to require a hospital to have a trained health care provider “available” to complete a sexual assault forensic examination, or a transfer agreement as provided in a county plan. Before implementation of the new law, the full Legislature will need to approve the legislative rules during the 2024 Regular Session.

One important definition in the new law is the term “available” which is defined to include as having access to a trained sexual assault forensic examination expert via telehealth.

The Sexual Assault Forensic Examination (SAFE Commission) Commission was created under *West Virginia Code Chapter 15-§9B-1, §9B-2 and §9B-3* and includes WVHA representation. It is housed within the Governor’s Committee on Crime, Delinquency and Correction. The purpose of the SAFE Commission is to establish, manage, and monitor a statewide system to facilitate the timely and efficient collection of forensic evidence in sexual assault cases.

Duties of the Commission include the implementation of **SB 89**, but are not limited to, the following:

- (1) Establish mandatory statewide protocols for conducting sexual assault forensic examinations, including designating locations and providers to perform examinations, establishing minimum qualifications and procedures for their performance, and establishing protocols to assure the proper collection of evidence;
- (2) Facilitate the recruitment and retention of qualified health care providers that are properly qualified to conduct forensic examinations;
- (3) Authorize minimum training requirements for providers conducting exams and establish a basic standard of care for victims of sexual assault;
- (4) Support county prosecutors in establishing sexual assault forensic examination boards, set forth minimum requirements for local plans developed by county or regional boards, and approve local plans for each area of the state on a county or regional basis; and
- (5) Propose rules for legislative approval.

Other Key Hospital / Health Care Bills

SB 613

Relating to certificate of need (CON)

EFFECTIVE DATE: From Passage - March 10, 2023

This bill relates to the current Certificate of Need (CON) Program in West Virginia and makes a series of modifications outlined below.

1. This bill raises the current "expenditure minimum" of \$5 million to \$100 million. This new amount applies to the acquisition, improvement, expansion of any facility, equipment, or services including the cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities, including staff effort and consulting.
2. This bill exempts from CON "hospital services" provided on a hospital's campus. There are two key definitions applicable to this exemption:
 - "Hospital Campus" means the physical area immediately adjacent to the hospital's main buildings, other areas, and structures that are not strictly contiguous to the main buildings, but are located within 250 yards of the main buildings.
 - "Hospital Services" means services provided primarily to an inpatient to include, but not be limited to, preventative, diagnostic, treatment, or rehabilitative services provided in various departments on a hospital's campus.
3. The bill also deals with MRIs and private office practices. The following entity may acquire and utilize one fixed-site MRI without CON approval:
 - A private office practice which is owned/operated by one or more health care professionals authorized or organized pursuant to Chapter 30 of *West Virginia Code*;
 - Has at least seven office practice locations; and
 - 75 percent of the scans are for the patients of the private practice.
4. The bill exempts the construction, development, acquisition, or establishment of a birthing center in West Virginia. This is a short-stay ambulatory health care facility designed for low-risk births following a normal uncomplicated pregnancy. There are liability protections for hospitals in that a hospital shall be deemed a trauma center, subject to the provisions of [§55-7B-9c](#) of *West Virginia Code* for any and all claims arising out of any medical services provided by a hospital or physician to an individual as a result of birth complications at a birthing center.

HB 3559

Relating to defining a newborn safety device

EFFECTIVE DATE: June 9, 2023

This bill permits hospitals, health care facilities, and fire departments which are designated as safe-surrender sites in *West Virginia Code §49-4-206*, to install and operate newborn safety devices.

A newborn safety device means a device:

- Designed to permit a person to anonymously place a child under 30 days of age in the device with the intent to leave the child and for a licensed EMS provider to remove the child from the device and take custody of him or her;
- It must be equipped with an adequate dual alarm system connected to the physical location where the device is physically installed;
- Approved by and physically located, with outside access, at a participating hospital or medical facility, or fire department designated as a safe-surrender site; and
- Located in an area that is conspicuous and visible to a hospital, medical facility, or fire department.

The bill provides certain protections and waivers applicable to a person placing a child in a newborn safety device.

Finally, the bill grants immunity to an EMS provider whose actions are taken in good faith pursuant to this section.

HB 3199

Relating to removing the requirement that an ectopic pregnancy be reported

EFFECTIVE DATE: From Passage - March 11, 2023

This bill amends the state's abortion law passed during a special session of the Legislature in September 2022. The abortion law requires all abortions to be reported to the state, but the current language is not clear on exempting the reporting of pregnancies that are not viable - when a baby, if delivered, would have no chance of survival. This bill amends the law so that the termination of ectopic pregnancies would no longer have to be reported as part of the new abortion law.

SB 552

Relating to abortion

EFFECTIVE DATE: From Passage - March 11, 2023

This bill amends *Article 2R Section 9* of the Unborn Child Protection Act in *West Virginia Code*. It provides that if a provision or provisions of the Act are judicially determined to be unconstitutional, then the remaining sections of the Act are still in effect. It also provides guidance in the event the entire Act is determined to be unconstitutional.

HB 2007

Prohibiting certain medical practices (gender affirming care)

EFFECTIVE DATE: June 9, 2023, with internal effective date of January 1, 2024

This bill relates to prohibiting certain medical practices as it pertains to gender affirming care. Among the provisions, the bill prohibits irreversible gender reassignment surgery to a minor; prohibits the providing of gender altering medication to a minor, with exceptions. There is an internal effective date of January 1, 2024.

Specifically, the bill prohibits those under 18 from being prescribed hormone therapy and fully reversible medication for suspending the physical changes of puberty.

The bill contains exemptions to the medication therapy ban for people under the age of 18 at risk for suicide. This would permit some transgender youth to continue receiving medical interventions under certain circumstances, including hormone therapy if they experience severe gender dysphoria. Gender dysphoria is defined by medical professionals as severe psychological distress experienced by those whose gender identity differs from their sex assigned at birth.

Under the amended bill, a person below the age of 18 would need to be diagnosed with severe gender dysphoria by at least two medical or mental health providers to gain access to medication therapy, including a mental health provider or adolescent medicine specialist. The dosage must be the lowest possible necessary to “treat the psychiatric condition and not for purposes of gender alteration,” according to the bill.

Providers must be specifically trained to diagnose and treat severe gender dysphoria in adolescents and provide written testimony saying medical interventions are necessary to prevent or limit possible or actual self-harm. The minor’s parents or guardians would be required to give written consent to the treatments.

The bill includes exceptions for individuals born with a “medically verifiable disorder,” including people with ambiguous “external biological sex characteristics” and for people taking treatments for infection, injury, disease, or disorder that has been “caused by or exacerbated by the performance of gender transition procedures.”

People also can access treatment if they are in “imminent danger of death, or impairment of a major bodily function unless surgery is performed.”

HB 2006- DHHR Reorganization

During the 2023 Regular Session, the Legislature passed, and Gov. Justice signed [HB 2006](#) to reorganize the Department of Health and Human Resources (DHHR). The bill essentially ends the current DHHR structure and creates three separate Departments effective January 1, 2024.

1. The Department of Health;
2. The Department of Human Resources and;
3. the Department of Health Facilities

This is the second year the Legislature has passed a bill to reorganize the DHHR. During the 2022 legislative session, Gov. Justice vetoed a bill that would have divided the department into three agencies. Instead, he called for a \$1 million top-to-bottom review of the agency from the Virginia-based McChrystal Group LLC.

1. Under [HB 2006](#), **The Department of Health** will include the Bureau of Public Health, the Office of Emergency Medical Services, the Office of the Chief Medical Examiner, the Center for Threat Preparedness, the Health Care Authority, and the Office of the Inspector General and its subsidiary offices.
2. **The Department of Human Resources** will contain the bureaus of social services, medical services (Medicaid), child support, family assistance, behavioral health, and the office of drug control policy.
3. **The Department of Health Facilities** will oversee the state's hospitals including: Hopemont Hospital Jackie Withrow Hospital, John Manchin, Sr. Health Care Center, Lakin Hospital, Mildred Mitchel-Bateman Hospital, Welch Community Hospital, and William R. Sharpe Jr. Hospital

Any bureau, office, board, commission, or other state entity not specifically organized above shall be organized by the secretaries of the three agencies.

Each department will have a secretary appointed by the Governor by December 1, 2023. The three secretaries will work together through the Office of the Chief Operating Officer. The COO will act as a liaison to ensure the three departments are in communication with one another. The three departments will also share administrative services, which will be through the Office of the COO. The first COO will be appointed by the Governor. On January 1, 2026, and thereafter, the COO will be appointed by the Secretary of Human Services. The bill also makes changes to the State Health Officer qualifications and Inspector General duties.

In a statement following the bill's signing, DHHR interim Cabinet secretary Dr. Jeffrey Coben said the department is "ready to implement and uphold the intent of the Legislature." "Under the direction of Gov. Justice, we will work to ensure a seamless transition to a new organizational structure over the course of this next year," Coben said. "DHHR leadership and our dedicated staff look forward to working with all stakeholders to optimize the functions and services we provide to West Virginians."

Other Bills of Interest by Topic

[Behavioral Health / Substance Use Disorder / Other related bills](#)

[SB 136 \(Psychological/Psychiatric Testing\)](#) – This bill deals with the judicial treatment of sex offenses and requires persons convicted of certain offenses to undergo psychological or psychiatric testing and have a treatment plan to be eligible for probation. The bill expands the list of offenses for which a defendant has been convicted which precludes the defendant from residing with minor children or having any contact with the victims.

[SB 239 \(Homeless Study\)](#) – This bill requires the Commissioner of the Bureau for Behavioral Health to engage behavioral health providers, substance use disorder providers, municipal leaders, and county government leaders to study a breakdown of homeless demographic information throughout West Virginia. The findings of the study are to be reported to the President of the Senate, Speaker of the House of Delegates, and the Joint Committee on Government and Finance. The report is due on or before July 1, 2024.

[SB 241 \(Patient Brokering\)](#) – This bill deals with the practice of patient brokering, where providers pay third parties to find patients with health insurance that covers substance abuse treatment to bring those patients into those facilities. Under this bill, the Office of Inspector General is given authority to develop a tool that facilitates the submission of complaints. The General is also given investigative and enforcement powers.

[HB 3218 \(Suicide Prevention\)](#) – This bill relates to student suicide prevention. It requires that suicide prevention resources be printed on student identification cards for students in grades 6-12 in public schools that issue student identification cards. The bill also requires suicide prevention resources be printed on student identification cards for students in a public or private institution of higher education that issues student identification cards.

[HB 3261 \(Social Workers\)](#) – This bill deals with social work. Specifically, it directs that provisional social workers who are laid off or ill during the four-year provisional licensure period may request the West Virginia Board of Social Work allow a reasonable interruption in service and allow additional time to complete the licensure requirements. It declares a crisis exists in certain parts of the state due to an absence of child protective services, youth services workers, youth case workers and support staff and it defines affected geographical areas. There is also established a three-year pilot program in two judicial circuits: 14th and 23rd judicial circuits.

[HB 3337 \(CON and Drug/Alcohol Treatment Facilities\)](#) – This bill deals with the Certificate of Need program by prohibiting additional drug and alcohol treatment facilities and services in certain counties. This bill prohibits the addition of licensed substance abuse treatment beds in any county which already has greater than 250 licensed substance abuse treatment beds.

[Child Welfare](#)

[SB 273 \(Child Protective Workers\)](#) – This bill deals with the child welfare crisis in West Virginia by addressing how the Commissioner for the Bureau for Social Services allocates child protective service workers. There are provisions dealing with a merit-based system and grievance procedures. It also updates the child welfare dashboard operated by the Bureau.

[SB 469 \(CPR in Public Schools\)](#) – This bill creates a special revenue fund designated as the Cardiopulmonary Resuscitation Instruction Fund to support cardiopulmonary instruction for public high schools. The West Virginia Department of Education will administer the fund which will consist of moneys appropriated by the Legislature, grants, gifts, and donations from any public or private source.

[HB 2002 \(Foster Care System\)](#) – This bill deals with the foster care system in West Virginia. Among the key provisions, the bill increases the adoption tax credit; establishes eligibility of adopted children of West Virginia residents for early intervention services; establishes the West Virginia Mothers and Babies Pregnancy Support Program; establishes which organizations are eligible for funding pursuant to program; allows DHHR to contract with a management agency to provide program services.

[HB 2016 \(Confidential Child Care Records\)](#) – This bill deals with the release of information to facilitate care of a child. It provides for qualified disclosure of confidential information between certain entities; requires court notices be sent to child placement agencies in adoption cases; and requires the State Registrar to issue a copy of vital records to child placement agencies, among other changes.

[HB 2018 \(Multidisciplinary Teams\)](#) – The purpose of this bill is to ensure that managed care case coordinators can participate in multidisciplinary team meetings. The team is in place to assess, plan and implement a comprehensive, individualized service plan for children who are victims of abuse or neglect and their families.

[DHHR Operations](#)

[HB 2029 \(All-Payor Claims Database\)](#) – This purpose of this bill is to repeal the all-payor claims database that was to be established and maintained by the DHHR.

[HB 3164 \(West Virginia Advisory Council on Rare Diseases\)](#) – This bill relates to the West Virginia Advisory Council on Rare Diseases. The Council is in place to coordinate statewide efforts for the study of the incidence of rare disease within the state. It acts as an advisory board to the DHHR Secretary and the West Virginia Legislature on research, treatment, and education relating to rare diseases. This bill extends the time frame for the Council's work to June 30, 2025.

[SB 476 \(Medicaid Managed Care\)](#) – This bill deals with managed care contracts. Specifically, it provides that the Bureau for Medical Services (Medicaid) is exempt from the requirements of the Purchasing Division with respect to managed care contracts. It states that the Bureau may not disrupt certain existing enrollments with managed care organizations and it prohibits them from redistributing or reassigning membership, among other provisions.

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SB 526 (Alzheimer's Education) – The purpose of this bill is to include Alzheimer's disease in existing public health programs. It gives authority to the Commissioner of the Bureau for Public Health, in partnership with the Bureau for Medical Services (Medicaid) and the Alzheimer's Association, to incorporate in its existing public health programs and services, the importance of early detection and timely diagnosis of cognitive impairment and dementia.

SB 605 (Organ Procurement Organizations) – This bill requires the state medical examiner to enter into contracts and agreements with a procurement organization when necessary to facilitate the efficient and economical recovery of anatomical gifts. This is to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education.

Insurance

SB 577 (Insulin Cap) – This bill reduces the copay cap of a 30-day supply of insulin from \$100 to \$35, and sets a \$100 cap for devices (a blood glucose test strip, glucose monitor, lancet, lancing device, or insulin syringe ; but not insulin pumps). The cost-sharing maximums are aggregate, regardless of quantity or type. A prescription would not be required to obtain a blood-testing kit for ketones. The bill affects insulin copay rates for private insurance, Medicaid, and the Public Employees Insurance Agency (PEIA).

SB 594 (Health Savings Accounts) – This bill relates to cost-sharing calculations in insurance *Code* and Health Savings Account eligibility. It is aimed at clarifying the application of manufacturer cost sharing programs to those with health savings accounts (HSAs).

Legislative Rules

SB 345 (PBMs) – This “Rules Bill” includes legislative rules pertaining to the regulation of pharmacy auditing entities and pharmacy benefit managers (PBMs) as promulgated by the state Insurance Commission.

SB 361 (Professional Licensing Boards) – This is the professional licensing board “Rules Bill” that includes legislative rules by health care licensing boards like the Board of Medicine, the RN Board, and the Board of Pharmacy, among others.

HB 2648 (Various DHHR Rules) – This is the “DHHR Rules Bill” that includes a series of legislative rules pertaining to various topics: standards for local boards of health; medical examiner requirements for postmortem inquiries; the Medical Cannabis Program; financial disclosures to the Health Care Authority; the Uniform Bill Database under the Health Care Authority; methodologies to examine needs for substance use disorder treatment facilities within the state; and the Core Behavioral Health Crisis Services System.

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Licensing Boards and Professions

SB 83 (Tactical Medical Professionals) – This bill allows a "tactical medical professional " trained and certified in tactical combat casualty care and tactical emergency medical support to carry a firearm while on duty with a law enforcement team. The medical professional — EMTs, physicians, osteopaths, physician assistants and nurses — is to be certified by the Law Enforcement Professional Standards Subcommittee of the Governor's Committee on Crime, Delinquency and Corrections. The medical professional is protected from civil and criminal liability while performing with law enforcement.

SB 240 (Licensing Board Public Information) – This bill relates to professional licensing boards' collection and dissemination of certain records and information. It provides for public access to the record of each board's proceedings and public access to each board's register of applicants. There are other provisions stating information that must be provided to access the register of applicants; and requiring each board to maintain a website that provides certain information about the board. Other provisions deal with prohibiting the disclosure of sensitive personally identifiable information; providing that boards shall not be prohibited from providing information related to the qualifications and practice of licensees and registrants; providing that certain personal information of licensed practitioners shall not be disclosed; and requiring the roster of licensed practitioners to be posted on each board's website.

SB 244 (Licensing Board Rosters) – This bill makes rosters of individuals who have obtained professional, occupational, and trade licenses, registrations, and certificates available to the public. It requires entities that authorize individuals to practice a profession, occupation, or trade in West Virginia to prepare and maintain a roster of authorized individuals and to make the roster available to the public.

SB 737 (EMS Funding) – This bill relates to emergency medical services funding. The bill creates a special revenue fund known as the Emergency Medical Services Salary Enhancement Fund. The fund is established to support supplementing the salaries of, and providing crisis response for, county emergency medical service personnel as that term is defined in [§16-4C-3\(g\)](#) of *West Virginia Code* or a county designated or contracted emergency medical service provider. All moneys must be spent to support increasing salaries of emergency medical service workers and providing crisis response to encourage retention. The Director of the West Virginia Office of Emergency Medical Services will administer the fund.

HB 2760 (EMT, Firefighters Ambulance) – This bill states that in the event that emergency medical technicians ("EMTs") or paramedics on the scene of an emergency are unable to drive an ambulance in the course of administering patient care, firefighters on the scene shall be permitted to drive an ambulance: *Provided*, That the fire department with which the firefighters are associated or members and the emergency medical services provider that owns the ambulance have previously entered into a memorandum of understanding or other agreement authorizing such action and the firefighter driving the ambulance has completed an Emergency Vehicle Operations Course ("EVOC") otherwise required by *West Virginia Code* or legislative rule.

HB 3141 (WV Dental Practice Act) – This bill updates the West Virginia Dental Practice Act. It modifies the requirements of dental specialists and specifies duties during declared public health emergencies, among other provisions.

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HB 3317 (Drug Diversion Continuing Ed) – This bill deals with continuing education requirements for drug diversion training, best-practice prescribing of controlled substances training, and training on prescribing and administering an opioid antagonist if that person prescribes, administers, or dispenses a controlled substance. This bill removes the annual requirement for continuing education and instead requires it within one year of when an individual receives his or her initial license from the professional licensing board.

Pharmacy Issues

SB 546 (Uniform Controlled Substances Act) – This bill relates to classifying additional drugs and substances to Schedules I, II, IV, and V of the Uniform Controlled Substances Act and removing a substance from Schedule V. The bill states that unless expressly exempted by law, all delta tetrahydrocannabinols are included in schedule I; and declares that the provisions related to tetrahydrocannabinols are inapplicable to products lawfully manufactured, distributed, or possessed pursuant to the Industrial Hemp Development Act and the Medical Cannabis Act.

HB 2754 (Pharmacy Techs and Immunizations) - This bill directs the Board of Medicine and the Board of Osteopathic Medicine to propose joint rules by July 1, 2023, to permit a pharmacy technician to administer immunizations in accordance with definitive treatment guidelines for immunizations by the U.S. Department of Health and Human Services and the Centers for Disease Control and Prevention (CDC). In addition, the joint rules shall permit a pharmacy technician to administer immunizations in accordance with the guidelines to persons age 3 through 17, with written informed parental consent and there are no contraindications to that patient receiving that vaccine.

HB 3077 (Multi-State Real-Time Tracking System) - This bill eliminates the expiration date of the Multi-State Real-Time Tracking System. This system is an electronic logging system used by pharmacies and members of law enforcement to track purchases of over-the-counter cold and flu medication used to make methamphetamine. The system is provided at no-cost to the state by the National Association of Drug Diversion Investigators and was set to expire on June 30, 2023.

State Government Organization/Operations

SB 232 (Study Re: Diversion of Persons with Mental Illness) – This bill creates a multi-disciplinary study group to make recommendations regarding the diversion of persons with mental illness, developmental disabilities, cognitive disabilities, substance abuse problems, and other disabilities from the criminal justice system. The bill lists the membership of the study group and includes a designee from the West Virginia Hospital Association (WVHA). The study group is charged with developing a plan to coordinate care, treatment, and placement for persons with disabilities in the criminal justice system and in the community. A report is to be presented to the Legislature on or before November 30, 2023.

SB 298 (Emergency Management/Homeland Security) – This bill clarifies that mutual aid agreements can be entered into by local emergency services or organizations for reciprocal aid in bordering counties of other states for day-to-day support for fire and emergency medical service calls.

2023 WVHA Legislative Summary

[SB 568 \(Dangerousness Assessment Advisory Board\)](#) – This bill deals with the Dangerousness Assessment Advisory Board. The primary purpose of the board is to provide opinion, guidance, and informed objective expertise to circuit courts as to the appropriate level of custody or supervision necessary to ensure that persons who have been judicially determined to be incompetent to stand trial and not restorable or not guilty by reason of mental illness are in the least restrictive environment available to protect the person, other persons, and the public generally.

[SB 679 \(Forensic Group Homes\)](#) – This bill deals with forensic group homes. The bill requires the Office of the Inspector General to propose legislative rules on where forensic group homes may be located. The bill states that the home shall not be located within one mile of a residential area, a public or private licensed day care center, or a public or private k-12 school learning pods and micro-schools. Appropriate stakeholders are to be consulted for the development of the rules.

[SB 730 \(LOCHHRA Interim Committee\)](#) – This bill expands the authority of the Legislative Oversight Commission on Health and Human Resources Accountability (LOCHHRA) - a standing legislative interim committee. Among new oversight is the evaluation of the adequacy and availability of care delivery networks throughout the health care continuum from primary care to postmortem settings. The Commission is also authorized to conduct continuing investigation, study, and review of all matters related to any area of concern that exists within DHHR, and any successor agencies, including, but not limited to, financial, administrative, programmatic, and systemic issues.

[HB 3191 \(State Hospitals\)](#) – The purpose of this bill is to clarify that certain health care facilities operated by the state are required to be licensed as hospitals.

[HB 3306 \(Office of Drug Control Policy\)](#) – This bill relates to the Office of Drug Control Policy within DHHR and contains several parts. The first part provides for the appointment of the Director by the Governor, by and with the advice and consent of the Senate. The Director is administratively housed in the Department of Human Services and directly reports to the Office of the Governor, and works in cooperation with the State Health Officer, the Bureau of Public Health, and the Bureau for Behavioral Health. The second part of the bill directs the Office to create a Sober Living Home/Recovery Residence Taskforce comprised of various stakeholders, primarily within state government. The purpose of the taskforce is to review existing West Virginia law, the laws of other states, and any developed case law regarding sober living homes/recovery residences and make recommendations to the Legislature regarding any revisions needed to West Virginia law. A third part of the bill deals with ensuring hospitals receive payment for services intended to improve the delivery of health and mental health services.

[HB 3360 \(Office of the Inspector General\)](#) – This bill relates generally to creating the Office of the Inspector General in the Department of Homeland Security. It authorizes the appointment of the Inspector General and sets forth duties and powers of the Inspector General. Other provisions deal with the appointment and removal of the General, qualifications, duties, and rulemaking authority.

[Workforce and Education](#)

[SB 617 \(IDDW Program\)](#) – This bill states that by July 1, 2023, the Legislative Oversight Commission on Health and Human Resources Accountability (LOCHHRA) shall conduct a workforce study pertaining to the Intellectual and Developmental Disabilities Waiver Program (IDDW Program). The bill also directs the Bureau for Medicaid Services (Medicaid) to conduct an annual study reviewing the adequacy and appropriateness of the reimbursement rates to providers in the IDDW Program.

[HB 2005 \(Dual Enrollment\)](#) – This bill establishes a pilot program that will cover the costs of dual enrollment courses offered by the state’s colleges and universities that are tied to some of West Virginia’s most in-demand careers. State-funded dual enrollment will begin as a four-year pilot program, supporting up to an estimated 10,000 students per year. Under this bill, West Virginia’s public community and technical colleges and four-year institutions will offer courses in certain designated career pathways, such as health care, information technology, advanced manufacturing, construction, engineering, education, agriculture, and any other program that meets a workforce need in the state as determined by the West Virginia Department of Commerce. The pilot program will be administered by the Higher Education Policy Commission (HEPC) and the Council for Community and Technical College Education in conjunction with the State Board of Education.

[HB 2757 \(WV Invests Grant Program\)](#) – This bill expands institutional eligibility for the WV Invests Grant Program. West Virginia Invests is a “last-dollar-in” financial aid program designed to cover the cost of tuition, mandatory fees and academic program fees for certificate or associate degree programs in specific high-demand fields. This bill expands that program to not-for-profit private baccalaureate institutions and not-for-profit hospital-based allied health programs authorized by the West Virginia Council for Community and Technical College Education.

[Miscellaneous](#)

[SB 450 \(Medical Examinations for State Retirement Programs\)](#) – This bill relates to disability retirement medical examinations of the West Virginia Public Employees Retirement System, the Deputy Sheriffs’ Retirement System, the Municipal Police and Firefighters Retirement System, the State Police Retirement System, the Emergency Medical Services Retirement System, the Teachers Retirement System, and the Natural Resources Police Officers Retirement System. The bill defines the term "medical examination"; and provides that board approval of disability awards and benefits be based on a medical examination.

[HB 2218 \(Distracted Driving\)](#) – This bill is known as the Electronically Distracted Driving Act. It expands prohibitions and penalties for using an electronic device while driving. Current West Virginia law prohibits drivers from using their cell phones, or other devices, while operating a vehicle. This bill adds to those prohibitions and states that drivers may not hold an electronic device while operating a vehicle and makes each violation a separate offense.

[HB 3270 \(Deliberate Intent\)](#) – This bill deals with capping non-economic damages on deliberate intent cases. This legislation does **not** apply to economic damages (i.e., lost wages, medical expenses, etc.), but would cap non-economic damages at \$500,000 or double economic damages.

Features of the FY 2024 State Budget

Once again legislators fulfilled their promise of approving the state budget before the conclusion of the session. The Legislature approved the Fiscal Year (FY) 2024 Budget ([HB 2024](#)) and various supplemental appropriations to support state agency spending. The Budget Bill sets the general revenue budget for FY 2024, beginning on July 1, 2024, at \$4.875 billion.

This year's budget includes provisions for pay raises and tax cuts. The governor at the start of this year's legislative session called for a "relatively flat," \$4.884 billion budget to include pay raises for most state employees and some increased financial support for PEIA. The budget bill also includes \$1.1 million in general revenue surplus appropriations. This is one-time funding placed in the surplus section in the "back of the budget" to be paid out if the state ends the current fiscal year with a surplus tax revenue.

As for how hospitals fared, this year's final budget accounts for dedicated funding to support PEIA, including about \$71 million to offset premium cost-sharing requirements between employers and employees and to support the provisions of SB 268. Of the \$71 million, about \$49 million is dedicated to increasing the inpatient rates for hospitals and for increasing rates for other health care providers. Overall, there were *no payment cuts to hospitals*. Additionally, key hospital-specific line items supporting Medicaid, including targeted line items supporting safety net urban and rural hospitals were fully funded in the budget as were several other important health related items such as the DSH funding and waiver programs to name a few.

With the support of the Legislature, the state's Telestroke Program once again was fully funded at \$1 million in the FY 2024 budget. In 2019, the legislature provided funding for hospitals to enhance their telestroke services and to consult with neurologists at Charleston Area Medical Center (CAMC), Mountain Health Network and WVU Medicine. West Virginians throughout the state are benefiting from neurological specialty consults, with about 30 West Virginia hospitals now participating in the program.

The financial highlights of the budget are \$2,300 across-the-board pay raises meant for most public employees including teachers, school service personnel and WV State Police troopers and staff. The budget also makes way for a tax cut policy with an overall financial impact of the tax bill ([HB 2526](#)) being \$695 million in fiscal 2024 and \$817.8 million upon full implementation. The main aspect of the tax cut policy is an initial 21.25 percent income tax cut. The final bill also includes a personal property tax credit for vehicles and a 50 percent personal property tax break aimed at small businesses, which are refined through definitions in the bill. Also, there's a tax credit for disabled veterans on personal income taxes on a homestead.

As of this writing, three-quarters of the way through the fiscal year, it's being reported that West Virginia is running a budget surplus of hundreds of millions of dollars – based on several factors, including high energy prices that have produced high-performing severance tax returns and the likely stimulus of federal dollars. The state's fiscal year runs from July 1, 2023 – June 30, 2024.

2023 Legislative Interim Period

We expect another busy interim period for hospitals thru December. The tentative dates for the 2023 Legislative Interim Period are below.

- April 16-18
- May 7-9 (in Huntington)
- August 6-8
- September 10-12
- October 15-17
- November 12-14 (in Wheeling)
- December 10-12

We'll continue the momentum generated from the 2023 Regular Session into the legislative interim period this year. Key interim committees we'll be following include the [Joint Health Committee](#) and the [Legislative Oversight Commission on Health and Human Resources Accountability](#) (LOCHHRA), among others.

Along with legislative interim action, our Legislative Team will be busy this year initiating a project with our hospital finance teams to review Medicaid payments and the various supplemental programs we have in place. We want to ensure we're maximizing federal matching dollars available to the State. We'll also be revisiting [SB 669](#) – which is the “anti-doxing” legislation to protect our health care workers - that did not pass this session and also working with our WVHA Legislative Committee throughout the year to develop once again, a comprehensive and unified legislative agenda.

Overall, we will utilize this time to continue building solid relationships with Administration officials, legislators, and their staff, as we advocate for stronger hospitals and stronger communities in West Virginia.

Interim Period Hospital Visits and Tours

To assist us in our efforts on the grassroots level, we encourage you once again during this interim period to invite legislators to your hospital to showcase the good things you are doing to care for West Virginians across the state.

To support your efforts, the WVHA legislative team will be helping facilitate legislator and staff visits throughout the interim period. Our goal is to solidify our relationships at the Capitol, improve the image of hospitals statewide and build upon the great momentum that the hospital community generated during the 2023 legislative session.

2023 Legislative Recap



2023 Legislative Session Overview

2,317

Bills Introduced in the 86th West Virginia Legislature

333

Bills Completed Legislative Action

326

Signed by the Governor

6 Bills Will Become Law Without Governor's Signature

1 Bill Was Vetoed



WVHA 2023 State Legislative Agenda

- ✓ Protect Hospital Fiscal Status and Access to Care
- ✓ Modernize Prior Authorization Process
- ✓ Improve Hospital Delivery System
- ✓ Improve Health Care Workforce Supply, Recruitment and Retention
- ✓ Minimize Hospital And Health Care Regulations In State Government
- ✓ Protect Public Health

Help "Tell the Hospital Story"



- Showcase efforts to care for your community
- Educate policymakers about opportunities and challenges hospitals face
- Improve the public's perception of hospitals and health care
- Reinforce and support WVHA State and Federal Public Policy Priorities

WVHA Tracked Approximately

250 Bills

Top 5 Hospital Bills Completed Legislative Action

- SB 268 - Relating to PEIA inpatient rates and addressing state agency structural matters
- HB 2759 - Expanding the Physician Payment Improvement Program
- SB 267 - Streamlining the Prior Authorization process for hospitals and health care practitioners
- HB 2993 - Establishing licensure for Rural Emergency Hospital (REH) model
- HB 3166 - Permitting a hospital to hold a patient experiencing a psychiatric emergency for up to 72 hours

The WVHA and Interim Period



Advocacy is at the core of the WVHA mission to support hospitals to achieve a strong, healthy West Virginia. While most of the attention is focused on the State Capitol during session, the reality is most of the work occurs outside the confines of the 60-day legislative session. Efforts will continue as hospitals and WVHA will be active throughout the year continuing to build solid relationships with administration officials, legislators, and their staff, as we advocate on behalf of hospitals during interim committee meetings.

Some of the areas of focus will be on working with hospital finance teams to review Medicaid payments and the various supplemental payment programs in place, and revisiting SB 669 – relating to anti-doxxing and protecting our health care workers, among many other topics.