

WEST VIRGINIA HOSPITALS

A unified voice in Charleston



WVHA members,

The second session of the 83rd Legislature adjourned on Saturday, March 10 after grueling and long debates over salary increases for teachers, service personnel and state employees, and the passage of the Fiscal Year (FY) 2019 State Budget. Amid all the action, there also was action on several issues important to hospitals, health systems and healthcare, with the passage of key legislative priorities for the WVHA. The success of this work, so critical to our communities, is thanks to you and your colleagues working together with the *WVHA Legislative Team* prior to and during the legislative session. We are deeply thankful for the time you have spent shaping our agenda, providing feedback, weighing in with legislators and coming to Charleston to attend committee meetings and to meet with legislators.

Overall, the WVHA saw positive outcomes of the association's legislative priorities to help support the hospital community in West Virginia. This included the passage of legislation: continuing our Hospital Directed Payment Program (**DPP**); and passage of legislation to help reduce the number of opioid prescriptions in the State. Several important hospital operational issues also were approved by the Legislature and signed into law including legislation to permit hospitals to obtain **autopsy reports** and the facilitation of **coordinated stroke care** in West Virginia. Despite passage by the Legislature, there were two bills the hospital and healthcare community worked on collaboratively that were unceremoniously vetoed by the Governor without much warning. These bills included legislation to help streamline and simplify the **prior authorization** process under managed care; and legislation to modernize our state's **peer review** statute pertaining to medical liability cases. We will once again pursue these issues at the next legislative opportunity.

While we are disappointed the two bills were vetoed, there were big wins this session particularly in the budget arena and the enactment of **no payment cuts to hospitals**. Following are summaries of WVHA priority issues and other issues of interest from the legislative session that affect hospitals, health systems and healthcare in West Virginia.

Thank you for your hard work to make this session another great one for hospitals and healthcare in our State. It is our pleasure to represent you in Charleston.

Sincerely,

Joe Letnaunchyn



President and CEO

Tony Gregory



VP, Legislative Affairs

Brandon Hatfield



General Counsel

WEST VIRGINIA HOSPITAL ASSOCIATION 2018 FINAL LEGISLATIVE REPORT

The pages that follow are summaries of bills the *WVHA Legislative Team* tracked during the 2018 Regular Session impacting hospitals, health systems and healthcare in West Virginia. This *Final Report* includes bills passed by the Legislature and signed into law by the Governor, and bills that were vetoed by the Governor. For key bills that were vetoed, the Governor's veto message is included with each summary.

The summaries of each bill in this *Report* are intended to provide a general overview, and should not be relied upon as a substitute for the actual bill language. Each summary is not an exhaustive list of every change in Statute. Rather, pertinent sections of law are highlighted that impact member hospitals and health systems. To access the actual bill, we've provided a link with each summary so that you and your key staff may review important provisions.

For specific questions about bills in this Report, please feel free to contact [Joe](#), [Tony](#) or [Brandon](#).

TABLE OF CONTENTS

FY 2019 STATE BUDGET / MEDICAID / DIRECTED PAYMENT PROGRAM	4
HOSPITAL OPERATIONAL ISSUES	6
HOSPITAL FINANCIAL DISCLOSURE / LEGISLATIVE RULES	7
PRIOR AUTHORIZATION / MANAGED CARE	9
PATIENT INJURY COMPENSATION FUND (PICF)	10
HEALTHCARE PEER REVIEW ORGANIZATION	10
SUBSTANCE USE DISORDER / OPIOIDS	12
PHARMACISTS / PHARMACIES / PHARMACEUTICALS	14
INSURANCE COVERAGE / PHYSICIANS MUTUAL	15
PHYSICIANS	17
NURSES	18
PROFESSIONS	19
MEDICAID ADMINISTRATIVE ISSUES	20
STATE GOVERNMENT OPERATIONS	21
INVOLUNTARY COMMITMENT/MENTAL HYGIENE/BEHAVIORAL HEALTH	23
NURSING HOMES AND INTERMEDIATE CARE FACILITIES	24
MISCELLANEOUS	25
EMPLOYER-RELATED BILLS	26
CHILD CARE / PARENTAL RIGHTS	27

On day 60 of the 2018 Regular Session, the Legislature passed and sent to the Governor a \$4.3 Billion Fiscal Year (FY) 2019 State Budget.

A key factor in the passage of the Budget this year was the resolution to the battle over pay raises for teachers and other public employees which dominated much of the session. It resulted in classrooms across West Virginia being closed for nine days. The result was an average five percent pay raise for educators as well as average five percent pay raises for many other public employees.

The pay raises were ironed out during the middle of the last week in session, reopening schools and settling most disagreements over how to spend any revenue beyond the basics. The five percent pay raise to school personnel and for many other state employees amounts to about \$111 million. There also was an additional \$29 million to freeze the Public Employees Insurance Agency (PEIA) plan for the coming fiscal year, and another \$14 million directed to the annual state share of retirement payments. So, the FY 2019 budget includes roughly \$150 million in total new compensation.

To accomplish the goals of satisfying teachers, school service personnel and state employees, some spending items had to go. Late in the session, Governor Jim Justice proposed raising the state revenue estimate by \$58 million, but lawmakers elected not to immediately count on that and, instead, to see if it really comes through. Instead, there will be some reductions of spending that had been intended earlier, plus some supplemental transfers.

- A \$46 million spending increase that the Governor had advocated for the Division of Commerce and the Department of Tourism is on hold;
- Another \$18 million the state had planned to perform deferred maintenance on public properties will remain deferred;
- A community and technical college bill that would have subsidized tuition for some students – to the tune of \$7 million did not pass;
- There will be a \$14 million transfer of Lottery revenue;
- A \$12 million annual transfer from the General Fund to the Road Fund will go un-transferred; and
- \$13.5 million that would have gone toward paying down what remains of West Virginia's workers compensation fund debt will be held back.

FY 2019 Medicaid Budget

In terms of the Medicaid Budget, there was about \$100 million of unspent Medicaid funds that were carried over from the FY 2018 Budget used to help fund various aspects of the FY 2019 Budget. The medical services line item for Medicaid in the FY 2019 Budget was cut by about \$10 million but, according to legislative leaders that amount may be backfilled later in the fiscal year.

The line involving Medicaid is actually a \$10 million transfer from the Medicaid Reserve Funds, which leaves an account balance of approximately \$42 million after the transfer and after the passage of various supplemental bills throughout the Regular Session.

In various media reports during the last days of the session and the Legislature's overall budget plan, there was indication the \$10 million cut would result in cuts in Medicaid. In discussing this issue with DHHR Leadership during budget negotiations, the *WVHA Legislative Team* confirmed that the \$10 million does not impact programs or provider payments. Rather, the transfer from the Reserve Fund is routine, albeit not ideal in terms of looking at future fiscal year Medicaid budgets. Further, upon signing the pay raise bill and the talk around Medicaid, the Governor said: "I will not allow our people on Medicaid to suffer in any way."

In terms of hospital-specific line items supporting Medicaid in the FY 2019 Budget, the targeted line items supporting safety net urban and rural hospitals are fully funded in the budget as are several other important health related items such as the DSH funding and waiver programs, to name a few.

Looking ahead, we know through our communication that the DHHR Leadership continues to employ cost-saving measures within Medicaid to avoid material impact on programs and providers.

The FY 2019 Federal Match will remain at the current rate, and Medicaid savings continue to be experienced through pharmacy rebates and maturing managed care programs. Also, to achieve additional savings, DHHR Leadership may well evaluate planned increases in the Intellectual/Developmental Disabilities Waiver (IDD) and Senior waiver slots, or advance savings from the 1115 Substance Use Disorder (SUD) Medicaid waiver. Legislators also have stated that mid-year supplemental appropriations during a Special Session could be legislatively approved if funding challenges with Medicaid come to fruition during FY 2019.

SB 441 – Directed Payment Program (DPP). Effective July 1, 2018

To maintain and increase payments to hospitals, the WVHA initiated the passage once again of legislation to continue the existing Hospital Directed Payment Program. Otherwise known as the (DPP), this bill continues the existing Hospital Directed Payment Program for three (3) additional years to June 30, 2021. 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. Under the bill passed this year, the current tax rate paid by eligible acute care hospitals to support the Program remains the same at .75 percent (seventy-five one-hundredths of one percent on the gross receipts). No other changes were made to the Program under this legislation.

HOSPITAL OPERATIONAL ISSUES

SB 510 – Hospital Stroke Recognition. Effective: June 5, 2018

This bill states that a hospital shall be recognized by the Office of Emergency Medical Services (OEMS) as a comprehensive stroke center (CSC), thrombectomy-capable stroke center (TSC), primary stroke center (PSC), or an acute stroke-ready hospital (ASRH), upon submitting verification of certification as granted by the American Heart Association (AHA), the joint commission, or other nationally recognized organization. This is merely a recognition program, and the DHHR under this bill, has no authority to designate hospital stroke centers in the State.

To help coordinate care, the OEMS shall gain access to, and utilize, a nationally recognized stroke database (*the existing "Get with The Guidelines" Program*) that compiles information and statistics on stroke care that align with the stroke consensus metrics developed and approved by the American Heart Association (AHA) and the American Stroke Association.

By July 1, 2018, the DHHR Secretary shall establish and appoint a stroke advisory committee which shall function as an advisory body to the secretary. Functions of this committee include: 1) promoting stroke prevention and health policy recommendations; 2) advising the OEMS on the development of stroke networks; and 3) utilizing stroke care data to provide recommendations to OEMS to improve stroke care throughout the state.

Membership of the advisory committee includes many healthcare professionals namely several members of the hospital community as set forth in the legislation.

HB 4169 –Human trafficking assistance notices. Effective: June 3, 2018

Intends to assist victims of human trafficking to obtain help and services. Specifically, this bill relates to requiring various businesses and establishments (*including hospital emergency departments*) to post human trafficking assistance notices. The bill establishes where the notices must be posted and the contents of the notice. To assist businesses, the bill requires the state Director of the Division of Justice and Community Services to provide certain resources on its website regarding the notices. The bill authorizes certain state and local agents to issue violations; and provides for criminal penalties for failure to comply with posting of notices.

HB 4217 – Release of autopsy reports. Effective: June 8, 2018

Permits a designated representative of a hospital, or an attending physician to obtain a patient’s autopsy report. Specifically, this bill authorizes the state’s Chief Medical Examiner (CME) to release a copy of the autopsy and toxicology reports upon the request from a designated representative of a hospital to said facility who has reported a death under the provisions of [§61-12-8](#). The autopsy reports are to be used for purposes of quality review and medical record completion as stated in the bill. Further, the CME is authorized to release a copy of the autopsy and toxicology reports upon the request of an attending physician to said physician whose patient has died - for purposes of quality review and medical record completion.

HOSPITAL FINANCIAL DISCLOSURE / LEGISLATIVE RULES

SB 165 - DHHR Rules. Effective from passage February 19, 2018

This bill contains several legislative rules administered by agencies within the Department of Health and Human Resources (DHHR).

- Among them include minor updates to the **Hospital Licensure** legislative rules administered by the Office of Health Facilities and Licensure Certification (OHFLAC);
- Rewrite of the **Financial Disclosure** legislative rules administered by the West Virginia Health Care Authority; and
- Other relevant DHHR rules dealing with emergency medical services, methodologies to examine needs for substance use disorder treatment facilities; collection and exchange of data related to overdoses; and drug screening of applicants for cash assistance, among other rules.

The **Financial Disclosure Rule** promulgated by the West Virginia Health Care Authority contains several key provisions relating specifically to hospitals. The rule requires a hospital to file annually, and within 120 days after the end of its fiscal year, the following:

- A statement of charges for services rendered;
- The Health Care Authority Financial Report, through the Uniform Reporting System; and
- Uniform Bill form in effect for inpatient.

Failing to submit the required information for more than 10 days following formal notice of the failure may result in a penalty of \$1,000 per day that the failure continues.

The Legislature also passed another **Omnibus Legislative Rules bill (HB 4079)** containing rules promulgated by various health professional licensing boards and commissions. Some of the rules deal with:

- authorizing the Board of Medicine to promulgate legislative rules relating to licensure, disciplinary and complaint procedures; continuing education of physician assistants; and continuing education for physicians and podiatric physicians;
- authorizing the Board of Osteopathic Medicine to promulgate a legislative rule relating to osteopathic physician assistants;
- authorizing the Board of Pharmacy to promulgate legislative rules relating to licensure and practice of pharmacy; pharmacist recovery networks; immunizations administered by pharmacists and pharmacy interns; centralized prescription processing; uniform controlled substances act; registration of pharmacy technicians; and the controlled substances monitoring program.

SB 442 – Establishing universal forms and deadlines when submitting prior authorization electronically. VETOED

The bill attempted to regulate and modernize the prior authorization process, using some of the following provisions:

- Beginning October 1, 2018, the Public Employees Insurance Agency (PEIA), managed care organizations and private insurers are required to develop and prepare prior authorization forms which are to be placed in an easily identifiable and accessible place on their web page. The forms are to include instructions for the submission of clinical documentation and provide an electronic notification confirming receipt of the prior authorization request.
- By July 1, 2019, PEIA, managed care organizations and private insurers are all required to accept electronic prior authorization requests and respond to the requests through electronic means.
 - For “urgent care services” as defined in the bill – the insurer is required to respond to the prior authorization request within 48 hours; and
 - 7 days for non-urgent requests.
- One other important provision in the bill states that a prior authorization approved by a managed care organization is carried over (valid) to all other managed care organizations for 3 months.

This bill was vetoed by the Governor on March 28, 2018. The Governor’s Veto Message states:

“Enrolled Committee Substitute for SB 442 is concerning because it voids current contracts governing prior authorization response times would be unconstitutional. WV Code 33-4-22(i) violates the Contracts Clause of both the Constitutions of the US and WV. Both the Supreme Court of Appeals of WV and the US Supreme Court have held state laws unconstitutional where a state statute ‘impairs the obligation of an existing contract.’ If this provision would become law, insurance companies, with current contracts that govern response times for prior authorizations, would have no alternative but to unilaterally alter these contracts based on the requirements of this bill. This legislative interference with current contracts would be unconstitutional.”

PATIENT INJURY COMPENSATION FUND (PICF)

SB 576 - Relating to Patient Injury Compensation Fund. Effective: June 6, 2018

Continues the Patient Injury Compensation Fund (PICF) funding mechanisms agreed to during the 2016 Legislative Session. The funding extension is for an additional 18 months, ending December 31, 2021. This continuation will ensure full funding of the PICF. The bill also provides that any excess funds remaining in the PICF account as of June 30, 2022 will be transferred to the General Revenue Fund.

HEALTHCARE PEER REVIEW ORGANIZATION PROTECTION

SB 434 - Specifying documents not subject to discovery in certain proceedings. VETOED

The bill attempted to modernize key provisions pertaining to healthcare peer review organizations. The goal of the bill was to protect certain documents from discovery in legal proceedings:

- Updated specific terms used throughout the peer review statute such as “documents” and “healthcare facility.”
- Stated which documents produced by healthcare facilities such as hospitals and nursing homes - are confidential and not subject to discovery. These included documents related to review organization proceedings for hiring, disciplining, terminating, credentialing, issuing staff privileges, renewing staff privileges, or alleged misconduct of a healthcare provider; quality control and performance improvement documents; and reviews, audits, and recommendations of consultants or other persons or entities engaged in the performance of peer review, to name a few.
- Stated that a person who testifies before a review organization, or who is a member of a review organization shall not be required to testify regarding, or be asked about, his or her testimony before such review organization, deliberations of the review organization, or opinions formed as a result of the review organization’s proceedings.

- Stated that all peer review proceedings, communications, and documents of a review organization shall be confidential and privileged and shall not be subject to discovery in any civil action or administrative proceeding:
 - *Provided*, that an individual may be given access to any document that was used as the basis for an adverse professional review action against him or her, subject to such protective order as may be appropriate to maintain the confidentiality of the information contained therein. Privilege is not deemed to be waived unless the review organization executes a written waiver authorizing the release of such peer review proceedings, communications, or documents.
- Information available from original sources are not to be construed as immune from discovery or use in any civil action merely because they were included in any report or analysis related to improving the quality, delivery, or efficiency of healthcare or for the purpose of credentialing or reviewing healthcare providers. However, no court may compel production of documents contained in peer review files on the basis that they were not created as part of the peer review process; rather, the document must be produced from the original source.

This bill was vetoed by the Governor on March 28, 2018. The Governor's Veto Message states:

"Enrolled Committee Substitute for SB 434 makes confidential and not subject to disclosure documents regarding the hiring, discipline, terminating, credentialing, issuing and reviewing of staff privileges, as well as alleged misconduct of a healthcare provider. It further mandates nondisclosure for performance improvement, review, recommendation and audit documents regarding the performance of healthcare professionals.

To shield such documents from disclosure does not allow patients harmed in the court of their treatment, to fully seek redress of their damages and be made whole. It puts patients at a disadvantage as they pursue their claims. The bill is bad public policy for West Virginia because it does not promote patient rights and public safety."

SB 272 –Office of Drug Control Policy and Hospital ED Reporting. Effective: June 5, 2018

Relates generally to drug control. The bill specifically requires certain reports to the state Office of Drug Control Policy, within the DHHR's Bureau for Public Health. The bill adds hospital emergency departments to the list of entities now required to report suspected or reported overdoses to the Office of Drug Control Policy.

Further, the bill allows the Office to establish a pilot program for community response to persons who have experienced a recent overdose; requires governmental agencies to require first responders to carry Naloxone subject to certain conditions; requires governmental agencies to require first responders to be trained in Naloxone use; provides that Naloxone is subject to funding and availability; and provides for a statewide standing order for Naloxone by the state health officer.

SB 273- Opioid Reduction Act. Effective: June 7, 2018

This bill is the product of a 2017 legislative interim study.

- The bill amends the current definition of "Pain management clinic" by changing the current threshold of 50 percent of the patients of the clinic are prescribed or dispensed opioids or other controlled substances to only include schedule II opioids or other controlled substances.
- The bill provides an exemption from registration for a person, partnership, association, or corporation providing office-based, medication assisted treatment to no more than 30 patients of their practice or program, conditioned on certain requirements.

The Act also limits the prescribing of opioids as follows:

- Emergency Room or Urgent Care facility setting for outpatient use - not more than a four-day supply;
- Healthcare practitioner prescribing for a minor- not more than a three-day supply;
- Dentist or Optometrist- not more than a three-day supply;
- A practitioner may not issue an initial opioid prescription for more than a seven-day supply; and
- A veterinarian may not issue an initial opioid prescription for more than a seven-day supply.

The bill also requires that prior to issuing an initial opioid prescription, a practitioner shall:

- 1) Take and document a thorough medical history;
- 2) Conduct, as appropriate, and document the results of a physical examination;
- 3) Develop a treatment plan; and,
- 4) Access relevant information under the Controlled Substances Monitoring Program Database.

Further, the bill states that no medication listed as a Schedule II controlled substance may be prescribed by a practitioner for more than a 30-day supply. However, two additional 30-day prescriptions may be prescribed, for a total of a 90-day supply, if the practitioner accesses the Controlled Substances Monitoring Program Database. The bill specifically excludes cancer patients, patients receiving hospice care from a licensed hospice provider, patients receiving palliative care, a patient who is a resident of a long-term care facility, or a patient receiving medications that are being prescribed for use in the treatment of substance abuse or opioid dependence from these limitations.

Finally, the bill includes several other provisions including the creation of an advanced directive form for a patient to complete if he or she does not wish to be administered or offered a prescription or medication order for an opioid, and the creation of a narcotics contract that is required to be entered into between a patient and the prescribing practitioner any time a prescription for more than a seven-day supply of any Schedule II opioid is provided to a patient. The required provisions of the contract are provided in the legislation.

Other bills dealing with **Substance Abuse** from various perspectives also were passed by the Legislature including:

- **SB 469** - Relating to converting the **Addiction Treatment Pilot Program** into a permanent program; and placing the program under the control of the Department of Military Affairs and Public Safety (DMAPS). **Effective: June 8, 2018**
- **HB 4509** - Relating to the **establishment of substance abuse treatment and recovery facilities**; and permitting the DHHR to provide funding to facilities that provide peer-support services which follow specified standards. **Effective: June 5, 2018**

- **HB 4603** - Relating to **providing immunity from civil liability** to certain facilities, including their directors, officers, employees, and agents, providing crisis stabilization and/or drug and alcohol detoxification services, substance use disorder services, and/or drug overdose services on a short-term basis. **Effective: June 8, 2018**

PHARMACISTS / PHARMACIES / PHARMACEUTICALS

SB 46 - Permitting pharmacists to inform customers of lower-cost alternative drug. Effective: June 8, 2018

Allows pharmacy, pharmacist, and a pharmacy technician to provide a covered individual with information related to lower cost alternatives and cost share for such covered individual. A pharmacy, pharmacist, or a pharmacy technician shall not be penalized by a Pharmacy Benefit Manager (PBM) for discussing this information or for selling a lower cost alternative to a covered individual. The bill further provides that a PBM shall not collect from a pharmacy, pharmacist, or pharmacy technician a cost share charged to a covered individual that exceeds the total submitted charges to the PBM. Finally, the bill specifies when a PBM may directly or indirectly charge or hold a pharmacy, pharmacist, or pharmacy technician responsible for a fee related to the adjudication of a claim.

HB 4025 - Reciprocity for licensure as a pharmacy technician. Effective: June 4, 2018

Permits the Board of Pharmacy to license pharmacy technicians who have obtained national certification and practiced in another jurisdiction. The time required of an applicant to have practiced in another jurisdiction will be determined by the Board of Pharmacy.

HB 4336 - Updating the schedule of controlled substances. Effective: June 7, 2018

The Legislature updates the schedule of controlled substances annually during the Legislative Session. This year, the bill adds chemical compounds to three of the schedules - gabapentin and pregabalin are added to Schedule V; dronabinol is added to Schedule II; and several new chemical compounds are added to Schedule I, including the chemical compound for fentanyl.

HB 4524 - Establishing guidelines for the substitution of certain biological pharmaceuticals. Effective: June 8, 2018

Requires a pharmacist who receives a prescription for a specific biological product to select a less expensive interchangeable biological product unless in the exercise of his or her professional judgment the pharmacist believes that the less expensive drug is not suitable for the particular patient. However, if, in the professional opinion of the prescriber, it is medically necessary that an equivalent drug product or interchangeable biological product not be selected, the prescriber may so indicate by certifying that the specific brand-name drug product prescribed, or the specific brand-name biological product prescribed, is medically necessary for that particular patient.

INSURANCE COVERAGE / PHYSICIANS MUTUAL

SB 242 - Requiring health insurance providers provide coverage for certain Lyme disease treatment. Effective: June 6, 2018

States that all individual and group health insurance policies providing coverage on an expense-incurred basis and individual and group service or indemnity type contracts issued by a nonprofit corporation shall provide coverage for long-term antibiotic therapy for a patient with Lyme disease. The coverage is when determined to be medically necessary and ordered by a licensed physician after making a thorough evaluation of the patient's symptoms, diagnostic test results, or response to treatment.

SB 299 - Relating to mandatory insurance coverage for medical foods for amino acid-based formulas. Effective: June 6, 2018

Relates to mandatory insurance coverage, up to the age of 20, for certain medical foods for amino acid-based formulas. The bill provides a list of diagnosed conditions for which insurance coverage should extend; provides that coverage extends to medically necessary foods for home use when prescribed by a physician; defines terms; and provides for exclusions from such coverage.

SB 401 - Requiring specified coverage in health benefit plans for treatment of substance abuse disorders. Effective: June 8, 2018

This bill requires specified coverage in health benefit plans for outpatient and inpatient treatment for substance use disorders by July 1, 2019.

The bill defines terms; provides for rulemaking for the Insurance Commissioner and sets forth time frames for coverage, among other provisions.

The bill defines “substance use disorder” as the same as that term is defined by the American Psychiatric Association in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, and shall include substance use withdrawal. Specifically:

- The bill states that the inpatient and outpatient treatment of substance use disorders shall be provided when determined medically necessary by the covered person’s physician, psychologist, or psychiatrist.
- The facility shall notify the insurer of both the admission and the initial treatment plan within 48 hours of the admission or initiation of treatment.
- If there is no in-network facility immediately available for a covered person, a health benefit plan offered by a health plan issuer shall provide necessary exceptions to its network to ensure admission in a treatment facility within 72 hours.
- A health benefit plan may transfer a covered person to an in-network facility if one becomes available during the course of the treatment plan.
- If a covered person is being treated at an out-of-network facility and an in-network facility becomes available during the course of the treatment plan, an insurer may transfer the covered person to the in-network facility.

Other provisions deal with payment and utilization management review.

Two other bills dealing with **Insurance** also were passed by the Legislature including the following:

- **SB 495** - Relating to commercial insurance rates and designating **specific insurance coverages which are exempt from the requirements of filing rates** with the Insurance Commissioner. **Effective: June 8, 2018**
- **HB 4400** – Relating to the **West Virginia Physicians Mutual Insurance Company**. Specifically, the bill removes language that is no longer relevant to the operation of the company as a private mutual insurance company and adds language to accommodate policies written to physicians outside the State of West Virginia. **Effective: June 5, 2018**

SB 499 - Postgraduate clinical training for persons with foreign medical degrees. Effective: June 5, 2018

Relates to specific licenses granted by the West Virginia Board of Medicine. The bill clarifies certain requirements to obtain licensure and reorganizes the minimum licensing requirements for a license. The bill provides for the completion of a certain amount of graduate clinical training.

HB 4027 - Creating an education permit for allopathic physician resident. Effective: June 4, 2018

Creates an education permit for allopathic physician residents. Specifically, the bill states that beginning July 1, 2019, no person shall participate in a program of graduate medical training in West Virginia unless such person holds a license to practice medicine and surgery in this state or has been issued an educational permit issued by the West Virginia Board of Medicine.

The bill states that an educational permit issued by the Board authorizes the recipient to practice medicine and surgery only within the parameters of the recipient's training program. An applicant for an educational permit shall file an application with the Board and furnish evidence establishing that the applicant has satisfied several requirements spelled out in the bill.

- The applicant must have graduated from an allopathic college approved by the Liaison Committee on Medical Education;
- Graduated from a medical college that meets requirements for certification by the Educational Commission for Foreign Medical Graduates; or
- Completed an alternate pathway for meeting initial entry requirements or prerequisite or transfer requirements recognized by the Accreditation Council for Graduate Medical Education, among other requirements.

The bill further states that an educational permit shall be valid for up to one year of post-graduate training. An educational permit may be renewed if the holder remains eligible to receive a renewed permit.

The bill authorizes the Board of Medicine to promulgate emergency rules to include a number of specified details including: an implementation schedule for the issuance of educational permits prior to July 1, 2019; the extent to which residents and fellows may practice medicine and surgery pursuant to an educational permit; and criteria for the issuance of reciprocal educational permits for out of state allopathic medical residents seeking to complete a residency rotation in West Virginia, among other provisions.

HB 4156 – Establishing the qualifications of full and part time nursing school faculty members. Effective: From Passage March 10, 2018

As originally introduced, the bill provided for the following new education and training requirements for nursing school faculty members:

- Full-time nursing faculty members shall: Have a graduate degree with a major in nursing; have a bachelor's degree with a major in nursing, and be enrolled in a graduate degree program with a major in nursing within one year of employment as a faculty member; or have a bachelor's degree with a major in nursing and at least 10 years of direct patient care experience in nursing.
- Part-time nursing faculty members shall: Have a graduate degree with a major in nursing; have a bachelor's degree with a major in nursing and be enrolled in a graduate degree program with a major in nursing within one year of employment as a faculty member; or have a bachelor's degree with a major in nursing and at least two years of direct patient care experience in nursing.

The bill was further amended to add a provision from other legislation whereby a nursing program is determined to be board approved if the program is accredited by a national nursing accrediting agency recognized by the United States Department of Education. The accreditation is considered board approved and is exempt from board of nursing rules that require ongoing approval if the school or program maintains this accreditation. Lastly, the bill states that by July 1, 2022, all nursing programs shall be accredited by a national accrediting agency recognized by the United States Department of Education. A program created after July 1, 2018, shall have 5 years to obtain accreditation by an accrediting agency recognized by the United States Department of Education.

HB 4175 - Preventing requirement that an advanced practice registered nurse participate in a collaborative relationship to obtain payment. Effective: May 31, 2018

The bill simply changes state statute with a provision that an insurance company or managed care organization may not require an advanced practice registered nurse to participate in a collaborative agreement to obtain payment for his or her services.

SB 456 - PT Licensure Compact Act. Effective: June 5, 2018

Creates the Physical Therapy Licensure Compact Act to facilitate interstate practice of physical therapy with the goal of improving public access to physical therapy services. The Compact is created to achieve the following:

- Increase public access to physical therapy services by providing for the mutual recognition of other member state licenses;
- Enhance the states' ability to protect the public's health and safety;
- Encourage the cooperation of member states in regulating multi-state physical therapy practice;
- Enhance the exchange of licensure, investigative, and disciplinary information between member states; and
- Allow a remote state to hold a provider of services with a compact privilege in that state accountable to that state's practice standards. The bill includes conditions to participation as a state and requirements of a licensee to exercise the compact privilege under the terms of the Compact.

SB 525 - Certification for emergency medical training – mining. Effective: June 8, 2018

This bill transfers the current certification for emergency medical training-mining to the chapter in code relating to miners' health, safety, and training. It now requires the Director of Miners' Health Safety and Training to work in consultation with the Board of Coal Mine Health and Safety to authorize the education program and cognitive and skills examination required for applicants.

HB 4023 - Relating to the regulation of dialysis technicians. Effective: June 4, 2018

This bill amends language to provide that a temporary permit is effective from the date of issuance until three days after the receipt by the applicant and the board of the results of the certification examination or after eighteen months whichever is sooner, unless the board revokes the temporary permit prior to its expiration. The bill also allows for the renewal of a temporary permit for an additional eighteen months from the renewal date unless the board revokes the temporary permit prior to its expiration, under certain circumstances outlined in the bill. Finally, the bill repeals the dialysis technician advisory council.

SB 406 – Ground emergency medical transportation. Effective: From Passage March 10, 2018

States that a ground emergency medical transportation services provider, owned, operated by, or providing services under contract to, the state, or a city, a county, or city and county, that provides services to Medicare and Medicaid beneficiaries is eligible for supplemental reimbursement. The bill further states that the DHHR shall obtain approval from the Centers for Medicare and Medicaid Services (CMS) for the payment methodology to be used before any payment is made.

HB 4001 - Relating to eligibility and fraud requirements for public assistance. Effective: June 8, 2018

This bill deals with several provisions relating to the investigations, inspections, evaluations, and review conducted by the DHHR to prevent fraud and abuse. The bill primarily has two parts: one dealing with work requirements for food stamp eligibility; and the other dealing generally with fraud as it relates to Medicaid.

- The part dealing with work requirements for food stamp eligibility contains several provisions, including one that limits waivers on work requirements under federal law for counties with high unemployment rates. Federal law allows waivers for counties if their 12-month average unemployment rate is above 10 percent, or if their 24-month average unemployment rate is 20 percent above the national average. The changes affect able-bodied adults between the ages of 18-50 who do not have children or dependents, who are not pregnant and who don't have a disability. The bill says they must work, volunteer or participate in job training for 20 hours a week to qualify for food stamps.
- The part of the bill dealing with Medicaid specifically defines fraud as it relates to Medicaid to mean: "knowing misrepresentation, knowing concealment, or reckless statement of a material fact." The bill creates criminal penalties against providers for failure to keep medical records for a specific time-period and authorizes a civil cause of action for fraud when a person or entity knew or reasonably should have known a claim to be false.

The bill also enlarges the statute of limitations to file healthcare fraud civil actions to five years.

HB 4392 - Relating to Medicaid subrogation liens of the Department of Health and Human Resources. VETOED

SB 392 - Reconfiguring membership of Emergency Medical Services Advisory Council – VETOED**SB 411 - Removing Commissioner of Bureau for Public Health from State Board of Sanitarians. Effective: June 6, 2018**

Removes the Commissioner of the Bureau for Public Health from the membership of the State Board of Sanitarians.

SB 522 - Administrative Procedures Act. Effective: June 4, 2018

Makes several changes to the Administrative Procedures Act as well as the legislative rule-making review process. The goal of the legislation is to simplify the regulatory process for agencies and those industries impacted. Among the many provisions:

- The bill specifically states that rules become void if statutory authority is repealed.
- The bill provides that legislative exempt, procedural, or interpretive rules may be repealed by an agency upon notification to Secretary of State. Specifically, beginning in 2019, The Legislative Rule-Making Review Committee may withhold from its report any proposed legislative rule which was submitted to the committee after the last Friday in July and beginning in 2020, and every four years thereafter, by the last Friday in August.
- Finally, the bill provides a procedure for agencies to affirmatively seek renewal of a legislative rule; and provides that legislative rules up for termination are not subject to a public comment period.

SB 635 - 2019 salary adjustment for employees of DHHR. Effective: June 7, 2018

This bill provides for an across-the-board salary adjustment for employees of the various bureaus and offices of the DHHR. This salary adjustment shall be provided from the funding appropriated to the department in the fiscal year 2019 budget and may not be construed to require additional appropriations from the Legislature. This adjustment is separate from and in addition to any other salary adjustment approved during the 2018 regular session of the Legislature relative to the 2019 budget.

HB 3104 - WV Traumatic Brain and Spinal Cord Injury Rehabilitation Fund. Effective: May 31, 2018

Transfers the administration of the West Virginia Traumatic Brain and Spinal Cord Injury Rehabilitation Fund to the DHHR. Specifically, the bill abolishes the West Virginia Traumatic Brain and Spinal Cord Injury Rehabilitation Fund Board and transfers the powers, duties and records of the West Virginia Traumatic Brain and Spinal Cord Injury Rehabilitation Fund Board to DHHR, among other provisions.

HB 4009 - State Settlement and Recovered Funds Accountability Act – VETOED

HB 4016 - Relating to combatting waste, fraud, and misuse of public funds through investigations, accountability and transparency. Effective: June 6, 2018

Directs the State Auditor to create and maintain a searchable financial transparency website detailing where, how much, and for what purpose taxpayer moneys in state government are expended. The searchable website is to be made compatible for future inclusion of counties or municipalities that desire to have their own searchable financial transparency website. Several terms are defined in the bill including: “funding action or expenditure,” “governmental agency” and recipients.”

HB 4035 – Palliative care Coalition. Effective: June 7, 2018

Creates a state advisory coalition to improve palliative care in West Virginia. The Advisory Coalition on Palliative Care consists of individuals appointed by the Senate President and House Speaker who are health professionals having palliative care work experience and/or expertise in palliative care delivery models in a variety of inpatient, outpatient, and community settings and with a variety of populations, including pediatric, youth, and adults. Members of the Coalition include physicians, an RN, social worker, pharmacist, spiritual advisory, patient advocate, family caregiver advocate, among others.

The Coalition is to meet at least quarterly to address pertinent issues related to palliative care; consult with entities and persons with expertise as the coalition considers necessary; and establish a system for identifying patients or residents who could benefit from palliative care, among other duties.

The Coalition is to report its findings to the Joint Committee on Health by December 31, 2019, and annually after that until it’s scheduled to terminate December 31, 2021.

SB 359 - Authorizing Supreme Court establish curricula for mental hygiene commissioners and certain magistrates. Effective from passage March 7, 2018

Eliminates the requirement that new mental hygiene commissioners undergo a minimum of three-day orientation course within one year of their appointment. It also removes the requirement that the course required for existing mental hygiene commissioners and certain magistrates include instruction on the manifestations of mental illness and addiction. Instead, the bill requires the Supreme Court of Appeals to establish the curricula.

SB 543 - Relating to confidentiality of medical records. Effective: June 5, 2018

Relates to the confidentiality of certain medical records relating to mental health matters and lists out several legally-justified exceptions to the confidentiality provisions. In 2017, the Legislature added two provisions to comply with federal privacy rules and authorized disclosure of confidential information in certain circumstances relating to the guardianship of a protected person. This bill combines all of those enactments and adds an express provision to permit disclosure of confidential information if there has been a written release of confidentially issued by a legally-authorized person.

SB 603 - Relating to proceedings for involuntary custody for examination. Effective: June 8, 2018

Adds licensed professional counselors to the list of professionals that may examine an individual by order of a circuit court, mental hygiene commissioner, or magistrate for purposes of an involuntary custody proceeding. It also adds licensed professional counselors to the list of professionals that may provide the required certification to admit an individual to a mental health facility for examination and treatment upon entry of an order finding probable cause.

HB 4453 – Relating to judicial review of contested cases under the West Virginia Department of Health and Human Resources Board of Review. Effective: June 6, 2018

This bill was a technical cleanup, changing the word “not” to “or” at §9-2-13(d).

NURSING HOMES AND INTERMEDIATE CARE FACILITIES

SB 408 – Licensing of nursing homes and assisted living residences. **Effective: June 8, 2018**

Repeals certain provisions relating to the licensure of nursing homes and assisted living residences; requires a streamlined, online publication of information about long term care facilities; and requires compliance with certain provision related to the Board of Pharmacy. The bill also provides the Secretary of the Department of Health and Human Resources (DHHR) with numerous powers, duties and rights related to assisted living facilities.

SB 575 – Approving additional beds for intermediate care facilities. **Effective: June 6, 2018**

Allows for an additional 24 beds in intermediate care facilities for individuals with an intellectual disability without further action by the West Virginia Health Care Authority. The beds may be added by providers and in the areas the Secretary of the Department of DHHR in his or her discretion designates to move individuals to a less restrictive setting or to prevent individuals from entry to a more restrictive setting. Eligibility for bed placement will be determined by a multidisciplinary team on a case-by-case basis based upon bed availability. Additional beds may be added at the sole discretion of the Secretary.

HB 4178 - Permitting certain portions of certified nurse aide training to be provided through distance learning technologies. Effective: June 4, 2018

This bill allows for the use of distance learning technologies, such as those delivered over the internet, broadcasts, recordings, instructional videos, or videoconferencing for the nonclinical instruction portions of a nurse aide training program. The bill requires the promulgation of legislative rules by the Office of Health Facility Licensure and Certification (OHFLAC) before the DHHR Secretary, or his designee, will permit the provisions of the bill to be implemented.

HB 4199 - Permitting a nursing home to use trained individuals to administer medication. VETOED

SB 36 – Relating generally to DNA testing. Effective: June 5, 2018

Amends sections of *WV Code* related to DNA testing. Specifically, the bill allows the West Virginia State Police Forensic Laboratory to use qualified outside entities for DNA testing and it clarifies that the State Police shall attempt to contract with the Marshall University Forensic Science Center for certain DNA testing when outsourcing such testing. The bill grants legislative and emergency rule-making authority to the Sexual Assault Forensic Examination (SAFE) Commission and directs the commission to promulgate time frames for DNA sample submission among many other provisions.

SB 555 - Providing immunity from civil liability for qualified directors of certain governmental and nonprofit entities. Effective: June 5, 2018

Relates to the liability for qualified directors of volunteer organizations and entities; and provides that a qualified director is not personally liable for the torts of a volunteer organization or entity, or the torts of the agents or employees of a volunteer organization or entity, unless he or she approved of, ratified, directed, sanctioned, or participated in the wrongful acts. These protections apply to volunteer organizations or entities as defined at §55-7C-2.

HB 4320 - Limiting the ability of an agent under a power of attorney to take self-benefiting actions. Effective: June 8, 2018

Relates to limiting the ability of an agent under a power of attorney to take self-benefiting actions. Specifically, the bill clarifies the presumption that an act is not within the scope of authority granted in a power of attorney when an agent benefits from the act to the detriment of an ancestor, spouse, heir, or descendant. The bill further requires express grant of authority to exercise authority over the content of electronic communications sent or received by the principal, among other provisions.

HB 4332 – Home peritoneal renal dialysis. Effective: June 1, 2018

Allows home peritoneal renal dialysis equipment and drugs to be distributed to patients with end state renal disease. The bill provides for payment by Medicaid under the current benefit structure; and exempts cashiers from licensure under the Larry W. Border Pharmacy Practice Act. As it pertains to the latter, the bill specifically states that a person who handles a prescription drug only during the point of sale to provide the prescription drug to a patient and accept payment is not subject to the licensure requirements of this article.

EMPLOYER-RELATED BILLS

SB 338 - Changing date for employers to file annual reconciliation and withholding statements. Effective: June 1, 2018

Relates generally to employer withholding taxes. The bill changes the due date for employers to file annual reconciliation and withholding statements with the State Tax Commissioner to January 31.

The bill also states that any employer required to file a withholding return for 50 or more employees shall file its return using electronic filing, *provided*, that for any tax period beginning after December 31, 2017, any employer that uses a payroll service or is required to file a withholding return for 25 or more employees shall file its return using electronic filing as defined in [§11-21-54](#) of the *Code*. An employer that is required to file electronically but does not do so is subject to a penalty in the amount of \$25 per employee for whom the return was not filed electronically, unless the employer shows that the failure is due to a technical inability to comply.

HB 2028 - Relating to the venue for suits and other actions against the state. Effective: June 6, 2018

Eliminates the current requirement that all lawsuits against the State of West Virginia or its state agencies must be filed in Kanawha County Circuit Court, and will instead allow such lawsuits to be filed locally in the county where the claim arose.

HB 2546 - Allowing replacement costs of employer provided property to be deducted from an employee's final paycheck if the property is not returned. Effective: May 15, 2018

Relates to the Wage Payment and Collection Act and allows actual cash value of employer provided property to be deducted from an employee's final paycheck if the property is not returned. The bill sets forth several conditions upon which an employer may withhold, deduct or divert the actual cash value of employer provided property that has not been timely returned and requires written agreements before withholding or deductions for the actual cash value of employer provided property may be made. Other provisions deal with specifying certain contents of such written agreements; and authorizing withholding, deduction or diversion of actual cash value of employer provided property with consent of employee.

HB 4013 - Clarifying venue as it applies to nonresidents of the state.
Effective: June 8, 2018

This bill prohibits out-of-state plaintiffs from filing lawsuits here in West Virginia unless the lawsuit cannot be filed anywhere else.

HB 4187 - Business Liability Protection Act (Guns in Parking Lots Bill).
Effective: June 8, 2018

This bill prohibits employers or businesses from banning weapons and firearms from parking lots if such weapons are kept locked inside the vehicle. Unlike similar laws enacted in other states, HB 4187 does not contain any exceptions for those employers or businesses that work with hazardous chemicals, refineries, or explosives.

Specifically, the bill says no private or public-sector employee may prevent an employee, customer or invitee from keeping a firearm properly locked out of sight inside the vehicle from parking in the parking lot. The property owner may not ask the driver if there is a gun in the vehicle and may not search the vehicle. An employer may not condition employment upon gun ownership or intention to keep a gun locked in the employee 's car. The bill exempts vehicles owned or leased by the employer for the employee's use. The bill provides immunity for the employer if anyone brings a legal action because of the weapon.

CHILD CARE / PARENTAL RIGHTS

SB 407 – Licensing and approval of child care programs.
Effective: June 7, 2018

This bill relates to modifying definitions related to licensing and approval of child care programs. Specifically, the bill modifies definitions related to child advocacy, care, residential, and treatment programs. The bill eliminates the ability for family child care homes, informal family child care homes, or relative family child care homes to self-certify compliance with legislative rules; eliminates statutory caps on the number of children under 24 months of age in family child care facilities and family child care homes among other changes.

SB 443 - Terminating parental rights when certain conditions are met.
Effective: June 8, 2018

This bill relates to requiring the DHHR to file a petition to terminate parental rights when parents voluntarily fail to have contact or attempt to have contact with the child for a period of 18 consecutive months. There are exceptions under the bill such as when the child has been placed permanently with a relative by court order.

SB 465 - Mandated reporting of child abuse and neglect. Effective: June 5, 2018

This bill relates generally to mandated reporting of child abuse and neglect. The bill clarifies that sexual abuse and sexual assault constitute abuse of a child for reporting purposes. It also reduces the time period in which a mandated reporter is required to report suspected abuse or neglect and requires mandated reporters to directly report known or suspected abuse or neglect. The bill eliminates certain broad reporting requirements applicable to any person over the age of 18 and clarifies that minors are not mandated reporters, among other provisions. Persons mandated to report suspected abuse and neglect include: medical, dental or mental health professionals as well as social workers and emergency medical services personnel, among other entities.

HB 4402 - Relating to the prevention of sexual abuse of children. Effective: June 3, 2018.

This bill relates to the education and prevention of sexual abuse of children. The bill mandates that children in grades K-12 receive sexual abuse education at least once during the academic year beginning July 1, 2019; requires the State Board of Education to promulgate legislative rules to facilitate this process and develop resources by December 31, 2018. The bill provides a list of minimum content for said legislative rules; requires that the state board promulgate legislative rules for sexual abuse education and prevention training of public school employees by December 31, 2018; provides for an emergency rule, if necessary; providing a list of minimum content for said legislative rules; provides that said training be administered every two years; and provides additional requirements of said training.

West Virginia Hospital Association Member Hospitals and Health Systems

Bluefield Regional Medical Center
Boone Memorial Hospital
Braxton County Memorial Hospital
Cabell Huntington Hospital/Hoops Family Children's Hospital

CAMC Health System

CAMC General Hospital
CAMC Memorial Hospital
CAMC Teays Valley Hospital
CAMC Women and Children's Hospital

Charleston Surgical Hospital
Cornerstone Hospital of Huntington

Davis Health System

Broadus Hospital
Davis Medical Center
Fairmont Regional Medical Center
Grafton City Hospital
Grant Memorial Hospital
Greenbrier Valley Medical Center
Hampshire Memorial Hospital

HealthSouth Huntington Rehab Hospital
HealthSouth MountainView Rehab Hospital
HealthSouth Southern Hills Rehab Hospital
HealthSouth Western Hills Rehab Hospital
Highland Hospital Association
Highland-Clarksburg Hospital, Inc.
Jackson General Hospital

Logan Regional Medical Center
Minnie Hamilton Health System

Mon Health

Mon Health Medical Center
Mon Health Preston Memorial Hospital
Mon Health Stonewall Jackson Memorial Hospital

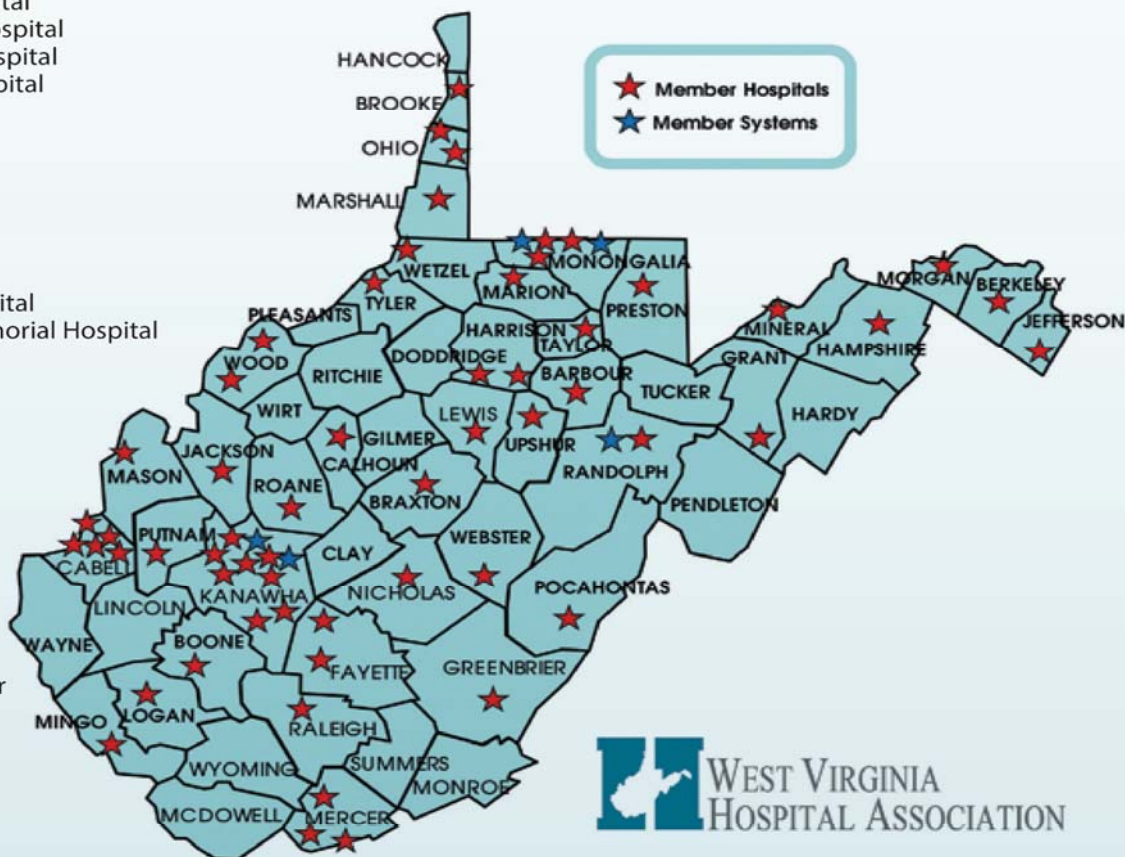
Montgomery General Hospital
Ohio Valley Medical Center
Plateau Medical Center
Pleasant Valley Hospital
Pocahontas Memorial Hospital
Princeton Community Hospital
Raleigh General Hospital
River Park Hospital
Roane General Hospital
Select Specialty Hospital
Sistersville General Hospital
St. Mary's Medical Center
Summersville Regional Medical Center

Thomas Health System

Saint Francis Hospital
Thomas Memorial Hospital
War Memorial Hospital
Webster County Memorial Hospital
Weirton Medical Center
Wheeling Hospital
Williamson Memorial Hospital

WVU Medicine - West Virginia University Health System

WVU Medicine Berkeley Medical Center
WVU Medicine Camden Clark Medical Center
WVU Medicine Jefferson Medical Center
WVU Medicine J.W. Ruby Memorial Hospital/WVU Medicine Children's
WVU Medicine Potomac Valley Hospital
WVU Medicine Reynolds Memorial Hospital
WVU Medicine St. Joseph's Hospital
WVU Medicine United Hospital Center
Wetzel County Hospital an Affiliate of WVU Medicine



WVHA Legislative Staff

Joe Letnaunchyn

President & CEO
joelet@wvha.org
304-353-9716

Tony Gregory

Vice President, Legislative Affairs
tgregory@wvha.org
304-353-9719

Brandon Hatfield

General Counsel
bhatfield@wvha.org
304-353-9720