

# WVHA

## LEGISLATIVE UPDATE

January 19, 2024

Today is Day 10 of the 2024 Regular Session and more than [1400](#) bills have been introduced in the Legislature. WVHA is following the action on several bills that impact hospitals on the financial, clinical, regulatory, and operational level. Below is a rundown of key hospital/health care bills of interest. If you have a question about bills featured below or bills introduced, please contact [me](#).

### **Action Alert: Facility Directed Payment Program**

This week we learned the [House Finance Committee](#) will consider the WVHA priority bill on the Medicaid Facility Directed Payment Program (DPP) bill as early as next week. While a companion Senate bill has been introduced ([SB 294](#)), we're working to get the House bill moving after it's formally introduced. House Finance Committee Chairman Vernon Criss, who's been a strong advocate for hospitals, WVHA and this legislation, has expressed to us interest in moving the bill in Committee as soon as it's introduced in the House. Stay tuned for a bill number early next week.

As for Grassroots Advocacy, we're requesting WVHA members who have a Delegate on the [House Finance Committee](#) to contact them to express support for the Medicaid DPP bill. Committee listing along with emails and Capitol phone numbers are available [here](#). Please note, legislators are likely back in their home districts this weekend so if you have their cell and you regularly communicate with them, this will be the most efficient way to deliver the message.

### **Key Messages:**

- The bill continues the existing Medicaid Facility Directed Payment Program (DPP) which began in 2011 to provide funding to West Virginia hospitals by maximizing federal matching funds.
- Federal Centers for Medicare and Medicaid Services (CMS) recently changed the formula calculating the limit of federal funding a state can receive through the DPP. Historically, the cap has been the Medicare level, but Kentucky received CMS approval to use the average commercial rate (ACR) which increased the federal funding limit. The House bill will allow West Virginia Medicaid to seek similar approval from CMS.
- In addition to maximizing federal funds, the bill also proposes expansion of the eligible participating hospitals. The current DPP includes 23 acute care hospitals—passage of this bill would allow a request to CMS to include Critical Access Hospitals (CAH) and Specialty Hospitals, bringing the number of eligible hospitals to approximately 57.
- The DPP does not require any state budget appropriation, as the DPP uses a voluntary hospital assessment to create the state matching funds, allowing West Virginia to draw down additional federal Medicaid funds at a rate of 3 to 1.
- It is important to note, before any of these additional federal funds are received, West Virginia Medicaid must submit a state plan amendment (SPA) to CMS for approval which will likely not be received until 2025 or 2026.
- Please support the House Medicaid DPP bill.

## **Action Alert: 340B Legislation**

WVHA is working with several stakeholders including the West Virginia Primary Care Association and community pharmacies on another priority bill dealing with the 340B Drug Pricing Program.

The Senate bill is: [SB 325](#) in the [Senate Health Committee](#) and the House companion bill is: [HB 4892](#) pending in the [House Committee on Prevention and Treatment of Substance Abuse](#). We're focusing on the Senate Health Committee and we're hearing the Committee will consider the bill as early as Tuesday.

SB 325 requires drug manufacturers and related supply chain parties to ship discounted drugs purchased by safety net providers participating in the 340B program to their pharmacy partners without improper restrictions or conditions. The bill relies on West Virginia's authority to regulate supply chain issues, and complements but does not interfere with federal law. It establishes civil penalties for violations and empowers the Board of Pharmacy, Attorney General and Insurance Commissioner to investigate violations and enforce the law, among other provisions. Similar bills have been passed in Louisiana and Arkansas. Please be sure to reach out to members of the [Senate Health Committee](#) in support of this legislation.

### **Key Messages:**

- West Virginia safety net providers, including hospitals - rely on the federal 340B drug discount program to obtain drugs at a significant discount to dispense to or administer to their patients.
- For more than 25 years, safety net providers have entered into mutually beneficial arrangements with pharmacies, including locally owned community pharmacies, to allow their underserved and vulnerable patients to obtain their medications at pharmacies convenient to them.
- In the past few years, drug manufacturers have exploited a blind spot in federal law and refused to ship discounted drugs to these "contract pharmacy" partners.
- West Virginia can fill that gap, close the loophole, and restore the status quo for the benefit of its most vulnerable citizens.

## **CON Legislation Introduced in the Legislature; Action Alert: CON Repeal bill**

Several Certificate of Need (CON) bills have been introduced in the Legislature and the one receiving the most attention this week is: [HB 4433](#) which provides for a CON exemption for the acquisition of a mobile facility performing mammography/low density CT. The bill passed the House yesterday 96-0 and will be referred to a Senate Committee soon. There's been several media on this bill including the Op/Ed that appeared today in the [Charleston Gazette](#). Look for more information as the Senate begins considering the bill; the WVHA Legislative Committee has reaffirmed its opposition to this bill since significant CON reforms were put in place last year under [SB 613](#).

There's also been a CON repeal bill introduced this week in HB 4909. This is a single sponsor bill by House Health Committee Chair Amy Summers – a long-time proponent of repealing CON. To ensure HB 4909 does not advance, we're requesting members reach out to their [Delegates](#) to express opposition to this bill. Focusing on your Delegates in the [House Health Committee](#) is a good start but it will be important to engage all of your [Delegates](#).

### **Key Messages on HB 4909 CON Repeal**

- The Legislature approved significant changes to the CON process last session in SB 613.
- It's been less than a year since passage and it's prudent to allow these reforms to develop in the ever-changing landscape of health care in West Virginia.

Other CON bills introduced in the Legislature:

- [HB 4795](#) - Relating to permitting an academic medical center to operate an opioid treatment facility – *approved by the House Health Committee yesterday and is now before the full House for consideration.*
- [HB 4571](#) Authorizing long term care facilities to increase their number of beds on certificate of need by 5% so long as those beds are filled by veterans
- [HB 4750](#) - Relating to removing the Certificate of Need moratorium on opioid treatment facilities

## Childhood Immunization Bills and SB 412

WVHA is working with various stakeholders to protect our current public health policies involving school immunization requirements. The lead group is the [West Virginia Immunization Network](#), under the Center for Rural Health Development and it's comprised of health care providers and various organizations. Several related bills have already been introduced that attempt to roll back our policies, for example, by allowing for religious and philosophical exemptions, to name a few. Stay tuned for any Action Alerts regarding immunization bills.

The focus right now is on a bill introduced by Senator Tom Takubo as [SB 412](#). This bill is viewed as an alternative to the more harmful bills introduced to roll back our immunization policies. The overarching goal of the legislation is to maintain current immunization policies while improving the process by which medical exemptions are currently reviewed on the state level. Provisions in the bill aim to add timelines and oversight to improve responsiveness by DHHR and it brings in additional medical expertise by shifting the review of medical exemptions denied by the Immunization Officer to a board of independent physicians.

The Network is finalizing talking points ahead of any action on this bill in the Senate Health Committee but here's some initial messaging:

- The medical exemption review process plays an important role in ensuring that medical exemptions are given only for valid medical reasons.
- Bill maintains a strong medical exemption review process while addressing some of the concerns shared by families attempting to obtain a medical exemption for their child.
- Modernizes the medical exemption review process by engaging independent physicians, external to the Bureau for Public Health, to provide medical expertise in reviewing appeals.
- Ensures responsiveness to families by establishing timelines for which decisions must be made and allows for children to be provisionally enrolled in school while the medical exemption request is being reviewed.
- Establishes secure handling and protection of medical records throughout the medical exemption request and review process.

## A few other bills on the radar

- EMS: [HB 4869](#) - Expansion of the Prudent Layperson Statute to include payment when no transportation is provided
- Pharmacy: [HB 4174](#) – Prohibit the practice of white bagging
- Medical Records: [HB 4320](#) – Access to minor children's medical records; other bill expected to be introduced
- Nursing: [HB 4740](#) - To provide safe harbor peer review for nurses
- Biomarker: [HB 4753](#) – Requiring health insurance policies and Medicaid to cover biomarker testing
- Behavioral Health: [SB 442](#) – Providing immunity for mental health providers who are involved in mental hygiene checks

If you have any questions about these or other bills introduced or any bills featured in the *Update*, please feel free to contact [me](#), [Jim Kaufman](#) or [Brandon Hatfield](#). Thanks. Tony