

# WVHA

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## LEGISLATIVE UPDATE

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January 26, 2024

Today is Day 17 of the 2024 Regular Session and more than [1800](#) bills have been introduced in the Legislature. Below is a rundown of the action at the Capitol and key hospital/health care bills of interest.

### 340B Legislation advances unanimously in Senate and House Committees

There's been a flurry of activity this week regarding legislation on the *340B Drug Pricing Program*. We're working with various stakeholders to advance SB 325 and HB 4892. Both bills are the same and require 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.

- **On the Senate side:** the Senate Health Committee unanimously advanced [SB 325](#). During the committee meeting, there was lengthy discussion about West Virginia hospitals participating in 340B and there were some comments made by a representative of PhRMA questioning hospitals' uncompensated care along with their 340B activities and the savings used to support access to care. WVHA Legislative Committee Chair Karen Bowling, countered the remarks by explaining the importance of 340B to hospitals and other covered entities and dismissed the notion that hospitals are profiting through savings. SB 325 is now in the Senate Judiciary Committee.
- **On the House side:** the House Committee on Prevention and Treatment of Substance Abuse unanimously passed [HB 4892](#). The House bill was modified in Committee to match the same version of SB 325. There were legislator questions involving how 340B works for covered entities along with questions pertaining to the drug supply chain, contract pharmacies, PBMs, etc. On behalf of WVHA, Karen Bowling, once again responded to questions along with a representative of the West Virginia Primary Care Association. HB 4892 moves on to the House Health Committee for further consideration.
- **Action Alert:** Even though we have two different bill #s in two different committees - the messaging remains the same. Please contact members of the [Senate Judiciary Committee](#) to express support for SB 325; and contact members of the [House Health Committee](#) to do the same for HB 4892. It's important in your communication to explain what 340B is and what it means to your hospital(s).

## HB 5157 - Facility Directed Payment Program – House Finance Committee action next week

Two companion - *same as bills* - related to our Facility Directed Payment Program (DPP) have now been introduced in the Legislature: [SB 294](#) and [HB 5157](#). We're focusing our advocacy efforts on HB 5157.

Now that the House bill has been formally introduced, it's expected the [House Finance Committee](#) will consider the bill as early as Monday. 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 soon.

**Action Alert:** Please contact your Delegate on the [House Finance Committee](#) to support HB 5157 - 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 HB 5157.

## SB 447 – Anti-doxing legislation advances to full Senate

Yesterday, the Senate Judiciary Committee unanimously passed [SB 477](#) relating to anti-doxing protections for health care workers. The bill was approved following a lengthy discussion by the committee and testimony by Jim Kaufman WVHA President and CEO, and Abby Reale, Director of Advocacy Marshall Health Network. They did an excellent job of presenting the issue and why the legislation is necessary.

The Committee adopted a "[Committee Substitute](#)" which remains largely intact from the original bill but with an amendment that adds first responders (like law enforcement, EMS and firefighters) to the list of those protected under the bill. The bill defines several key terms, including:

- **"Health care worker"** as "a person who is an employee of a health care entity, a subcontractor, or independent contractor for a health care entity, or an employee of the subcontractor or independent contractor. The term includes, but is not limited to, a nurse, nurse's aide, laboratory technician, physician, intern, resident, physician assistant, physical therapist, any other person who provides direct patient care, or any person serving in a governance capacity of a health care entity"; and

- **“Personal information”** as “the home address, home telephone number, personal mobile telephone number, pager number, personal e-mail address, or a personal photograph or video of a health care worker; directions to the home of a health care worker; or photographs or videos of the home or vehicle of a healthcare worker.”

There are 2 main goals of the bill:

1. To criminalize knowingly, willfully, and intentionally making the personal information of a health care worker, or their immediate family, publicly available on the internet with the intent to threaten or incite the commission of a crime of violence against that person, or with the intent and knowledge that the personal information will be used in this way.
2. To provide a process for a health care worker to submit a written request to a state or local government to remove personal information from records available on the internet if he or she provides evidence that they are a health care worker and affirm under penalty of false swearing that they have reason to believe that the dissemination of the personal information contained in the records that the official makes available on the internet poses an imminent and serious threat to the person’s safety or the safety of the person’s immediate family.

**Action Alert:** The bill is now on 1<sup>st</sup> reading in the Senate for Monday. If you haven’t already done so, please reach out to your [Senator](#) in support of SB 477. In your messaging, we encourage you to use examples of when doxing may have occurred, but please note: Senators have recommended to us that we refrain from using examples associated with the COVID pandemic or vaccines. Pandemic related issues involving vaccines, masks, and the like continue to be contentious topics among some legislators and it’s best to not include them in arguments in support of this bill.

## Other Bills Moving or Introduced

There are several bills on our radar that are either moving through the Legislature or have been introduced. Below is a small sampling and status.

- [HB 4320](#) - Relating to access for minor children’s medical records – *pending House Judiciary*
- [HB 4376](#) - Relating to surgical smoke evacuation - *House Floor*
- [HB 4567](#) - Prohibit businesses from having licenses revoked for not requiring masks – *pending House Judiciary*
- [HB 4753](#) –Biomarker testing – *pending House Judiciary*
- [HB 4783](#) – Relating to practice of optometry – *pending House Floor*
- [HB 4817](#) - Relating to updating the practice of nursing – *pending House Floor*
- [HB 5054](#) - Relating to the licensure of birthing centers – *pending House Health*
- [HB 5032](#) - Require hospitals under CON to accept PEIA – *pending House Banking and Insurance*
- [HB 5149](#) - Requiring all hospitals/medical offices to send a notice to all former or current patients when they turn 18, informing them that if they have had any negative or adverse side effects of a procedure that was performed on them as a child to contact the hospital or office to inform them of the issue – *pending House Health*
- [HB 5163](#) - Relating to involuntary hold by law enforcement for a person determined to be an imminent danger – *pending House Judiciary*

## Legislators continue focus on EMS

Funding and operational issues pertaining to emergency medical services (EMS) and personnel continue to be a focus of legislators this session. There have been several bills introduced and below is a small sampling on the radar.

- [SB 533](#) - Allowing EMS agencies to triage, treat or transport patients to alternate destinations
- [SB 445](#) / [HB 4868](#) - Reducing certification periods and renewal fees for EMS personnel
- [HB 4869](#) / [SB 444](#) – Expansion of Prudent Layperson Statute to include payment when no transportation is provided.
- [HB 4443](#) - Relating generally to distribution of certain taxes/surcharges to benefit volunteer/part-volunteer fire departments
- [HB 5103](#) – Relating to payment for EMS without transport
- [HB 5203](#) – Annual funding for EMS; and [HB 5204](#) – Treat in place

## Update re: Childhood Immunization Bills

As we've reported, 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.

About 25 House Bills have been introduced so far to roll back our childhood immunization policies in various ways - for example, by allowing for religious and philosophical exemptions, to name a few. We've heard that the House Health Committee may be considering a bill on Tuesday –*Health Freedom Day at the Legislature* – so please be on the lookout for additional advocacy information generated by the Immunization Network.

In the Senate, there are about 10 bills introduced relating to immunizations including one from yesterday [SB 553](#) – providing for religious exemptions of school attendance immunizations.

We'll continue to follow the action and provide any advocacy updates throughout the week.

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