

WVIA LEGISLATIVE UPDATE

March 8, 2023

Today is Day 57 of the 60-Day Legislative Session – which ends at midnight Sat., March 11th. Although the session hasn't concluded, we want to share a few updates including several key bills that have already completed legislative action and now on the Governor's desk for his signature. Below is a brief mid-week summary and status report. If you have any questions, please contact [me](#).

SB 268 Completes Legislative Action - now on Governor's desk

Earlier this week, the Senate agreed to the House changes and passed [SB 268](#) by a [vote of 26-6](#). This bill, which provides for a series of comprehensive changes to the Public Employees Insurance Agency (**PEIA**), now has completed legislative action and is on the Governor's desk for his signature. By all indications, the Governor is likely to sign the bill. The key provisions for hospitals were retained in the bill throughout the legislative process. They increase PEIA inpatient rates effective July 1, 2023, to 110% of Medicare, including language clarifying this rate also applies to critical access hospitals per diem, per day rate.

Other components of the bill:

- 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.
- The bill also requires PEIA to return to an 80/20 employer-employee match beginning in July, though the employee/employer match would go to 70/30 for out-of-state medical care. An amendment was offered and adopted which would make the employee/employer match remain at 80/20 for health care in out-of-state counties contiguous to West Virginia counties.
- The bill would change 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 estimated this could cost plan participants an additional \$147 per month.
- According to figures, SB 268 would provide \$76 million in savings in year one and more than \$500 million in savings by 2027.
- According to the most recent fiscal note available from PEIA, the bill would cost \$27.7 million when fully implemented. If the state returns to an 80-20 match beginning in July, premiums could increase by 26% for employees and 25% for employers after July. The bill would mark the first-time premiums have increased in more than a decade.
- 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.

If you haven't already done so, please be sure to thank your legislators who voted for the bill. The House roll call vote of 69-27 is [here](#). The final Senate roll call vote of 26-6 is [here](#).

SB 267 - Prior Authorization Completes Legislative Action

Another positive bill that has already completed legislative deals with **prior authorization** – in [SB 267](#). This bill streamlines and modernizes the prior authorization process for medical procedures and impacts PEIA, Medicaid and Private Insurers. Legislative leadership has been supportive of this effort, and we've been working collaboratively with them to get this bill over the finish line. It's now before the Governor for his signature. Key features of the bill:

- Require all submissions be submitted via an electronic portal and requires the portal be operational by July 1, 2024;
- Expedite several timelines for review and approval;
- Reduce the threshold for gold card from 100% down to 90% of final prior approval decisions;
- Sets the minimum gold card status at 6 months, with the insurer having the option to permit it longer; and exempts the practitioner from all prior authorizations, not just procedure.

Other proactive hospitals bills complete legislative action

There were several other bills the WVHA proactively advanced this session based on its Legislative Agenda. The following bills have already completed legislative action and on the Governor's desk for his signature:

1. [HB 2993 -REH](#): 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 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 – *Completed Legislative Action*.
2. [HB 2759 - PHYSICIAN PAYMENT](#): This bill permits the draw-down of additional federal matching funds to expand the existing **Physician Payment Improvement Program**. This bill would essentially expand the Program to more physicians practicing in hospitals. The *Program* was modeled after the existing Acute Care Facility (Directed Payment Program) where PPS hospitals pay a voluntary provider tax to help increase Medicaid payment rates. Currently only employed "W-2" employees are eligible, but this bill would expand eligible providers to include physicians who are contracted by the hospital and who the hospital bill and collect for - *Completed Legislative Action*.

Senate Judiciary Committee advances 72-Hour hold bill and Nurse Acuity Bill

Last evening, the Senate Judiciary Committee advanced [HB 3166](#) with no changes. This bill permits a hospital to hold a patient experiencing psychiatric emergency for up to **72 hours**. This is an expansion of a bill we previously advocated for that allowed for a 72 hour hold of an individual who presents in an ED experiencing a psychiatric emergency. This bill is now being considered by the full Senate.

Also, following testimony by the lead sponsor of the bill, nurse and Delegate Heather Tully and also Jim Kaufman, WVHA President and CEO, the Senate Judiciary Committee advanced [HB 2436](#). This is a bill being promoted by Tully and House Health Committee Chair and registered nurse Amy Summers. It deals

with an **acuity-based patient classification system for nursing care**. Recognizing that this bill was advancing, the WVHA Legislative Team worked throughout this session to minimize the burden on hospitals as much as possible.

- As currently drafted, this bill states that a hospital shall develop, by July 1, 2024, an acuity-based patient classification system to be used to establish the staffing plan to be used for each unit.
- The bill directs each unit nurse staffing committee (which is defined in the bill) 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.
- It provides for orientation, competency validation, education, and training programs in accordance with a nationally recognized accrediting body recognized by CMS or in accordance with the Office of Health Facility Licensure and Certification. The orientation shall include providing for orientation of registered nursing staff to assigned clinical practice areas.
- It's important to note that the bill originally called for the staffing plans to be submitted, by July 1, 2024, and annually thereafter to the state Department of Homeland Security, among other burdensome regulations. However, we worked with the Senate to remove the reporting requirements to the state Department of Homeland Security. The bill now places all staffing plans related to the acuity-based patient classification system – under health care peer review protection and not subject to discovery in any civil action or administrative proceeding.
- The bill is now on the Senate floor for consideration.

Playing defense and working w/ stakeholders

As all sessions go, the WVHA Legislative Team played defense on several bills that were introduced and/or were being advanced. This involved either keeping bills off a committee agenda or being engaged with stakeholders and legislators through amendments/discussion to improve the bills if we saw they were going to advance. Below are just a few examples.

Immunization Bills

This session, we managed and played defense on several bills that would have allowed nonmedical exemptions to school and child-care center immunization requirements; removed provisional enrollment for immunization requirements; and removed the medical exemption review process. Most of the action focused on the Senate where there was strong interest to move SB 535 which created religious and philosophical exemptions for school attendance vaccines. Lots of stakeholders were involved to keep this bill from moving and we also owe a lot to Senators Maroney and Takubo for keeping this bill off the Senate Health Committee agenda. Pediatricians, physicians, nurses, parents, the business community, and others including the WVHA were all engaged on the grassroots level to keep this and other related bills from advancing this session.

SANE Bill – SB 89 – Completes Legislative Action

One of the nursing bills we managed this session was [SB 89](#) - relating to sexual assault nurse examiners. The bill completed legislative action a few weeks ago and is now on the Governor's desk for his signature. As originally introduced, it would have required hospitals to staff SANE nurses. Hospitals expressed serious concern with staffing to deal with this mandate, so the bill was significantly amended in the

Senate. The bill now calls for the existing Sexual Assault Forensic Examination Commission (SAFE) Commission to develop legislative rules requiring a hospital to have a trained health care provider or transfer agreement as provided in a county plan- available to complete a sexual assault forensic examination. "Available" is defined in the bill as: having access to a trained sexual assault forensic examination expert via telehealth. Because the details of this bill will need to go through the Legislative Rule-Making Review process this summer, the hospital community will have an opportunity to help shape implementation of the new law.

Status of some other bills of interest

- [HB 2186](#) - relating to surgical smoke evacuation –*pending Senate Health Committee*
- [HB 3101](#) – notification of breast density – *pending Senate Health Committee*
- [HB 2007](#) – gender affirming care – *pending Senate Judiciary Committee*
- [HB 2989](#) – relating to increasing the number of out-of-state medical students receiving in-state tuition – *pending Senate Finance Committee*
- [SB 650](#)– allowing physician assistants to own practice – *pending House Health Committee*
- [SB 613](#) – exempting from CON "hospital services" defined to mean inpatient, outpatient, emergency room, surgical, diagnostic, imaging, and laboratory services provided on the hospital's campus, among other changes to the CON Program – *pending House Floor*
- [HB 3199](#) – relating to removing the requirement that an ectopic pregnancy be reported – *pending Senate Floor*
- [HB 3559](#) – relating to Safe Haven Baby Box – *pending Senate Floor*
- [HB 2754](#) – allowing pharmacy techs to administer immunizations – *Completed Legislative Action*

If you have any questions, please feel free to contact [me](#). Thanks.

Tony



Tony Gregory | Vice President, Legislative Affairs
West Virginia Hospital Association
100 Association Drive Charleston, West Virginia 25311
tgregory@wvha.org | 304.353.9719 | www.wvha.org