

WVHA

LEGISLATIVE UPDATE

Sunday, March 12, 2023

The 2023 Regular Session concluded midnight Saturday. In total, **332 Bills (203 House Bills, 129 Senate Bills)** completed legislative action. Below is a preliminary summary of key bills for hospitals and health care. Thank you to the hospital community for your grassroots support and for helping achieve the passage of key legislative agenda items for the WVHA and for health care in WV. Playing defense was also a top priority and we could not have accomplished this goal without your grassroots support. Thank you. For a full list of bills that completed legislative action this session, please visit [here](#).

Key hospital bills that completed legislative action

SB 268 (PEIA) – provides a series of comprehensive changes to the Public Employees Insurance Agency (**PEIA**). This bill is now on the Governor's desk for his signature. Key provisions in the bill:

- Increases 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.
- 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.

SB 267 (Prior Authorization) - streamlines and modernizes the **prior authorization process** for health care practitioners. This bill applies to PEIA, Medicaid and private insurers. The overall effective date of the bill is 90 days from passage March 8, 2023, but it's important to note internal effective dates in the bill. Key features of the bill:

- Requires all submissions be submitted via an electronic portal and requires the portal be operational by July 1, 2024;
- Expedites several timelines for review and approval and gives the Office of the Insurance Commission oversight for compliance;
- Exempts a health care practitioner from prior authorization requirements if he or she achieves a 90% prior authorization approval rate for a 6-month period, among other changes in the bill.

[HB 2993 \(REH Model\)](#) - 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. This bill is effective 90 days from passage March 2, 2023.

[HB 2759 \(Physician Payments\)](#) - 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. This bill goes into effect July 1, 2023.

[HB 3166 \(72-Hour Hold\)](#) – 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.

[Nurse Acuity and SANE bills complete legislative action](#)

[HB 2436 \(Nurse Acuity\)](#) –deals with an acuity-based patient classification system for nursing care. Recognizing this bill was advancing through the legislative process, the WVHA Legislative Team worked throughout this session to minimize the burden on hospitals as much as possible. Key provisions for hospitals:

- 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.

[SB 89 \(SANE\)](#) – relates to sexual assault nurse examiners. 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. It's also important to note that funding is in the FY 2024 State Budget to increase reimbursement for sexual assault kits. Finally, 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.

Other key hospital/health care provider bills – completed legislative action *(not an exhaustive list)*

Several other key bills impacting hospitals on the financial, clinical, regulatory, and operational level also completed legislative action this session including some of the following:

- [SB 552](#) – Relating to abortion
- [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
- [HB 2007](#) – Prohibiting certain medical practices (gender affirming care bill)
- [HB 3199](#) - Relating to removing the requirement that an ectopic pregnancy be reported
- [HB 3559](#) - Relating to defining a newborn safety device

Among the health care bills that completed legislative action:

- [SB 83](#) - Authorizing tactical medical professionals to carry firearms
- [SB 241](#) - Patient Brokering Act
- [SB 476](#) - Exempting managed care contracts from purchasing requirements
- [SB 526](#) - Including Alzheimer's disease in existing public health programs
- [SB 577](#) - Reducing copay cap on insulin and devices and permitting purchase of testing equipment without prescription
- [SB 594](#) - Specifying fairness in cost sharing calculations for certain high deductible health plans
- [SB 605](#) - Requiring state medical examiner to enter into contracts with procurement organization
- [SB 617](#) - Relating to Intellectual and Development Disabilities Waiver Program Workforce Study
- [SB 679](#) - Requiring Office of Inspector General to promulgate rules concerning location of forensic group homes
- [SB 730](#) - Expanding authority of Legislative Oversight Commission on Health and Human Resources Accountability
- [SB 737](#) - Emergency Medical Services Act

- [HB 2005](#) - Establishing the dual enrollment pilot program to be administered by the Higher Education Policy Commission and the Council for Community and Technical College Education in conjunction with the State Board of Education
- [HB 2006](#) – Reorganizing DHHR
- [HB 2029](#) – Repealing all payer claims database
- [HB 2218](#) – Distracted Driving Act
- [HB 2754](#) - Relating to immunizations performed in a pharmacy
- [HB 2757](#) - Relating to expanding institutional eligibility for the WV Invests Grant Program
- [HB 2760](#) - To allow CPR fire fighters to drive ambulances when both attendants are needed to administer patient care
- [HB 3077](#) - Relating to making the use of the multi-state real time tracking system permanent
- [HB 3141](#) - Relating to the practice of dentistry
- [HB 3164](#) - To extend the termination date of the West Virginia Advisory Council on Rare Diseases due to a delay in beginning its duties
- [HB 3191](#) - Relating to certain facilities operated by the state government to obtain a license
- [HB 3306](#) - Relating to the organizational structure of the Office of Drug Control Policy
- [HB 3317](#) - Relating to removing specific continuing education requirements
- [HB 3337](#) - Prohibiting additional drug and alcohol treatment facilities and services in a certain county

Bills Not Advancing

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. Just a few other bills not advancing this session:

- [HB 2186](#) - relating to surgical smoke evacuation
- [HB 3101](#) – notification of breast density
- [HB 2592](#) – safe harbor nurse peer review
- [HB 2989](#) – relating to increasing the number of out-of-state medical students receiving in-state tuition
- [SB 650](#)– allowing physician assistants to own practice

State Budget FY 2024

The Legislature also approved the Fiscal Year (FY) 2023 Budget Bill ([HB 2024](#)) and various supplemental appropriations to support state agency spending. The Budget Bill sets the general revenue budget for FY 2024 beginning July 1, 2024, at \$4.875 billion. This year's budget includes provisions for pay raises and tax cuts. The governor at the start of this year's legislative session called for a "relatively flat," \$4.884 billion budget to include pay raises for most state employees and some increased financial support for PEIA. In the end, this year's final budget accounts for dedicated funding to support PEIA, including about \$71 million to offset premium cost-sharing requirements between employers and employees and to support the provisions of SB 268. The budget bill also includes \$1.1 million in general revenue surplus appropriations. This is one-time funding placed in the surplus section in the "back of the budget" to be paid out if the state ends the current fiscal year with a surplus tax revenue. The financial highlights of the budget are \$2,300 across-the-board pay raises meant for most public employees including teachers, school service personnel and WV State Police troopers and staff. It also makes way for a tax cut policy with an overall financial impact of the tax bill being \$695 million in fiscal 2024 and \$817.8 million upon full implementation. It's being reported that West Virginia has been running a budget surplus of hundreds of millions of dollars – based on several factors, including high energy prices that have produced high-performing severance tax returns and the likely stimulus of federal dollars.

The WVHA Legislative Team will be featuring the highlights of the 2023 Regular Session during a WVHA Member call scheduled for Wednesday, March 15 at 12:30 p.m. Additionally, we'll be producing a more detailed Legislative Summary in the coming weeks. Finally, please be on the lookout for a WVHA sponsored webinar that we'll be scheduling in April to highlight key hospital bills that completed legislative action.

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

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