

Health Care Highlights©

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Good morning! The first interim meetings of the 83rd West Virginia Legislature got under way last week, despite a lack of agreement on which study resolutions will be reviewed by which committees. Such decisions usually are the purview of the Joint Committee on Government & Finance, with final approval by Senate President Mitch Carmichael and House Speaker Tim Armstead. A list of health-related resolutions that could be considered is included in this issue. Following this year's regular session and lengthy special session, interim meetings will be held each month through the start of the 2018 regular session on Jan. 10, 2018.

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Upcoming Interim Meetings:

September 17-19
October 15-17
November 12-14
December 3-5
January (2018) 7-9

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Joint Health Studies Med-Mal Review Panels

The Joint Committee on Health last Monday renewed study of a proposal to create Medical Malpractice Review Panels. A bill introduced during the 2017 regular session, [SB 560](#), made it to the Senate floor before being remanded to the Senate Judiciary Committee on second reading. It instead become a study resolution.

The general concept of the bill was to create a screening mechanism prior to the filing of a lawsuit in Circuit Court both to weed out frivolous suits and to preclude the “shotgun approach” to naming as defendants all those whose names appear in a patient record – even if the practitioner never actually saw the patient. The bill called for administration of the panels by the West Virginia Board of Medicine.

Mark Spangler, executive director of the WVBOM, said the board has no position on the concept of review panels, but does not believe they should be administered by the regulatory body, which handles licensing and discipline for allopathic physicians and surgeons (MDs), podiatric physicians (DPMs) and physician assistants who collaborate with MDs. Among the board’s reservations is the possibility of conflicting decisions within the same agency, based on differing burdens of proof. A review panel could potentially find no cause to pursue a lawsuit, while the board could still take action against a practitioner’s license, based on the same set of circumstances. In addition, the bill failed to identify a funding stream for the potentially costly and lengthy process, or to include provisions to compel physicians and attorneys to participate.

A WVBOM study found that 18 other states have similar review panels, but only one (Idaho) is administered by its medical board. Others are administered by insurance commissions, the court system, or an equivalent to the state Department of Health and Human Resources or other state agency. Kentucky enacted a new statute for review panels this year, which was immediately challenged on constitutional grounds.

Several other speakers expressed similar reservations about the legislation, including Diana Shepard, executive director of the WV Board of Osteopathic Medicine; Sherri Young, who chairs the WV State Medical Association’s Legislative Committee; Penny Fioravante, executive director of the WV Osteopathic Medical Association; and Ben Salango, an attorney representing the WV Association for Justice. “I could just simply say, ‘ditto,’ to what Mr. Spangler said,” Shepard noted. “From our perspective, the (certificate of merit) system appears to be working.”

Salango asserted that the current system requiring screening certificates of merit is working well, reducing the number of claims by 67% since 2001, reducing average settlement costs and stabilizing malpractice insurance rates. “I may be the only plaintiff attorney in the state to tell you that system was much-needed,” Salango said. “The system is working. Insurance rates have stabilized.” He said Pennsylvania and more than a half-dozen other states have abandoned the review panel concept as either unconstitutional or unworkable. “It’s a bad idea for West Virginia.”

The committee took no immediate action.

Health-Related Rules Changes Approved

The Legislative Rule-Making Review Committee on Wednesday approved amendments to **11 CSR 6**, regarding Continuing Education for Physicians and Podiatric Physicians. The changes update or eliminate outdated language, and include provisions for mandatory three hours of training in drug diversion and best practice prescribing of controlled substances.

Other health-related rules changes included:

- **64 CSR 12** regarding the licensing of hospitals and long-term care facilities. Changes offered by the Office of Facilities Licensure and Certification clarify that facilities use updated editions of building and design codes;
- **69 CSR 10** regarding West Virginia Clearance for Access: Registry and Employment Screening (WVCARES). The amended rule adds to the list of qualifying offenses which could be identified during background checks;
- **14 CSR 1** on behalf of the West Virginia Board of Optometry; and,
- **8 CSR 1** regarding fees and licensure for the WV Board of Hearing Aid Dealers.

The amended rules will next be introduced as bills during the 2018 regular session.

Crouch Updates LOCHHRA on DHHR Progress

Cabinet Secretary Bill Crouch told members of the Legislative Oversight Commission on Health and Human Resources Accountability (LOCHHRA) last Tuesday that the newly created Office of Drug Control Policy has gotten to work on combatting “the biggest public health problem we’ve ever had in this state” – substance abuse.

Toward that end, DHHR recently announced the hiring of Jim Johnson as director of the office, charged with increasing coordination of substance abuse prevention, response and treatment programs. Johnson has served as director of the Huntington Mayor’s Office of Drug Control Policy since 2014. A police officer and police chief in Huntington for the last 40 years, he assumes his new role Sept. 2.

The Office of Drug Control Policy reports through DHHR’s Bureau for Public Health, led by Dr. Rahul Gupta, commissioner and state health officer. West Virginia’s drug overdose death rate is more than double the national average. Crouch said the Governor’s Advisory Council on Substance Abuse (GACSA) created in 2011, will become the advisory board for the Office of Drug Control Policy.

Crouch also lauded this year’s passage of [HB 2428](#), creating the Ryan Brown Addiction Prevention and Recovery Fund. DHHR received \$21.6 million in settlement funds from a Boone County lawsuit against drug manufacturers. The Ryan Brown Fund will receive \$12.7 million from that total, the remainder dedicated to other substance abuse initiatives, which may include expansion of community support for pregnant mothers with addiction, neonatal abstinence syndrome (NAS) babies, and other programs. DHHR also anticipates receiving another \$850,000 from the Attorney General’s office.

West Virginia’s state-owned hospitals continue to be a major liability to the state, Crouch told the committee. Replacement of the now-unsafe facilities could spur economic development in those communities, he said. Following the special session in June, Gov. Jim Justice vetoed [HB 113](#), which would have allowed DHHR to sell Jackie Withrow Hospital in Beckley, calling it a “half-measure” and asking the legislature to allow DHHR to craft a comprehensive statewide strategy. Crouch vowed to come back to the Legislature with an updated strategy in 2018.

Crouch also reported on progress in bringing the West Virginia Health Care Authority under DHHR’s umbrella, as called for in [HB 2459](#), which became effective at passage on March 30. The HCA’s workforce has been reduced from 48 full-time employees to 19, while three full-time, financially compensated board members have been replaced by a part-time, non-compensated five-member board which meets twice per month. Justice announced appointments to five-year board terms in July, including Darrell W. Cummings of Wheeling, Charlene M. Ferrell of Huntington, Robert J. Gray of South Charleston, Samuel G. Kapourales of Williamson, and Martha Yeager Walker of Charleston. Walker will serve as chair of the board.

PEIA Chief Outlines Agency, Budget

Ted Cheatham, director of the Public Employees Insurance Agency, told members of the Select Committee on PEIA, Seniors and Long-Term Care on Aug. 20 that although his agency outsources many of its services, the idea of outsourcing PEIA entirely is a non-starter. “We contract. We manage. That’s what we do,” Cheatham said. “It doesn’t make any sense in terms of scale to outsource PEIA.”

Cheatham said PEIA, with a budget of \$908 million, insures 230,000 members, including state employees (19%), employees of county boards of education (32%), employees of non-state entities (11%), higher education employees (10%) and retirees (27%). The total includes 170,000 active employees and their dependents, and 63,000 retirees and their dependents. For active state fund employees, the state contributes 80% of premiums and the employees 20%. For non-Medicare retirees, the active premium is 64% subsidized; for Medicare retirees, there is a 73% subsidy. Cheatham pointed out that employees hired after 2010 are not eligible for any retiree subsidy.

During a brief question-and-answer session, Cheatham said PEIA is working on the fiscal 2019 budget now, and “We’re going to need another \$60 million, just to keep the plan as it is.” He said the 35,000 spouses covered under PEIA are the most expensive group of beneficiaries, accounting for \$180 million in the annual budget. Some committee members questioned whether it would be possible to identify other insurance plans for which spouses would be eligible, such as plans offered by their own employers.

Resolutions for Legislative Interim Study

The following health-related resolutions were introduced during the regular session, to be considered by the Joint Committee on Government and Finance for assignment to various legislative interim study committees, with approval from Senate President Mitch Carmichael and House Speaker Tim Armstead. Legislative Auditor Aaron Allred on Thursday reported those studies have yet to be assigned.

Potential health studies include:

[SCR 12](#) – Government benefit programs

[SCR 48](#) – Transferring WV food production inspections and regulations from DHHR to Agriculture

[SCR 51](#) – Implementing return-to-learn protocols for student who have suffered concussions

[HCR 79](#) – Costs and benefits of medicinal marijuana

[HCR 86](#) – Post-treatment protocols for a person diagnosed with triple negative breast cancer

[HCR 112](#) – Occupational licensing requirements

[HCR 115](#) – Board of Examiners of Registered Professional Nurses and Board of Examiners of Licensed Practical Nurses

[HCR 122](#) – Increased funding for WV's Medicaid program

[HCR 129](#) – WV Office on Drug Policy

[HCR 130](#) – Feasibility of selling WV's state-owned mental health facilities

[HCR 131](#) – Reforming preauthorization procedures

[HCR 132](#) – Creation of Advisory Council on Rare Diseases

[HCR 133](#) – Tobacco / smoking harm reduction policies

[HCR 134](#) – Dividing the Department of Health and Human Resources

[HCR 135](#) – Structure and duties of the WV Medical Examiner's Office

[HCR 136](#) – Issues, needs and challenges facing senior citizens

[HCR 138](#) – Nursing shortage in West Virginia

[HCR 139](#) – Tax on sale of tobacco products other than cigarettes and the excise tax on e-cigarette liquid

Medical Cannabis Board Hosts 1st Meeting

The Medical Cannabis Advisory Board, chaired by Dr. Rahul Gupta, in his capacity as commissioner of the West Virginia Bureau of Public Health, met for the first time on Aug. 16 at the University of Charleston to begin the process of implementing [SB 386](#), signed into law by Gov. Jim Justice on April 9 and effective on July 5.

Physicians are well-represented on the 13-member Advisory Board. In addition to Gupta, physician members include: Arvinder Bir, M.D., of Huntington; James Felsen, M.D., of Great Cacapon; Rudy Malayil, M.D., of Huntington; and Joseph Selby, M.D., of Morgantown. Other appointed members are: Col. Jan Cahill, superintendent, WV State Police; social worker Michael J. Deegan of Cross Lanes; pharmacist Michelle R. Easton of Charleston; attorney W. Jesse Forbes of Charleston; horticulturalist Joseph Hatton of the WV Department of Agriculture; pharmacist Kimberly Knuckles of Beaver; Boone County Prosecutor D. Keith Randolph; and patient advocate Russell A. Williams of Nitro.

The legislation creates a WV Office of Medical Cannabis under BPH, which is part of the state Department of Health and Human Resources. DHHR is expected to begin issuing patient and caregiver identifications cards to obtain medical cannabis in July 2019.

Preliminary discussion highlighted plans to create an electronic registry for those physicians interested in applying to issue certifications to patients to use medical cannabis, as well as a four-hour training course for physicians who want to be registered to issue medical cannabis certifications. Medical practice and liability issues will need to be fleshed out over the next two years. A panel member asked whether mid-level practitioners such as physician assistants or advanced practice registered nurses will be able to issue medical cannabis certifications in the future. Under the new law, as written, only physicians may register.

Delegate Mike Pushkin advocates beginning the process to identify interested physicians and potential patients immediately, in order to gauge current and future demand.

Bureau updates can be found at www.medcanwv.org. The Advisory Board's next meeting is Oct. 11.

In Other Health Care Highlights ...

... The Board of Respiratory Care Practitioners received a “satisfactory compliance” rating in a review by the Performance Evaluation and Research Division (PERD) of the Legislative Auditor’s Office. PERD took issue only with a lapse in disciplinary procedures, in which the board failed to file a status report, and with a mandate that board members participate in a regulatory orientation seminar at least once per term. The review was presented last Tuesday to the Joint Committee on Government Operations. ...

... DHHR’s Bureau for Public Health is hosting its inaugural Rural Health and Primary Care Forum on Friday and Saturday at Embassy Suites in Charleston. Call (304) 558-4007 for information. ...

... Speakers for the upcoming Appalachian Addiction & Prescription Drug Abuse Conference, to be held Oct. 19-22 in Charleston, will include DHHR Cabinet Secretary Bill Crouch; Dr. Rahul Gupta, WV state health officer and commissioner of the Bureau for Public Health; Robert DuPont, M.D., first director of the National Institute on Drug Abuse and the second White House Drug Czar; Allen Mock, M.D., WV chief medical examiner; and many other state and national experts, including the deans of all three West Virginia medical schools. The fifth annual conference is endorsed and supported by both the WV Board of Medicine and the WV Board of Osteopathic Medicine, and satisfies the boards’ licensure requirement for three hours of continuing medical education on best practice prescribing of controlled substances. Support is also provided by the WV Medical Professionals Health Program (WVMPPH), the WV State Medical Association, the WV Society of Addiction Medicine, the WV Osteopathic Medical Association, and DHHR’s Bureau for Behavioral Health & Health Facilities. Topics cover a broad range of issues related to prescription drug abuse, addiction and the paradigm for the epidemic. Day One topics include office management of the addicted patient and integration of addiction treatment into the primary care office; and medication-assisted treatment (MAT) and suboxone, highlighting the current national and state of expansion of addiction treatment. Day Two includes the developmental process of addiction; management of chronic pain without opioids; burnout in the health care profession; and a special luncheon with updates from medical school deans focusing on early career physician education. Synthetic drugs of abuse will also be covered. Day Three will highlight alcohol as the most common substance of abuse; case studies on best practices in prescribing; current WV overdose statistics; WV laws, rules, regulations and the Prescription Drug Monitoring Program; addiction and pregnancy; and the perils and pitfalls of benzodiazepines. For more information, visit www.wvmpph.org. ...

... Dr. Sally Swisher will be recognized as the 2017 Volunteer of the Year by West Virginia Health Right during its annual fundraiser at 6 p.m. Sept. 22 at Beni Kedem Temple in Charleston. A neurologist, Swisher has been a volunteer at Health Right for 13 years. For information about the event, contact Lisa Tignor at (304) 414-5921 or visit www.wvhealthright.org. ...

Quotes of Note:

... ***“There are lots of moving parts in all of this.”***

- Brian Skinner, general counsel for the Bureau for Public Health, describing the Medical Cannabis Act.

... ***“Some of the people we hire to take care of these kids are eligible for our own services.”***

- DHHR Cabinet Secretary Bill Crouch, lamenting the chronically poor salaries offered to social workers hired to deal with the state’s child welfare crisis. In 2016, 2,171 children were removed from West Virginia homes because of substance abuse issues. West Virginia leads the nation in children removed from the home, and is 48th in children placed in group homes.

... ***“We’re hamstringing you, financially. We need to look hard at ourselves here. We’re at the tip of the iceberg in terms of demand for services.”***

- Sen. Ron Stollings to DHHR Cabinet Secretary Bill Crouch, during last week’s LOCHHRA meeting.

Our Next Issue

The next issue of *Health Care Highlights* will be published following the upcoming September interim meetings.

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