

# Health Care Highlights©

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Good morning! The final round of 2017 interim committee meetings of the 83<sup>rd</sup> West Virginia Legislature took place last week. Following this year's regular session and lengthy special session, interim meetings have been held each month; a final interim session is scheduled Jan. 7-9, 2018, just prior to the start of the 2018 regular session on Jan. 10, 2018.

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**Health Care Highlights**

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## ***Breaking Up is Hard to Do***

A mammoth, 460-page draft bill slated to be introduced in the state Senate would realign the state Department of Health and Human Resources into four separate entities – the Department of Health and Health Care Compliance, the Department of Human Services, Health Facilities and an Inspector General’s office.

Attorney Jeff Johnson, one of the bill’s authors, told the Legislative Oversight Committee of Health and Human Resources Accountability last Monday that the bill would move all Chapter 30 licensing boards – including the West Virginia Board of Medicine and the West Virginia Board of Osteopathic Medicine – under the jurisdiction of the new Department of Health and Health Care Compliance.

Johnson, who is counsel to the Senate Health Committee, said the Chapter 30 boards would remain autonomous, retaining rule-making authority, along with licensing and disciplinary functions. He said the bill’s intent is to spark greater cooperation among the boards, including opportunities to share services and staff. The bill is being widely distributed among affected agencies and other key stakeholders.

“We’re trying to separate out services, facilities and compliance,” Johnson explained. “We need to develop a system that works best for us.”

Johnson said that after the 2017 regular session, legislative leadership tasked him and House Health Committee counsel Charles Roskovensky with drafting a bill to reorganize DHHR. After developing an initial draft, a work group composed of Sens. Craig Blair, Tom Takubo and Charles Trump, along with Delegates Lynne Arvon, Mark Dean, Roger Hanshaw, Eric Householder and Amy Summers convened to review the initial draft and conduct a series of stakeholder meetings with representatives of the state Supreme Court and the Governor’s Office, among others, to craft the current version.

The preliminary draft involved rewrites of WV Code Chapter 9 (Human Services) and Chapter 27 (Behavioral Health), along with updates to Chapter 16 (Public Health), Chapter 48 (Domestic Relations), Chapter 49 (Child Welfare) and Chapter 5F (Reorganization of the Executive Branch). The objectives of the legislation are to increase efficiency and responsiveness, reduce waste, allow for better employee “job mastery,” increase quality of services, remain as revenue neutral as possible, reallocate existing positions and resources without creating new positions, and decrease red tape and confusion.

According to a preliminary organizational chart, Public Health, the Health Care Authority, Child Support Enforcement and Chapter 30 boards would comprise the new Department of Health and Health Care Compliance. The position of State Health Officer would be eliminated.

The new Department of Human Services would include Medical Services (including CHIP), Behavioral Health, Drug Control Policy, Child and Family Services (including Juvenile Services) and Economic Assistance.

The Inspector General’s Office would include the Office of Health Facility Licensure and Certification (OHFLAC) and a Board of Review.

Health Facilities would include three state-funded hospitals (Mildred Mitchell-Bateman Hospital, William R. Sharpe Jr. Hospital and Welch Community Hospital) and four long-term care facilities (Hopemont Hospital, Jackie Withrow Hospital, John Manchin Sr. Health Care Center and Lakin Hospital).

If approved, the bill would be effective July 1, 2019. A transition plan for resource allocation would be due to the Governor, the Division of Personnel and the Joint Committee on Government and Finance by Sept. 1, 2018. A transition plan for transfer of functionality would be due to the Governor, the Secretary of Administration, the Division of Personnel and the Joint Committee on Government and Finance due by Jan. 1, 2019.

Asked whether the bill seems to be heading in the right direction, Cabinet Secretary Bill Crouch replied, “I’m not prepared to go that far, yet.” He said DHHR and the Governor’s Office want to see additional details. “There are a lot of things that can be done internally to become more efficient,” he noted. “This is a little bit contrary to my approach and the way I would do things, but I have pledged to be open-minded.”

## ***WVSMA, Board of Pharmacy Suggest Potential Legislation***

Dr. Brad Henry, president of the West Virginia State Medical Association, told the Joint Committee on Health on Tuesday that WVSMA supports several potential legislative changes as the state continues to grapple with overdose deaths and the over-prescribing of opioids.

West Virginia leads the nation with 880 overdose deaths in 2016 (50.3 per 100,000 population). Henry said higher amounts of opioids are prescribed in counties with a larger percentage of non-Hispanic whites, a higher prevalence of diabetes and arthritis, and counties with higher rates of unemployment and Medicaid enrollment.

Suggested legislative changes including limiting acute pain prescriptions to seven days or less (12 already have made this change); moving gabapentin, used to treat neuropathic pain and other conditions, to Schedule IV; reporting overdose treatment; limiting prescriptions of controlled substances for chronic conditions to 30 days; allowing providers to share substance abuse problems with prescribers without violating HIPAA requirements; and increasing mandatory access to the Prescription Drug Monitoring Program database.

Mike Goff, interim executive director of the West Virginia Board of Pharmacy, said the Controlled Substances Monitoring Program (CSMP), also known as the PDMP, plans to begin providing Prescriber Report Cards, to inform practitioners of their prescribing practices and how they compare to their peers, beginning in January. CSMP reports also will include non-fatal overdose information beginning next month.

Goff said the CSMP Advisory Committee has recommended the dispensing of all Scheduled V drugs be included in the CSMP, and that prescribers be mandated to obtain a CSMP report on each patient prior to prescribing pain medications. Exceptions might include the prescribing of post-surgical pain medications and prescriptions for terminally-ill patients. There is no current legislation on those recommendations.

The Board of Pharmacy, using grant funding from the federal Centers for Disease Control and Prevention, also is working to integrate the CSMP into the workflow of practitioners. According to a data sheet provided to the committee, “By interfacing with the existing EHR/EMR (electronic health record, electronic medical record) and pharmacy programs directly, prescription information can be provided automatically, eliminating the requirement to access the state CSMP as a separate task.”

Delegate Matthew Rohrbach, pledged to support enhancements that provide feedback to practitioners, including systems that can share information across state lines.

## ***Draft Bill Proposes Opioid Reduction Act***

In a related development, a draft bill referred to as the Opioid Reduction Act would limit opiate prescriptions for adults seeking treatment in an emergency room setting to no more than a three-day supply. A similar three-day limit would be in place for practitioners, including dentists, when prescribing an opiate for minors. Initial prescriptions for an opioid medication would be limited to seven days for acute pain.

The bill, distributed to the Joint Committee on Health, would direct the Office of Drug Control Policy to establish a voluntary non-opiate advanced directive form. The form would indicate to practitioners that an individual may not be administered, or offered a prescription or medication order, for an opiate. The information would be available on the CSMP database and be added to the individual’s electronic health record.

Also, the bill would alter the state Board of Medicine’s burden of proof in disciplinary cases from a “clear and convincing” evidentiary standard to a “preponderance of the evidence” standard. The change would bring the Board of Medicine into line with the WV Board of Osteopathic Medicine and all other Chapter 30 boards in West Virginia, as well as with surrounding states, except Virginia. Across the country, 51 jurisdictions maintain a “preponderance of evidence” standard, while 23 have a “clear and convincing evidence” standard. The Board of Medicine believes a “preponderance of the evidence” standard would best protect the public, particularly in cases which involve overprescribing of opioids or overdose deaths from prescription drugs. It would level the playing field when considering competing expert testimony, mitigate over-reliance on “he said/she said” testimony, and assist the Board in protecting the public in situations involving allegations of sexual misconduct or other boundary violations.

## ***Rule-Making Review Approves PA Modernization***

The Legislative Rule-Making Review Committee on Dec. 3 approved a modified rule on behalf of the West Virginia Board of Medicine (**11 CSR 1B**) regarding Licensure, Disciplinary and Complaint Procedures, Continuing Education for Physicians Assistants. The rule modernizes the Physician Assistant Practice Act as called for in **SB 1014**, passed during the Legislature's first special session last summer.

Gov. Jim Justice signed the bill June 19, effective 90 days from passage, or on Sept. 7. An emergency rule to implement the changes went into effect Oct. 20. Major PAPA changes include: replacement of the concept of a "supervising" physician with a "collaborating" physician; enhanced prescriptive authority to achieve parity with other mid-level practitioners; expansion of signature authority; the addition of a second PA representative on the West Virginia Board of Medicine; and, parity in insurance payments.

The committee also approved a companion rule for osteopathic PAs, **24 CSR 2**. In other business, the committee Ok'd:

- **15 CSR 7** regarding Registration of Pharmacy Technicians (as called for in **HB 2846**);
- **15 CSR 14** regarding Centralized Prescription Processing;
- **31 CSR 1** regarding Licensure and Renewal Requirements for Dietitians. The rule allows for a modest fee increase for 467 active licensees; and,
- **69 CSR 14** regarding the Collection and Exchange of Data Related to Overdoses.

The WV State Board of Examiners for Licensed Practical Nurses withdrew a proposed rule (**10 CSR 4**) which would have allowed a \$211,295 increase in licensing fees, or a \$20 annual increase for each of the state's 7,982 LPNs. The board currently charges a \$40 annual fee. Its executive director, Michelle Mayhew, told the committee in October there has been no fee increase since 1995.

Each of the approved rules now will be introduced as bills during the upcoming 2018 legislative session.

## ***Palliative Care Options Studied in WV Communities***

Using a grant from the Claude Worthington Benedum Foundation, with assistance from the West Virginia University Foundation, the West Virginia Center for End-of-Life Care recently conducted a statewide survey to gather information on knowledge of advanced illness care and preferences.

"West Virginia has a dramatic gap between the kind of care people want near the end of life and the kind of care people have access to or are aware of," said Executive Director Courtney Dunithan. "Our next step is to gather a larger statewide group of stakeholders to create a comprehensive plan to ensure community palliative care is available to all."

Dunithan said the group already includes health care professionals from community hospitals, hospices, nursing facilities, and administrators involved in patient care. The goal is to expand that network to include the insurance industry, government agencies, academia and patient/family representatives. Contact Dunithan at [courtney.dunithan@hsc.wvu.edu](mailto:courtney.dunithan@hsc.wvu.edu) for more information.

According to the survey, only 23 percent of West Virginians were knowledgeable about community palliative care. But among those with a serious illness, 89 percent would consider that option. Survey results reveal a number of other interesting facts:

- Most (82%) West Virginians believe it is important for palliative care services to be available in the community for patients with serious illness.
- What matters most to patients when managing a serious illness is being at home, being able to discuss treatment options and deciding which ones they do or do not want.
- Nearly three quarters (72%) of West Virginians would rather live a shorter time to avoid pain, suffering and being put on life support, compared to being kept alive as long as possible even if they were experiencing pain and suffering.

The WV Center for End-of-Life Care offers a nationally recognized registry to ensure people's wishes are respected near the end of life. For more information, call 1-877-209-8086 or visit [www.wvendoflife.org](http://www.wvendoflife.org).

## ***DHHR Awards Ryan Brown Funds***

The state Department of Health and Human Resources on Dec. 4 awarded more than \$20.8 million to nine substance use disorder programs to expand residential treatment services across West Virginia. Cabinet Secretary Bill Crouch on Tuesday told the Joint Committee on Health that DHHR received 23 Ryan Brown Addiction Prevention and Recovery Fund proposals totaling \$62.7 million.

“The biggest problems are in Southern West Virginia,” Crouch told lawmakers, “but I want to emphasize, we have problems all over West Virginia.”

The Ryan Brown Addiction Prevention and Recovery Fund, created earlier this year in **HB 2428**, mandates that DHHR identify need and allocate additional treatment beds in the state to be operated by the private sector. These beds are intended to provide substance use disorder treatment services in existing or newly constructed facilities, as part of a comprehensive statewide plan to combat the opioid epidemic.

Grant recipients were selected by DHHR’s Office of Drug Control Policy based on public health indicators by region. Crouch said because the Ryan Brown provides one-time funding, reviewers considered sustainability among the program selection criteria.

- Region 1: Living Free Ohio Valley; Wheeling - \$3 million to provide a recovery program focused on underserved female populations.
- Region 2: Mountaineer Behavioral Health, PLLC; Martinsburg - \$3 million to provide both residential addiction treatment plus step-down continuing outpatient care using a long-term treatment model.
- Region 3: St. Joseph Recovery Center, LLC; Parkersburg - \$3 million to provide outreach and offer services to the region’s counties hit hardest by substance use: Boone, Jackson, McDowell, Mingo, Roane and Wyoming.
- Region 3: Westbrook Health Services, Inc.; Parkersburg - \$1 million to provide a drug and alcohol-free residential, long-term treatment environment for recovering consumers while they build the life skills necessary to reintegrate back into the community.
- Region 4: Valley HealthCare System, Inc.; Morgantown - \$3 million to expand the number of short-term treatment beds and create long-term beds.
- Region 4: West Virginia University Research Corporation; Morgantown - \$1 million to open a residential treatment facility as part of Chestnut Ridge Center and WVU Medicine.
- Region 5: Marshall University Physicians and Surgeons, Inc., Huntington - \$2,825,406 to provide trauma-informed residential treatment services for pregnant and post-partum women through the Marshall Recovery Center for Families.
- Region 5: WestCare West Virginia, Inc., Culloden - \$1 million to develop a new substance use disorder treatment facility.
- Region 6: Southern West Virginia Treatment thru Recovery Continuum, a collaboration between FMRS Health Systems, Seneca Health Services, and Southern Highlands Community Mental Health Center; Beckley – \$2,999,927 to expand the availability of substance use disorder treatment beds, partner with existing programs and improve the occupancy rate of available beds.

Crouch said he anticipates the additional treatment beds to be sustained with funding from DHHR’s Medicaid Substance Use Disorder waiver, which covers the long-term costs for Medicaid enrollees.

## ***MedCan Advisory Board Meeting Scheduled***

The Medical Cannabis Advisory Board is scheduled to meet this Thursday (Dec. 14) in Morgantown to review the results of two surveys, proposed emergency legislative rules, and the designation of regions for West Virginia growers, processors and dispensaries. The board also will hear a presentation by Pennsylvania state Sen. Mike Folmer, the lead sponsor of his state's **SB 3**, regarding "The Pennsylvania Experience."

The board oversees the Office of Medical Cannabis, administered within the state Department of Health and Human Resources' Bureau for Public Health. Separate online surveys were created to gather information from patients who may be interested in obtaining medical cannabis, and to gauge interest from physicians whose current patients may be eligible.

The meeting will take place at the National Research Center for Coal and Energy, classroom 101, 385 Evansdale Drive, Morgantown. The Advisory Board's report to the Legislature and Governor is due in July 2019.

## ***In Other Health Care Highlights ...***

... Officials from the Mercatus Center at George Mason University told the Joint Standing Committee on Government Organization last Monday that West Virginia could help "rescue its economy" through a process of deregulation and "evidence-based budgeting." The center's Government Accountability Project has examined regulatory language in the codes of 18 states, scouring legal language for such key words as "shall," "must" and "may not." West Virginia's regulatory environment is ripe for reform, they said, with more than 125,700 identified regulatory restrictions in state code. "There is increasing academic evidence that regulation is a drag on economic growth," said Maurice McTigue, vice president for outreach, who noted that West Virginia's economy has grown at about half the rate of the rest of the U.S. over the past decade. Much of the regulatory language in state code appears in areas related to health care and education. British Columbia placed a cap on new regulation and began reducing existing regulation in the early 2000s, leading to economic revival. The goal of the center's project is to "generate growth, create opportunity and increase prosperity," McTigue said. Delegate Scott Brewer said GMU's approach seems, "simplistic," adding, "There is a difference between good regulation and over-regulation. This is just counting words."

... The Senate Confirmations Committee again cancelled its deliberations on recent gubernatorial appointments during last week's interim meetings. No official explanation has been forthcoming. ...

... Richard Restuccia, executive director of Community Catalyst, a national non-profit organization that builds state-level health care advocacy networks, was keynote speaker Dec. 1 at West Virginians for Affordable Health Care's annual reception and fundraiser in Charleston. Restuccia recalled living on the same dorm as Dr. Dan Foster "back in the day" at Harvard University. Foster, a former state senator, serves on WVAHC's Board of Directors. Restuccia lamented the potential loss of the Children's Health Insurance Program (CHIP), the federally funded programs which ensures tens of thousands of West Virginia children. The program expired on Sept. 30, and unless reauthorized, West Virginia is expected to freeze enrollment in the program by the end of February. "We have a president who is stoking the flames of division every day," he said, "and a Congress that can find the money for tax cuts that benefit corporations and rich people, but can't find the money for children." ...

... Michael Staab and Greg Madsen, co-CEOs at Innovative Rx Strategies, LLC, a Chicago-based pharmacy benefit management consulting firm, told members of the Joint Government Accountability, Transparency and Efficiency (GATE) Committee on Tuesday they typically save clients 10-15% on annual costs as a result of a detailed contract and performance review. The consultants asked for an unredacted copy of the Public Employees Insurance Agency's current PBM contract with CVS/Caremark; the contract, along with a year's worth of claims data, would help them identify opportunities for more competitive drug pricing, among other potential savings. Committee members didn't bite. "I don't think they're going to give up the pricing and their claims data to a consultant who doesn't have a contract in West Virginia," Delegate Daryl Cowles observed. Staab and Madsen also planned to meet with Senate President Mitch Carmichael and PEIA Director Ted Cheatham later in the day. The PEIA Finance Board on Thursday adopted its financial plan for fiscal 2019, which begins on July 1, 2018. ...

## ***Quotes of Note:***

... ***“Ireland, for much of its history, was best known for exporting Irish people.”***

- Maurice McTigue, vice president for outreach at the Mercatus Center at George Mason University. McTigue said the Irish economy turned around when the government began practicing “evidence-based budgeting.”

... ***“She earned her nickname as the ‘Mama Bear for Obamacare.’”***

- Chantal Centofanti-Fields, executive director of West Virginians for Affordable Health Care, regarding the diligence of longtime activist Renate Pore during the organization’s annual reception and fundraiser.

... ***“You could be just one grope away from bankruptcy.”***

- Delegate Barbara Fleischauer, on the need for licensing boards to maintain diligent complaint procedures.

... ***“Zero (complaints) to one is a massive increase, percentage-wise, but it’s still just one.”***

- Sen. Robert Karnes, regarding the low number of complaints investigated involving dieticians since 2015.

... ***“I was wondering if you lost a bet.”***

- One lawmaker to another, the latter wearing a particularly bright blue and white Christmas suit, featuring trees and reindeer.

... ***“If you’ve seen one state’s DHHR, you’ve seen one state’s DHHR.”***

- Sen. Ron Stollings, regarding the difficulty in trying to model West Virginia’s structure with that of other states.

... ***“At some point, we’re going to end up with a lawsuit that’s DHHR vs. DHHR.”***

- Cabinet Secretary Bill Crouch, acknowledging the complicated nature of the current department structure.

## ***Our Next Issue***

The next issue of ***Health Care Highlights*** will be published on Jan. 15, 2018, following the start of the 2018 regular session.

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