

Health Care Highlights®

February 20, 2017

VOLUME 29, ISSUE 3

Good morning! Today is the 13th day of the 60-day regular session of the West Virginia Legislature. Of the 885 bills introduced to date (536 House, 349 Senate), we are tracking 188 health-related bills.

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2017 Key Legislative Dates

Feb. 22: DHHR Budget Hearing – House Finance Committee – 2 p.m.

Feb. 27: Submission of Legislative Rule-Making Review bills due.

Feb. 28: DHHR Budget Hearing – Senate Finance Committee – 3 p.m.

March 20: Last day to introduce bills in the Senate. (Does not apply to originating or supplementary appropriation bills.)

March 21: Last day to introduce bills in the House. (Does not apply to originating or supplementary appropriation bills.)

March 26: Bills due out of committees in house of origin to ensure three full days for readings.

March 29: Last day to consider bills on third reading (passage stage) in house of origin for "cross-over." (Does not include budget or supplementary appropriations bills.)

April 8: Adjournment at midnight.

April 12: Anticipated extended session to work only on the Budget Bill and other appropriation bills.

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Crouch Outlines Goals for DHHR

Cabinet Secretary Bill Crouch outlined several of his priorities for the state Department of Health and Human Resources during a brief appearance last Tuesday before the House Health and Human Resources Committee, including moving the state away from providing long-term patient care and out of facility ownership. “The state is a terrible provider of direct service,” Crouch told committee members. “We’ve got to get out of that. We’re no good at it.”

Crouch said the state’s four long-term care facilities – Hopemont Hospital, Jackie Withrow Hospital, John Manchin Sr. Health Care Center and Lakin Hospital – are on average more than 100 years old. Maintenance and upgrades are costly. He would like to transition patients and staff to new, private facilities – a move that actually could increase employment in some communities. Crouch spent 13 years in the long-term care business; he also was the state’s first executive director of the former Health Care Cost Review Authority.

“I’m not guaranteeing I can do this, but I’d like to give it a shot,” Crouch said. “I think we have a high probability of success in some areas.” He acknowledged that to encourage private construction of new facilities may be “a difficult sell.”

During Thursday’s House Health meeting, Crouch testified in regard to **HB 2366**, which would require DHHR to sell Jackie Withrow Hospital in Beckley, which provides care about 91 patients but needs \$25 million in repairs. Crouch said he preferred legislation to allow DHHR to sell all four long-term care facilities. “We’ve got to get out of these buildings,” he said. “These are time bombs.”

After approving an amendment to require DHHR to relocate patients to facilities within a 15-mile radius, the committee laid the bill over for future consideration.

Crouch on Tuesday also mentioned that the state owns more than 50 other facilities statewide, often leasing them to providers under “sweetheart deals.” He added, “I don’t think we need to be in that business, either.” Crouch said DHHR will develop an Office of Substance Abuse and Recovery, while streamlining bureaucracy in other areas of the agency. “I feel like I’m in the right place at the right time,” he said.

WVSOM Privatization Plan Under Fire

A proposal to privatize the West Virginia School for Osteopathic Medicine in Lewisburg is coming under fire on several fronts, including the Governor’s Office. “It makes absolutely no sense to divest yourself of such a strong asset,” Gov. Jim Justice said in a news release.

“WVSOM graduates more physicians annually than both West Virginia University and Marshall University, and more than half of the primary care physicians practicing in West Virginia are graduates of the Osteopathic School. Privatization of this outstanding educational facility will also drive up in-state tuition, dramatically, for our state’s brightest young women and men and that would be counterproductive,” the Governor said.

Justice noted that WVSOM has been recognized by U.S. News & World Report as one of the best medical schools in the country for 18 consecutive years and is ranked No. 1 in the nation among all medical schools graduating physicians who practice in rural areas by Academic Medicine. “At a time when West Virginians need access to quality health care, especially in our most rural areas, we simply can’t afford to even entertain the thought of giving up WVSOM,” he added.

Sen. Craig Blair introduced **SB 184** on the regular session’s first day. Assigned for discussion in the Government Organization Committee (which Blair chairs) and the Finance Committee, the bill would transition WVSOM from a state-owned and operated entity to a not-for-profit corporation, effective July 1, 2018. To make the sale as quickly as possible, the bill would make the transaction exempt from bidding and public sale requirements, as well as from approval of contractual agreements by the Department of Administration, the State Auditor, the State Treasurer, the Higher Education Policy Commission, or the Attorney General. According to the bill, the transition “would greatly benefit the institution by providing it with greater flexibility and freedom in providing medical education.”

Others senators have requested the bill be reviewed by the Senate Health Committee and Senate Education Committee. The WVSOM is slated to receive at least \$6,798,239 in the Governor’s proposed budget for SFY 2018, along with \$168,354 from the Medical Schools Rural Health Outreach Program.

Bill Would Exempt MCOs from Bidding Process

The state of West Virginia has failed to realize any cost savings from requiring Medicaid managed care organizations to bid on the state's business, according to Andrew Kirkner, executive director of the West Virginia Association of Health Plans. In fact, the same four MCOs who participated in the former opt-in system are the same four offering coverage now.

The WVAHP represents Aetna Better Health of West Virginia, Health Plan of the Upper Ohio Valley, UniCare Health Plan of West Virginia and West Virginia Family Health. Kirkner testified Thursday before the House Health Committee regarding **HB 2360**, which would exempt Medicaid managed care contracts from the bidding process. The committee advanced the bill on a vote of 14-9 to the Government Organization Committee.

Under the current system, the state Department of Health and Human Resources sends out RFQs (requests for quotation) to MCOs, which can be a very costly process for both the state and the companies. By federal law, the state must assure that at least two MCOs offer coverage in each county. Phil Shimer of TSG Consulting said in many cases, a state sets the price at which it is willing to do business with any managed care company; the MCOs then compete based on quality indicators, outcomes and other services provided to consumers. Cabinet Secretary Bill Crouch said DHHR has no official position on the bill and was not involved in its drafting.

In other business last week, the Health Committee:

- Approved **HB 2113**, despite DHHR opposition, which would require legislative approval for any change to the state plan or a federal waiver under Medicaid, if the change results in a gain or loss of \$250,000 to the state. The committee defeated an amendment that would have mandated changes take place under the rulemaking process. Ryan Sims, general counsel for the Bureau of Medical Services, said State Plan Amendments already require a six- to nine-month process through the Centers for Medicare and Medicaid Services, with multiple opportunities for public input and oversight. Sims said he was not aware of any states which have their Medicaid plan in statute, and that such a move may conflict with federal law. Nevertheless, the bill advanced to the Finance Committee.
- Amended **HB 2359**, which aligns the penalties for practicing osteopathic medicine without a license with those of practicing allopathic medicine without a license. The bill is now before the Judiciary Committee.
- Amended **HB 2431**, to allow influenza vaccinations to be offered to patients and residents of hospitals, assisted living facilities and nursing homes. The bill will be on first reading on the House floor today.
- Voted to repeal the West Virginia Health Benefit Exchange Act. The bill, **HB 2119**, moves to Finance Committee.

Health Committees Advance Rules Bills

The Senate and House Health Committees advanced a series of rules bills during last week's meetings, many based on legislation passed during the 2016 regular session and others updating existing rules to accommodate technical changes.

For example, the Senate Health Committee on Tuesday approved four WV Health Care Authority rules bills made necessary by last year's passage of **HB 4365**, which streamlined the certificate of need process, and shortened timelines for processing CON and exemption applications. These included **SB 123** and **SB 126** related to CON, as well as **SB 124** regarding the Rural Health Systems Grant Program and **SB 125** regarding the Hospital Assistance Grant Program. All four are now before the Judiciary Committee.

Senate Health also advanced three DHHR rules, including: **SB 118** regarding expedited partner therapy, allowing doctors to treat all parties in a sexual relationship for STDs, even if only one is a face-to-face patient; **SB 119** regarding licensure for clinical laboratory technicians and technologists, bringing the state into compliance with the federal Clinical Laboratory Improvement Act; and **SB 120**, regarding remediation of clandestine drug laboratories.

The House Health Committee likewise approved rules bills on behalf of: Dentistry – **HB 2249**, criminal background checks; DHHR – **HB 2254**, licensure for clinical laboratory technicians and technologists, and **HB 2256**, expedited partner therapy; RNs – **HB 2282**, limited prescriptive authority for APRNs, and **HB 2281**, licensure and criminal background checks; WV Board of Osteopathic Medicine – **HB 2273** and **HB 2274**, licensure and background checks for osteopathic physicians and physician assistants, respectively; Optometry – **HB 2272**, continuing education; and WV Board of Medicine – **HB 2264** and **HB 2265**, licensure and background checks for allopathic physicians and PAs, respectively, and **HB 2266**, dispensing of medications.

West Virginia Legislature

Health Care Bill Status as of 2/19/17

To find a particular bill, look below for the bill number under a general health category. A description of the bill is provided along with the bill's lead sponsor, additional information about the bill, committee references and other legislative action. Please note that bill numbers are web links to the bill text, so you may click on the blue bill number while holding down the control key and information on the bill will open in your web browser.

APPROPRIATIONS & BUDGET

- [**SB 199**](#) Carmichael+ **Budget Bill SFY 2018** Bill proposed by Governor. Of note: More than 20% of all state expenditures are allocated for Health and Human Resources. (see **HB 2018**) To Finance
- [**SB 302**](#) Carmichael+ **Supplemental appropriation to DHHR Division of Human Services** (see **HB 2500**) Governor's bill to appropriate federal funds. To Finance
- [**SB 303**](#) Carmichael+ **Supplemental appropriation to DHHR** Governor's bill to appropriate \$295,000 for the Laboratory Services Fund, \$3,325,111 for the WV Birth-to-Three Fund and \$6.9 million for the Medicaid State Share Fund. To Finance
- [**SB 304**](#) Carmichael+ **Supplemental appropriation to DHHR** Governor's bill to provide expiring funds to DHHR's Division of Health To Finance
- [**HB 2018**](#) Armstead+ **Budget Bill SFY 2018** Bill proposed by Governor. Of note: More than 20% of all state expenditures are allocated for Health and Human Resources (see **SB 199**) To Finance
- [**HB 2488**](#) Gearheart+ **Forfeiture of unencumbered funds in special revenue accounts to the General Revenue Fund** To Gov. Org., then Finance
- [**HB 2500**](#) Armstead+ **Supplemental appropriation to DHHR Division of Human Services** (see **SB 302**) Governor's bill to appropriate federal funds. To Finance

BOARD LICENSURE AND REGULATION

- [**SB 195**](#) Blair+ **Terminates WV Medical Imaging and Radiation Therapy Technology Board of Examiners** To Gov. Org.
- [**SB 196**](#) Blair+ **Terminates WV Massage Therapy Licensure Board** To Gov. Org.
- [**SB 253**](#) Takubo+ **Clarifies English language requirement for medical licensure applicants** To Gov. Org.
- [**SB 254**](#) Blair+ **Terminates WV Nursing Home Administrators Licensing Board** To Gov. Org.
- [**HB 2345**](#) Hamrick+ **Terminates WV LPN Board and transfer powers to WV RN Board** To Gov. Org.
- [**HB 2359**](#) Arvon **Aligns penalties for practicing without D.O. license with M.D. penalties** Health amended, to Judiciary
- [**HB 2502**](#) Ellington+ **Allows licensed professionals in other states to apply for licensure in WV** To Gov. Org.
- [**HB 2503**](#) Ellington+ **Updates rulemaking authority of the WV Board of Osteopathic Medicine** To Gov. Org.
- [**HB 2504**](#) Hamrick+ **Prohibits state nursing boards from limiting the number of students** To Health, then Gov. Org.
- [**HB 2521**](#) Summers+ **Creates an Advanced Practice Registered Nurse Compact** To Health
- [**HB 2522**](#) Ellington+ **Creates an interstate licensure compact for RNs and LPNs** To Health, then Judiciary
- [**HB 2538**](#) Ellington+ **Removes requirement that PAs have certification from the National Commission on Certification of Physician Assistants** To Health, then Gov. Org.

CHILDREN

- [**SB 251**](#) Woelfel+ **Creates pilot program for school-based mental and behavioral health services** To Education
- [**SB 317**](#) Weld+ **Authorizes family court judges to order substance abuse counseling of children** To Health, then Judiciary
- [**SB 319**](#) Miller+ **Reduces student-school nurse ratio and expands to all levels of school in 2017-18** To Education, then Finance
- [**SB 326**](#) Romano+ **Requires D.O.D. notification about abuse or neglect of military member's child** To Military, then Health
- [**HB 2014**](#) Rodighiero **Allows holiday sweets in schools with parental or guardian consent** To Education
- [**HB 2195**](#) Rohrbach+ **Requires drug awareness and prevention programs in public schools** To Substance Abuse, then Education
- [**HB 2373**](#) Statler+ **Authorizes trained school bus drivers to administer epinephrine auto-injectors** To Education, then Judiciary
- [**HB 2387**](#) Byrd **Mandates K-12 students receive drug abuse awareness and prevention instruction** To Substance Abuse, then Education

HOSPITALS

- [SB 47](#)** Ferns **Allows certain employers to discriminate against tobacco users** To Health, then Judiciary
- [SB 276](#)** Miller **Protects WV insured citizens from “excessive” charges by air-ambulance providers** To Insurance, then Judiciary
- [HB 2085](#)** Rodighiero **Ensuring Patient Safety Act; establishes minimum RN-patient ratios** To Health, then Gov. Org.
- [HB 2145](#)** Fast **Allows certain employers to discriminate against tobacco users** To Health, then Judiciary
- [HB 2201](#)** McGeehan **Save the Hospitals Act** To Health, then Finance
- [HB 2459](#)** Ellington+ **Clarifies requirements of the certificate of need process** To Health, then Judiciary
- [HB 2523](#)** Folk+ **Eliminates the Certificate of Need program** To Health, then Judiciary

INSURANCE & HEALTH COVERAGE

- [SB 49](#)** Ferns **Requires provisions for prior authorization of drug benefits by insurers** To Insurance, then Health
- [SB 56](#)** Ferns **Defines criteria private insurers must consider when setting rates for health providers** To Insurance, then Health
- [SB 221](#)** Blair+ **Changes composition of the PEIA Finance Board** To Gov. Org.
- [HB 2020](#)** Rodighiero **Freezes PEIA employee premiums for three years** To Insurance, then Finance
- [HB 2051](#)** Rodighiero **Authorizes reduced rate PEIA coverage for married workers without children** To Insurance, then Finance
- [HB 2055](#)** Rodighiero **Includes volunteer firefighters within PEIA** To Insurance, then Finance
- [HB 2072](#)** Rodighiero **Qualifies children of state employees earning \$25,000 or less for CHIP** To Insurance, then Finance
- [HB 2119](#)** Ellington+ **Repeals WV Health Benefit Exchange Act** Health reported, to Finance
- [HB 2120](#)** Ellington+ **Exempts managed care contracts from the bidding process (see [HB 2360](#))** To Insurance, then Health
- [HB 2300](#)** Kelly+ **Regulates step therapy protocols in health benefit plans** Health reported, on 1st reading 2/20
- [HB 2327](#)** Fleischauer+ **Protects consumers from “surprise bills” by health care providers** To Insurance, then Health
- [HB 2341](#)** Sobonya **Affirms DHHR’s right to subrogation for 3rd-party liability settlements by Medicaid recipients** To Insurance, then Judiciary
- [HB 2360](#)** Ellington+ **Exempts managed care contracts from the bidding process (see [HB 2120](#))** Health reported, to Gov. Org.
- [HB 2420](#)** Westfall+ **Allows state Board of Education to delegate Medicaid provider status and reimbursements to RESAs or county boards** To Education (*on agenda for 2/20*), then Health
- [HB 2460](#)** Ellington+ **Requires equal treatment of telehealth services by insurance policies** To Insurance, then Health
- [HB 2471](#)** Ellington+ **Requires insurance coverage for breast cancer screenings** To Insurance, then Finance
- [HB 2519](#)** Ellington+ **Requires DHHR enter a compact to ensure payment to other states’ Medicaid participants** To Health, then Gov. Org.

MEDICAL LIABILITY

- [SB 197](#)** Takubo **Excludes certain medical care amounts from compensatory damage awards** To Judiciary
- [SB 236](#)** Trump+ **Limits damage awards for medical monitoring** To Judiciary
- [SB 287](#)** Blair+ **Governs civil damages for future medical monitoring expenses** To Judiciary
- [SB 338](#)** Trump+ **Amends Medical Professional Liability Act** To Judiciary
- [HB 2113](#)** Ellington+ **Prohibits DHHR from changing Medicaid program without legislative approval** *DHHR opposed this bill.* Health reported, to Finance
- [HB 2192](#)** Ferro **Adds pharmacist and pharmacy to definition of health care provider in Medical Practice Liability Act** To Health, then Judiciary
- [HB 2498](#)** Lovejoy+ **Presumes that certain cancers by firefighters arose out of course of employment** To Health, then Judiciary

MISCELLANEOUS

- [SB 1](#)** Trump+ **Establishes additional \$1 fee per wireless subscriber to fund 911 centers** To Gov. Org., then Finance
- [SB 27](#)** Karnes+ **Permits sale of home-based micro-processed foods at farmers markets** To Agriculture, then Health
- [SB 40](#)** Stollings+ **Requires protocols of after-school emergencies in school crisis response plans** Health reported Com. Sub., to Education
- [SB 52](#)** Ferns **Authorizes county commissions to approve local health board policies** To Gov. Org.
- [SB 60](#)** Gaunch+ **Provides eligibility and fraud prevention requirements for SNAP and TANF** To Health, then Finance
- [SB 71](#)** Gaunch+ **Creates the 24/7 Sobriety Program administered by the Attorney General** To Judiciary, then Finance

SB 169 Ferns+ **Repeals article on assistance to Korea and Vietnam veterans exposed to chemical defoliants** *Recommended by LOCHHRA. Health reported, Finance dispensed, on 1st reading 2/13*

SB 170 Ferns+ **Repeals state hemophilia program** *Recommended by LOCHHRA. Health reported, Finance dispensed, passed Senate 2/15, to House Health, then Finance*

SB 176 Ferns+ **Repeals code on detection of tuberculosis, high blood pressure and diabetes** *Recommended by LOCHHRA. Health reported, passed Senate 2/15, to House Health*

SB 177 Ferns+ **Repeals article related to prenatal examinations** *Recommended by LOCHHRA. To Health*

SB 184 Blair+ **Transitions WV School of Osteopathic Medicine to a not-for-profit corporation** *To Gov. Org., then Finance*

SB 187 Takubo+ **Provides for confidentiality of patient medical records** *Health reported, to Judiciary*

SB 201 Blair **Requires DHHR consultant to explore sale, rent or lease of state-owned health facilities** *To Health, then Finance*

SB 339 Takubo+ **Creates legislative coalition to study chronic pain management** *To Health, then Gov. Org.*

HB 2016 Rodighiero **Provides state health care services to active or inactive duty military personnel** *To Insurance, then Finance*

HB 2022 Rodighiero **Requires hand sanitizers in all public restrooms** *To Health, then Finance*

HB 2068 Rohrbach **Authorizes WVHIN and WVHCA to implement interoperable health info network** *To Health, then Finance*

HB 2071 Bates+ **Authorizes medical use of cannabis-based pharmaceuticals** *To Substance Abuse, then Health, then Judiciary*

HB 2095 McGeehan+ **Authorizes “local governing body” to approve local health board policies** *To Health, then Gov. Org.*

HB 2121 Fleischauer+ **WV Residential Furniture and Children’s Products Flame Retardants Act** *To Health, then Judiciary*

HB 2132 Folk+ **Limits adults without dependents to 3 months of SNAP benefits in 36 months** *To Health, then Judiciary*

HB 2135 Kelly+ **Permits those 21 or older to operate or ride on a motorcycle without a helmet** *To Roads, then Judiciary*

HB 2187 Rohrbach **Establishes an advisory council on rare diseases** *To Health, then Finance*

HB 2366 Ellington+ **Requires DHHR to sell Jackie Withrow Hospital** *Health laid over, then Finance*

HB 2376 Ellington+ **Reorganizes DHHR, creates Department of Medical Services** *To Health, then Gov. Org.*

HB 2423 Howell+ **Adds MDs and DOs to prohibition against therapeutic deception** *Health reported, to Judiciary*

HB 2425 Walters+ **Authorizes complimentary samples of nonintoxicating beer** *To Substance Abuse, then Judiciary*

HB 2453 Eldridge+ **Expands list of persons the Commissioner of Agriculture may license to grow industrial hemp** *To Agriculture, then Judiciary*

HB 2458 Sobonya **Exempts certain individually produced foods from related laws or rules** *To Health*

HB 2486 Westfall **Allows release of medical records in certain civil cases without court order** *To Judiciary*

HB 2520 Summers+ **Prohibits use of tanning devices by persons under age 18** *To Health, the Judiciary*

NURSING HOMES, LONG TERM CARE & SENIORS

SB 171 Ferns+ **Repeals Programs of All-Inclusive Care for Elderly** *Recommended by LOCHHRA. Health reported, Finance dispensed, passed Senate 2/15, to House Health, then Finance*

HB 2404 Rowan+ **Bars criminals from acquiring property from their victims** *Senior Citizen Issues amended, to Judiciary*

HB 2432 Rowan+ **Bars criminals from acquiring property from their victims** *To Judiciary*

HB 2496 Hollen+ **Exempts for-profit corporations operating nursing homes from CON requirements** *To Health, then Judiciary*

HB 2497 Ellington+ **Permits unlicensed personnel to administer medications in nursing homes** *To Health, then Judiciary*

PRESCRIPTION MEDICATIONS & DRUG USE/ABUSE/DIVERSION

SB 36 Stollings+ **Permits school nurses to possess and administer opioid antagonists** *To Health*

SB 188 Takubo **Corrects definition of “telehealth” in medication-assisted treatment programs** *Health reported, on 1st reading 2/20*

SB 297 Carmichael+ **Increases minimum penalties for transport of Schedule I and II drugs into WV** *Requested by the Governor. To Judiciary*

SB 318 Takubo+ **Allows voluntary influenza immunizations at specified facilities** (see **HB 2431**) *To Health*

SB 329 Woelfel+ **Creates felony for manufacturing, possessing, distributing, dispensing or transporting any quantity of fentanyl, or any fentanyl derivative or analog** *To Judiciary, then Health*

SB 333 Takubo+ **Requires all DHHR-licensed facilities access CSMP database** *To Health, then Judiciary*

HB 2070 Rodighiero **Prohibits new methadone programs or clinics, except at comprehensive mental health centers** *To Substance Abuse, then Judiciary*

[HB 2081](#) Rodighiero **Prohibits new methadone programs or clinics, except at comprehensive mental health centers; requires CSMP use** To Substance Abuse, then Judiciary

[HB 2083](#) Rodighiero **Increases penalties for exposing children to meth manufacturing** Substance Abuse amended, to Judiciary

[HB 2130](#) Fluharty+ **Requires legislators to pass annual drug test** To Judiciary, then Finance

[HB 2207](#) Hamilton+ **Prohibits business licenses for selling drug paraphernalia** To Substance Abuse, then Judiciary

[HB 2329](#) Rohrbach+ **Prohibits production, manufacture or possession of fentanyl** Substance Abuse amended, to Judiciary

[HB 2330](#) Arvon+ **Prohibits the sale of drug paraphernalia** To Substance Abuse, then Judiciary

[HB 2422](#) Robinson+ **Creates Ryan Brown Addiction Prevention and Recovery Fund Act** Substance Abuse amended, to Finance

[HB 2428](#) Kelly+ **Establishes additional substance abuse treatment facilities** To Substance Abuse, then Finance

[HB 2431](#) Ellington+ **Allows voluntary influenza immunizations at specified facilities** (see **SB 318**) Health amended, on 1st reading 2/20

[HB 2448](#) Sobonya **Increases penalties for transporting controlled substances into WV** To Substance Abuse, then Judiciary

[HB 2450](#) Sobonya **Increases mandatory minimum sentences for trafficking drugs into WV** To Substance Abuse, then Judiciary

[HB 2457](#) Sobonya **Creates the WV Addictions Treatment and Recovery Fund** To Substance Abuse, then Finance

[HB 2470](#) Sobonya **Creates felony for knowingly housing drug traffickers** To Substance Abuse, then Judiciary

[HB 2509](#) Ellington+ **Permits physicians to prescribe controlled substances using telemedicine** To Health, then Judiciary

[HB 2516](#) Byrd+ **Reforms efforts to combat substance abuse** To Substance Abuse, then Judiciary

[HB 2518](#) Ellington+ **Permits pharmacist or pharmacy intern to administer immunizations** To Health, then Gov. Org.

[HB 2526](#) Ellington+ **Classifies additional drugs to Schedules I, II, IV and V of controlled substances** To Health, then Judiciary

[HB 2533](#) Sobonya **Increases penalties for transporting narcotics and certain controlled substances into WV; exempts marijuana** To Substance Abuse, then Judiciary

PROFESSIONALS: HEALTH & MEDICAL

[SB 4](#) Gaunch+ **Allows licensed professionals to donate time for indigent care in clinical settings** To Health, then Judiciary

[SB 23](#) Karnes+ **Defines “midwife,” “certified midwife” and “midwifery”** To Health

[SB 51](#) Ferns **Requires patient notification when a mammogram indicates dense breast tissue** To Health

[SB 175](#) Ferns+ **Permits the practice of Direct Primary Care** (see **HB 2301**) *Recommended by Joint Committee on Health* To Health, then Finance

[SB 198](#) Takubo+ **Expands Health Sciences Program to allow certain medical practitioners in underserved areas** To Health

[SB 347](#) Takubo **Creates Physician Assistant Practice Act** To Health

[HB 2165](#) Statler+ **Exempts physician or surgeon traveling with a sports team from state licensure** To Health, then Judiciary

[HB 2301](#) Ellington+ **Permits individuals to enter into agreements for Direct Primary Care** (see **SB 175**) *Recommended by Joint Committee on Health. Health reported, Judiciary reported Com. Sub., on 1st reading 2/20*

[HB 2540](#) Ellington+ **Permits professional practice without licensure for seven days for a charitable function** To Gov. Org.

REPRODUCTIVE RIGHTS & ABORTION

[SB 20](#) Karnes+ **Limits insurance coverage for elective abortions** To Insurance, then Judiciary

[SB 21](#) Karnes+ **Relates to care of aborted fetuses** To Health, then Judiciary

[SB 31](#) Karnes+ **Prohibits abortion coverage in qualified health plans** To Health, then Judiciary

[HB 2053](#) Rodighiero **Requires abortion clinics to obtain parental notification or consent in writing** To Health, then Judiciary

[HB 2082](#) Rodighiero **Prohibits state funding of abortions** To Health, then Judiciary

[HB 2467](#) Sobonya **Prohibits school employees from counseling, referring, transporting or assisting any student to obtain an abortion** To Education, then Judiciary

[HB 2468](#) Sobonya **Creates misdemeanor for transporting a minor across state lines to obtain an abortion without written consent of both parents or legal guardians** To Health, then Judiciary

[HB 2484](#) Frich+ **Prevents taxpayer subsidization of insurance covering elective abortions** To Health, then Judiciary

RULE MAKING & LEGISLATIVE REVIEW

State agencies, boards and commissions are often given statutory authority to promulgate rules. These are known as “legislative review” during the interim period by the Legislative Rule-Making Review Committee, and if approved, then are introduced for

legislative consideration in individual rules bills. The rules bills are then assigned to various committees, eventually ending up in the Judiciary Committees of the Senate and House of Delegates. There, they are bundled into categories of rules bills.

SENATE RULES BILLS

DHHR [SB 118](#) Expedited partner therapy (see **HB 2256**) Health reported, to Judiciary
DHHR [SB 119](#) Licensure and certification of clinical lab technicians and technologists (see **HB 2254**) Health reported, to Judiciary
DHHR [SB 120](#) Clandestine drug laboratory remediation (see **HB 2255**) Health reported, to Judiciary
DHHR [SB 121](#) Medication-assisted opioid treatment programs (see **HB 2257**) To Health, then Judiciary
DHHR [SB 122](#) Medication-assisted treatment, office-based MAT (see **HB 2258**) To Health, then Judiciary
DENTAL BOARD [SB 104](#) Criminal background checks (see **HB 2249**) To Judiciary
HEALTH CARE AUTHORITY [SB 123](#) Exemption from certificate of need (see **HB 2259**) Health reported, to Judiciary
HEALTH CARE AUTHORITY [SB 124](#) Rural Health Systems Grant Program (see **HB 2260**) Health reported, to Judiciary
HEALTH CARE AUTHORITY [SB 125](#) Hospital Assistance Grant Program (see **HB 2261**) Health reported, to Judiciary
HEALTH CARE AUTHORITY [SB 126](#) Certificate of need (see **HB 2262**) Health reported, to Judiciary
MEDICAL BOARD [SB 129](#) Licensure and background checks for MDs and podiatrists (see **HB 2264**) To Judiciary
MEDICAL BOARD [SB 130](#) Licensure and background checks for PAs (see **HB 2265**) To Judiciary
MEDICAL BOARD [SB 131](#) Drug dispensing by practitioners (see **HB 2266**) To Judiciary
NURSING BOARD [SB 148](#) Registration, licensure and professional misconduct (see **HB 2281**) To Judiciary
NURSING BOARD [SB 149](#) Limited prescriptive authority for APRNs (see **HB 2282**) To Judiciary
OPTOMETRY BOARD [SB 138](#) Continuing education (see **HB 2272**) To Judiciary
OSTEOPATHIC BOARD [SB 139](#) Licensure and background checks for osteopaths (see **HB 2273**) To Judiciary
OSTEOPATHIC BOARD [SB 140](#) Licensure and background checks for PAs (see **HB 2274**) To Judiciary
PHARMACY BOARD [SB 141](#) Licensure and practice of pharmacy (see **HB 2275**) To Judiciary
PHARMACY BOARD [SB 142](#) Mail-order and nonresident pharmacies (see **HB 2276**) To Judiciary
PHARMACY BOARD [SB 143](#) Controlled Substances Monitoring Program (see **HB 2277**) To Judiciary
PHYSICAL THERAPY BOARD [SB 144](#) Fees (see **HB 2232**) To Judiciary
RISK MANAGEMENT BOARD [SB 151](#) Patient Injury Compensation Fund (see **HB 2284**) Judiciary reported Com. Sub., passed Senate 2/15, to House Judiciary

HOUSE RULES BILLS

DHHR [HB 2254](#) Licensure and certification of clinical lab technicians and technologists (see **SB 119**) Health reported, to Judiciary
DHHR [HB 2255](#) Clandestine drug laboratory remediation (see **SB 120**) To Judiciary
DHHR [HB 2256](#) Expedited partner therapy (see **SB 118**) Health reported, to Judiciary
DHHR [HB 2257](#) Medication-assisted opioid treatment programs (see **SB 121**) To Substance Abuse, then Judiciary
DHHR [HB 2258](#) Medication-assisted treatment, office-based MAT (see **SB 122**) To Substance Abuse, then Judiciary
DENTAL BOARD [HB 2249](#) Criminal background checks (see **SB 104**) Health amended, to Judiciary
HEALTH CARE AUTHORITY [HB 2259](#) Exemption from certificate of need (see **SB 123**) To Health, then Judiciary
HEALTH CARE AUTHORITY [HB 2260](#) Rural Health Systems Grant Program (see **SB 124**) To Health, then Judiciary
HEALTH CARE AUTHORITY [HB 2261](#) Hospital Assistance Grant Program (see **SB 125**) To Health, then Judiciary
HEALTH CARE AUTHORITY [HB 2262](#) Certificate of need (see **SB 126**) To Health, then Judiciary
MEDICAL BOARD [HB 2264](#) Licensure and background checks for MDs and podiatrists (see **SB 129**) Health amended, to Judiciary
MEDICAL BOARD [HB 2265](#) Licensure and background checks for PAs (see **SB 130**) Health amended, to Judiciary
MEDICAL BOARD [HB 2266](#) Drug dispensing by practitioners (see **SB 131**) Health amended, to Judiciary
NURSING BOARD [HB 2281](#) Registration, licensure and professional misconduct (see **SB 148**) Health amended, to Judiciary
NURSING BOARD [HB 2282](#) Limited prescriptive authority for APRNs (see **SB 149**) Health amended, to Judiciary
OPTOMETRY BOARD [HB 2272](#) Continuing education (see **SB 138**) Health reported, to Judiciary
OSTEOPATHIC BOARD [HB 2273](#) Licensure and background checks for osteopaths (see **SB 139**) Health reported, to Judiciary
OSTEOPATHIC BOARD [HB 2274](#) Licensure and background checks for PAs (see **SB 140**) Health reported, to Judiciary
PHARMACY BOARD [HB 2275](#) Licensure and practice of pharmacy (see **SB 141**) To Health, then Judiciary
PHARMACY BOARD [HB 2276](#) Mail-order and nonresident pharmacies (see **SB 142**) To Health, then Judiciary
PHARMACY BOARD [HB 2277](#) Controlled Substances Monitoring Program (see **SB 143**) Substance Abuse reported, to Judiciary
PHYSICAL THERAPY BOARD [HB 2232](#) Fees (see **SB 144**) To Gov. Org., then Judiciary
RISK MANAGEMENT BOARD [HB 2284](#) Patient Injury Compensation Fund (see **SB 151**) To Judiciary

TAXES, FEES & LOANS

SB 46 Ferns+ **Excludes mobile X-ray services from health care provider tax** To Health, then Finance

SB 250 Takubo+ **Establishes tax credit for newly graduated physicians who locate in WV for 6 years** To Health, then Finance

HB 2351 Pyles **Provides 5% sales tax on OTC medications and nutritional supplements to offset PEIA premiums** To Health, then Finance

TOBACCO

SB 37 Stollings+ **Raises legal age for purchase of tobacco, alternative nicotine and vapor products to 21** Health reported, to Finance

SB 193 Takubo+ **Prohibits smoking in motor vehicles with those age 16 and under** To Health, then Judiciary

HB 2331 Rowe+ **Raises legal age for purchase of tobacco or tobacco products to 21** To Health, then Judiciary

Tobacco Age Hike Proposal Sparks Debate

A bill that would raise the legal age for purchase of tobacco, alternative nicotine and vapor products to 21 sparked extended debate by the Senate Health Committee on Thursday, focused around public health policy versus personal freedom. Sen. Tom Takubo, the committee chair, declared **SB 37** passed on a narrow voice vote; the bill now moves to the Finance Committee.

“The number one killer of our entire population is tobacco, followed by obesity,” said Sen. Ron Stollings, the bill’s lead sponsor. “The number one driver of health care costs is tobacco, followed by obesity. We are the least healthy state in the nation. The data is clear: If a lot less people use tobacco, then our population will be healthier and we will spend less money on Medicaid and PEIA.”

Committee counsel Jeff Johnson said states such as Hawaii and California, as well as hundreds of local jurisdictions in Massachusetts and other states, have enacted similar legislation. A fiscal note attached to the bill by the Alcohol Beverage Control Administration declared the bill “too speculative to provide a revenue or cost estimate” of its impact, he said.

“There is not fiscal note because, as we all know, they’re going to smoke cigarettes anyway,” said Sen. Robert Karnes. “But we can be like Massachusetts if we want.”

Karnes and several other Republican members of the committee dismissed the bill as “feel-good” legislation, and deemed “absurd” the notion that 18-year-olds could vote and serve in the military, but not purchase tobacco products. “This is just heavy-handed government,” said Sen. Mike Azinger. “I’m just a little weary of political correctness, and government going outside the bounds of where it should be.”

Dr. Rahul Gupta, commissioner of the Bureau for Public Health, said public policy and scientific research indicate a positive impact of raising the purchase age. Although our state’s smoking rates among youth and pregnant women have trended downward in recent years, West Virginia and Kentucky continue to lead the nation in overall smoking rates. In addition, employers estimate the loss of productivity to accommodate “smoke breaks” for employees to be as much as \$2 billion annually.

In other action Thursday, the committee:

- Advanced to the Education Committee a bill (**SB 40**) that would require inclusion of protocols for response to after-school emergencies in school crisis response plans. Sen. Robert Plymale indicated he would like to see a requirement that certified athletic trainers be present at all scholastic sporting events.
- Approved **SB 187**, which would bring the state into greater compliance with the federal Health Insurance Portability and Accountability Act (HIPAA) regarding confidentiality of patients’ medical records. The bill moves on to the Judiciary Committee.
- Passed **SB 188** to correct the definition of “telehealth” in medication-assisted treatment programs, reinserting language inadvertently left out of a bill passed during the 2016 regular session. “This may be the easiest bill the committee addresses all session,” Johnson noted. The bill will be on first reading on the Senate floor today.

Newspaper Studies State Medical Boards

The Atlanta Journal-Constitution last fall published a state-by-state report on laws governing its medical boards, and West Virginia placed 21st among all states with an overall rating of 62 – tied with Alaska, Kentucky, New Mexico, North Carolina and Oregon.

The special report was part of the newspaper's series on "Doctors and Sex Abuse," and was based on its examination of laws that govern physician licensing and discipline, specifically as to how they protect patients from sexually abusive doctors. The state's overall rating covers both the West Virginia Board of Medicine and the West Virginia Board of Osteopathic Medicine.

The report, based on fact sheets distributed to the medical boards for review and response, rated each state on five categories – transparency, duty-to-report laws, board composition, criminal acts and discipline laws. The overall rating for the state is the average of the category scores.

West Virginia received a score of 62 for transparency, including a perfect score for posting all medical board orders. However, the newspaper found, while Board of Medicine orders detail the allegations that led to sanctions, Board of Osteopathic Medicine orders do not always contain the information. Also, the AJC found, doctor profile information from either board does not include hospital sanctions, criminal charges or orders from other states. The report also indicated that the Board of Osteopathic Medicine may issue private letters of concern; the Board of Medicine does not.

The duty-to-report standard examined whether institutions or colleagues aware of potential misconduct are required to notify regulators. West Virginia received a score of 76 in this category.

The report found, "The CEO of every hospital must report doctors whose privileges have been revoked, restricted, reduced or terminated for any cause, including resignation. ... The reporting law doesn't apply to nursing homes or clinics, however medical peer review committees must report information related to the practice or performance of any physician if the board requests it."

The reporting must take place, "within 60 days after completing formal disciplinary procedure or commencing or concluding resulting legal action." Failure to comply could result in a fine of up to \$10,000. In addition, "physicians are required to report known or observed violations by fellow doctors" and "clerks of court are required to report within 30 days after a doctor is convicted of a felony or any crime involving alcohol or drugs in any way."

The AJC awarded West Virginia a score of 68 for medical board composition, noting that the Board of Medicine is composed of three public members, eight physicians, the state health officer, two podiatrists and one physician's assistant, while the Board of Osteopathic Medicine includes two public members, five physicians and one physician's assistant. Each board included two women members at the time of the report.

For the Board of Medicine, public members and their families cannot be employed by health care providers, and no member can serve on any political party's executive committee. For the osteopathic board, public members cannot be associated with the practice of osteopathic medicine.

West Virginia received a score of 40 in the category of criminal acts, though the AJC noted that the state Legislature passed a law in 2016 to require background checks with fingerprints as a condition of licensure. Further, "On its own initiative, the Medical Board has conducted non-fingerprint background checks," the report noted.

There is no legal requirement for boards to notify law enforcement if they learn of allegations of criminal conduct, the study found. However, "In 2016, a new law was approved creating the crime of prohibited sexual contact by a psychotherapist. It is illegal for a psychiatrist or other therapist to engage in sexual contact or sexual intercourse with a client or patient by means of therapeutic deception - meaning that the therapist represents that the sexual contact or intercourse is consistent with or part of the treatment. This is a felony offense which brings a sentence of up to 5 years. The law states that consent is not a defense."

Newspaper Studies State Medical Boards continued ...

The AJC study gave West Virginia a rating of 65 on its discipline laws. The report found, “The Board of Medicine cannot permanently revoke a license. But it can have permanent surrender of a license. It must revoke the license of a doctor who is convicted of any felony involving prescription drugs, but it may reinstate the doctor after his or her sentence is completed. The Board of Osteopathic Medicine doesn't have a time limit on revocation; an applicant can reapply any time. The Board of Osteopathic Medicine is not required to revoke the licenses of doctors convicted of felonies involving prescription drugs.”

HB 2423, introduced this session by Delegate Gary Howell, adds MDs and DOs to the list of those prohibited from “therapeutic deception,” which means any representation that sexual contact or sexual intercourse is part of the patient/client’s treatment. The bill was advanced by the House Health Committee on Thursday and is now before the Judiciary Committee.

The study praised West Virginia for allowing medical regulators the legal right to hospital peer review records and proceedings. Both boards can deny licensure to someone whose license is currently revoked or suspended in another state. However, the osteopathic board may grant licensure if the applicant, “proves the surrender issue has been resolved and he or she is eligible to reapply.”

The standard of proof also differs between the boards, the report noted. The Board of Medicine, “requires clear and convincing evidence to proof a disciplinary case against a doctor. ... The state's osteopathic board requires only a preponderance of evidence, which is N

The highest rated state overall was Delaware (91) and the lowest rated was Mississippi (37). Other than Kentucky, surrounding state overall scores included Maryland (71 – 5th in the country), Ohio (66 – tied for 10th), Virginia (64 – tied for 15th) and Pennsylvania (53 – tied for 37th).

More information on the Atlanta Journal-Constitution’s state-by-state ratings can be found at <http://doctors.ajc.com/states/>. Access the newspaper’s complete series at http://doctors.ajc.com/table_of_contents/.

Addiction Prevention and Recovery Bill Approved

The House Selection Committee on Prevention and Treatment of Substance Abuse on Thursday approved **HB 2422**, the Ryan Brown Addiction Prevention and Recovery Fund Act, to make resources available for programs not otherwise covered by the state or federal government. The bill creates a special revenue account with funds from federal Substance Abuse Prevention and Treatment Block Grants (SABG), as well as gifts, investment income and other public and private sources. The state has received about \$8.4 million in SABG funds since October 2015.

According to the amended bill, the fund would be administered by the state Department of Health and Human Resources. At least 20% of the funds must be allocated to prevention programs. Addiction recovery funds will be paid directly to the treatment provider; for-profit treatment facilities are not eligible. Medication-assisted treatment would qualify for three months of treatment only if the planned course of treatment is 24 months or less.

Priority for funding will be given to: intravenous drug users; HIV positive, AIDS or HCV positive individuals; pregnant women and women with dependent children; veterans; persons with criminal justice involvement; Sober Living Entry fees for individuals; cost of transportation to recovery centers, sober living homes or other facilities used for addiction recovery; and, Naloxone and other similar medications to be distributed by addiction awareness facilities, nonprofit recovery programs, sober living homes, prevention agencies or county health departments. This is limited to payment for Naloxone or similar overdose reversal pharmaceuticals only.

In other action, the committee advanced to Judiciary Committee:

- **HB 2329**, increasing penalties for the production, manufacture or possession of fentanyl;
- **HB 2083**, increasing penalties for exposing children to methamphetamine manufacturing;
- **HB 2277**, a rules bill updating reporting requirements for the WV Board of Pharmacy’s Controlled Substances Monitoring Program database.

In Other Health Care Highlights ...

... The federal Drug Enforcement Administration last week announced that Charleston and Huntington and the surrounding tri-county areas will be part of a comprehensive law enforcement and prevention initiative called the 360 Strategy, designed to help deal with the heroin and prescription drug abuse epidemic and the violent crime associated with it. The 360 Strategy focuses on integrating law enforcement, diversion control, education and prevention with community outreach. DEA Washington Field Division Special Agent-in-Charge Karl C. Colder said the strategy is a three-fold approach to fighting drug trafficking and stemming abuse. It is designed to change attitudes through community outreach; have a long lasting impact through diversion control; and provide DEA leadership. The 360 Strategy brings together experts in substance abuse and prevention to work with four key groups of citizens: parents and caregivers in the home; educators and students in the classroom; after-school organizations such as the Boys & Girls Clubs and athletic associations; and in workplaces around the region. The DEA and its partners also plan to host a “Call to Action” forum in the region. ...

... Andrew Kirkner, the recently named executive director of the West Virginia Association of Health Plans (*see related story, Page 3*), is affiliated with the law firm Dinsmore & Shohl, where he focuses on government relations and civil and administrative litigation, with clients in health care, property and casualty insurance, public education and public utilities. “By coordinating care, increasing competition and placing a renewed emphasis on health management, managed care organizations can lower West Virginia's Medicaid costs and provide the state with much-needed budget predictability,” Kirkner said in a news release. ...

Quotes of Note:

... ***“I turned 18 around that time, and I did not in any way support raising the drinking age to 21.”***

- Sen. Robert Karnes, during Senate Health Committee debate on raising the age for tobacco purchases to 21.

... ***“I know a little bit about a whole lot of things, but I don’t know much about anything.”***

- Cabinet Secretary Bill Crouch, just weeks into his new position heading DHHR, to the House Health Committee last week.

... ***“I kinda like this room ...”***

- Delegate Joe Ellington, chair of House Health, as delegates moved quickly through an agenda dominated by rules bills.

... ***“This is as clear as mud, now.”***

- Delegate Barbara Fleischauer, during often-confusing discussion on efforts to give lawmakers more oversight of Medicaid.

... ***“For too long, West Virginia has been ranked as having the most burdensome, onerous regulatory structures of any state. This Legislature will act swiftly to remove regulatory burdens on job creators while maintaining reasonable rules to protect our citizens and the environment.”***

- Senate President Mitch Carmichael, in a news release, on legislation to repeal or revise outdated programs and statutes.

February Capitol Health Care Events

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|---------|--------------------------------------|
| Feb. 20 | WV Optometric Physicians Association |
| Feb. 21 | WV Occupational Therapy Association |
| Feb. 22 | Arthritis Foundation |
| Feb. 23 | WV School of Osteopathic Medicine |
| Feb. 24 | Undergraduate Research Day |

Our Next Issue

The next issue of *Health Care Highlights* will be published **Feb. 27**, when we will report on DHHR’s first formal budget presentation before the House Finance Committee. We also will continue the weekly tracking of all health care-related bills under consideration by the House and Senate, and continue reporting on other actions taken by legislative committees and other health care news.

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