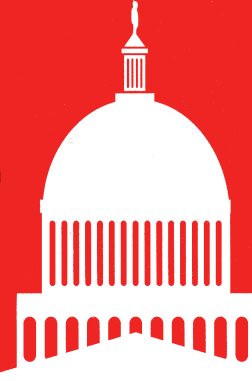




LEGISLATIVE UPDATE



May, 2007

This issue of the Legislative Update provides an overview of the actions taken in the final days of the Regular Legislative Session. To obtain copies of any bill (which passed or failed), please visit the West Virginia Legislature's web site at www.Legis.State.WV.US or contact WVSMA Government Relations Specialist Amy N. Tolliver, MS at (304) 925-0342 ext. 25 or Amy@wvsma.com.

2007 Legislative Wrap-Up

Saturday, March 10, marked the last day of the 2007 regular Legislative Session. As usual, the Legislature immediately went into an extended session for the purpose of passing the budget bill and addressing any bills with technical errors. They adjourned Sine Die a week later on Sunday, March 18.

Of the 1799 bills introduced during the Session, a total of 277 measures passed both chambers and completed legislative action by the end of the extended session.

Though this was a relatively slow year in regard to the actual number of bills passed, the Legislature did address some big issues. The medical community saw its fair share of controversy with the battle over the Health Care Authority's certificate of need rule between the physicians and the hospitals. The Legislature did pass two pieces of particularly important legislation to the physician community the Physician Health Program (SB 573) and the pharmaceutical tax exemption (HB 2380). Both were the result of collaboration among key stakeholders.

WVSMA 2007 Legislative Policy Issues

The following is an update on legislative action on the 2007 key policy issues of the WVSMA.

Protection of Medical Liability Reform and the Provider Tax Phase-Out

The top two priority issues for the WVSMA were to protect the achievements we have made in past Sessions - medical liability reform legislation and the provider tax phase out. Neither of these issues faced any serious threats.

Creation of a Physician Health Program: SB 573

A year and a half ago a group of stakeholders met at the WVSMA office to discuss the need for the development of a physician health program (PHP) in West Virginia. That group consisted of representatives of the WVSMA, the WV Society of Osteopathic Medicine, WV Board of Medicine, WV Board of Osteopathic Medicine, WV Hospital Association, WV Mutual Insurance Company and WV PAGE. This group worked hard researching other state's PHP's, developing a structure for such a program and drafting legislation to enable the creation of one in WV. Now, the Legislature has passed the legislation, SB 573, which will take effect in mid-June 2007.

This legislation will allow the Board of Medicine and the Board of Osteopathic Medicine to contract with a qualified PHP to provide monitoring services for physicians with substance abuse/addiction and major mental illnesses. The bill allows the Boards to take a "therapeutic" instead of "punitive" approach toward physicians with addictions and mental illnesses and helps to steer them into treatment voluntarily.

Now that the bill is passed, the WVSMA will encourage steps be taken toward the creation of a PHP. This will be a private non-profit organization that will be funded by donations, grants and fees generated by the physicians seeking the services.

Modification to license suspension language

This bill also modifies the statute regarding non-renewal of medical licenses. Currently, if a physician allows their license to lapse by

simply not paying the renewal fee, the Board of Medicine ‘suspends’ their license. Though it is a non-disciplinary suspension, it still is regarded as a suspension that is on the physician’s record. The bill changes this to “expiration” and modifies the process to reinstate the license to active status.

Elimination of Sales Tax on Pharmaceuticals Administered in Physician Offices, Clinics, Hospitals and Other Facilities: HB 2380
This is another issue that the WVSMA has worked on for quite a while and is pleased to see HB 2380 pass. Two years ago, in response to a Supreme Court ruling which determined that some pharmaceuticals purchased by healthcare providers should not be subject to the 6 percent sales tax, the WV Tax Commission pursued legislation to reverse this ruling. The WVSMA and the Hospital Association worked to stop the legislation and promised to work with the Tax Commission to develop appropriate legislation. Over the next two years our organizations worked to gain the Governor’s and the Tax Commission’s support for the full repeal of this tax instead of a reversal of the Supreme Court’s partial tax break. This session we achieved just that.

HB 2380 clarifies that all drugs, durable medical equipment, mobility enhancing equipment and prosthetic devices purchased by physicians, clinics hospitals or other healthcare providers will no longer be subject to the 6% sales tax. This bill essentially puts to rest the debate over whether physicians and hospitals are subject to the sales tax and how it is to be implemented.

Opposition to Health Care Authority Diagnostic Center CON Rule 65 CSR 17: SB 278 (was 266)

SB 278 contains the rule on physician owned diagnostic centers which was filed this summer by the Health Care Authority upon the request of the WV Hospital Association. The rule tightens up key aspects of the certificate of need law impacting private physician practices which provide laboratory or imaging services. It consists of a definition of diagnostic center and creates six “tests” that determine if a physician office must apply for a CON to provide laboratory or imaging services to their patients. The rule also establishes a list of items that require automatic CON approval. WVSMA worked to make significant improvements in several areas of the rule and came up against strong opposition from the Hospital Association. The WVSMA lobbied to get two amendments to the rule – delete the prohibition regarding physician to physician referral for diagnostic services and delete the automatic CON on CT Scanners.

After months of negotiating with the Health Care Authority over their diagnostic center rule the WVSMA, the WV Hospital Association and the Authority made an agreement on several amendments in the final week of the Session. Though the WVSMA did agree to amendments, we did not take the position that we supported the rule in its final form. Faced with the reality that there was not enough support by the Legislature or the Governor’s office to either pull the entire rule or modify it in a way to address all the physician’s concerns, the WVSMA chose to agree to amendments that made the rule less onerous. The amendments only address the following two areas: modifying the grandfather clause and modifying the referral section.

Grandfather Clause:

The grandfather clause has been modified to clarify that physician practices currently offering lab or imaging services shall NOT be deemed a diagnostic center if:

2.1.g.1. Such lab or imaging services were offered in a manner that did not constitute a diagnostic center as it existed at such time the lab or imaging services were first offered;

2.1.g.2 Such lab or imaging services were offered in compliance with any certificate of need or any ruling of non-reviewability received by the Health care Authority; OR

2.1.g.1.3 Such laboratory or imaging services were offered by the private office practice on the effective date of this rule; provided however, that the number of laboratory or imaging procedures performed on patients who are sent to the private office practice subsequent to the effective date of this rule for the sole purpose of obtaining laboratory or imaging services must remain at or below the level performed on such patients in 2006, or the level established by calculating an annual average based upon calendar years 2004 through 2006, inclusive.

Referral Section:

The referral section has been modified to allow practices to take up to 25% of the procedures they do on referral for the sole purpose of doing that lab or imaging service. This clarifies that any referrals accepted by a practice where the physician sees the patient as their own will not be considered under that 25%. The following is the specific language that replaces section 2.1.c of the rule:

“Any facility owned or operated by one or more health professionals licensed, authorized, or organized pursuant to Chapter 30 of the West Virginia Code which offers laboratory or imaging services to patients that are sent by other licensed health care professionals for the sole purpose of obtaining the laboratory or imaging services, regardless of the cost associated with the proposal. A facility shall not be deemed a diagnostic center under subsection 2.1.c. if the proportion of laboratory procedures performed on such patients does not exceed 25% of the total laboratory procedures performed by the facility, and the proportion of imaging procedures performed on such patients does not exceed 25% of the total imaging procedures performed by the facility.”

The Health Care Authority must now establish the standards by which the rule will be implemented. The WVSMA will be involved in this process and will keep our members informed as the standards are developed over the next few months. Additionally, our legal team is drafting a more in depth review on this rule and the WVSMA will share that with our members within the next few weeks.

Enabling E-Prescribing: SB 69/SB 1001

The Governor's e-prescribing bill went through some bumps in the road over the last few days of the regular session. SB 69 was passed on the last night but a technical error caused the House and Senate to both act upon different versions of the bill so the bill never made it to the Governor's desk. The Legislature then took up and passed a new version of the bill (SB 1001) in their extended session and passed it on March 18. This legislation clarifies that a prescription can be oral, written or "electronic" and allows intermediaries between the prescribing physician and the pharmacist. It paves the way for physicians to employ the use of more e-prescribing technology in West Virginia. Early in the last week of the regular session the House Health Committee amended the bill to add in a definition of the "practice of pharmacy." The seemingly benign amendment was promoted as needed because there is no definition currently in statute.

The WVSMA attorney and lobbyist quickly pointed out that the definition in fact lies in the pharmacy rule not the statute and that the proposed definition was significantly broader. The amendment would have essentially "exploded" the pharmacist's scope of practice by allowing them to perform numerous duties that they currently are not authorized to perform. After a few days of working this issue, the House amended this definition out of the bill before it passed over to the Senate. This last minute modification was likely the cause of the technical error.

Preservation of the Mental Health Parity Act: HB 2578

The legislature passed HB 2578 extending indefinitely the Mental Health Parity Act. Four years ago, the Legislature passed this Act which requires insurers to provide insurance coverage for mental illnesses on par with physical illnesses. The bill placed financial protections in law by allowing insurers to ask to be exempted from the law if their cost of providing the coverage exceeded 2%. The law was passed with a "sunset" provision that essentially required it to cease on March 31, 2007 unless the Legislature specifically took action to extend the law. Also included was a requirement for the Insurance Commissioner to annually report to the Legislature the financial impact this law on insurers. This bill removes the "sunset" requirement from the current law, placing the law onto the books indefinitely. It also removes the reporting requirement to the Insurance Commissioner.

Strengthen Tobacco Control Efforts

Second Hand Smoke

SB 219: Prohibiting smoking in motor vehicle when persons under fourteen are present.

One bill which made a lot of waves this session but did not make the final cut is SB 219. This bill would have prohibited smoking in cars when children under 14 are present. The bill came out of the Senate Health Committee with stiff fines and allowed this as a "first offense," meaning that law enforcement could pull someone over if they observed someone smoking and they thought a passenger looked under 14 years of age. The Senate Judiciary Committee amended the bill to make it a "second offense" meaning that law enforcement would have to observe the driver committing another offense (like speeding) before pulling them over. The fines were dropped down from \$50-\$250 to \$10-\$20. The fines and the secondary offense are similar to the law currently on the books requiring seatbelt use. The bill died in the House Judiciary Committee where it was never placed on the committee agenda.

Cigarette and Smokeless Tobacco Excise Taxes

Though a few bills were introduced this session aiming to increase the cigarette and smokeless tobacco taxes no action was taken by the legislature on any of the bills.

Tobacco Prevention Funding

The 2007 fiscal year state budget includes funding for tobacco prevention at the current level, \$5.85 million.

Other Tobacco Related Legislation

SB 185: Creating Tobacco Settlement Finance Authority & Securitizing Tobacco Funds

The legislature passed SB 185 allowing the State to sell bonds to securitize the future years of tobacco settlement payments under the master tobacco settlement agreement. Similar legislation had been proposed a few times by the Wise administration, however, they failed to gain enough support from legislators or the anti-tobacco advocates because they did not secure future funding for tobacco prevention or specify a minimum amount of money the sale would be required to gross. This bill creates the Tobacco Settlement Finance Authority, allows for the issuance of bonds by the authority, and the payment of the net proceeds of such bonds to the state for specified purposes. It requires the state to bring in at least \$800 million from the sale of the bonds. All of the proceeds will be used to pay down the debt in the State Teachers Retirement System. Paying down the debt early is expected to save the State approximately \$700 million over the long run.

HB 2332: Clarifying that magistrate courts have concurrent jurisdiction with circuit courts with laws prohibiting the use of tobacco by minors.

HB 2332 clarifies that magistrate courts have concurrent juvenile jurisdiction with circuit courts with regard to enforcement of laws prohibiting the possession or use of tobacco or tobacco products by minors. The bill also gives concurrent juvenile jurisdiction to municipal courts. This was passed to address a glitch in the law that did not provide these courts jurisdiction over such youth cases.

Expansion of Newborn Screening Tests: HB 2583

HB 2583 increases the number of required metabolic tests from the current 8 to 29. The Bureau for Public Health would continue to operate this program and pay for the tests for all WV newborns however they are authorized to initiate billing insurers for the cost of the tests.

Hospitals and birthing centers are currently required to ensure that each newborn be tested for phenylketonuria, galactosemia, hypothyroidism, sickle cell anemia and certain other diseases specified by the Bureau for Public Health. By July 1, 2007, the Bureau for Public Health will also require testing for the following: congenital adrenal hyperplasia, cystic fibrosis and biotinidase deficiency. By July 1, 2008 the Bureau for Public Health will also require testing for: isovaleric acidemia, glutaric acidemia type I, 3-Hydroxy-3-methylglutaric aciduria, multiple carboxylase deficiency, methylmalonic acidemia-mutase deficiency form, 3-methylcrotonyl-CoA carboxylase deficiency, methylmalonic acidemia, Cbl A and Cbl B forms, propionic acidemia, beta-ketothiolase deficiency, medium-chain acyl-CoA dehydrogenase deficiency, very long-chain acyl-CoA dehydrogenase deficiency, long-chain hydroxyacyl-CoA dehydrogenase deficiency, trifunctional protein deficiency, carnitine uptake defect, maple syrup urine disease, homocystinuria, citrullinemia type I, argininosuccinate acidemia, tyrosinemia type I, hemoglobin S/Beta-thalassemia, sickle C disease and hearing deficiency.

Strengthen the Healthy Lifestyles Act: SB 745/HB 2842

Legislation aimed at modifying the current statute relating to sale of soft drinks in schools (SB 745 and HB 2842) failed to pass this session. Both the House and Senate Education Committees passed out legislation clarifying ambiguities in the law relating to when and if soft drinks and healthy beverages may be sold or served in elementary, middle and high schools. The only difference between the two bills was the Senate bill would have redefined the term “healthy beverage,” specifying that a healthy beverage is “water, 100% fruit or vegetable juice and low-fat milk.” Current law defines fruit or vegetable juices with only 20% real juice as healthy. The House passed their version of the bill over to the Senate. However, the Senate did not pass either bill.

Strengthen the All-Terrain Vehicle Safety Law: 509

Legislation aimed at strengthening the ATV safety laws (SB 509) failed to make it out of the Senate. The bill would have prohibited the operation of ATVs on any paved road, prohibits passengers unless the vehicle is made for allowing passengers and require all persons under age 18 to wear size appropriate helmets. Persons are allowed to operate their ATV on the shoulder of a paved road for a distance of no longer than 2 miles and must keep at or below 25 miles per hour and have headlights and taillights if operated at night. The bill also authorized the DOH, DMV, State Police and the Governor’s Highway Safety Program to create an all-terrain vehicle incident form. Law enforcement officers would have been required to complete the form when an all-terrain vehicle is involved in any incident.

Another piece of legislation (SB 508) that would have required registration of all ATV’s in WV also died in the Senate Roads and Transportation Committee. There were many issues raised regarding the taxes that were to be assessed on the sale of ATVs and the registration fees.

Protect the Motorcycle Helmet Law: HB 2834

Legislation that would have removed the current helmet law for all motorcycle drivers and passengers (HB 2834) died in the House Judiciary Committee. The House Roads and Transportation committee passed this bill out on Feb 14. The bill removed the helmet requirement for any motorcycle driver or passenger over the age of 21. It clarified that drivers must have a valid motorcycle operator license for at least two years before being eligible to drive without a helmet. The WVSMA maintains a strong voice at the Legislature opposing any repeal of the mandatory motorcycle helmet law.

Asbestos/Silicosis Reform Act: SB 374/HB 2762

Efforts to get the 2007 Legislature to consider an asbestos/silica bill (SB 374 or HB 2762) were unsuccessful this session. The WVSMA joined the West Virginians for Fairness Coalition in support of legislation that would have established (1) minimum medical criteria and procedures for asbestos and silica claims; and (2) require a physician with a physician-patient relationship with the exposed worker to diagnose and establish the presence of these criteria in the exposed worker.

Mandatory Eye Screen for Driver’s License Renewal

The WVSMA joined with the WV Academy of Ophthalmology in supporting legislation requiring a mandatory eye screen at the time a driver renews his/her license. The bill would have each person renewing their driver license to take an acuity test. This legislation failed to pass.

Child’s Right to Nurse Act: SB 148

SB 148 specifies that breastfeeding in public is not indecent. This is the legislation pushed by breastfeeding advocates to help dispel the stigma related to public breastfeeding in an effort to encourage more mothers to breastfeed their babies and do it longer. The bill

passed the full Legislature relatively early in the session, Feb 26, however due to a technical error the Governor was forced to veto the bill. The Legislature addressed the error and passed the bill a second time in the extended session.

Other Bills of Interest that Passed

HB 2422: Providing cost-saving measures in connection with providing medical care in regional jails.

HB 2422 mandates that critical access hospitals and other medical providers may not be paid more than 75% of billed charges for medical services provided to regional jail inmates

HB 2800: Relating to the practice of medical imaging and radiation therapy.

HB 2800 makes significant modifications to the operations of the West Virginia Radiologic Technology Board of Examiners. The bill changes the makeup of the board and renames the board the West Virginia Medical Imaging and Radiation Therapy Technology Board of Examiners. It codifies the scope of practice for Radiologic Technologist and Radiation Therapists. Additionally, it licenses Nuclear Medicine Technologists and Magnetic Resonance Imaging Technologists under this Board. Previously these professions were not required to be licensed in WV. The bill sets out the various educational requirements for their licenses and creates an apprentice license for persons already working in these fields thereby allowing them up to five years to complete their requirements for licensure.

Of particular interest to the physician community is the bill directs the Board of Medicine to propose rules to establish the scope of practice of a Radiologist Assistant. This is a radiologic technologist who has received further education to act as essentially a physician assistant to a radiologist. The Board is to develop the education and training requirements for Radiologist Assistants and will also license them. The WVSMA worked with the Radiologic Technology Board to develop this legislation and to ensure scope of practice boundaries were not crossed.

HB 2940: Increasing the age of dependents for health insurance coverage.

HB 2940 requires insurers to allow parents to keep their dependent children on their health insurance policy until age 25. This bill applies to private insurance carriers as well as PEIA.

HB 2944: Enhancing the end-of-life care given to residents of nursing homes.

HB 2944 requires that nursing home residents who are terminally ill be given information by the facility about the option of receiving hospice palliative care. It also requires the facility to document that they have given this information to the patient or their medical power of attorney. The bill originally was introduced with language requiring all medical directors of nursing homes to take 2 hours of CME in end of life care every licensure cycle. An amendment was drafted to expand that to all attending physicians. The WVSMA made it very clear that we would oppose the bill if it expanded the CME requirements for any physicians. That entire section was taken out of the bill.

HB 2986: Providing advance notice to the public regarding the pending closure of certain public or private health care facilities or hospitals.

HB 2986 requires any hospital, extended care facility operated in connection with a hospital, ambulatory health care facility, or ambulatory surgical facility (freestanding or operated in connection with a hospital) which is licensed in WV to provide at least three weeks notice of intent to the public prior to the actual termination of operations.

HB 2992: Decreasing the healthcare provider tax imposed on gross receipts of providers of nursing facility services.

HB 2992 decreases the provider tax on nursing homes from 5.95 percent of gross receipts to 5.5 percent. The legislation was necessary as a result of federal legislation which set the maximum of such taxes at 5.5 percent. The bill will go into effect on November 1, 2007.

HB 3057: Relating to programs for All-inclusive Care of the Elderly, known as "PACE."

HB 3057 codifies an innovative new healthcare program for seniors. The Program for All-Inclusive Care for the Elderly (PACE) is a model program designed to serve individuals aged 55 years or older who are certified by Medicaid to need nursing home care, are able to live safely in the community at the time of enrollment, and live in a PACE service area.

HB 3072: Relating to defining "charitable exemptions" for purposes of the municipal business and occupation tax.

HB 3072 allows municipalities to establish Business and Occupation (B&O) taxes on non-profit organizations at a 1% rate. It only applies to those non-profits with income generated by the various activities under the provisions of section 511 of the Internal Revenue Code of 1986.

HB 3093: Providing a form for a combined medical power of attorney and living will.

HB 3093 combines the two separate forms, the medical power of attorney and living will, into one document so that a person need only complete one form.

HB 3184: Relating to confidentiality, disclosure and authorization for disclosure of mental health information.

HB 3184 was passed to bring West Virginia law in conformity with recently passed federal regulations regarding medical records, which safeguard the privacy of the records while recognizing that there are instances where the public interest outweighs the need for privacy. The bill would allow family and clergy to know if a patient is in a mental facility, will allow disclosure for law-enforcement, abuse, national security and certain research purposes and will facilitate payments to hospitals by Medicare, Medicaid and other third party payors.

SB 18: Requiring third party reimbursement for kidney disease screening.

SB 18 clarifies that private insurers, PEIA and Medicaid are required to pay for annual kidney disease screenings. It specifies that the testing may use any combination of blood pressure testing, urine albumin or urine protein testing and serum creatinine testing as recommended by the National Kidney Foundation and is to be determined medically necessary by a physician.

When this bill was on the floor of the House Delegates Ray Canterbury (R, Greenbrier), Jonathan Miller, (R, Berkeley) and Ron Walters (R, Kanawha) attempted to amend the bill by requiring that if kidney disease is diagnosed as a result of the screening, the insurance plan shall include coverage for treatment of the kidney disease in foreign health care facilities. The amendment went further to provide incentives, rebates and travel expenses for covered persons who elect to obtain treatment of kidney disease in foreign health care facilities at a lesser cost than available in a health care facility in this country. This amendment failed on a ruling by the Speaker that it was not germane to the bill. Last year Delegate Canterbury received national news attention when he introduced broader legislation that would have provided incentives to persons who seek cheaper medical treatment outside the United States.

SB 121: Tolling state licensure or registration requirements for active duty military personnel.

SB 121 tolls any licensure or registration requirement, including, but not limited to, the payment of any license or registration fees of a licensing board or commission of the state during the period of absence for active duty for any member of the National Guard or other reserve component of the armed services until sixty days after the return of the member from active duty. Additionally, the service member is granted a period of time equal to the period of active duty to fulfill any continuing education requirements needed for licensure or registration. This bill applies to all West Virginia licensing boards including the Board of Medicine and the Board of Osteopathic Medicine.

SB 411: Correctional Center Nursery Act.

SB 411 allows imprisoned pregnant women to keep their infants with them in a special housing unit.

SB 416: Creating misdemeanor offenses for attempting to defeat drug or alcohol screening test.

SB 416 creates a misdemeanor offense of attempting to defeat an alcohol or drug treatment test with fines ranging from \$1,000 to \$10,000 and jail time.

SB 447: Regulating opioid treatment centers.

SB 447 places an indefinite moratorium on the licensure of new Methodone clinics which have not received a certificate of need (CON) by the effective date of the bill. It requires the Health Care Authority to establish specific CON standards for such clinics and requires the Secretary of DHHR to propose emergency rules to regulate opioid programs in the state. The rules are to include in addition to other items the following:

An assessment shall be done on all patients prior to admission for opioid treatment including an initial drug test. The rule is to set out a specific process for responding to positive drug tests. Persons must show evidence of addiction to opioids or methadone with the exception of the following select groups with high risk of relapse: pregnant women with a history of opioid abuse, prisoners or parolees recently released from correctional facilities, former clinic patients who have successfully completed treatment but who believe themselves to be at risk of imminent relapse and HIV patients with a history of intravenous drug use. Specific timelines are set for treatment programs to be developed for these patients and their treatment plan is to reflect that detoxification is an option for treatment and supported by the program. Each program is required to report statistics to the DHHR at least semi-annually regarding number of patients their demographics and the length of their treatment. The rules are to also require random drug testing of patients and sets out a schedule for interventions regarding the first through fourth positive drug test in a six month period of time.

SB 758: Supplementing and amending appropriations from federal funds to Division of Human Services.

Appropriation for DHHR for federal transformation grants in the amount of \$14 million for Medicaid redesign. The bill raises the appropriation level to allow the recently received federal grant dollars to be spent by the Division of Medical Services.

SB 749: Relating to corporation net income tax.

SB 749 reduces the business franchise tax by 2% over five years starting in 2009.

Other Bills of Interest that Died

HB 2866: Requiring public notice of state plan amendments prior to submission and increasing the membership of the Medicaid Advisory Board.

HB 2866 would have required the secretary of DHHR to provide public notice of any proposed amendment to the state plan for Medicaid, proposed changes to the reimbursement schedule for Medicaid or any demonstration projects permitted by federal law and specified those projects may not be filed for federal approval until thirty days following the close of the public comment period. The bill required public hearings to be held and also added the Chairs of the House and Senate Health committees to the Medicaid advisory council.

HB 2835: Requiring vaccinations of all girls entering the sixth grade against the HPV.

HB 2835 would have required vaccinations of all girls entering the sixth grade against the human papillomavirus (HPV). The bill would have required proof of vaccination by a doctor and provided medical exemptions.

HB 2933: Exempting for nursing licensing provisions the care of the sick when done in connection with the practice of religious tenets.

HB 2933, pushed by the Christian Scientists, would have exempted persons from nurse licensure requirements when providing nursing services and care of the sick when done in connection with the practice of religious tenets of any church or religious organization and by or for its members. The bill was amended in the House Health Committee to specify that the care is delivered at the request of the recipient and is delivered in the requestor's home or in a religious non-medical health care institution. The bill passed the full House and the Senate Health Committee and died in the Senate Judiciary Committee.

HB 3164: Pharmaceutical Availability and Affordability Act.

HB 3164, known as the Pharmaceutical Availability and Affordability Act of 2007, garnered a lot of attention during the last few weeks of the 2007 Legislative Session, but failed to gain enough support to pass out of the Senate Health and Human Resources Committee after passing the House. This bill was introduced by the Governor in response to the Pharmaceutical Cost Management Council's withdrawal of their pharmaceutical marketing reporting rule. That rule was hotly contested by the pharmaceutical industry as being outside the scope of the original Pharmaceutical Availability and Affordability Act. The WVSMA had protested early drafts of the rule which would have required reporting of all physicians who receive "gifts, grants or payments of any kind" from pharmaceutical manufacturers also on the basis that it was outside the scope of the law. The Governor's bill aimed to change the law to enable the Council to move forward with such a more comprehensive reporting form.

The bill required the pharmaceutical industry to report: the costs for all employees and contractors in West Virginia; all advertising, promotion, or marketing in West Virginia; and all marketing or educational related expenditures made to all licensed health care providers in West Virginia. This area was the most concerning to the WVSMA. It would have required the industry to report to the Pharmaceutical Advocate the names of every physician or other provider who is the recipient of the following: educational or informational programs, materials and seminars; remuneration for promoting or participating in educational or informational sessions; food entertainment, gifts and anything provided to them for less than market value; all expenses associated with trips and travel; all product samples, except for those samples that will be distributed free of charge to patients. While the data that would be made available to the public was to be aggregate, there were concerns over potential loopholes in the law allowing the release of the physician's names.

Additionally, this bill was largely disliked by the pharmaceutical industry and other business interests throughout the state for many reasons, but one in particular was because the bill would have created a mechanism for the state to impose price controls on prescription drugs. Though this bill failed to pass, it is anticipated that the Pharmaceutical Cost Management Council will likely propose in the near future another marketing and advertising disclosure rule.

SB 354: Providing penalties for failure to report to Alzheimer's Disease Registry.

SB 354, which was proposed by the DHHR, would have clarified that persons failing to report required information to the Alzheimer's Registry would be subject to the same penalties that are in place for failure to report to other registries like the cancer registry. The Alzheimer's Registry, which was created last year, requires all reporting sources, including hospitals, physicians, facilities, clinics or

other similar units diagnosing or providing treatment or care for Alzheimer’s disease and related disorders, to report each case to the Registry. The penalty for failure to report would have been between \$50 and \$500.

SB 395: Relating to the Management of Pain Act.

SB 395, which was proposed by the WVU Center for Health Ethics and Law, would have modified the Management of Intractable Pain Act by removing the term “intractable pain” from the code and replacing it with “pain.” The bill was held up as it passed the Senate and ran out of time when it hit the House. The purpose was to eliminate the ambiguity between the definition currently in code and the definition currently in the Model Policy for the Use of Controlled Substances for the Treatment of Pain established by the WV Board of Medicine. The ambiguity was identified by the nationally respected Pain and Policies Studies Group of the University of Wisconsin School of Medicine when they published their state by state report card in September 2006.

“Intractable pain” currently is defined as “a state of pain having a cause that cannot be removed... and exists if an effective relief or cure of the cause of the pain... is not possible; or has not been found after reasonable efforts. Intractable pain may be temporary or chronic.” The new proposed definition for “Pain” would have been “an unpleasant sensory and emotional experience associated with actual or potential tissue damage or described in terms of such damage.”

SB 544: Parental notification of abortion.

SB 544, promoted by WV Right to Life, modified the current law regarding parental notification of minors seeking abortion services. The bill established record keeping and reporting requirements for physicians providing this service and imposed civil and criminal penalties against physicians for noncompliance. It additionally placed stringent proof of age and paternity requirements on women seeking abortion and required physicians to maintain records of sworn affidavits for seven years. Additionally, the bill removed the current judicial bypass to this notification law. The only allowance for a waiver of the notification mandate was if the female alleged sexual assault. Physicians would have been required to keep a sample of the fetal tissue until the state police collected it for the purpose of performing a DNA test. This bill passed out of the Senate Health and Judiciary Committees and was amended to lessen the penalties against physicians and reinsert the judicial bypass. The bill passed the full Senate, but, it was not taken up once it reached the House Judiciary Committee.

SB 621: Standardizing preferred drug lists and formularies.

SB 621, supported by the WV Pharmacists Association, would have required the Insurance Commissioner to propose rules requiring a standardized format for all preferred drug lists or drug formularies used in West Virginia. The rules would have applied to all entities regulated by the Insurance Commissioner including Medicaid, PEIA, and all pharmacy benefit managers.

“Keeping Up-to-Date Throughout the Year”

The WVSMA reports on legislative activities year round. When not in session, the Legislature meets monthly for their interim meetings to study key policy issues. The WVSMA keeps our members up-to-date through our e-mail “Legislative Update” and “WESGRAM Online” newsletters. If you do not receive these important online newsletters please e-mail Amy Tolliver, WVSMA Government Relations Specialist, at Amy@wvsma.com and ask to be added to the list. Member physicians, their spouses and their office staff are encouraged to sign up.

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