January 18, 2016

Welcome to the 1st issue of award-winning Health Care Highlights for 2016. This year marks the 28th year of our unique health care publication. Our newsletter reaches more than 5,000 health professionals and health policymakers.

Health Care Highlights is published weekly during the regular legislative session and monthly during the periods in between legislative sessions by the firm Government Relations Specialists, LLC. As in past years, we follow issues relating to patient advocacy; hospice services and end-of-life decisions; organ and tissue donation and education; diabetes programs; primary and specialty medical practices; behavioral health initiatives; child health care services; hospital topics; health care delivery systems; pharmaceutical availability; insurance coverage; health care management; preventive health and wellness programs; children topics, and public safety. These are the issues represented by the firm Government Relations Specialists, LLC, publisher of Health Care Highlights.

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2016 Key Legislative Dates

Feb. 1: DHHR Budget Hearing - Senate Finance Committee - 3:00 PM
Feb. 1: Submission of Legislative Rule-Making Review bills due. (WV Code §29A-3-12)
Feb. 3: DHHR Budget Hearing - House Finance Committee – 2:00 PM
Feb. 22: Last day to introduce bills in the Senate. (Senate Rule 14)
   Does not apply to originating or supplementary appropriation bills.
   Does not apply to Senate or House resolutions or concurrent resolutions.
Feb. 23: Last day to introduce bills in the House. (House Rule 91a)
   Does not apply to originating or supplementary appropriation bills.
   Does not apply to Senate or House resolutions or concurrent resolutions.
Feb. 28: Bills due out of committees in house of origin to ensure three full days for readings.
March 2: Last day to consider bills on third reading (passage stage) in house of origin for "cross-over." (Joint Rule 5b)
   Does not include budget or supplementary appropriation bills.
March 12: Adjournment at midnight. (WV Const. Art. VI, §22)
March 13: Extended session expected to work only on the Budget Bill and other appropriation bills.
Gov. Focuses Health Remarks on Substance Abuse, Tobacco Tax

Gov. Earl Ray Tomblin focused the majority of health-related remarks during his Jan. 13 State of the Address on waging the ongoing battle against substance abuse in West Virginia. His remarks also revealed plans to increase the state’s tobacco tax to offset proposed benefit cuts for state employees and retirees. Several other proposed pieces of legislation were unveiled on the governor’s web site.

Speaking to a joint session of the Legislature from the House Chamber, Tomblin’s address was his sixth and final State of the State speech. (Senate President Bill Cole and House Speaker Tim Armstead officially gavelled in the 2016 regular legislative session earlier that day.) To read the full text of the State of the State address, go to Governor Delivers State of the State Address.

“Substance abuse has become one of the greatest struggles our state has ever faced, and it is destroying the lives of far too many of our family members, friends and neighbors,” the Governor said. “We must continue to make the fight against substance abuse a top priority.”

The Governor highlighted a brochure that details 150 service providers statewide, which is available online and at local courthouses, hospitals, schools, churches, DHHR offices and libraries in all 55 counties. He also praised the September launch of 844-HELP-4-W-V, the state’s first 24-hour substance abuse help line, which allows callers to speak with certified professionals and receive referral support in local communities. He said the call line has connected more than 700 West Virginians with treatment and recovery services to date.

Gov. Tomblin called on the Legislature to make sure treatment facilities provide comprehensive care in West Virginia. Toward that end, he announced new licensing requirements for Suboxone and Methadone clinics, requiring medication-assisted treatment facilities to provide comprehensive therapies in coordination with medication to help to treat the root causes behind addictions. “This legislation requires counseling and behavioral therapies be used in conjunction with these medications to make sure those seeking treatment have the support they need to begin the recovery process,” he said.

In addition, Gov. Tomblin introduced legislation to expand the Opioid Antagonist Act of 2015, making opioid antagonists, such as Narcan, available to any West Virginian without a prescription. This new legislation requires pharmacists to train those who receive this drug on how to administer opioid antagonists and helps the state track those receiving Narcan to help better focus state resources in areas hardest hit by opioid overdoses. In 2015, first responders administered more than 3,000 doses of Narcan.

The Governor also plans to introduce legislation to increase the state’s tobacco tax by 45 cents a pack to a total of $1. He said the measure “strikes a balance that protects retailers in our border counties and discourages our young people from smoking, while generating nearly $71.5 million annually in new revenue.” He added, “Combined with savings from a new prescription drug contract, $43 million of this new revenue will fund PEIA, meaning public employees will not see the dramatic benefit reductions initially proposed for the coming year.”

Among the planned legislation highlighted on the Governor’s web site are:

- **Controlled Substances Monitoring Program (CSMP) Update Bill** – which would require practitioners to register for the CSMP to obtain or renew a license, and would create an administrative fine of $1,000 for failure to register for the CSMP, as well as an administrative fine of $500 for failure to access the CSMP as required.

- **Certificate of Need Exemption for Out-Patient Behavioral Health Community-Based Services** – which would exempt community-based behavioral health care facilities, programs or services from the CON process.

- **Air Ambulance Bill** – to prohibit air transportation or related emergency or treatment services providers operating in WV from collecting more for service from PEIA beneficiaries than the currently allowable Medicare reimbursement rate.

- **Repeal Behavioral Health Severance & Privilege Tax** – which would eliminate the behavioral health severance and privilege tax and limit the sales tax exemption on durable medical goods to those purchased for home use only. The change is believed to be revenue neutral and will help ensure continued federal matching funds for Medicaid and Medicare.


**Analysis of Health Care Spending in Proposed State Budget**

Gov. Earl Ray Tomblin submitted his Annual Budget to the Legislature during his State of the State Address last Wednesday. The budget request is for State Fiscal Year (SFY) 2017 covering the period of July 1, 2016 to June 30, 2017. The budget proposal recommends $4.69 billion in state-funded spending with continued realignments in the Medicaid program and others, a reduction in overall spending, increasing some taxes, and maximizing "paying off sins of the past."

There is a projected $466 million budget shortfall for next fiscal year and a $354 million shortfall for the rest of this fiscal year. That means the state is currently facing $820 million in budget deficits, but the Tomblin Budget Bill was presented to the Legislature as a Balanced Budget for next fiscal year, with a plan to close the gap in the current operating budget.

The current 4 percent spending cuts will remain through the rest of this fiscal year and the next. This follows an earlier mid-fiscal year hiring freeze. There are no proposed employee layoffs or furloughs. Budget reductions for next year are significant for some spending units, but the impact on health care is not near as bad as some programs. The budget does tap surplus accounts and transfers dollars from current accrued or excess funded accounts and impacts some 'sacred cow funds.' Also, the Rainy Day Fund will have a substantial withdrawal of about $52 million to help this year's budget deficit.

There are tax increases in the proposed budget on tobacco to yield $71 million in annual revenue. The tobacco taxes (45 cents per pack plus other increases) would go into effect in April to raise about $19 million in extra funds for this year's budget. Also, $43 million of these taxes would be used in next year's budget to offset a severe benefit shortfall in PEIA.

In reviewing the new SFY 2017 Budget Bill, it shows more than 20 percent of all state expenditures are allocated for Health and Human Resources.

**HB 4017** and **SB 269** have already been introduced as the Governor’s budget bills and are now under consideration by the House and Senate Finance Committees. The DHHR will appear for a budget hearing hosted by the Senate Finance Committee on Monday Feb. 1 at 3 PM. The House Finance Committee will hold a similar hearing for a DHHR budget presentation at 2 PM on Wednesday, Feb 3. Final disposition of the budget bill won't happen until a joint budget conference committee takes action during the extended legislative session which follows the end of the regular session.

**A detailed analysis of some health spending in the SFY 2017 Budget Bill follows:**

**Teaching Hospitals**
The budget continues current year funding of $6,356,000 for Tertiary Safety-Net Services at the major teaching hospitals, including Charleston Area Medical Center, Cabell Huntington Hospital, St. Mary’s Medical Center, and West Virginia University Hospitals. This is the same amount as the current and past budgets. These hospitals provide services to about 40% of all Medicaid patients in the state. The funds are of important assistance to the Medicaid program and are matched by the federal government. The primary purpose of this needed teaching hospital funding is to assist critically ill children in neonatal intensive care, pediatric intensive care, trauma, and burn services.

**Rural Hospitals & EMS**
The Rural Hospitals under 150 beds line-item in the budget includes $2,596,000, which is the same as the current SFY budget allocation. The budget maintains $1,348,136 for State EMS Technical Assistance; maintains $959,098 for Statewide EMS Support; and maintains $1,987,034 for the State Trauma and Emergency Care System.

**PEIA/Medicaid Swap, CHIP & GO-HELP**
The budget continues the current year allocation for the PEIA/Medicaid swap at $6.8 million. The CHIP allocation was moved to Medicaid for administration and is $3,333,752. The amount for the GO-HELP office was eliminated.

**Substance Abuse**
The budget does maintain current level funding of $5 million for "Substance Abuse Continuum of Care." The budget also maintains $11,592,430 to the Division of Health for substance abuse and treatment.

**Medicaid MR/DD & Senior In-Home Waiver Programs**
There is an appropriation of $88,753,483 in the MR/DD Waiver Program which is the same as current year funding. The new budget maintains $13,593,620 for the Title XIX waiver program for seniors.
A detailed analysis of some health spending in the SFY 2017 Budget Bill follows:

Health Programs – Including End-of-Life Center, Children’s Diabetes
The WV Center for End-of Life Care funding was maintained at $420,198 for operations and to provide for the new secure voluntary electronic registry for advance directives and for enhanced education and communication programs for physicians, health care providers and patients. The Diabetes Education and Prevention Program remained unchanged $97,125, with these funds intended for innovative children’s diabetes initiatives because no federal funds are available.

Health Programs
Budget funding is maintained at current SFY spending levels as follows: $146,282 for the Healthy Lifestyles Program; $427,500 for the CARDIAC Project; $100,000 for Adolescent Immunization Education; $100,000 for the Healing Place of Huntington; $100,000 for the West Virginia Cancer Coalition; $50,000 for the West Virginia AIDS Coalition; $50,000 for the Hospital Hospitality House of Huntington; $333,311 for Vaccines for Children; $158,366 for the Osteoporosis/Arthritis Program; $46,895 for the Maternal Mortality Review Program; $197,761 for the Cancer Registry; $5,476,995 for the Chief Medical Examiner’s Office; $400,000 for the Breast and Cervical Cancer Diagnostic Treatment Fund; $800,000 for the Traumatic Brain Injury Waiver; $73,065 for the Informal Dispute Resolution (IDR) of Nursing Home Administrative Appeals; and $125,000 for Sexual Assault Intervention and Prevention.

The new budget lowers funding for the following: $757,804 to $747,492 for the Poison Control Center; $3,000,000 to $2,750,000 for Health Right Free Clinics; and $4,870,309 to $2,435,155 for the Tobacco Education Program.

Medical Schools
General spending allocations for higher education is decreased under the new budget, but the three medical schools had a much higher percentage reduction in some funded accounts.

- School of Osteopathic Medicine is decreased from $7,458,334 to $6,727,945.
- Marshall University Medical School is reduced from $12,541,389 to $12,039,733, and lowered within the appropriation $417,351 to $240,395 for the Forensic Lab and lowered the $275,061 to $158,436 for the Center for Rural Health. There is no specified funding for Graduate Medical Education which may be transferred to Medicaid for matching federal funds.
- West Virginia University School of Health Sciences for the WVU Medical School is reduced from $16,711,414 to $15,316,901, with no written specified funding within this appropriation - as in previous budgets for: School of Public Health; Graduate Medical Education; multiple sclerosis programming/research; the Blanchette Rockefeller (Alzheimer's) project; or the WVU National Center for Excellence in Women's Health.
- The WVU Medical School - Charleston Division will receive a reduction from $2,374,260 to $2,279,290; and the Eastern Panhandle Division is reduced from $2,303,985 for this fiscal year to $2,211,826 for next fiscal year.
- There is a decrease from $525,687 to $504,659 for the Medical Schools Rural Health Outreach Programs, including rural health activities and programs, rural residency development and education, and rural outreach activities. These funds will be dispersed among the three medical schools as follows: WVU $168,691; MU $167,616; SOM $168,352. There is also a separate appropriation of $401,906, down from $418,652, for the SOM Rural Health Initiative - Medical Schools Support.

Doc for a Day Program
The new line items are continued for next SFY within the Senate and House budgets of $5,000 each, to be used for the Doc for the Day Program as sponsored by the West Virginia Academy of Family Physicians. These legislative budgeted amounts are to be used for family medicine physician teaching faculty and medical resident education and training from these two medical schools for participation and support of the Doc for a Day Program. The program will celebrate its 27th year of service during the 2016 regular legislative session, having already provided free medical care to almost 50,000 patients since 1989.
Special Report on 2015-2016 Legislative Interim Committees

Each year, the Legislature holds interim committee meetings between the annual regular legislative sessions. These interim meetings are of joint committees, subcommittees, select committees and commissions, and are composed of members of both the House of Delegates and the Senate. The following is a synopsis of the January 2016 interim meetings, which were the last of these sessions prior to the start of the 2016 regular legislative session on Jan. 13.

Appreciation for information to prepare our report is hereby extended to the excellent staff of the Senate and House Health Committees, including Jeff Johnson, Cassie Long, Charlie Roskovensky, Sara Jones, and Martha White.

Final Legislative Interim Report of LOCHHRA

The Legislative Oversight Commission on Health and Human Resources Accountability was appointed following the 2015 regular session, led by co-chairs Sen. Ryan Ferns and Delegate Joe Ellington. During the 2015-2016 interim period, LOCHHRA met and received information on various topics of study and other important health care and human services issues from state agencies, political subdivisions, advocacy groups and other pertinent sources.

The Commission studied six topics during the 2015-2016 interim period. These topics were:

- **HCR 143 – The public-private partnership model for the operation and maintenance of all or some of the state's hospital and nursing facilities**

  The commission felt that the issue of privatization of state run hospitals and nursing facilities was a complex issue and required intensive and specialized study. Arnett, Carbiss and Toothman provided a scope of work and cost estimate. The cost ranged from $35,000 to $40,000 per facility for a total cost of approximately $183,000. Due to the cost, it was decided not to pursue an outside study.

  A series of internal meetings with staff from the House and Senate Health and Human Resources Committees, the House and Senate Finance Committees and the Department of Health and Human Resources is ongoing. A number of issues have been discussed ranging from a total sale, a sale of just the beds, a sale of the physical plant and the real estate, and a number of combinations of all of these.

  The commission **RECOMMENDS** that no action be taken on **HCR 143** at this time. The Commission encourages the continued involvement of all parties, and a future presentation of the actions of this group. Potentially, the commission would like a draft plan – including any necessary legislation – to begin the process of privatization of all state hospitals and nursing facilities.

- **HCR 138 – The managed care system within the Bureau for Medical Services**

  During September interims, the commission heard from Jeremiah Samples, deputy secretary of DHHR, regarding managed care. Samples discussed the health of West Virginia’s citizens relative to risk factors, behavioral health, and other factors that fold into health outcomes. Additionally, he provided an overview of the department’s budget and specifically the budget of the Bureau for Medical Services (Medicaid). This included information regarding: West Virginia’s rank in terms of spending (12th) and health outcomes (44th); funding sources for Medicaid; and, Medicaid costs for the past three years.

  Various interest groups also provided the commission with information regarding specific topics relative to managed care; most notably pharmacy care. Additionally, the co-chairs were kept abreast of the ongoing litigation regarding the bidding process and the awarding of the managed care contracts to provide services to the Medicaid population. That lawsuit has now been settled.

  The commission **RECOMMENDS** that they continue to monitor managed care as called for in **HCR 138** as it relates to the Medicaid population. Specifically as contracts are required to be subject to state purchasing requirements, the commission will be particularly concerned with costs expenditures and cost savings.
HCR 135 - State hospitals in regards to the Hartley case

DHHR general counsel Karen Villanueva Matkovich provided correspondence to the commission with a procedural history of the Hartley case from its filing in 1981 to its current status. The case initially sought a Writ of Mandamus in the West Virginia Supreme Court to alleviate what then Justice Richard Neely referred to as “Dickensian squalor of unconscionable magnitudes” in state-run mental facilities. Following the mandamus action, the case continued in the Kanawha County Circuit Court and remains ongoing.

The litigation has resulted in a number of decisions impacting not only the physical condition of state-run hospitals but also resulted in 1983 in a 330-page report setting forth a “Behavioral Health System Plan.” Litigation has continued over the years resulting from such issues as a failed attempt in the early 1990s to construct a new state hospital, the appointment of a court monitor to oversee implementation of the courts orders, overcrowding of patients of the state-operated facilities and the salaries of employees at the state run hospitals.

The commission RECOMMENDS continued oversight of the actions of the department and the court in the Hartley decision as requested in HCR 135. No further legislative action is necessary at this time.

Study of school based Medicaid programs

The commission received a letter from DHHR to Senate President Bill Cole detailing West Virginia’s school-based health initiatives, accompanied by extensive attachments outlining Medicaid’s involvement in providing these services. The letter discussed a State Plan Amendment submitted in 2000 that provided for school-based health services throughout the state, and a potential $23,000,000 disallowance which could have potentially resulted in an overpayment by the federal government to West Virginia. Following an appeal, the West Virginia expenditures were upheld and no repayment was necessary.

Finally, the letter indicated the department continues to work with the Department of Education in providing effective school-based health services within the confines of the State Plan Amendment and the direction provided by the Centers for Medicare and Medicaid Services. The commission RECOMMENDS that no additional action be taken on this measure but that it continue to monitor the provisions of school-based health care offered by the Medicaid program.

Drug testing for welfare recipients and/or for teens obtaining a driver’s license

Rochelle Finzel, Group Director of National Conference of State Legislatures (NCSL) conducted a video conference with the commission. She discussed the federal authority which allows states to implement drug testing programs, and offered a perspective on current trends which states are employing as they consider drug testing of public assistance applicants. Finzel also provided insight on lessons learned by other states.

In response to questions from the commission, Nancy Exline, commissioner for Children and Families along with Kathy Paxton, substance abuse specialist from the Bureau for Behavioral Health and Health Facilities and Anne Williams, deputy commissioner from the Bureau for Public Health told legislators that:

The cost for a drug test is $56.50 per test. This particular drug test is a urine drug test that screens for various substances that the Bureau for Children and Families currently utilizes in child protective services cases.

DHHR does not have statistics on the percentage of our population which is drug addicted. We do know the national use of illicit drugs is 8.3%. DHHR records indicate the TANF caseload for 2015 is 7,936 households. That translates to 13,980 individuals – including 11,263 children and 2,697 adults. Given West Virginia’s population of 1,852,994 residents, that constitutes .00145% of the population. DHHR began tracking child protective services referrals involving illicit drug affected infants in August 2014. From August 1, 2014 to July 31, 2015 there were 161 illicit drug affected infant referrals.

At the October meeting, counsel provided the membership with two bills from the 2015 regular session of the Legislature pertaining to this subject: Senate Bill 348 – Creating a pilot program for drug screening of cash assistance applicants; and House Bill No. 2012 - Implementing drug screening for recipients of federal-state and state assistance. Counsel presented new draft legislation at the November meeting.
The commission RECOMMENDS the passage of legislation during the 2016 regular session of the Legislature that would require specified populations seeking public assistance who raise a reasonable suspicion with DHHR be tested for substance abuse. A positive test would result in a prohibition from receiving assistance. The time of the prohibition would be on a sliding scale depending upon whether it was the first, second or third offense.

- **Structure and authority of the Department of Health and Human Resources**
  The commission remains concerned that services which DHHR is required to provide are impacted by the magnitude of its bureaucracy and the inefficiencies inherent in an operation of that size. It is their belief that an independent consulting firm should be contracted to provide a study that would offer options for partitioning DHHR into two or more entities. The end result would be delivery of a plan that would provide guidance on what would be most cost effective to the state, what would provide a more efficient operation and offer a structure that would provide the best delivery of services to the citizens of West Virginia.

The commission RECOMMENDS that the Legislature contract with an independent consultant with an expertise in business management and delivery of services to conduct a thorough analysis of the department and report back with findings and recommendations on the best way to separate the department into manageable entities. This should include a cost analysis, organizational structure recommendations and a timeline.

**Final Legislative Interim Report of Joint Committee on Health**

The Joint Committee on Health was appointed by the Joint Committee on Government and Finance, following the 2015 regular session of the 82nd Legislature. The committee was assigned the following resolutions and topics for study during the course of the 2015-2016 interim period:

- **SCR 37 - Pharmaceutical benefits management industry**
  During October’s meetings, Richard Stevens, executive director of the West Virginia Pharmacists Association, offered his thoughts on regulation of pharmacy benefit managers (PBMs) in West Virginia. The key points of the legislation would: update prices PBMs pay pharmacies every seven (7) days; require disclosure by PBMs to pharmacies a current list of sources used to determine this price; require prices to be determined by the availability of prescription drugs in West Virginia; allow recoupment of claims by PBMs to be limited to the dispensing fee paid pharmacies and not the drug cost when a claim is found to have a clerical error; and, place PBMs under the regulation of the West Virginia Insurance Commission.

Ben Twilley, senior manager for State Government Affairs for Express Scripts, expressed concern over regulation. He emphasized for negotiation of contract terms between PBMs and pharmacies, rendering regulation by the OIC unnecessary.

The committee RECOMMENDS that no action be taken on SCR 37 at this time.

- **HCR 128 - Need for the health insurance policies to provide adequate coverage to encourage adoption of abuse deterrent formulation technologies for opioids in order to assist in the state's continuing efforts to eliminate prescription drug abuse**
  John Burke, president of the National Association of Drug Diversion Investigators, indicated that his organization supports the provisions of House Bill 2961 introduced during the 2015 regular session. That legislation required any insurance policy issued in West Virginia to provide coverage for an abuse deterrent analgesic drug as a preferred drug on formularies, preferred drug lists or any other similar list. He informed the committee that in 2012 an estimated 2.1 million people in the U.S. suffered from substance use disorders related to prescription opioid pain relievers. Additionally, the number of unintentional overdose deaths from prescription pain relievers has more than quadrupled since 1999; and that a balance must be struck between providing persons who suffer from pain to get the relief they need while also making diversion of opioids more difficult.

The committee RECOMMENDS in response to HCR 128 that a bill be proposed for passage during the 2016 regular session similar to the provisions of House Bill 2961.
HCR 134 - Health Care Authority and the Certificate of Need Review process

The committee focused on the certificate of need (CON) issue during September interim meetings, hearing via video conference from Ashley Nobel, JD, a health policy associate with the National Conference of State Legislatures. She provided a 50-state review of CON and its designed purpose to provide for geographic diversity, discourage overuse, encourage cost reduction and allow greater public input. She also discussed some of the unintended consequences of CON. These included a decrease in competition, limited access, potential conflicts of interest and perceived over-regulation. Nobel said no state has completely repealed CON regulations since 1999.

Thirty-five states have some form of CON. West Virginia currently has CON for 26 categories and is considered by many experts to be the most highly regulated CON state. All of our border states have some type of CON, except Pennsylvania.

The committee heard presentations by several stakeholders in November. Jim Pitrolo, chairman of the state Health Care Authority, provided an agency overview, including its budget (currently $6,738,766), statutory functions including reporting, rate review and CON, grant making authority and development of the state health plan.

Joe Letnaunchyn, President and CEO of the West Virginia Hospital Association offered WVHA’s thoughts on how to modernize the CON program. They made the following recommendations:

1. Remove Lithotripsy from the list of reviewable services;
2. Eliminate the Letter of Intent;
3. Tighten up statutory language in the CON procedures section of state code, most particularly as they relate to applicable timeframes;
4. Expand the list of exemptions to exempt equipment replacement and upgrades, expand the list of non-health related projects, address hospitals renovations without adding beds; allow additional operating rooms and reclassifying beds; and,
5. Raise the capital expenditure threshold from $3.1 million to $5 million with the retention of the annual medical inflator.

Pat Kelly of the West Virginia Health Care Association provided background on the number of nursing homes in the state (131), the number of beds (10,922) and the number of employees (approximately 11,000). He also discussed the payer mix in terms of Medicaid, Medicare and private pay patients. His primary focus, however, was the nursing home bed moratorium instituted in 1987. He recommended that the committee exempt nursing home acquisitions from CON review; exempt facility renovations; and, allow the transfer of existing beds between facilities.

Matt Walker of the WV Primary Care Association recommended elimination of the requirement that the Office of Community and Rural Health Services define the services classified as primary care services for the purposes of the primary care services exemption in the CON statute.

A follow-up stakeholder meeting included the Health Care Authority, the WVPCA, osteopathic physicians, hospice, the WV State Medical Association, the WVHA, the WVHCA and several individuals. Based upon these presentations and the stakeholder meeting, the committee RECOMMENDS a rewrite of the CON laws in West Virginia. This should focus on modernizing the process, increasing the number of exemptions, raising the capital expenditure threshold and modifying the moratorium on nursing home beds.

HCR 136 - Insurers cover topical ophthalmic treatment early refills in a manner similar to or consistent with CMS guidelines

The committee heard from optometrists and ophthalmologists about the issue of prescription refills for topical ophthalmic treatment at its October meeting. Rebecca St. Jean, OD, an optometrist, and Stephen Powell, MD, an ophthalmologist, both supported legislation that would require insurers to cover the early refills for topical ophthalmic treatment. This practice would mirror provisions set in place by the Centers for Medicare and Medicaid Services, which has issued regulations that authorize refills, for inadvertent spillage at a rate of 70% in a 30-day time period. This allows patients to refill at day 21 of their prescription for essential topical ophthalmic treatments.
Seven states adopted early eye drop refill bills in 2015 bringing the total number of states with enacted legislation to eighteen (including the surrounding states of Maryland and Kentucky. These laws result in greater quality of patient care for sufferers of glaucoma and other degenerative eye diseases. The issue is particularly relevant in West Virginia, given the state’s aging population and a significant number of patients with eye disease.

The Committee RECOMMENDS that legislation be proposed for passage during the 2016 regular session which would allow the Insurance Commissioner to require insurers operating in West Virginia to cover the cost of ophthalmic refills in a manner similar to that which in currently required by CMS. The bill has a 75% early refill allowance rate for patients.

- **HCR 137 - Access and costs associated with cancer clinical trials**
  Because of time constraints, the committee did not receive any testimony or presentations regarding HCR 137. Staff provided a comprehensive listing from the NCSL on approaches taken by other states in dealing with the cost of cancer clinical trials. The information provided a state-by-state matrix which shows who would pay for the clinical trial, what services and benefits are covered, and other key criteria. The Committee RECOMMENDS that no action be taken on this issue at this time, but that the committee continue to study this issue during the next interim period.

- **Teen pregnancy rates in West Virginia**
  Laura Tobler, MPP, program director-Medicaid, Health and Primary Care for the NCSL provided a presentation via teleconference “Preventing Teen Pregnancy: Data and State Policy Options.” Teen pregnancy rates have been decreasing nationally over the past decade. In West Virginia, there has been a 31% drop, but that is the lowest drop of any state in the nation. Nearly six births a day in our state are to a teen mother, resulting in the sixth highest teen birth rate in the U.S.

  One in three girls in West Virginia indicate that pregnancy is or was the reason they dropped out of high school; 83% of these births are outside of marriage. Pregnancy is documented as a major barrier to continued education and is a huge cost drain in states on public health, child welfare and criminal justice systems. National estimates indicate the costs to be $9.4 billion. In West Virginia, the cost is $65 million.

  Tobler, provided some policy options for the state. These included sexual health education, integration with other issues such as educational attainment, and family planning. The committee RECOMMENDS that they continue to monitor this issue but propose no legislation at this time.

**Final Legislative Interim Report of Select Committee on PEIA, Seniors & Long-Term Care**

The Select Committee on PEIA, Seniors and Long-Term Care was established and appointed by the Joint Committee on Government and Finance following the 2015 regular session. The committee was assigned the following topics for study during the course of the 2015-2016 interim period:

- **Issues, needs and challenges facing senior citizens in the state**
  Suzanne Messenger, long-term care ombudsman for the state Department of Health and Human Resources, addressed the committee regarding financial exploitation of seniors in West Virginia. A 2010 study by MetLife estimates the annual cost at $2.9 billion nationwide, or $40 million per state. There are 11 regional ombudsmen in the state, but just one attorney, contracted through Legal Aid, who had 28 cases by mid-year. A task force including representatives from AARP, Social Security Administration, banks, the Federal Trade Commission, the state Auditor’s Office and Attorney General’s Office, DHHR’s Medicaid Fraud Investigation Section, the Legal Aid Society, private attorneys and legislators meets quarterly.

- **Current law, procedure and public services intended to protect against senior citizen financial abuse and exploitation**
  Ombudsman attorney Jennifer Taylor told the committee in September that WV’s senior population will exceed 405,000 by 2020, and will comprise nearly one in four state residents by 2030. In 2013, WV Adult Protective Services received 13,232 reports of abuse, neglect or financial exploitation and conducted investigations on 5,067 of these reports.

  Ted Cheatham, director of the Public Employees Insurance Agency, presented an overview of his agency. Last week, the group heard from Mark Knabenshue, president of WV Directors of Senior and Community Services, regarding the state’s senior centers. Two proposed bills – increasing criminal penalties for financial exploitation of an elderly, protected or incapacitated person; and prohibiting certain public services as a condition of probation for conviction of a violent crime against an elderly person – were not acted upon for lack of a quorum, but will be introduced during the 2016 session.
Health Committees Host Initial Meetings, Set Schedules
The House Committee on Health and Human Resources hosted its initial meeting Thursday, with an agenda including organizational motions, introductions of committee members and staff, and discussion on several bills.

Going forward, the Senate Health Committee will meet next and in the future plans to meet at 1 p.m. on Tuesdays and Thursdays. The House Health Committee plans to meet at 2 p.m. on Tuesday and Thursdays.

Delegate Perdue Retiring from Legislature
Our longtime friend and colleague, Delegate Don Perdue, announced in early December that he will not seek re-election in 2016, after spending the better part of two decades serving the people of Wayne County and of all West Virginia. A pharmacist by trade, and a passionate advocate of many health care causes, Don is a former chairman of the House Committee on Health and Human Resources, among his many committee assignments over the years. He was first elected to the House of Delegates in 1998.

“To say this was a difficult decision is gilding the lily in the extreme,” Perdue wrote in a Facebook posting. “After 18 years, I could cite any number of reasons, but it really boiled down to simple math. Over that 18 years, only about 14 have been spent fully with my family (counting all the local calls, meetings, initiatives, election campaigns, etc., it is certainly a great deal less.) I will miss being your delegate, but I genuinely look forward to that time when I can be just a husband, a father and a grandfather, and a neighbor once again.”

Perdue noted that he has enjoyed public service. “Leaving an arena so compelling and populated by people who honestly do believe they can make a difference is difficult in the extreme, but there are others whom I am sure will find it just as compelling (and personally fulfilling) as I. It's time to make room for them,” he said.

WVHA Announced Opioid Rx Guidelines
The West Virginia Hospital Association (WVHA) Board of Trustees in December endorsed new provider-focused and provider-developed recommended guidelines for all West Virginia hospitals to address the misuse of opioid prescriptions.

The “WVHA Guidelines for Use and Prescribing of Opioids in Hospital Emergency Departments” result from work by front-line experts from state hospitals and other leading health care professionals, including physicians and nurses. The guidelines were written and endorsed in partnership with the West Virginia Chapter of the American College of Emergency Physicians. The WVHA represents 66 acute and specialty hospitals and health systems.

The new guidelines consist of 10 principles that establish baseline recommendations for opioid screening, prescribing practices, and appropriate use of resources to work with patients prior to prescribing an opioid pain medication in a hospital ED. The overall goal is to ensure that health care providers have current, standardized resources and tools to work with, and to educate patients on the risk of taking opioid medications. The guidelines also recognize that each patient’s medical condition is unique, so it is not intended to interfere with or supersede the professional judgement of a treating clinician.

Joe Letnaunchyn, president and CEO of the WVHA, said the guidelines “compliment on-going national and statewide initiatives exploring substance abuse from all levels, including Gov. Tomblin’s Advisory Council on Substance Abuse.

“The tragedy of substance abuse has many root causes, and it takes a comprehensive approach to effectively tackle the situation,” Letnaunchyn added. “West Virginia hospitals and health systems have a crucial leadership role to play in helping to find and implement solutions, and this initiative aims to reduce the current high numbers of injuries and deaths that result from misuse and addiction to opioids.”

Opioids are medications that relieve pain. Medications that fall within this class include hydrocodone (e.g., Vicodin), oxycodone (e.g., OxyContin, Percocet), morphine, codeine, and related drugs. West Virginia has the third highest prescribing rate per 100 persons for opioid pain relievers (137.6 per 100 persons) and has the highest prescribing rate for
WVHA Announced Opioid Rx Guidelines - continued

benzodiazepines in the country (71.9 per 100 persons). West Virginia also has the highest drug overdose mortality rate in the nation. ED visits associated with pharmaceutical misuse or abuse increasing 114% between 2004 and 2011 in West Virginia.

The Hospital Association’s 10 guidelines include:

1. In compliance with the West Virginia Medical Practice Act, one medical provider should provide all opioids (narcotics) to treat a patient's chronic pain. For exacerbations of chronic pain, the emergency medical provider should attempt to contact the patient's primary opioid provider or pharmacy. It is recommended that a summary of the ED care be sent to the primary opioid provider.

2. A prescription for a controlled substance should not be given to a patient without a government issued photo ID.

3. The administration of intravenous and intramuscular opioids in the ED for the relief of acute exacerbation of chronic pain is not in the patient's best interest and is discouraged.

4. Emergency medical providers should not provide replacement prescriptions for controlled substances that were lost, stolen, destroyed or finished prematurely.

5. Emergency medical providers should not provide replacement doses of methadone for patients in a methadone program without consultation with the methadone program.

6. The ED will not prescribe or dispense suboxone. The ED will not prescribe opioid pain pills to those identified as enrolled in a suboxone clinic without consultation with the suboxone clinic, except in the case of an acute injury or illness such as a broken bone.

7. Long-acting or controlled-release opioids should not be prescribed in the ED, with the rare exceptions of some hospice patients, and only after consultation with hospice.

8. Prescriptions for opioids from the ED for acute injuries, such as broken bones, will cover the shortest appropriate time. If the emergency provider does elect to provide pain medication for chronic pain, it will only be enough to cover until the next business day.

9. The ED may coordinate the care of patients who frequently visit the ED to establish a patient specific policy/treatment plan, which should include treatment referrals for patients with suspected prescription opioid abuse problems.

10. ED providers, or their delegates, should consult the West Virginia Controlled Substance Automated Prescription Program (CSAPP) before writing a controlled substance prescription.

PEIA Finance Board OKs Benefit Reductions
The Public Employees Insurance Agency’s Finance Board voted in early December to approve $120 million in benefit reductions for state employees and retirees. Beginning July 1, active workers will see higher copays and deductibles, higher prescription drug costs, and higher out-of-pocket maximum costs. Retirees face premium increase of 8% along with higher prescription drug costs.

Following a series of six public hearings held across the state in November, the Finance Board approved a $500 increase for state workers on an individual plan and $1,000 for those with a family plan. Out-of-pocket maximums would jump by $1,500 for one person and $3,000 for a family. PEIA cannot increase premiums for state workers because, under State Code, the employer (the state) pays 80% of premiums and the employee 20%. So, without an increase in state funding, PEIA Director Ted Cheatham said, premiums remain stagnant. The Finance Board also voted to send a letter to the Legislature advocating an increase in the tobacco tax to offset PEIA costs.

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CAMC Health System Receives Prestigious Quality Award

CAMC Health System has been named a 2015 Malcolm Baldrige National Quality Award recipient - one of only four recipients nationwide, the only health care winner and, the first and only organization in West Virginia to ever receive the honor. “The honorees are recognized for their outstanding commitment to sustainable excellence through innovation, improvement and visionary leadership,” according to a news release.

The award will be presented by U.S. Secretary of Commerce Penny Pritzker in April during the Quest for Excellence conference in Baltimore. “This puts us in the top echelon of quality across all industries in the country,” said CAMC President and CEO David Ramsey. “This is not just another quality award. This is the most prestigious quality award in the nation.”

Named after the 26th Secretary of Commerce, the Malcolm Baldrige National Quality Award was established in 1987 by Congress to promote quality awareness, to recognize quality and business achievements of U.S. organizations, and to publicize these organizations’ successful performance strategies. Other recipients included MidwayUSA (Columbia, MO), Charter School of San Diego, and Mid-America Transplant Services (St. Louis).

UniCare, AHA Partner on CPR Training

UniCare Health Plan of West Virginia and the American Heart Association partnered in December to provide hands-only cardiopulmonary resuscitation (CPR) training kits to a dozen high schools in Kanawha and Mercer counties. The kits, which cost $600 each, were developed in response to passage of the CPR in Schools law (Senate Bill 7) during the 2015 session. The law, which went into effect July 1, requires 30 minutes of CPR training as a condition of graduation.

Senator President Bill Cole and Delegate John Shott attended a Dec. 10 presentation at Pikeview High School in Princeton, along with Mitch Collins, UniCare’s president and CEO, and Tadd Haynes, UniCare’s vice president and COO. Sen. Ed Gaunch and Delegate Chris Stansbury represented the Legislature at a similar launch five days later at South Charleston High School. UniCare’s support provided three kits for each of the 12 high schools in those two counties.

The CPR kits allow students to gain hands-on experience in performing life-saving CPR techniques. “Because of the rural nature of our state, we know that emergency responders may not be able to arrive at the scene of a cardiac arrest as quickly as we’d like so having our high school students trained in this life-saving skill is of critical importance,” said Kevin Pauley, communications director for the AHA. “We’ve seen that high school students are more than capable to learn CPR and that they, in turn, will train their families at home.”

When a teen or adult has a sudden cardiac arrest, survival depends on immediately receiving CPR from someone nearby. Studies have shown that hands-only CPR is equally as effective as conventional mouth-to-mouth CPR, and people are more likely to feel comfortable performing it. Cardiac arrest is a leading cause of death, with more than 326,000 out-of-hospital cases occurring annually in the United States.

Quotes of Note:

… “It is sort of like exiting a roller coaster. Wired, a bit off-balance and maybe nauseated, but rushing back to the end of the line for the next new ride.”

- Delegate Don Perdue, on serving in the West Virginia Legislature. Perdue is not seeking re-election in 2016.

… “We are, indeed, a good investment of the state’s dollars. Senior centers enrich lives. The last I heard, the senior population is growing exponentially, but still the funding levels have remained stagnant.”

- Mark Knabenshue, president of the WV Directors of Senior and Community Services, and executive director of the Hancock County Senior Center, addressing funding needs before the Select Committee on PEIA, Seniors and Long-Term Care.

… “We have a tough budget year ahead of us, and we have some very difficult decisions to make. I just hope we don’t put it on the backs of our seniors.”

- Delegate Denise Campbell, during that same interim committee meeting last week.
January Capitol Health Care Events
January 22  Advocates for a Safe Water System
January 27  “WV Cancer Plan 2016-2020”
January 28  West Virginia Immunization Network Day
             Kids and Families Day – Our Children, Our Future

Health Care Legislative Bill Tracking Begins Next Week
Today is the 6th day of the 60-day regular legislative session. In the next issue of Health Care Highlights, we will begin the weekly tracking of all health care-related bills under consideration by the House and Senate. Currently, 478 House bills have been introduced. The Senate is considering 310 bills. Of the 788 total bills introduced so far this session, many are rules-bills or are House carryover bills, and we expect about 20% of all bills will be health care-related. In addition, next week we will also report actions taken by legislative committees and other health care news.

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