The West Virginia Legislature passed SB 437, the Governor’s bill aimed at curbing prescription drug diversion on Saturday, March 10, 2012. This was the biggest healthcare related piece of legislation of the session and is the most comprehensive approach taken in recent history on addressing the epidemic of prescription drug diversion and substance abuse. The bill was offered by Governor Tomblin as a result of regional meetings he held around the state which included stakeholders from all sides of the substance abuse issue. The bill was structured upon most of the recommendations issued last fall by the WVMSA in our report entitled “Physician Leadership: Physician Leadership in Addressing Prescription Drug Diversion”.

The following is a detailed synopsis of the bill in its final form as passed by the full Legislature on Saturday, March 10, 2012:

1. Adds additional state regulations to Opioid Treatment Centers (Methadone Clinics) including:

   Methadone clinics are subject to monitoring by the DHHR, requiring all employees complete minimum education and safety training; follow national guidelines that include a recovery model in the individualized treatment of care; detoxification protocol to include that strength of methadone decreases over time, treatment limited to a defined period of time and participants are required to work toward a drug free lifestyle; random drug testing shall be conducted monthly; upon positive drug tests provide mandatory weekly counseling of no less than 30 minutes; a licensed healthcare professional (determined by the DHHR) is to be on the premises during all operating hours and a physician on call; mandatory checking of the controlled substances database is required; each clinic shall establish a peer review committee to review whether the program is following national guidelines and submit the results of the review to the DHHR quarterly.

2. Creates the “Chronic Pain Licensing Act”:

   A. Requires all “pain management clinics” to be licensed by the DHHR and submit to regulations to be established.

   • Pain management clinic is defined as “all privately owned pain management clinics, facilities or offices not otherwise exempted from this article and which meets both of the following criteria: (1) Where in any month more than fifty percent of patients of the prescribers or dispensers are prescribed or dispensed opioids or other controlled substances specified in rules promulgated pursuant to this article for chronic pain resulting from non-malignant conditions; (2) The facility meets any other identifying criteria established by the secretary by rule.”

   • Chronic pain is defined as: “pain that has persisted after reasonable medical efforts have been made to relieve the pain or cure its cause and that has continued, either continuously or episodically, for longer than three continuous months. For purposes of this article, “chronic pain” does not include pain associated with a terminal condition or with a progressive disease that, in the normal course of progression, may reasonably be expected to result in a terminal condition.”

   B. The practices, clinics and facilities exempted from this regulation are:

   1. A facility that is affiliated with an accredited medical school at which training is provided for medical or osteopathic students, residents or fellows, podiatrists, dentists, nurses, physician assistants, veterinarians or any affiliated facility to the extent that it participates in the provision of the instruction;

   2. A facility that does not prescribe or dispense controlled substances for the treatment of chronic pain;

   3. A hospital licensed in this state, a facility located on the campus of a licensed hospital that is owned, operated or controlled by that licensed hospital, and an ambulatory health care facility as defined by section two, article two-d, chapter 16 that is owned, operated or controlled by a licensed hospital;
4. A physician practice owned or controlled, in whole or in part, by a licensed hospital or an entity that owns or controls, in whole or in part, one or more licensed hospitals;

5. A hospice program licensed in this state;

6. A nursing home licensed in this state;

7. Ambulatory surgical facility as defined by section two, article two-d, chapter 16; and

8. A facility conducting clinical research that may use controlled substances in studies approved by a hospital-based institutional review board or an institutional review board accredited by the organization accrediting the study.

Any facility that is not included in this section may petition to the secretary for an exemption from the requirements of this article. All such petitions are subject to the administrative procedures requirements of chapter twenty-nine-a of this code.

C. The operational requirements are:

1. Must be owned by at least one physician.

2. Must designate a physician owner manager responsible for the operation of the clinic who has completed a pain medicine fellowship accredited by the ACME or be board certified by the American Board of Pain Medicine or American Board of Anesthesiology or other board certification approved by the Secretary of the DHHR.

3. The physician owner must practice at the clinic and is responsible for supervising the employees and for complying with all regulations for licensing and operation of the clinic.

4. No owner or employees may have a felony conviction. Criminal background checks are mandated.

5. No prescribers who have ever had their DEA number revoked or have had their license to prescribe or dispense controlled substances been denied, or found guilty of a felony for receipt of illicit and diverted drugs may be an owner or employee of a licensed pain clinic.

6. Dispensing controlled substances in a licensed pain management clinic is allowed only by physicians and pharmacists and only for a 72-hour supply. The treating physician is required to check the controlled substances database on all patients at each examination or at least every 90 days.

7. The pain management clinic shall develop patient protocols, treatment plans and profiles that include the requirement for another physician to evaluate the patient under specific situations. Diagnosis and treatment decisions shall be made according to accepted and prevailing standards for medical care.

8. There are requirements for adequate documentation and record keeping.

9. A physical examination is required of the patient on the same day that controlled substances are initially prescribed, dispensed or administered to a patient and at least four (4) times a year thereafter according to accepted and prevailing standards of medical care.

10. The DHHR has authority to perform inspections and revoke licenses of clinics that aren’t in compliance and there is a process for the clinic to appeal the decision.

11. There are monetary penalties for non-compliance with the law. Highest penalty is $20,000 for a physician who knowingly operates an unlicensed pain management clinic.

12. The DHHR is required to develop rules for the licensing and operation of pain management clinics with the consultation of the Boards of Medicine and Osteopathic Medicine.

D. Advertising Regulations Established:

Any advertisement made by or on behalf of a licensed pain management clinic through public media, such as a telephone directory, medical directory, newspaper or other periodical, outdoor advertising, radio or television, or through written or recorded communication, concerning the treatment of chronic pain shall include the name of, at a minimum, one physician owner responsible for the content of the advertisement.

3. Requirement for continuing medical education:

The current requirement for 2 hours of continuing education in "end of life care and pain management" is being deleted from law. A new requirement is created for "drug diversion training" and "best practices for prescribing of controlled substances training" to be done every 3-year cycle. Only those who prescribe, dispense or administer controlled substances are required to take the training.

The WVSMA has been in conversations with the Boards of Medicine and Osteopathy regarding setting up the trainings so that CME is easily accessible (on the Boards website for example) and the documentation of the completed training is maintained by the Boards so there is no problem with compliance as there was with the end of life care documentation.

The actual number of hours required and course content was not set in statute and under the new law, is left up to the licensing boards to determine.

4. Prescriptions dispensed only with a valid practitioner patient relationship:

The bill clarifies that no pharmacist may dispense any prescription if they have knowledge that the prescription was issued without a valid practitioner-patient relationship. Online or telephone evaluation by questionnaire or consultation is clarified as inadequate to establish a valid practitioner-patient relationship.

5. Suboxone pills disallowed in most cases:

After September 1, 2012 any practitioner or entity prescribing or dispensing a combination of buprenorphine and naloxone (Suboxone) to treat opioid addiction shall only prescribe or dispense the drug in the form of sublingual film unless the film is clinically contraindicated. If it is contraindicated the reasons shall be documented in the patient’s chart.

6. New information reported to the Controlled Substances Database:

The following information is added to the information reported to the controlled substances database: name of the dispensing physician or dentist; full legal name of the patient; full legal name birth date and address of person picking up the prescription if other than the patient; and the source of payment.

There is a clarification that reporting is required for controlled substances (schedule II, III and IV) which are dispensed by a practitioner. Dispensing is limited to a 72-hour duration.

Prior to dispensing a controlled substance sold at retail, a pharmacist must verify the full legal name, address and date of birth of the person receiving the drug through the presentation of a government-issued photo ID.

7. Controlled Substances Database Law Modified:

The database is clarified as being confidential and not subject to the freedom of information act or obtainable as discovery in civil matters absent a court order.

There is a clarification that law enforcement who have access to the database information must be a member of a federally affiliated drug task force and be certified by the West Virginia law enforcement officer and have successfully completed DEA diversion training and National Association of Drug Diversion Investigation Training.

Information regarding schedule II, III, and IV controlled substances that are dispensed is to be reported to the Board of Pharmacy within 24-hours. (The current law is 7 days.)

An Advisory Board is established to be appointed by the Board of Pharmacy and is made up of physicians and pharmacists. The Advisory Board is charged to: "develop, implement, and recommend parameters to be used in identifying abnormal or unusual usage patterns of patients in the state; make recommendations for training, research and other areas to have the potential to reduce inappropriate use; monitor the ability of medical providers to meet the 24-hour reporting requirement; and, establish educational outreach programs with law enforcement."

The Board of Pharmacy is charged with running reports of patients that fall outside the parameters established by the Advisory Committee and is required to send the reports to the patients’ physicians.

A Database Review Committee is established and is to be appointed by the Board of Pharmacy to "query the database based on parameters established by the advisory committee." The review committee may make determinations on a case-by-case basis on specific unusual prescribing or dispensing patterns indicated by outliers in the system or abnormal or unusual usage patterns of controlled substances by patients which the review committee has reasonable cause to believe necessitates further action by
law enforcement or the licensing board having jurisdiction over the prescribers or dispensers under consideration. The review committee is made up of 2 prosecutors, 2 physicians and 1 pharmacist. An additional physician may be appointed on a case-by-case basis.

The state’s chief medical officer is required to report to the Review Committee information regarding any person who has died from a drug overdose.

8. Prescribers and dispensers granted immunity for reporting suspected doctor shoppers.

Any prescriber or dispenser may notify law enforcement of a patient who, in their judgment, is potentially a doctor shopper. The prescribing practitioner or dispenser is immune from any civil, administrative or criminal liability if the notification is made in good faith.

9. Requirement to check the Controlled Substances Database:

All prescribers and dispensers are required to check the controlled substances database upon initially prescribing or dispensing a pain relieving controlled substance to a patient (who is not suffering from a terminal illness) for chronic nonmalignant pain. They are required to check the database annually thereafter.

Any prescriber or dispenser who is required to check the database and doesn’t shall be disciplined by their licensing board as the Board deems appropriate.

10. Felony for unauthorized use or disclosure of the controlled substances database:

Unauthorized access or use or an unauthorized disclosure for reasons unrelated to the purposes of the law –of the information in the database is a felony punishable by imprisonment in a state correctional facility for not less than one year nor more than five years or fined not less than $3,000 nor more than $10,000, or both imprisoned or fined. (Simple accidental checking of the wrong individual would not be "unrelated to the purpose of the law" so would not considered a felony.)

11. Creation of “Fight substance Abuse Fund”:

A “Fight Substance Abuse fund is established as an interest bearing account consisting of appropriations by the state legislature, gifts, donations or any other source. Expenditures are approved to provide funding for substance abuse prevention, treatment, treatment coordination, recovery and education. This fund was created as an un-appropriated special revenue account and was not funded with state dollars in the budget bill but may be funded with grants or donations.

A separate fund was established in the State Budget under DHHR as the Substance Abuse Continuum of Care fund. And was funded at $5 Million. The Budget language specified that “...the funding will be consistent with the goal areas outlined in the Comprehensive Substance Abuse Strategic Action Plan. Prior to disbursement of funds, the Department of Health and Human Resources, Bureau for Behavioral Health and Health Facilities, shall submit a gap analysis of substance abuse services, and an outline of service provision costs to provide assistance to the Regional Task Forces and the Advisory Council.”

12. Regulation of the sale of pseudoephedrine products at retail pharmacies:

Products containing pseudoephedrine are currently required to be sold from behind the counter and personal information regarding the purchaser is required to be reported to the Board of Pharmacy. The bill requires that all pharmacies now utilize a “multi-state real-time tracking system” to check to see if an individual has purchased their limit of such products (this is being voluntarily done by some pharmacies now).

Current federal regulations limit the sale to 9 grams of pseudoephedrine that may be purchased monthly. Further state limitations are placed on the sale of the drug: 3.69g per day, 7.2g monthly and 48g annually. These limits do not apply to prescription products containing pseudoephedrine.

Violations for pharmacy or wholesaler which is in noncompliance with the law are established as a misdemeanor.

Pharmacists are required to offer patient counseling to improve proper use and discuss contraindications.

Information regarding pseudoephedrine product purchases shall be disclosed to DEA agents and local law enforcement and weekly reports are to be given to the WV State Police.

The state police are required to present an annual report to the Legislature on the number of meth labs that are busted.

The mandatory use of the “Multi-State Real Time Tracking System” expires on June 30, 2015. This was placed in the bill to require the Legislature to re-visit the issue and make modifications to this section of the law if it isn’t effectively reducing the number of meth labs in the state.

HEALTHCARE RELATED BILLS THAT PASSED

The following are all the healthcare related bills that passed the Legislature this Session.

SB 109 Permitting unlicensed personnel to administer medications or assist in certain circumstances.

The purpose of this bill is to permit unlicensed personnel to administer medications in certain circumstances for mentally or physically disabled persons who are residents of group homes in locations outside the group home.

SB 161 Relating to mandatory reporting of child abuse and neglect.

The purpose of this bill is to require all persons to report abuse and neglect of children and to increase the penalties for those who fail to report. Current mandatory reporting laws only apply to medical, dental or mental health professional, Christian Science practitioner, religious healer, school teacher or other school personnel, social service worker, child care or foster care worker, emergency medical services personnel, police officer or law-enforcement official, humane officer, member of the clergy, circuit court judge, family court judge, employee of the Division of Juvenile Services, or a magistrate. The bill adds to this list youth camp administrator or counselor, employee, coach or volunteer of an entity that provides organized activities for children, or commercial film or photographic print processor. Any of these individuals who has reasonable cause to suspect that a child is neglected or abused or observes the child being subjected to conditions that are likely to result in abuse or neglect is mandated to immediately report such abuse to the DHHR.

Also the bill adds a new mandate for any person over 18 who receives a disclosure of any sexual abuse or sexual assault of a child or witness it.” The bill adds to the DHHR’s list of mandatory reporters. Current mandatory reporting laws only apply to individuals who have reason to suspect that a child has been abused or neglected.

SB 211 Creating traffic offenses for texting or using handheld wireless communication device while driving.

The purpose of this bill is to create the primary offense of operating a motor vehicle (meaning while driving or idling in traffic) while texting or using a wireless communications device without hand-free technology. Any person who violates the law is guilty of a traffic offense and can be fined $500 for the first offense, $750 for a second offense and $500 for a third or subsequent offense. No points will be entered on the driver’s record until the third and subsequent offenses for which 3 points will be entered.

SB 221 Jason Flatt Act

The purpose of this bill is to require routine suicide prevention training for all teachers and principals. The Jason Flatt Act is named in honor of the late Jason Flatt, who took his own life in 1997 at age 16. After Jason’s death, his family
created the Jason Foundation, a nonprofit edu-
cational organization dedicated to preventing youth suicide. The Foundation has developed a curriculum for students and an informational sem-
inars for parents and teachers. The Act requires the West Virginia Center for Professional Devel-
opment to provide training resources on suicide prevention for all West Virginia school faculty and staff.

SB 214 Clarifying sunrise review require-
ment for establishment, revision or expansion of professional scope of practice.

The purpose of this bill is to clarify that a sun-
rise review is required for the establishment, revision or expansion of a professional scope of practice. The sunrise review would be done by the office of the Performance Evaluation and Reimbursement Department of the Legislative Auditor to determine the need for the scope of practice expansion. PERD would then make a recommendation to the Legislature on the need for revision or expansion of their scope of practice.

SB 245 Authorizing Department of Health and Human Resources promulgate regulato-
ries on state rules.

This bill contains all the legislative rules of the DHHR. It includes the AIDS Related Medical Testing
rule (64 CSR 64). This rule was revised based upon the passage of legislation last year that removed the requirement for the County Health Department to obtain consent for AIDS testing among other changes.

SB 365 Increasing membership of PEIA
Finance Board.

The purpose of this bill is to increase the num-
ber of members on the Public Employees Insur-
ance Agency Finance Board from nine to eleven by adding one representative of a political sub-
division and one additional representative of the public having experience in the financing, development or management of employee ben-
et programs.

SB 379 Authorizing Board of Registered Professional Nurses to designate cer-
tain treatment and recovery pro-
grams for licensees.

The purpose of this bill is to authorize the West Virginia Board of Examiners of Registered Professional Nurses to designate programs in which nurses may be monitored while they pursue treatment and recovery for alcohol abuse, chemical dependency or major mental illness, and in which these persons may volun-
tarily enroll without being subject to disciplin-
ary action if the person complies with the goals and restrictions of the program. This statute is
based upon the very successful law that allows the Board of Medicine and Osteopathic Medi-
cine to authorize a physician health program.

SB 414 Expanding definition of “medical services applicant” under Volun-
tee for Nonprofit Youth Organiza-
tions Act.

The purpose of this bill is to include various additional professions under the definition of “medical services applicant” under the Volunteer for Nonprofit Youth Organizations Act. “Medical services applicant” means a person authorized for Nonprofit Youth Organizations Act. “Medical services applicant” under the Volunteer for Nonprofit Youth Organizations Act.

SB 471 Authorizing Supreme Court estab-
lish mental hygiene commission-
ers compensation.

The purpose of this bill is to authorize the Supreme Court to establish a reason-
able rate of compensation at a uniform rate for mental hygiene services instead of a circuit court.

The bill also requires Mental Hygiene Commissioners to submit compensation requests to the administrative director of the courts for payment.

SB 484 Relating generally to child welfare.

This bill was requested by the Supreme Court of Appeal’s Court Improvement Program Over-
sight Board. The purpose of this legislation is to promote the safety, well-being and timely per-
manency of children in child abuse and neglect, family court and/or juvenile cases. This bill
also makes necessary amendments to the West Virginia code for compliance with federal law or consistency with the West Virginia Rules of Procedure for Child Abuse and Neglect Proceed-
ings or the Rules of Juvenile Procedure. This bill defines “court appointed special advocate pro-
gram” and outlines the standards for the pro-
gram. The bill also requires judges to provide in the court order the reasons why a child is being placed out-of-state as opposed to in-state.

The bill clarifies the multidisciplinary treatment planning process for everyone and establishes a process specific to child abuse and neglect cases as well as status offenders and delinquents. The bill also requires attorneys appointed in child abuse and neglect cases to have eight hours of training annually. This bill provides that reasonable efforts to preserve the family is not required when the person is required by law to register as a sex offender. It also provides when a dispo-
sitional order may be modified. The bill clarifies that the circuit court has exclusive jurisdiction over child abuse and neglect matters. The bill provides a process for permanency hearings and permanent placement reviews. The bill authorizes family court to order a child be taken into emergency custody under certain circum-
stances. The bill also provides guidelines for unified child and family case plans and requires quarterly status review hearings and yearly per-
manency hearings for transitioning adults.

SB 507 Relating to voluntary and involun-
tary hospitalization of mentally ill persons.

This bill was by request of the Supreme Court of Appeals. The purpose of this bill is to amend the code to authorize parents or guardians to com-
mitt children age twelve or older to mental health hospitalization without the child’s consent and to amend the code relating to the ability of cer-
tain individuals to petition a court to regain the right to possess firearms so that West Virginia can become eligible for federal funding.

SB 535 Expanding certain prescriptive authority for chronic diseases.

The purpose of this bill is to expand prescrip-
tive authority for physician assistants, advanced nurse practitioners to include medications for chronic health conditions within specific limita-
tions. Specifically the bill directs the Board’s of Medicine, Osteopathy and Nursing to draft rules permitting PA’s and Advanced Practice Regis-
tered Nurses (APRN’s) to prescribe an annual supply of any drug, with the exception of con-
trolled substances, which is “prescribed for the treatment of a chronic condition”, other than chronic pain management. A “chronic condition” is
specified as “a condition which lasts three months or more, generally cannot be prevented by vaccines, can be controlled but not cured by medication and does not generally disappear. These conditions, with the exception of chronic pain, include, but are not limited to, arthritis, asthma, cardiovascular disease, cancer, diabetes, epilepsy and seizure, and obesity.” The law requires the prescriber to note on the prescrip-
tion the chronic disease being treated. The bill also grants the authority to PA’s and APRNs to prescribe anticoagulants.

SB 572 Replacing “advanced nurse prac-
titioner” with “advanced practice registered nurse”.

The purpose of this bill is to replace the term “advanced nurse practitioner” with “advanced practice registered nurse.” The bill defines advanced practice registered nurse as “a regis-
tered nurse who has acquired advanced clini-
cal knowledge and skills preparing him or her to provide direct and independent patient care services, who has completed a board-approved graduate-
level education program and who has passed a
The purpose of this bill is to require carbon monoxide detectors in certain facilities. The bill authorizes the board to require carbon monoxide detectors be installed in either a common area where the general public has access or in areas or rooms that contain permanent fuel-burning appliances and equipment that emits carbon monoxide as a by-product of combustion located within all apartment buildings, boardings houses, dormitories, long-term care facilities, adult or child care facilities, assisted living facilities, one and two family dwellings intended to be occupied or used by adults or children, assisted living facilities, and assisted living facilities for the elderly. The bill also establishes the penalty of a misdemeanor and increasing the membership of the West Virginia Board of Osteopathy. The board in creases the membership of the board by adding an additional licensed osteopathic physician and a licensed osteopathic physician assistant bringing the Board to seven (7) members.

HB 4279 Increasing the membership of the West Virginia Board of Osteopathy

The purpose of this bill is to require each birthing facility licensed by the Department of Health and Human Resources to perform a pulse oximetry screening for newborns. The patient must be referred for a dental examination within six months of sealant application.

HB 4419 Allowing nonlicensed practitioners to place dental sealants on patients’ teeth

The purpose of this bill is to remove the expiration date of the pilot project establishing emergency mental hygiene procedures and make the program permanent.

HB 4424 Relating to modified mental hygiene procedures

The purpose of this bill is to authorize the Board of Pharmacy to collect license fees. The new fees are expected to bring in around $750,000 which will partially be used by the Board to implement new requirements placed upon them by the passage of the Governor’s drug bill (SB 437).

SB 597 Requiring installation of carbon monoxide detectors in certain facilities

The purpose of this bill is to authorize professional licensing boards to establish fees by legislative rule. The bill authorizes the board to establish fees for notifying licensees of fee proposals. Current law requires licensure boards to mail a full copy of any license fee rule change to all licensees. This bill changes that by allowing the licensure boards to notify affected parties by posting the rule on their website and sending an email or postcard or notification in their newsletter to all their licensees. The law becomes effective September 1, 2012.

HB 4001 Authorizing boards to establish fees by legislative rule

The purpose of this bill is to create the Provider Sponsored Network Act of 2012. The bill provides for the register of wholesale and retail drug distributors and establishes the penalty of a misdemeanor.

HB 4486 Relating to the disclosure of insurance coverage

The purpose of this bill is to remove the expiration date of the pilot project establishing emergency mental hygiene procedures and make the program permanent. The findings specify that it is to the benefit of the state and its Medicaid populations to foster the development of care systems and Medicaid options that allow for the functional integration and participation of privately practicing physicians with provider sponsored networks who have patient-centered medical homes and who are willing to share access and use of those resources and that federal qualified health centers are deeply engaged with integrating behavioral health providers and other community services in their care of Medicaid beneficiaries.

HB 4481 Relating to the Comprehensive Behavioral Health Commission

The bill modifies the membership of the Commission by deleting a number of representatives and adding new members. In total there are 10 additional members which are: the director of the Division of Rehabilitative Services; the director of a behavioral health consumer’s organization or his or her designee; the director of the West Virginia Coalition Against Domestic Violence and a representative from each of the three medical schools – WVU, Marshall and the Osteopathic school; a consumer of behavioral health services; a child advocate; a representative of the West Virginia Coalition Against Domestic Violence and a representative of the county probation program.

Also the following members are being modified: the representative of the National Alliance on Mental Illness is replaced with an individual who represents a behavioral health consumer’s organization; the executive director of a federally qualified health center in West Virginia is replaced with the director of a Primary Care Association and the citizen member is deleted.

The purpose of this bill is to require certain information pertaining to liability coverage be disclosed.
to the claimant or his or her attorney within thirty days of a written request. This bill has come under serious scrutiny by the business and healthcare industry arguing that it has many negative implications and is tort reform in favor of the plaintiffs. The bill requires identification of any policy or coverage defense which the insurer “reasonably believes” is available and requires that information to be provided under oath. Concerns have been raised that the bill would open the door to the plaintiff’s bar by giving unfettered access to anyone’s insurance coverage for almost any reason. The bill would apply to medical liability cases as well as workplace liability case (automobile, etc.). WVSMA and the Physician’s Mutual Insurance Co. attorneys have indicated it could Reinstateload bad faith claims.

SB 4504 Relating to development and operation of a nursing home on the grounds of a nonprofit community healthcare organization.

The bill allows for a 35-bed nursing home to be developed in Wirt County. There is currently a moratorium on the development of any new nursing homes (or additional beds in current facilities). The bill waives the moratorium for just this facility. A Certificate of need review is still required for this facility and must be approved prior to its development.

LEGISLATIVE STUDY RESOLUTIONS
The following are resolutions that were proposed for study during the interim period. Each year the Legislature meets monthly when not in session to study pending issues of interest. Following the studies, often times the committees will propose legislation on the subjects.

HCR 107 Requesting the Joint Committee on Government and Finance to conduct a study regarding the reorganization of the State Board of Education.

HCR 149 Requesting a study on the feasibility or requiring coverage for eosinophilic disorders.

HCR 150 Requesting the Joint Committee on Government and Finance to conduct a study on the financial impact of drug safety program and requires that the team provide an annual report to the Governor and the Legislature.

SB 201 Creating Unintentional Pharmaceutical Drug Overdose Fatality Review Team

The purpose of this bill is to create the Unintentional Pharmaceutical Drug Overdose Fatality Review Team under the Office of the Chief Medical Examiner. The bill sets forth membership of the team and its responsibilities. The bill requires the team to examine cases that involve unintentional pharmaceutical drug overdose deaths and to promote public awareness of the causes of unintentional pharmaceutical drug overdose deaths.

SB 346 Creating Larry Border Act

The bill requires a prescription for the dispensing of drugs containing as an active ingredient ephedrine, pseudoephedrine and phenylpropanolamine. The bill re-categorizes these drugs from Schedule V to Schedule IV. The bill removes the pediatric exemption. The bill deletes certain provisions and definitions that are no longer applicable. The bill makes additional findings.

SB 347 Proposing to include funding as necessary for the support of the State Police to submit a report by December 1, 2012 regarding the sales and attempted purchase of the drug. Similar to HB 4023.

SB 501 Requiring health insurance coverage of certain hearing aids

The purpose of this bill is to require health insurers to cover hearing aids for persons under age eighteen when prescribed by a licensed physician. Coverage is limited as follows: (1) Initial hearing aids and replacement hearing aids not more frequently than every thirty-six months; (2) hearing aids when alterations to the existing hearing aids cannot adequately meet the needs of the covered individual; and (3) services, including audiometric testing, the initial hearing aid evaluation, fitting and adjustment, and supply of hearing ear molds. Covered individuals may have to meet deductibles, coinsurance, or other limitations.

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SB 507 Requiring parents objecting to immunizations provide written statement of belief in lieu of immunization proof

The purpose of this bill is to require parents or guardians who object to immunizations on the basis of religious, philosophical or conscientious beliefs to sign a statement to this effect in that it shows proof of immunizations. The bill was opposed by many healthcare organizations including the WVSMA. It was referred to Senate Education where it was not taken up for consideration. A resolution however was offered to study this issue.

SB 63 Requiring tanning facilities

The purpose of this bill is to require parent consent for minors to use a tanning device within a tanning facility and parental accompaniment for minors under the age of fourteen while using a tanning device within a tanning facility. The bill went through many changes as it moved from the Senate to the House. It passed the Senate with a total ban on the use of tanning beds by minors. The House Health Committee debated the bill and passed an amendment (pa/ed by Delegate Ellenings, MD) requiring only parental consent for minors use of tanning beds. The bill was sent to House Judiciary where it failed to be taken up. The bill was supported by the American Cancer Society and the WVSMA.

SB 194 Requiring health insurers cover maternity and contraceptive services for dependents

The purpose of this bill is to require health insurers to cover maternity and contraceptive services for all individuals who are participating in or receiving coverage under a policyholder’s health insurance plan, if those services are covered under the policy. Under current law, health insurers are not required to cover maternity or contraceptive services for dependents. Same as HB 4706.

HB 4504 Relating to development and operation of a nursing home on the grounds of a nonprofit community healthcare organization.

The bill allows for a 35-bed nursing home to be developed in Wirt County. There is currently a moratorium on the development of any new nursing homes (or additional beds in current facilities). The bill waives the moratorium for just this facility. A Certificate of need review is still required for this facility and must be approved prior to its development.

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SB 346 Creating Larry Border Act

The bill requires a prescription for the dispensing of drugs containing as an active ingredient ephedrine, pseudoephedrine and phenylpropanolamine. The bill re-categorizes these drugs from Schedule V to Schedule IV. The bill removes the pediatric exemption. The bill deletes certain provisions and definitions that are no longer applicable. The bill makes additional findings.

SB 347 Proposing to include funding as necessary for the support of the State Police to submit a report by December 1, 2012 regarding the sales and attempted purchase of the drug. Similar to HB 4023.

SB 501 Requiring health insurance coverage of certain hearing aids

The purpose of this bill is to require health insurers to cover hearing aids for persons under age eighteen when prescribed by a licensed physician. Coverage is limited as follows: (1) Initial hearing aids and replacement hearing aids not more frequently than every thirty-six months; (2) hearing aids when alterations to the existing hearing aids cannot adequately meet the needs of the covered individual; and (3) services, including audiometric testing, the initial hearing aid evaluation, fitting and adjustment, and supply of hearing ear molds. Covered individuals may have to meet deductibles, coinsurance, or other limitations.

SB 503 Requiring health insurance coverage of certain hearing aids

The purpose of this bill is to require health insurers to cover hearing aids for persons under age eighteen when prescribed by a licensed physician. Coverage is limited as follows: (1) Initial hearing aids and replacement hearing aids not more frequently than every thirty-six months; (2) hearing aids when alterations to the existing hearing aids cannot adequately meet the needs of the covered individual; and (3) services, including audiometric testing, the initial hearing aid evaluation, fitting and adjustment, and supply of hearing ear molds. Covered individuals may have to meet deductibles, coinsurance, or other limitations.

SB 505 Requiring health insurance coverage of certain hearing aids

The purpose of this bill is to require health insurers to cover hearing aids for persons under age eighteen when prescribed by a licensed physician. Coverage is limited as follows: (1) Initial hearing aids and replacement hearing aids not more frequently than every thirty-six months; (2) hearing aids when alterations to the existing hearing aids cannot adequately meet the needs of the covered individual; and (3) services, including audiometric testing, the initial hearing aid evaluation, fitting and adjustment, and supply of hearing ear molds. Covered individuals may have to meet deductibles, coinsurance, or other limitations.
SB 509  Requiring health insurance contracts include certain claims submission deadline

The purpose of this bill is to require that a healthcare insurance provider to include a provision in an insurance contract if claims may be submitted sooner than the Medicare requirement of three hundred sixty-five days.

SB 514  Deeming retail establishments with roll-your-own cigarette machines as manufacturers

The purpose of this bill to provide that any person who maintains a “roll your own” cigarette machine at a retail establishment is deemed a manufacturer of cigarettes and that the resulting product is deemed to be “cigarettes sold to a consumer” which would require payment of the $0.55 excise tax per pack of 20 on the cigarettes. Same as HB 4428

SB 642  Relating to sexually transmitted disease treatment

The purpose of this bill is to allow for expedited partner therapy. It would permit the prescribing of antibiotics for the partner of a patient without first examining the partner. It requires counseling by the physician. The bill also requires the Department of Health and Human Resources to develop outreach materials. The bill would cap limited liability for physicians, physician assistants and advance nurse practitioners who prescribe expedited partner therapy. The bill makes changes to the licensing portions of the code to make it permissible for the various disciplines to prescribe without disciplinary actions from their respective licensing boards.

SB 647  Providing Boards of Medicine, Dental Examiners and Osteopathic initiatory disciplinary proceedings related to controlled substance monitoring program data

The purpose of this bill is to provide for the Board of Medicine and the Board of Osteopathy to independently initiate disciplinary proceedings based on information received by the Board of Pharmacy’s Controlled Substances Database Review Committee as established in the Governor’s prescription drug diversion bill SB 437.

SB 656  Requiring direct healthcare providers wear identification badges

The purpose of this bill is to require healthcare providers to inform patients of their name, title and licensure information by wearing an identification badge when providing direct patient care. The bill grants the Secretary of the Department of Health and Human Resources rule-making authority to address exemptions and establishment of penalties for violations. The identification badge requirement is not required until July 1, 2015.

SB 667  Updating WV schedules of controlled substances

The purpose of this bill is to update the schedules of controlled substances in West Virginia code to match the federal schedules of controlled substances.

HB 2287  Abolishing joint liability and establishing the principle of comparative fault

The purpose of this bill is to abolish joint liability and establish the principle of comparative fault by which each defendant is liable for damages according to the percentage of fault attributed by a judge or jury. Similar to SB 65

HB 2754  Allowing sheriffs and their designees access to information maintained by the Board of Pharmacy

The purpose of this bill is to allow sheriffs and their designees access to information maintained by the Board of Pharmacy under the Controlled Substances Monitoring Act. Similar to SB 534 and SB 438.

HB 3085  Including oral or written inquiry of a patient about possession, ownership or storage of firearms as a reason for invoking disciplinary proceedings against physicians

The purpose of this bill is to include oral or written inquiry of a patient about possession, ownership or storage of firearms as a reason for invoking disciplinary proceedings against physicians, podiatrists and osteopathic physicians and surgeons.

HB 3139  Relating to restrictions on dispensing oxycodone extended release or fentanyl patches

The purpose of this bill is to prevent the abuse of oxycodone extended release and fentanyl by requiring those substances to contain naloxone to be released only on alteration of the delivery vehicle. The bill requires those substances be directly prescribed by a licensed practitioner with Schedule II privileges and directly monitored by a licensed physician or nurse at least monthly. The bill also provides for penalties, including a felony for third and subsequent convictions.

HB 4025  Requiring healthcare providers to provide the first request for a copy of a patient’s medical records without charge

The purpose of this bill is to require healthcare providers to provide the first request for a copy of a patient’s medical records at no charge and to impose a fee limit of $1 per page for subsequent requests. Similar to HB 4301.

HB 4033  Requiring doctors and hospitals to bill patients within one year of when the goods and services were provided

The purpose of this bill is to require doctors and hospitals to bill patients within one year of when the goods and services were provided. The bill requires doctors and hospitals to state with specificity any charges identified as miscellaneous. A bill not submitted within one year or does not itemize miscellaneous charges is null and void and not enforceable against the patient.

HB 4034  Establishing prohibited acts relating to possession of controlled substances obtained from more than one health practitioner

The purpose of the bill is to make it the crime of “doctor shopping” if a person possesses a more than two controlled substances from more than one health practitioner for the same or similar therapeutic purpose that were filled within a 72-hour period. Same as SB 358

HB 4268  Relating to limitations of actions and suits

The purpose of this bill is to reduce the number of defendants named in the beginning of a lawsuit by tolling the statute of limitations against all tortfeasors upon filing. Same as SB 388

HB 4372  Relating to payments from the West Virginia Patient Injury Compensation Fund

The purpose of this bill is to remove the limitation that damages must be economic before payments from the West Virginia Patient Injury Compensation Fund may be made. The bill caps the amount in any one occurrence to $1 million.

HB 4399  Relating to several liability for healthcare providers

The purpose of this bill is to eliminate the statutory provisions which conflict with the rule-making authority vested in the judiciary including: (a) The creation of the statutory “empty chair” defense by mandating the procedure of including nonparties on the verdict form in violation of Louk v. Corderman, 218 W.Va. 81, 622 S.E.2d 788 (2005); (b) permitting a verdict credit in the absence of a joint liability in violation of Pennington v. Bluefield Orthopedics, P.C., 187 W.Va. 344, 419 S.E.2d 8 (1992); and (c) permitting the calculation of a verdict credit in violation of Board of Education of McDowell Co. v. Zando, Martin & Milstead, 182 W.Va. 597, 390 S.E.2d 796 (1990). Same as SB 504

2012 Certified Medical Office Manager Class (CMOM)

Thursday, April 26 & Friday, April 27 and Thursday, May 3 & Friday, May 4, 2012

Time: 9:00 a.m. to 4:00 p.m.  | Place: St. Marys Medical Center, Huntington, WV  (Participants must attend all 4 days.)

Develop your skills in areas including:  • Financial Administration  • Managed Care and the Medical Practice  • Practice Administration  • Personnel Management

Reserve your seat today! Call 304-925-0342, ext. 10 or visit www.wvsma.com to register online.
Two seats on the West Virginia Supreme Court of Appeals are up for election in 2012, one open seat and one incumbent seat. Justice Robin Jean Davis, last elected in 2000, is running for re-election, while Justice Thomas E. McHugh, who was appointed to the Court in 2006 by former Governor Joe Manchin, is not running for the position. Justice Joseph Albright and then was elected in 2010 to complete the unexpired term, is retiring.

Protecting our hard fought medical liability reform is of critical interest to West Virginia physicians, which makes the State Supreme Court race one of the most important elections on the 2012 ballot. The State Supreme Court has five (5) Justices, each who serve a term of 12 years. In 2011, the Court issued a significant decision upholding the most important non-economic damages cap. It is easy to understand why this election is so important to physicians and their patients. There are six candidates running on the Democratic Primary ballot for two spots in November. Two Republican candidates will automatically advance.

Tish Chafin is a graduate of Marshall University and earned her law degree from the West Virginia College of Law where she was a member of the National Moot Court Team. She is managing partner at the H. Truman Chafin Law Firm, together with her husband Senator H. Truman Chafin, where she has worked since graduation from law school. Licensed to practice in both West Virginia and Kentucky, Chafin has also been admitted to practice before the United States Supreme Court, Fourth Circuit of the United States Federal Court of Appeals, and the Southern District of West Virginia. She is a member of the Marshall University Board of Governors, and serves on the Board of Directors of the West Virginia Education Alliance and the West Virginia Children’s Home Society. She is an Elder of First Presbyterian Church of Charleston. Chafin is an immediate past President of the West Virginia State Bar and has served on the Board of Governors as an Ex Officio member of the state’s Judicial Advisory Commission. Chafin’s website is: www.Chafin2012.com

Judge J.D. Beane was appointed by Governor Joe Manchin, II in 2006 to serve as Circuit Court Judge for Wood and Wirt Counties. He received a certified completion for General Jurisdiction in July 2007 from the National Judicial College. Judge Beane was then elected in 2008 to an eight-year term on the bench. He has served as Chief Judge since 2011 and was previously a circuit judge member on the judicial investigation committee.

Judge Beane holds a law degree from Capital University Law School and attended summer law programs at Ohio State University College of Law and Oxford University. He received a Bachelor of Arts degree from West Virginia University and attended public schools in Wood County. Judge Beane’s website is: www.JDBeane.com

Robin Jean Davis was born and raised in Boone County, West Virginia and attended West Virginia Wesleyan College, after which she earned both her master’s and law degrees from West Virginia University. From 1982 to 1996, Justice Davis was a member of the six-person law firm Segal and Davis, L.C., with her husband, Scott Segal. She concentrated in the areas of employee benefits and domestic relations and in 1993 became the first lawyer in West Virginia inducted into the American Academy of Matrimonial Lawyers. In 1991 the West Virginia Supreme Court of Appeals appointed her to the seven-person West Virginia Board of Law Examiners, on which she served until her election to the West Virginia Supreme Court in 1996. Initially elected to a four-year unexpired term, Justice Davis won election in November, 2000, to a full 12-year term.

Currently, Justice Davis is the Supreme Court’s designee to the Judiciary’s Initiative on Truancy, an effort to combat high absenteeism and early drop outs and keep students in the classroom and out of the courtroom. Davis is the author of West Virginia Law Review articles and has co-authored books on the rules of civil procedure, punitive damages, and Workers’ Compensation litigation.

Justice Davis recently voted to uphold the constitutional validity of an essential element of the 2001/2003 medical liability reform law, the critically important non-economic damages cap. Judge Davis’ website is: www.JusticeRobinDavis.com

John Douglas “J.D.” Beane (D)

Justice Robin Davis was born and raised in Boone County, West Virginia and attended West Virginia Wesleyan College, after which she earned both her master’s and law degrees from West Virginia University.

James J. “Jim” Rowe (D)

James J. “Jim” Rowe (D)

Judge Jim Rowe has been a circuit judge in Greenbrier and Pocahontas counties since being appointed to the position by Governor Caperton in 1997. Before becoming a judge, he served four years in the House of Delegates where he held the powerful positions of House Majority Leader and Judiciary Committee Chairman.

Today, he is a member of the Governor’s Committee on Crime, Delinquency and Corrections, the Domestic Violence/Child Victimization Study and the Policy Work Group and the Education Committee of the West Virginia Judicial Association. He is also a charter member of the American College of Business Court Judges.

In 2004, in a bid for a seat on the Supreme Court Justice Rowe was endorsed by the WESPAC Political Action Committee WESPAC and strongly supported by the physician community.

Judge Jim Rowe grew up in rural Monroe and Pendleton Counties where he attended public schools and graduated from Franklin High School. After earning an undergraduate degree from West Virginia University, Judge Rowe served his country as a member of the United States Air Force. He is a graduate of the Law School of George Mason University. Judge Rowe’s website is: www.JimRoweForSupremeCourt.com

Palmer has been a Law Clerk for the West Virginia Supreme Court of Appeals since 1996. As a member of the Supreme Court’s law clerk staff for over 15 years, Palmer has provided legal advice to the Court on thousands of cases.

Judge John Yoder is currently circuit judge in the 23rd circuit of West Virginia, which includes Jefferson, Berkeley and Morgan Counties.

After serving four years as a state circuit judge from 1976-1980, Judge Yoder was selected by the United States Supreme Court to serve as a Supreme Court Fellow in 1988. Following his fellowship, Yoder was hired by the Chief Justice to work on his staff. President Reagan next appointed him to establish and run a new subdivision at the U.S. Department of Justice. He was elected West Virginia State Senator and served two terms from 2008 to 2010.

Judge Yoder holds a B.A. degree with majors in government and economics from Chapman University, a Juris Doctor degree from the University of Kansas School of Law, and an M.B.A. at the University of Chicago. He is also a graduate of several programs at the National Judicial College and the National College of Juvenile Justice. Judge Yoder’s website is: www.JudgeYoder.com

Allen Loughry is currently a Judicial Law Clerk for the West Virginia Supreme Court of Appeals and has served in that position for the past eight years. He also has experience in local, state and federal governments and during his career, he has served as Senior Assistant Attorney General; Special Prosecuting Attorney; Assistant to the Prosecution; Direct Aide to Governor Gaston Caperton; Special Assistant to a U.S. Congressman; and Adjunct Professor at the University of Charleston. Loughry is a well known writer and author of the book “Don’t Buy Another Vote, I Won’t Pay for a Landslide” on the sordid and continuing history of political corruption in West Virginia.

Loughry has four separate law degrees from American University, Washington’s College of Law, the University of London, and Capital University School of Law. He also studied law at Oxford University in England. He is a life-long West Virginia resident and native of Tucker County and currently lives in Charleston. Loughry’s website is: www.AllenLoughry.com

John Christian Yoder (R)

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José Luis Palmer was born in Savannah, Georgia and later moved to New York. After graduating from high school, Palmer joined the Marines. Upon receiving an honorable discharge, Palmer obtained a college degree from City University of New York in 1983, and a law degree from West Virginia University College of Law in 1992. In between obtaining the two degrees, Palmer was employed as a social worker in New York where he focused his work on the foster care and juvenile justice systems.

Palmer has been a Law Clerk for the West Virginia Supreme Court of Appeals since 1996. As a member of the Supreme Court’s law clerk staff for over 15 years, Palmer has provided legal advice to the Court on thousands of cases.

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H. John “Buck” Rogers (D), is another Democratic candidate for the State Supreme Court, but no campaign website was available for information on his candidacy.

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