

2010 WEST VIRGINIA LEGISLATURE
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The West Virginia Legislature began its 60-day session January 13, 2010. It is to adjourn at midnight, March 13. Below are Senate and House bills of interest to pharmacy. Each bill is identified by a number, the Senator(s) or Delegate(s) introducing it, a brief description, and current status of the bill.

Senate Bill 8 introduced by Senator Kessler. This bill clarifies that a licensed pharmacist and licensed pharmacy are defined as health care providers under the provisions of the Medical Professional Liability Act. (Approved by Committee on Health and Human Resources; now in Judiciary.)

Senate Bill 18 introduced by Senator Deem. This bill allows a federal adjusted gross income deduction of up to \$15,000 for the amount spent on health insurance by individuals, thus reducing their WV personal income tax liability. (Approved by Committee on Health and Human Resources; now in Finance.)

Senate Bill 24 introduced by Senator Foster. This bill prohibits licensed pharmacies from selling the following tobacco products: cigars, cigarettes, cigarette paper, chewing tobacco, snuff, bidis, tobacco of any other description or any of the products made from tobacco. (Currently in Committee on Health and Human Resources then Judiciary.)

Senate Bill 36 introduced by Senator Deem. This bill allows a federal adjusted gross income deduction for the amount spent by individuals on high deductible health plan purchased in conjunction with a health savings account, thus reducing their WV personal income tax liability. (Currently in Committee on Finance.)

Senate Bill 44 introduced by Senator Kessler. This bill establishes a tax credit for medical providers who provide services at no charge to free health clinics in the state. (Currently in Committee on Health and Human Resources then Finance.)

Senate Bill 49 introduced by Senator Sypolt. This bill allows pharmacists and other individuals involved in the dispensing medicines to refuse to fill prescriptions or dispense any substance that can be used as an abortifacient or that can be used as part of an abortion-related procedure. (Currently in Committee on Health and Human Resources then Judiciary.)

Senate Bill 54 introduced by Senator Foster. This bill restricts the use of prescription drug data for marketing purposes but allow the use in noncommercial areas, and establishes penalties for misuse of prescription data. The bill does not prohibit conduct involving the collection, use, transfer or sale of regulated records for marketing purposes if: (1) data is aggregated; (2) data does not contain individual identifying information; and (3) no reasonable person would believe that the data can be used to obtain individual identifying information. (Currently in Committee on Health and Human Resources then Judiciary.)

Senate Bill 65 introduced by Senator Barnes. This bill provides a tax credit to medical providers in an amount equal to their investment in electronic medical record technology. (Currently in Committee on Finance.)

Senate Bill 81 introduced by Senator Jenkins. Titled "WV Official Prescription Program Act" this bill intends to reduce prescription drug fraud by establishing an official prescription program. The bill also creates a "West Virginia Official Prescription" to mean a prescription, which has been authorized and issued by the WV Department of Health and Human Resources for use and meets the following criteria: (1) prevention of unauthorized copying; (2) prevention of erasure or modification; (3) an ability to prevent counterfeit prescription forms; and (4) capable of supporting automated validation through pharmacy claims processing systems using the official state prescription control number. The Secretary of DHHR may contract with a vendor to establish and maintain the official state prescription program, pursuant to guidelines promulgated by the Secretary. Every prescription written after July 1, 2011, must be written on the official prescription form, except those generated and dispensed within a medical facility. A pharmacist may not fill a written prescription after July 1, 2011, unless it is issued upon an official

prescription form. The official prescription form shall be prepared and issued by the Secretary in batch quantities. The forms are to be serially numbered and unable to be altered, copied or counterfeited. The prescription blanks shall not be transferable. The forms shall be provided by the Secretary to registered practitioners and facilities without charge. (Currently in Committee on Health and Human Resources then Judiciary.)

Senate Bill 162 introduced by Senators Kessler and Unger. This bill eliminates the severance tax and health care provider tax on behavioral health providers. (This bill being monitored as it opens tax code on “provider tax” being paid by providers other than pharmacy. Currently in Committee on Finance.)

Senate Bill 230 introduced by Senators Bowman, Kessler, Yost, Browning, Edgell, Snyder and D. Facemire. This bill revises the scope of practice of optometry to include: (1) examine, diagnosis and treat conditions of the human eye; (2) administer or prescribe schedule III, IV and V controlled substances related to the examination, diagnosis or treatment of diseases and conditions of the human eye and its appendages; and (3) prescribe and dispense ocular devices approved by the FDA as a drug, including but not limited to contact lenses, that contain and deliver pharmaceutical agents. (Same as House Bill 4131. Currently in Committee on Government Organization.)

Senate Bill 360 introduced by Senator Foster. This bill enacts the Smoke Free West Virginia Act, prohibiting smoking in all public places, places of employment and government vehicles. Continues authority of county health departments to regulate smoking but such regulations must be no less restrictive than this proposed law. (Currently in Committee on Health and Human Resources then Finance.)

Senate Bill 361 introduced by Senators Jenkins and Stollings. This bill adds the generic drug tramadol, brand name Ultram, to the Schedule IV list of controlled substances. (Same as House Bill 2899. Currently in Committee on the Judiciary.)

Senate Bill 362 introduced by Senators Jenkins and Stollings. This bill clarifies current law that prohibits misleading or false information from being given to a medical practitioner in order to obtain another prescription for a controlled substance. The bill also increases the criminal penalties for such actions. (Currently in Committee on Judiciary.)

Senate Bill 363 introduced by Senators Jenkins and Stollings. This bill requires methadone treatment centers to provide certain information in accordance with the WV Controlled Substance Monitoring Act to the Board of Pharmacy when a controlled substance is permitted to be taken away from a treatment facility by a patient of that facility. (Currently in Committee on Health and Human Resources then Government Organization.)

Senate Bill 364 introduced to Senators Jenkins and Stollings. The bill permits duly authorized agents of the Office of the Chief Medical Examiner to have access to inspect confidential information on controlled substances that is required to be kept by the Board of Pharmacy. (Currently in Committee on the Judiciary.)

Senate Bill 365 introduced by Senators Jenkins and Stollings. This bill requires all retail pharmacies to provide its personnel online access to the WV Controlled Substance Monitoring Program. (Approved by Committee on Health and Human Resources; now in Judiciary.)

Senate Bill 373 introduced by Senator Prezioso. This establishes the Caregivers Consent Act, allowing a caregiver who is not a parent, legal custodian or guardian of a minor to consent to health care for a minor through an affidavit. (Approved by Committee Health and Human Resources; now in Judiciary.)

House Bill 2014 introduced by Delegate Campbell. This bill eliminates the severance tax and health care provider tax on behavior health providers. (Carry-over from 2009. This bill being monitored because it opens tax code on “provider tax” paid by providers other than pharmacies. Currently in Committee on Finance.)

House Bill 2053 introduced by Delegates Hatfield and Doyle. This bill prohibits pharmacists and other persons involved in dispensing medicines from refusing to fill prescriptions or dispense any substance without a valid reason. A pharmacist may refuse to dispense a prescription only if: (1) the medication is not in stock; or, (2) a review of the patient’s history at the pharmacy shows that the medication is contraindicated when used with other medications. A pharmacist who refuses to dispense a prescription without a valid reason may be fined not less than

\$500 nor more than \$1,000 per violation. If the patient suffers physical or emotional harm as a result of a pharmacist or other person refusing to dispense medications in violation of this section, the pharmacist or other person and their employer are liable for damages. (Carry-over from 2009. Currently in Committee on Health and Human Resources then Judiciary.)

House Bill 2054 introduced by Delegates Iaquina, Argento, Barker, Fragale and Azinger. This bill provides a mechanism whereby unused, unexpired non-narcotic drugs previously owned by a deceased nursing home patient or resident may be donated to free health clinics. (Carry-over from 2009. Currently in Committee on Health and Human Resources then Judiciary.)

House Bill 2101 introduced by Delegates Cann, Kominar, Reynolds, Craig, Anderson, Evans and Doyle. This bill provides a credit against WV personal income tax liability in the amount of payments made on student loans. (Carry-over from 2009. Currently in Committee on Education then Finance.)

House Bill 2303 introduced by Delegate Schoen. This bill allows pharmacists to refuse to dispense any substance that can be used as an abortifacient or that can be used as part of an abortion-related procedure. (Carry-over from 2009. Currently in Committee on Health and Human Resources then Judiciary.)

House Bill 2394 introduced by Delegate Border. This bill authorizes issuance of special license plates for pharmacists. (Carry-over from 2009. Currently in Committee on Roads and Transportation then Judiciary.)

House Bill 2485 introduced by Delegates Border and Perdue. This bill permits pharmacy interns to vend pseudoephedrine and other chemical precursors of methamphetamine. (Carry-over from 2009. Currently in Committee on Health and Human Resources then Judiciary.)

House Bill 2576 introduced by Delegates Duke, Doyle, Overington and Blair. This bill provides a tax credit of 3.25% against the net corporate income tax for qualified health insurance policies provided by corporate employers to employees. (Carry-over from 2009. Currently in Committee on Banking and Insurance then Finance.)

House Bill 2599 introduced by Delegates Carmichael and Walters. This bill changes the PROMISE Scholarship Program to the PROMISE Forgivable Student Loan Program and establishes deferment and loan forgiveness if a college graduate lives and works in West Virginia for four years after graduation. (Carry-over from 2009. Currently in Committee on Education then Finance.)

House Bill 2646 introduced by Delegates Rodighiero and Eldridge. This bill requires the "Medicare Advantage Prescription Drug Plan" in the Public Employees Insurance Agency to comply with the federal Center for Medicare and Medicaid Services. (Carry-over from 2009. Currently in Committee on Health and Human Resources then Finance.)

House Bill 2648 introduced by Delegates Perdue, Boggs, Hatfield, Campbell, Mahan, Hamilton, Michael and Morgan. This bill prohibits the selling or transferring of a person's prescription drug information without the patient's authorization. (Carry-over from 2009. Currently in Committee on Health and Human Resources then Judiciary.)

House Bill 2679 introduced by Delegates Carmichael, Walters and Schoen. This bill provides a tax credit to medical providers in an amount equal to their investment in electronic medical record technology. (Carry-over from 2009. Currently in Committee on Health and Human Resources then Finance.)

House Bill 2712 introduced by Delegates Miley and Hamilton. This bill requires WV Medicaid to establish filing, notice and public comments and hearing requirements relating to any proposed changes in rules, policies or benefits. (Carry-over from 2009. Currently in Committee on Government Organization then Judiciary.)

House Bill 2746 introduced by Delegates Perdue, Hatfield, Marshall, Michael, Moore, Rodighiero and Border. This bill increases the tax on a pack of cigarettes from 55-cents to \$1.20. (Carry-over from 2009. Recommended by interim study by Select Committee on Health. Currently in Committee on Health and Human Resources then Finance.)

House Bill 2773 introduced by Delegates Lawrence, Fragale, Perdue, Sobonya, Paxton, Walker, Stowers, Moore, Eldridge, Hall and Smith. This bill increases the fine for selling tobacco products to minors from \$25 to \$100 for the first offense, and from \$100 to \$250 or \$500 for the second offense, and from \$250 to \$750 for the third offense. (Carry-over from 2009. Currently in Committee on Judiciary.)

House Bill 2780 introduced by Delegates Staggers, Shaver, Argento, Moye, Perdue, Phillips, Hamilton, Beach, Caputo, Fleischauer and Rowan. This bill establishes the “Emergency Credentialing for Health Care Providers Act” which requires the Secretary of DHHR to establish a registry of emergency health care providers. It requires health care providers to comply with an emergency plan and credentialing plan. (Carry-over from 2009. Currently in Committee on Health and Human Resources then Judiciary.)

House Bill 2850 introduced by Delegate Louisos. This bill requires recipients of food stamps and Medicaid to show photo identification when receiving benefits. (Carry-over from 2009. Currently in Government Organization then Finance.)

House Bill 2899 introduced by Delegates Border and Perdue. This bill adds tramadol to Schedule IV of the WV Uniform Controlled Substance Act. (Same as SB 361. Carry over from 2009. Approved by House Health and Human Resources Committee; now in Judiciary.)

House Bill 2978 introduced by Delegates Kominar, Swartzmiller, Varner, Perdue, Eldridge, Perry, Campbell, Stephens, Cowles and Miller. This authorizes optometrists to perform the clinical practices for which they are trained, including treatment of the eye, performing certain procedures, dispensing or administration certain drugs and ordering laboratory and diagnostic tests. The bill calls for the Board of Optometry to promulgate rules limiting the practice of optometrists and establishing a drug formulary for optometrists. (Carry-over from 2009. Currently in Committee on Health and Human Resources then Judiciary.)

House Bill 2979 introduced by Delegate Hunt. This bill requires the Board of Pharmacy to adopt guidelines to permit pharmacists to prescribe medications without an order of a practitioner, and developing an approved list of those medications. (Carry-over from 2009. Currently in Committee on Health and Human Resources then Government Organization.)

House Bill 3021 introduced by Delegates Schadler, J. Miller, Andes, Moore and Rowan. This bill establishes a program to permit medicine aides who are certified to administer certain drugs in licensed nursing homes. The bill sets forth the qualifications of certified medicine aids. (Carry-over from 2009. Currently in Committee on Health and Human Resources then Finance.)

House Bill 3060 introduced by Delegates Rodighiero, Reynolds, Eldridge, Hatfield and Butcher. This bill prohibits new methadone treatment programs and clinics except for program operated as community health centers and requiring all community health center methadone programs to monitor patients’ pharmacy registry. (Carry-over from 2009. Currently in Committee on Health and Human Resources then Judiciary.)

House Bill 3126 introduced by Delegate Azinger. This bill requires Dept. of Health and Human Resources to annually review and adjust rates it pays health care providers. (Carry-over from 2009. Currently in Committee on Health and Human Resources then Finance.)

House Bill 3238 introduced by Delegate Canterbury (by Request). This bill calls for brand name pharmaceutical manufacturers and pharmacies to dispose of prescription drugs and OTC products received from customers. (Carry-over from 2009. Died in Committee on Health and Human Resources in 2009. Currently in Committee on Health and Human Resources then Judiciary.)

House Bill 3247 introduced by Delegates Eldridge, Butcher, C. Miller, Barker, Hall, Rodighiero and Reynolds. This bill requires any person licensed to prescribe drugs to check with the WV Board of Pharmacy before initially prescribing certain drugs to a new patient to determine if the patient is engaging in doctor shopping. (Carry-over from 2009. Currently in Committee on Health and Human Resources then Government Organization.)

House Bill 4131 introduced by Delegates Swartzmiller, Klempa, Cowles, J. Miller, Michael, Hall, Martin, Ross and Stowers. This bill revises the scope of practice of optometry to include: (1) examine, diagnosis and treat conditions of the human eye; (2) administer or prescribe schedule III, IV and V controlled substances related to the examination, diagnosis or treatment of diseases and conditions of the human eye and its appendages; and (3) prescribe and dispense ocular devices approved by the FDA as a drug, including but not limited to contact lenses, that contain and deliver pharmaceutical agents. (Same as Senate Bill 230. Currently in Committee on Government Organization then Judiciary.)

House Bill 4135 introduced by Delegates Morgan, Stephens, Swartzmiller, Talbott, Staggers, C. Miller, Hartman and Ross. This bill authorized the Ethics Commission to promulgate a rule establishing guidelines under which a member of a professional licensing board may serve concurrently as an officer of a state professional association. (Currently in Committee on Government Organization then Judiciary.)

House Bill 4139 introduced by Delegates Morgan, Stephens, Swartzmiller, Givens, Staggers, Hartman, Ross and Butcher. This bill revises current law governing all professional licensing boards, including the WV Board of Pharmacy. Among the revisions are: (1) requiring board members attend training sessions; (2) required reporting of violations; (3) authorizing boards to establish fees; (4) notifying licensees of proposed fee increases; (4) authorizing boards to levy fines; (5) hiring administrative law judges; (6) clarifying law governing hearings and administrative hearings; (6) requiring board members to adhere to ethical standards; and (7) requiring performance reviews of all boards. (Currently in Committee on Government Organization.)

House Bill 4243 introduced by Delegates Perdue, Eldridge and Hatfield. This bill requires pharmacy benefit managers (PBM) to be licensed and regulated by the Insurance Commission. In order to be licensed as a PBM, the entity must submit various financial and corporation documents, as well as the names of individuals responsible for the PBM operations and other officers. A detailed description of the claims processing services, pharmacy services, insurance services, other prescription drug or device services, and audit procedures for network pharmacies are to be filed with the Insurance Committee. PBMs must disclose any ownership interest or affiliation of any kind with any insurance company, or any parent companies, subsidiaries and other entities or businesses relative to the provision of pharmacy services, other prescription drug or device services or a pharmaceutical manufacturer. PBMs must disclose the following: (1) all incentive arrangement or programs such as rebates, discounts, disbursements or nay other similar financial arrangements with pharmaceutical companies; (2) all agreements with pharmaceutical companies to share rebates and discounts or any other economic benefits to the PBM; (3) any agreement or practice to bill a health plan for prescription drugs at a cost higher than the PBM pays pharmacies; (4) any agreement to share revenue with a mail order or Internet pharmacy; and (5) any agreement to sell prescription drug data including data concerning the prescribing practices of the health care providers in the state. (Currently in Committee on Health and Human Resources then Finance.)

House Bill 4269 introduced by Delegate Reynolds. This bill restricts the sale of drug paraphernalia to licensed pharmacies. Drug paraphernalia is described as appliances or any items designed or marketed for use with controlled substances. (Currently in Committee on Health and Human Resources then to Judiciary.)