

# Public Health Overview of the 82<sup>nd</sup> Legislature

West Virginia Bureau for Public Health April 2016

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## 2016 Session – An Overview

The second session of the 82<sup>nd</sup> Legislature concluded at midnight on March 12, 2016. A total of 1,896 bills were introduced between the two chambers this session, of which 276 bills completed legislative action -- 139 originated in the House and 137 originated in the Senate.

A full list of completed legislation may be found on the West Virginia Legislature's website at the following link:

[http://www.legis.state.wv.us/Bill\\_Status/Bills\\_all\\_pass.cfm?year=2016&sessiontype=RS&btype=bill](http://www.legis.state.wv.us/Bill_Status/Bills_all_pass.cfm?year=2016&sessiontype=RS&btype=bill)

A total of 169 resolutions were adopted this session. To see a full list of approved resolutions, use the following link:

[http://www.legis.state.wv.us/Bill\\_Status/res\\_all\\_pass.cfm?year=2016&sessiontype=rs&btype=res](http://www.legis.state.wv.us/Bill_Status/res_all_pass.cfm?year=2016&sessiontype=rs&btype=res)

## Public Health Related Legislation

The following is a list of bills that may be of some interest to local boards of health, health officers, and administrators.

**S.B. 123 - Treatment for sexually transmitted diseases.** The bill authorizes health care professionals who make a clinical diagnosis of a sexually transmitted disease to provide expedited partner therapy (EPT) for the treatment of the sexually transmitted disease if, in the judgment of the health care professional, the sexual partner is unlikely or unable to present for comprehensive health care, including evaluation, testing and treatment for sexually transmitted diseases. EPT is the clinical practice of treating the sex partners of patients diagnosed with chlamydia or gonorrhea by providing prescriptions or medications to the patient to take to his/her partner without the health care provider first examining the partner. Under the provisions of S.B. 123, EPT is limited to a sexual partner who may have been exposed to a sexually transmitted disease within the previous 60 days and who is able to be contacted by the patient. A health care professional who provides EPT must provide counseling for the patient, including advice that all women and symptomatic persons, and in particular women with symptoms suggestive of pelvic inflammatory disease, are encouraged to seek medical attention. The health care professional must also provide in written or electronic format, materials provided by the Department of Health and Human Resources to be given by the patient to his or her sexual partner. The bill completed legislative action February 16, 2016, and was approved by Governor on February 25, 2016. The bill will become effective on May 25, 2016.

**S.B. 195 - Authorizing DHHR to promulgate legislative rules.** The bill approves the following legislative rules proposed by the Bureau as either a new rule or an amendment to a current rule.

- Emergency Medical Services. (64 CSR 46) Amendments to the current rule,
- Fees for Services. (64 CSR 51) Amendments to the current rule.
- Infectious Medical Waste. (64 CSR 56) Amendments to the current rule.
- Tuberculosis Testing, Control, Treatment and Commitment. (64 CSR 76). Amendments to the current rule.
- Aids-Related Medical Testing and Confidentiality. (64 CSR 64) Amendments to the current rule.
- Farmers Market Vendors (64 CSR 102). New rule.
- Certification of Opioid Overdose Prevention and Treatment Training Programs. (64 CSR 104) New rule.

The bill completed legislative action on March 10, 2016, and was approved by Governor on March 30, 2016.

**S.B. 387 - Shared animal ownership agreements to consume raw milk.** The bill permits written shared animal ownership agreements to consume raw milk where the owner of a milk producing animal sells a percentage ownership interest in the animal and the other party to the agreement is entitled to receive a fair share of the animal's raw milk production. The agreement must include an acknowledgment of the inherent dangers of consuming raw milk that may contain bacteria, such as Brucella, Campylobacter, Listeria, Salmonella and E. Coli, that has not been pasteurized to remove bacteria and that is particularly dangerous to children, pregnant women and those with compromised immunity. In exchange, the person selling an interest in the milk producing animal is given immunity for any injuries resulting from those inherent dangers, but not for those dangers that are caused by negligent acts or omissions of the seller. The party purchasing a share of the milk producing animal must agree not to distribute raw milk. Additionally, the bill also specifically prohibits the sale or resale of raw milk obtained from a herd share. The person selling an interest in the animal must meet the animal health requirements for milk-producing animals established by the state veterinarian in accordance with state and national standards. The Commissioner of Agriculture, in consultation with the Department of Health and Human Resources, may propose rules in compliance with raw milk dairy industry standards. Legislative action on the bill was completed on February 23, 2016, and was approved by Governor on March 3, 2016. The bill will become effective on May 23, 2016.

**S.B. 404 - Removing prohibition on billing persons for testing for HIV and sexually transmitted diseases.** The bill authorizes the state Bureau for Public Health and local health departments to bill patients, either directly or through their medical health insurance providers, for the reasonable costs of HIV and STD testing. With regard to HIV testing, current law fails to specify how voluntary testing done by public health agencies is to be paid for and specifically requires the state to pay for mandated HIV tests. The bill authorizes local health departments that routinely bill insurance companies or other third party payers for service, to bill for an HIV-related test if the person requesting the test does not request anonymity. As with current law, a person may not be refused testing if they are unable to pay, if they are without insurance, or if they request anonymity.

The bill provides that costs associated with mandatory HIV tests performed on persons charged with prostitution, sexual abuse, sexual assault, incest or sexual molestation may be charged to the defendant or juvenile respondent unless a court determines that the person charged with prostitution, sexual abuse, sexual assault, incest or sexual molestation is pecuniary unable to pay. If a person charged with prostitution, sexual abuse, sexual assault, incest or sexual molestation is ordered to be tested and is unable to pay, the cost of the HIV testing may be borne by the regional jail or other correctional or juvenile facility, the bureau or the local health department. If a person charged with prostitution, sexual abuse, sexual assault, incest or sexual molestation is ordered to submit to a HIV-related test and they are insured, they may not be permitted to remain anonymous and the local health department may administer and bill for the test.

With regard to STD testing and treatment, the bill similarly authorizes local health departments to require a person to pay the reasonable costs of STD testing and treatment, either directly or through billing the person's medical provider. Local health departments may charge in accordance with their existing fee schedules and may charge patients for such testing on a sliding fee scale. But, no individual may be refused testing or treatment at a local health department due to a lack of insurance or inability to pay. The bill also removes the current restriction on the amount that may be charged (\$5.00) for treatment and allows the cost of the treatment to be billed to the patient's health insurance provider.

Finally, the bill authorizes the Commissioner of the Bureau or his or her designee to require a person to undergo an HIV or other sexually transmitted disease test if a person was possibly exposed to HIV or other sexually transmitted disease infected blood or other body fluids as a result of receiving or rendering emergency medical aid, providing funeral services or providing law enforcement services. The Commissioner may use the results to determine the appropriate therapy, counseling and psychological support for the exposed person.

The bill completed legislative action on March 12, 2016, and was signed by the Governor on March 29, 2016. The bill will become effective on June 10, 2016.

**S.B. 431 - Authorizing pharmacists and pharmacy interns dispense opioid antagonists.** The bill amends the Access to Opioid Antagonists Act to authorize pharmacists and pharmacy interns to dispense opioid antagonists without a prescription. Prior to dispensing an opioid antagonist, a pharmacist or pharmacy intern must provide counseling to the individual for whom the opioid antagonist is being dispensed regarding, but not limited to, the following topics: (1) The proper administration of the opioid antagonist, (2) the importance of contacting emergency services as soon as practicable either before or after administering the opioid antagonist, and (3) the risks associated with failure to contact emergency services following administration of an opioid antagonist. This counseling is mandatory and may not be waived. The bill completed legislative action on March 12, 2016, and was signed by the Governor on March 29, 2016. The bill will become effective on June 10, 2016.

**S.B. 545 - Relating to asbestos abatement on oil and gas pipeline.** The creates an exception to the provisions of current law that require persons who come into contact with asbestos through abatement, removal, enclosure or encapsulation, to be trained and licensed professionals. The exception applies to the removal, repair and maintenance of intact oil and gas pipeline asphaltic wrap that contain asbestos fibers encapsulated or coated by bituminous or resinous compounds. The bill completed legislative action on March 10, 2016, and was signed by the Governor on March 29, 2016. The bill will become effective on June 8, 2016.

**S.B. 619 - 2016 Regulatory Reform Act.** The bill amends the executive agency rule-making provisions of the State's Administrative Procedures Act. The most noteworthy changes being, that new or modified legislative rules promulgated after April 1, 2016, must include a sunset provision terminating the rule after five years. Despite this requirement a rule may be renewed for additional terms of five years or less by the Legislature pursuant to rule-making procedures. This requirement does not apply to rules promulgated by the Department of Environmental Protection or emergency rules. The bill also requires all executive agencies with rule-making authority to:

- Review and evaluate all state rules, guidelines, policies and recommendations under their jurisdiction that have similar federal rules, guidelines, policies and recommendations;
- Determine whether the state rules, guidelines, policies and recommendations are more stringent than federal counterparts;
- Provide for a comment period for all rules, guidelines, policies and recommendations; and
- Submit a report to the Joint Committee on Government and Finance and the Legislative Rule-Making Review Committee on or before November 1, 2017

Then, within four years of the enactment of the bill, each executive agency with rule-making authority must review all of its rules and determine whether the rules should be continued without change, modified or repealed.

The bill completed legislative action on March 12, 2016, and was signed by the Governor on April 1, 2016. The bill will become effective on June 10, 2016.

**S.B. 625 - Revising exceptions from FOIA provided for in Aboveground Storage Tank Act.** The bill's short title is actually misleading. The bill simply amends current law applicable to source water protection plans required of public water utilities, to clarify that the utilities may disclose to the public information in the plans related to potential sources of significant contamination, to the extent they are in the public domain through a state or federal agency. Current law suggests that any information regarding potential sources of significant contamination had to be maintained in a confidential manner by the public water utility despite the fact that it was already in the public domain. The bill completed legislative action on March 11, 2016, and was signed by the Governor on March 30, 2016. The bill will become effective on June 9, 2016.

**H.B. 2122 - Making it illegal for first responders to photograph a corpse; Jonathan's Law.** The bill creates two new criminal offenses both related to photographing, filming, videotaping, recording or otherwise reproducing images of human corpse or a person being provided medical care or assistance at a motor vehicle accident or other emergency situation by a first responder. The first offense prohibits a first responder from recording images of the scene and the second offense prohibits the distribution of images without prior written consent of the injured person, the person's next-of-kin if the injured person cannot provide the consent, or the personal representative under law of a deceased person. The bill includes exceptions for a legitimate law-enforcement purpose, public safety purpose, health care purpose, insurance purpose, legal investigation or legal proceeding involving an injured or deceased person or pursuant to a court order. The bill completed legislative action on March 11, 2016, and was approved by Governor March 16, 2016. The bill will become effective on June 9, 2016.

**H.B. 4388 - Relating to stroke centers.** The bill provides for the designation of comprehensive, primary and acute stroke-ready hospitals. The appropriate designation will be granted by the Department of Health and Human Resources based upon criteria recognized by the American Heart Association, the Joint Commission or other nationally recognized organization. The Secretary of the Department of Health and Human Resources is authorized to establish by legislative rule, prehospital care protocols related to assessment, treatment and transport of patients identified as stroke patients. The protocols must include development and implementation of plans for the triage and transport within specified timeframes of onset of symptoms of acute stroke patients to the nearest comprehensive, primary or acute stroke ready hospital. The bill completed legislative action on March 12, 2016, and was signed by the Governor on March 29, 2016. The bill will become effective on June 10, 2016.

**H.B. 4659 - Authorizing local health departments to bill health insurance plans for services.** This bill simply provides an exception from the current requirement that fees for services charged by local health departments must be first subject to public comment and approval of the local board of health before being submitted and approved by the Commissioner. The bill permits local health departments to bill health care service fees to a payor including, Medicaid, a Medicaid Managed Care Organization and the Public Employees Insurance Agency, for medical services at the payor's maximum allowable rate without first seeking the approval of the Commissioner. The bill completed legislative action on March 12, 2016, and the Governor signed the bill into law on March 25, 2016. The bill will become effective on June 10, 2016.

## **The Budget**

The governor introduced his budget during his State of the State speech in January. The budget presented at that time used no money from the State's Rainy Day Fund, funded PEIA and raised several taxes, including taxes on tobacco and tobacco-related products and a telecommunication tax increase, as well as other revenue-generating measures. The Governor's budget also included 24% reduction in State Aid for Local Health. In the final week of

session, the Senate Finance Committee and the House Finance Committee unveiled their budget proposals, which were quite different from each other, as well as the governor's original proposal.

S.B. 269 was the Senate's budget bill. It uses no money from the State's Rainy Day Fund, provides additional funding to PEIA, raises the tobacco tax, raises the gas tax and eliminates subsidies to greyhound racing, as well as other revenue-enhancing measures, and does not make further cuts to state agencies. The bill passed the Senate 29-5 on March 10.

H.B. 4017 was the House's budget bill. It balances the budget by using additional money from the State's Rainy Day Fund, sweeping several agency revenue accounts for extra funding, and making some minor increases in cuts to state agencies. However, higher education institutions are not included in those further cuts. It contains no additional tax increases, while providing some additional funding to PEIA.

The two bills were merged into one measure – S.B. 269.

Because of the disagreements between the two chambers, the president of the senate and the speaker of the house appointed budget conferees to negotiate a final bill. The conferees met on Monday, March 14, to begin their deliberation. Leadership met with Governor Tomblin to receive new revenue projections for the State, which gave a more recent estimate of the shortfall facing state officials and can be found here:

<http://governor.wv.gov/media/pressreleases/2016/Pages/Governor-Tomblin-Issues-Statement-on-Budget-Following-New-Revenue-Estimates-for-Fiscal-Year-2017.aspx>

Final agreement was not reached by Tuesday, March 15. The Legislature adjourned and will wait for the governor to call them back into special session. It is expected that they will return in late spring to finish consideration of the budget. The new fiscal year begins on July 1, 2016