

The 2017 Legislative Session

Submitted by Patty and Jonathan Seib, WAFP Public Policy Consultants

The third special session of the 2017 Washington legislature was gaveled to a close on July 20th, on what was the state-record 193rd day of session this year. In total between the regular session beginning January 9th and the three special sessions, legislators introduced 2,303 bills and passed 390 through to Governor Inslee's desk. He subsequently vetoed all or part of 22 of those, while signing the remainder.

What follows is a brief description of the bills introduced in the 2017 legislature in which the Washington Academy of Family Physicians played an active role or which otherwise may be of interest to family physicians and their patients. For ease of reference, we've put the bills in numerical order simply as "Senate Bill" (SB) or "House Bill" (HB) rather than the more cumbersome notation (such as "Engrossed Second Substitute House Bill") that reflects procedural steps taken by a given bill to get through the process. We've also noted parenthetically the particular legislator who was the prime sponsor of the bill when introduced.

These brief summaries are taken from reports written by legislative staff, and reference only those sections of the legislation likely to matter to primary care and family medicine. We encourage you to go to the legislative website (leg.wa.gov) or the budget website (fiscal.wa.gov) for more details and to read enacted legislation in its entirety.

New laws: bills passed the legislature and signed by the Governor.

HB 1043: Personal health information (Robinson)

- Provides the nonpublic personal health information in the custody of the Insurance Commissioner is confidential and not subject to public disclosure.

HB 1234: Contraceptives (Robinson)

- Requires health plans that cover contraceptive drugs to reimburse a 12-month refill of contraceptive drugs obtained at one time.

HB 1337: Interstate licensure (Riccelli)

- Enacts the Interstate Medical Licensure Compact.
- Allows physicians to attain expedited licensure in Washington if already licensed in another state that is party to the Compact.

HB 1427: Opioids (Cody)

- Expands access to the Prescription Monitoring Program (PMP).
- Allows the PMP to provide notice to a patient's health care provider after an overdose.
- Requires health professional boards and commissions to adopt rules establishing requirements for prescribing opioid drugs.
- Updates language and terminology related to opioid treatment.

HB 1431: Osteopathic medicine and surgery board (Slatter)

- Adds four members to the Board of Osteopathic Medicine and Surgery.
- Designates the Board of Osteopathic Medicine and Surgery as a class five group for purposes of per diem compensation.

HB 1477: Disclosure of health-related information (Kilduff)

- Provides circumstances where a health care provider or facility may share health information with a family member or close friend of the patient without the patient's consent.
- Specifies information related to mental health services which may be shared with a family member or close friend when a person does not object to the disclosure or does not have the opportunity to object.
- Allows for health care information to be disclosed to prevent or lessen a serious and imminent threat.

HB 1641: Informed consent for homeless youth (McBride)

- Changes provisions regarding consent for nonemergency outpatient primary care services for homeless students, consolidating these with other laws concerning consent for health care for minors in general.

SB 5035: Investigational medical products (Pedersen)

- Permits patients who are suffering from a serious or immediately life-threatening disease to use investigational medical products that have been partially tested by the Food and Drug Administration, but are not available for patient use.
- Provides that the patient's health insurance provider is not required to provide coverage for the investigational medical product or harm caused to the patient as a result of product use.

SB 5413: Physician limited licenses (Cleveland)

- Allows the Medical Quality Assurance Commission to grant full medical licenses to holders of teaching-research limited licenses.
- Removes the two year limit on fellowship limited licenses.

SB 5435: Records related to mental health services (Rivers)

- Broadens the category of persons authorized to receive information related to mental health treatment of an individual, without authorization from the individual, to include persons working in a care coordinator role.

SB 5436: Telemedicine (Becker)

- Allows any location chosen by a patient to be the originating site for purposes of reimbursement for telemedicine services by an insurer or a Medicaid managed care organization.
- Requires behavioral health organizations to reimburse for telemedicine services.
- Effective January 1, 2018.

SB 5779: Behavioral health/primary care (Brown)

- Requires the state Health Care Authority to review payment codes related to behavioral health and primary care by August 1, 2017, and adjust payment rules to facilitate bidirectional integration of behavioral health into primary care.
- Requires the Health Care Authority to communicate with health care providers to increase awareness of behavioral health reimbursement options, standardized billing practices, and reduce bill errors.

SB 5835: Pregnant women and infants (Keiser)

- Provides that it is an unfair practice for an employer that employs 15 or more employees to refuse to make reasonable accommodations for an employee's pregnancy and pregnancy-related health conditions.
- Requires certain health facilities to establish skin-to-skin contact and room-in policies for newborn infants.
- Creates the Healthy Pregnancy Advisory Committee to develop a strategy to improve health outcomes for mothers and infants.

SB 5975: Paid family and medical leave (Fain)

- Provides eligible employees with paid family leave of up to 12 weeks to bond after the birth or placement of a child or to care for a family member with a serious health condition, and paid medical leave of up to 12 weeks for the employee's serious health condition.
- Funded through a tax on wages paid by both employers and employees. Benefits will vary depending on an employee's wages, and will be paid beginning January 1, 2020.

Bills failing to pass in 2017. It's important to note that these bills remain available for the legislature to act on in the 2018 session.

HB 1047: Disposal of unwanted medications (Peterson)

- Requires manufacturers that sell drugs into Washington to operate a drug take-back program to collect and dispose of prescription and over-the-counter drugs from residential sources.

HB 1054: Smoking age (Harris)

- Prohibits the sale of cigarettes, tobacco products, and vapor products to persons under the age of 21.

HB 1060: Students/medical marijuana (Blake)

- Requires school districts to permit a student who meets state law requirements for medical use of marijuana to consume marijuana on school grounds, aboard a school bus, or while attending a school-sponsored event.
- Directs school districts to adopt a policy related to the consumption of medical marijuana by a student if requested by a parent or guardian of a student who is a qualifying patient.

HB 1291: Health care for Pacific Islanders (Santos)

- Creates a premium assistance program for Washington residents who are citizens of the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau.

HB 1432: Foundational public health (Robinson)

- Requires the Department of Health and local health jurisdictions to undertake a shared services project for epidemiology assessment and communicable disease monitoring and response.
- Requires the Department of Health to develop a governmental public health improvement plan.
- Modifies definitions related to public health programs and services.

HB 1505: Naloxone access grant program (Peterson)

- Requires the department of health to establish the naloxone access grant program to:
(1) Distribute funds to local health jurisdictions to purchase naloxone; (2) Distribute naloxone to persons at highest risk for opioid overdose; (3) Provide training on how to administer naloxone; and (4) Educate the public on the potential harms of opioids.

HB 1541: Prescription drug cost transparency (Robinson)

- Requires insurance companies and drug manufacturers to report certain prescription drug pricing data to a data organization contracted by the Office of Financial Management (OFM).
- Requires the data organization to summarize the prescription drug pricing data and provide reports to the Legislature and the Office of Financial Management.

HB 1771: Doctors of Medical Science (Jenkins)

- Provides for the licensing of a new category of health care professional known as a "Doctor of Medical Science."
- Defines a Doctor of Medical Science as physician assistant who receives advanced training preparing him or her for clinical practice equivalent to a primary care doctor.

HB 1967: Non-compete agreements (Stanford)

- Provides that an unreasonable noncompetition agreement is void and unenforceable.
- Requires that for a noncompetition agreement to be enforceable, the employer must disclose its terms in writing no later than the acceptance of the employment offer.

HB 2114: Balanced billing (Cody)

- Modifies requirements related to coverage of emergency services provided at an out-of-network emergency department.
- Regulates the practice of balance billing by out-of-network providers and facilities; authorizes arbitration and mediation of balance billing disputes.
- Requires health care facilities, providers, and carriers to provide patients with information about network status.
- Requires insurance companies to treat hospitals and ambulatory surgical facilities as out-of-network if a certain percentage of providers who provide surgical or ancillary services do not contract with the same carrier.

HB 2143: Medical school loans and scholarships (Haler)

- Creates the Medical Student Loan Program to provide low-interest loans to students in Doctor of Medicine or Doctor of Osteopathic Medicine programs who declare an intention to work in a rural underserved area in Washington.
- Expands the Washington State Opportunity Scholarship to students in eligible advanced degree programs who commit to a required service obligation in a service obligation area.

SB 5071: Family medicine residency (Keiser)

- Establishes constraints on screening criteria used for graduates of the Escuela Latinoamericana de Medicina, a Cuban medical school, who are applying to a residency through the Family Medicine Residency Network.

SB 5072: Graduate medical education (Keiser)

- Requires the deans of the schools of medicine, the medical profession, hospitals, and clinics located throughout the state, in consultation with the family medicine education advisory board, in reviewing the development of new residency programs, to pursue opportunities to develop residency programs that would be enhanced by Spanish speaking residents who have graduated from either domestic or foreign medical schools.

SB 5179: Hearing aids (Bailey)

- Requires coverage for hearing instruments for enrollees in Medicaid and Public Employees' Benefit Board health plans.

SB 5223: Safe injection sites (Miloscia)

- Exerts state preemption over the field of safe injection sites in Washington State.

SB 5369: Naturopathy (Becker)

- Authorizes a naturopath to prescribe and administer legend drugs and controlled substances contained in schedules III through V of the uniform controlled substances act as necessary in the practice of naturopathy.
- Requires a naturopath who prescribes controlled substances to register with the department of health to access the prescription monitoring program.
- Requires the board of naturopathy to establish education and training requirements related to prescribing legend drugs and controlled substances.

SB 5433: Death with dignity decisions (Miloscia)

- Preserves the option for a terminally ill patient to request a lethal dose of medication to end their life.
- Requires the treating physician to inform a terminally ill patient of all feasible alternatives to life ending medication.
- Requires the treating physician to comply with Washington State's standard of care when counseling a terminally ill patient who requests a life-ending dose of medication.

SB 5457: Telemedicine (Becker)

- Requires health plans to pay the same rate for a health care service provided through telemedicine or store and forward technology as an in- person service.

SB 5471: Medicaid reimbursement/primary care (Rivers)

- Requires the Medicaid payment for primary care providers be not less than 100 percent of the Medicare rate.

SB 5722: Restricting conversion therapy (Liias)

- Regulates the professional conduct of licensed health care providers with regard to performing conversion therapy on patients under age eighteen.

SB 5767: Notice requirements/health care providers (Wellman)

- Requires a health care provider's office to post a statement on its web site and in locations accessible to and visible by patients or clients that a health care provider will not perform certain medical procedures or prescribe specific drugs because of his or her religious or philosophical beliefs.

SB 5800: Physician duty to warn (Baumgartner)

- Provides that a mental health professional providing mental health services to a patient has a duty to warn or take reasonable precautions to provide protection from a patient's violent behavior, only if the patient has made an actual threat of physical violence that

poses a serious or imminent threat to the health or safety of a reasonably identifiable person or persons.

- Provides that the duty to warn is discharged if the mental health professional makes reasonable efforts to communicate the threat to the reasonably identifiable person who is threatened and to law enforcement.

The 2017-2019 State Operating Budget.

SB 5883 is the state operating budget for the two-year period beginning July 1, 2017. As has become all too common in the last several years, the legislature flirted with at least a partial state government shut-down before the bill was passed and signed by the Governor on June 30 within an hour before the start of the new fiscal year.

The \$43.7 billion spending plan had lawmakers subsequently arguing to the State Supreme Court that they met their *McCleary* obligations to fully fund basic education (we'll see if the Court agrees by later this year). In the health care arena, the budget included some additional funding for foundational public health programs, and a substantial new investments in the state's behavioral and mental health infrastructure.

But in addition to the major agency appropriations, the budget bill typically includes hundreds of more detailed "provisos" directing agencies to use appropriated dollars in particular ways or for particular purposes, in effect setting policy through program implementation or laying groundwork for policies to be considered in the future. Among the provisos found in sorting through the 621 pages of the 2017 - 2019 budget:

- Funding for the Health Care Authority (HCA) to contract with the University of Washington tele-pain management program and pain management call center to continue to advance primary care provider knowledge of complex pain management issues, including opioid addiction.
- Funding for a pilot program for substance abuse treatment for inmates at the Snohomish County Jail who are undergoing detoxification from heroin and other opioids, and for connecting them with treatment providers in the community upon their release.
- Spending authority allowing the HCA's continued implementation of its Medicaid transformation demonstration project (the Medicaid waiver), which funds incentive-based payments for projects to improve health care delivery and lower costs for Medicaid clients; new services and supports for family caregivers that help people stay in their homes and avoid the need for more intensive services; and supportive housing and employment services for targeted individuals.
- An explicit assumption that the rates paid to Medicaid managed care companies will stay flat in calendar years 2018 and 2019. This could subsequently put pressure on the rates paid

by those companies to their network clinicians. However, HCA has already noted that it does not believe the assumed savings are achievable within the requirements of federal law.

- Funding for the State Auditor to conduct a performance audit of the Department of Health (DOH) focused on its fee setting for licensed health professions. The audit, which is due to the legislature by December, 2018, will include a review of the fee-setting process and how dollars are allocated between the various health profession disciplinary boards and DOH as overhead.
- Funding for the Office of Financial Management (OFM) to conduct a legal and policy review of whether the state's all-payer claims database may collect certain data from drug manufactures and use this data to bring greater public transparency to prescription drug prices. By December 15, 2017, OFM must report to the legislature the results of its review, including any legislation necessary to allow the collection and use of such data.
- Funding for the family medicine residency network at the University of Washington to expand the number of residency slots available in Washington.
- Funding for the University of Washington School of Law to conduct a study on the State Supreme Court's decision in *Volk v. DeMeerleer*, and whether or not it substantially changed the law on the duty of care for mental health providers and whether it had an impact on access to mental health care services in the state. The WAFP was among a coalition of health care organizations for whom addressing *Volk* was a legislative priority. Although the bill to do so failed to pass, this study will keep the issue alive and provide important information to inform the discussion in 2018. The WAFP is one of the groups with whom the UW is explicitly directed to consult in completing the study, which is due by December 1st of this year.
- Funding corresponding to newly authorized billing codes enabling primary care providers serving Medicaid enrollees to bill for collaborative care and integrated behavioral health services.

WAFP Policy and Advocacy Leadership Institute

Also held during the 2017 legislative session was WAFP's annual Policy and Advocacy Leadership Institute – Family Medicine Day (PALI), which took place on Wednesday, February 15. This brought over 60 WAFP members to Olympia to discuss with legislators and other policymakers matters of interest to family physicians. Courtesy of Senator Annette Cleveland, the group was able to assemble in a conference room on the Capitol campus. Following a discussion of WAFP legislative priorities, they were joined over the course of the morning by:

- **Representative Paul Graves (R – Issaquah).** Rep. Graves is a first term legislator who serves as Assistant Ranking Minority Member on the House Health Care & Wellness Committee, and as a member of the Judiciary Committee. He shared with the group his concerns with the *Volk* decision, and why it was important that legislation be passed mitigating its impact. He said also that he was “on the fence” about legislation to raise Washington’s smoking age from 18 to 21. He was very attentive as WAFP members drew on their clinical experience in urging him to support the bill, and afterwards said that what he heard was “very persuasive.”
- **Representative June Robinson (D – Everett).** Rep. Robinson is also a member of House Health Care & Wellness Committee, and Vice-Chair of the Appropriations Committee. She began by thanking the Academy for its support for legislation to provide paid family and medical leave, of which she is the prime sponsor. In discussing this year’s state budget, she identified the priority issues as addressing the Supreme Court’s *McCleary* mandate to fully fund basic education and to continue strengthening the state’s mental health system. Notable was her belief that these priorities could not be met while maintaining other important programs, without an increase in revenue.
- **Dr. John Wiesman, Secretary of Health.** Dr. Wiesman has led the state Department of Health since his appointment by Governor Inslee in 2013. He echoed Rep. Robinson in identifying education funding as a priority, noting that “education is health.” He also talked about the importance of the effort to fund “foundational public health,” and of his personal commitment to see the smoking age in Washington raised to 21.
- **Chase Napier, Lena Nachand, Health Care Authority Community Transformation Team.** Chase and Lena have helped lead the development statewide of “Accountable Communities of Health” that are expected to play a major role in implementing Washington’s recently approved Medicaid Transformation Project. They ran well over their scheduled time engaged in a discussion with members on how to better involve and reflect the interests and concerns of family physicians in this Project.

Following a lunch-time discussion of the “how-to” of legislative advocacy, WAFP members spent the afternoon meeting with legislators representing where they practice and/or live, talking to them about family medicine and encouraging them to support WAFP’s legislative agenda: (1) removing the increased risk of liability recently attached to providing mental health services under the Supreme Court’s *Volk* decision; (2) expanding the Health Professional Loan Repayment Program; and (3) helping prevent smoking-related illnesses by raising Washington’s smoking age from 18 to 21.