

2016 Virginia General Assembly Session Overview

General Overview

The General Assembly Session began on January 13, 2016. Because it is an even-numbered year, this was a long (60-day) Session. The legislature considered just over 3,000 bills and resolutions during this time, continuing Virginia's tradition of having one of the fastest-paced Sessions in the nation. In addition, the Legislature approved a new biennium budget, as it does during every long Session.

This Session marked the first and only time Governor McAuliffe was able to propose his own biennial budget, since an incoming Governor can only amend the outgoing Governor's budget, and does not have an opportunity to craft a new budget until mid-way through his term. The Governor's budget focused on Virginia schools, public safety and other core priorities. It also called for the Commonwealth to expand Medicaid, an effort that has been rebuffed by the Republican-controlled legislature for the last three years. This year, McAuliffe took a new approach to expansion that did not require the use of state dollars but instead charged some hospitals a fee, known as a "provider assessment," equal to 3 percent of their revenue. McAuliffe stated that that plan would provide \$156 million in projected Medicaid savings. In a controversial move, McAuliffe tied many Republican legislators' budget requests to these savings. This set the stage for a difficult Session filled with partisan bickering.

Besides the budget, the legislature handled bills on the following controversial topics:

- Airbnb
- Charter schools
- Clean Power Plan
- Coal tax credit
- COPN reform
- Credit unions
- Drones
- Economic development and research incentive grants
- Electric chair
- Ethics reform
- Fantasy sports regulation
- Gun background check/reciprocity
- Local proffer reform
- Pipeline safety
- Planned Parenthood
- Prescription drug monitoring program
- Public procurement
- Right to work constitutional amendment
- Smoking in cars with children
- Virtual schools

Overall, the legislature passed about half of the bills and resolutions that were introduced. These bills now head to the Governor for his signature, amendment or veto. The legislature will reconvene for a one-day "Veto Session" on April 20th to consider the Governor's recommendations, as well as his amendments to their budget proposal.

Issues of Importance to the Health Care Community

Of the 3,000 or so bills introduced this Session, your lobbyists tracked 86 bills of potential interest to the Virginia Society of Anesthesiologists. Most of these bills were of general interest to the health care community, although several were of particular import to the VSA. Below, please find a list of all the bills tracked for the VSA this year, with a brief summary of each bill, as well as its final outcome. We have highlighted the most important bills in yellow, and will discuss those in greater detail below. If you would like any more information on a particular bill on this list, please visit: <http://lis.virginia.gov/cgi-bin/legp604.exe?161+men+BIL>

Bill	Patron	Summary	Outcome
HB59	Byron	Certificate of public need; definition of medical care facility.	Died
HB86	Morris	VIEW; pilot program for substance abuse screening and assessment.	Died
HB193	O'Bannon	Certificates of public need; creates three-phase process to sunset requirements for medical care.	Died
HB232	Leftwich	Medical bills; authenticity and reasonableness, who may identify & provide testimony.	Signed by the Governor
HB239	O'Bannon	Physicians; division of fees.	Signed by the Governor
HB278	Miyares	Prescription of opioids and benzodiazepines; urine drug screening.	Died
HB284	Collins	Controlled substances; manufacturing, etc., resulting in overdose.	Died
HB290	Herring	Prescription Monitoring Program; indicators of misuse, disclosure of information.	Died
HB293	Herring	Prescription Monitoring Program; requirements of prescribers of benzodiazepine or opiates.	On Governor's desk
HB313	Orrock	Immunizations; adds type of health professionals who may administer.	Signed by the Governor
HB319	Rasoul	Health regulatory boards; continuing education for certain individuals.	Signed by the Governor
HB330	Pogge	Clinical nurse specialists; Board of Nursing may register applicant.	Signed by the Governor
HB338	Pogge	Affordable Care Act; use of resources to enforce.	Died
HB348	Byron	Certificate of public need; exception for certain medical care equipment and services.	Died
HB349	Byron	Certificate of public need; removes requirements for certain medical care facilities.	Died
HB350	Byron	Certificate of public need; changes to Medical Care Facilities Certificate of Public Need Program.	Died
HB354	Greason	Lyme disease; prevention pilot program.	Died
HB356	Garrett	Tanning facilities; prohibits use by persons under age 18.	Died
HB378	Farrell	Workers'; compensation; fee schedules for medical and legal services.	Signed by the Governor
HB386	Minchew	Certified nurse aides; training in observational and reporting techniques.	
HB463	Head	Transfer of medical equipment; certificate of public need not required.	Died
HB527	Hodges	Nonresident medical equipment suppliers; registration with Board of Pharmacy	Signed by the Governor
HB528	Hodges	Prescription drugs; manufacture and distribution in the Commonwealth.	Signed by the Governor
HB551	Watts	Certified nurse aides; Board of Nursing shall require continuing education.	Died
HB580	Robinson	Nurses; adds definition of 'advanced practice registered nurse,' etc.	Signed by the Governor
HB581	Robinson	Nurse practitioners; licensed as certified nurse midwives practicing outside of a patient care team.	On Governor's desk
HB586	Yost	Health regulatory boards; confidentiality of certain information obtained by boards.	Signed by the Governor
HB621	Bell, Robert B.	Certificates of public need; requirements for certain projects involving mental hospitals, etc.	Died
HB651	Bell, Richard P.	Certificate of public need; increase of beds at certain facilities.	Died
HB652	O'Bannon	Neurological death; updates terminology.	Signed by the Governor

HB656	O'Bannon	Syringes services program; public health emergency.	Died
HB657	O'Bannon	Prescription Monitoring Program; indicators of misuse, disclosure of information.	Signed by the Governor
HB685	Landes	Direct primary care agreements; Commonwealth's insurance laws do not apply.	
HB688	Peace	Certificate of public need; requirements before commencing a project.	Died
HB689	Peace	Certificate of public need; exception for certain medical care equipment and services.	Died
HB738	Garrett	Registered surgical technologists and surgical assistants; extends registration deadline.	Signed by the Governor
HB829	Stolle	Prescribers of covered substances; continuing education.	On Governor's desk
HB866	O'Bannon	Hospitals; advance disclosure of allowed amount or charge for procedure.	Died
HB900	Stolle	Associate physicians; requirements for licensure, practice agreements.	Died
HB905	Yancey	Hospitals; advance disclosure of charge for elective procedure, test, or service.	On Governor's desk
HB909	Minchew	Nurse practitioners; practicing outside of a patient care team.	Died
HB962	LaRock	Lyme disease; testing disclosure.	Died
HB963	LaRock	Pain-Capable Unborn Child Protection Act; created, penalty.	Died
HB1044	Landes	Prescription Monitoring Program; disclosure of certain information.	On Governor's desk
HB1083	Stolle	Medical Care Facilities Certificate of Public Need Program; changes to Program, report.	Died
HB1086	Villanueva	Certificates of death; electronic registration.	Died
HB1098	Villanueva	Practice of chiropractic; expands definition.	Died
HB1128	Habeeb	Spouse's liability for medical care; exemption for principal residence.	Signed by the Governor
HB1130	Habeeb	Medical records; fee limits and penalty for failure to provide.	Died
HB1204	Minchew	Virginia Health Care Access Fund; created.	Died
HB1205	O'Bannon	Secretary of Health and Human Resources; increase sharing of electronic health records, report.	Died
HB1265	Miyares	Practitioner of medicine, osteopathy, etc.; limits on dispensing of certain drugs, penalty.	Died
HB1342	Filler-Corn	Immunizations; requirements related to administration of vaccinations.	Died
HJ45	Byron	Health insurance; coverage for abuse deterrent formulations for opioid medications.	
HJ61	Stolle	Life-prolonging care; Joint Commission on Health Care to study legal and regulatory requirements.	Died
SB19	Stanley	Telemedicine; pilot program.	Died
SB20	Stanley	Patient-Centered Medical Home Advisory Council; established.	Died
SB201	Dunnavant	Division of fees among physicians.	Signed by the Governor
SB212	Dunnavant	Health regulatory boards; membership and terms.	Signed by the Governor
SB264	Dance	Nurse practitioners; practicing outside of a patient care team.	Signed by the Governor
SB265	Dance	Nurse Licensure Compact; current compact replaced with a revised version.	Signed by the Governor
SB267	Dance	Conversion therapy; prohibited.	Died
SB287	Wexton	Prescription Monitoring Program; reports by dispensers shall be made within 24 hours or next day.	Signed by the Governor

SB328	Favola	Nurse aide education programs; observational and reporting techniques to be included in curriculum.	Signed by the Governor
SB331	DeSteph	Accident and sickness insurance; step therapy for psychiatric medications.	Died
SB332	DeSteph	Accident and sickness insurance; step therapy protocols.	Died
SB333	DeSteph	Certificates of public need.	Died
SB343	Lucas	Cancer; possession or distribution of marijuana for medical purposes.	Died
SB369	Stanley	Nurse practitioners; practicing in telemedicine pilot program.	
SB452	Stanley	Medical school; clinical rotation requirements.	
SB463	Carrico	Nurse practitioners; licensed as certified nurse midwives, practicing without patient care team.	On Governor's desk
SB491	Hanger	Prescription Monitoring Program; disclosure of certain information.	
SB510	Sturtevant	Medical bills; who may identify and provide testimony.	Died
SB513	Dunnavant	Prescription Monitoring Program; requirements of prescribers of opiates.	Signed by the Governor
SB551	Cosgrove	Physician assistants; unlawful use of title.	On Governor's desk
SB561	Newman	Certificates of public need.	Died
SB585	Barker	Certificates of public need; conditions.	Died
SB592	Alexander	Vital records; amending death certificates.	On Governor's desk
SB594	Alexander	Certificates of death; electronic registration.	Died
SB596	Alexander	Death certificates; extends time for filing medical certification of death.	Died
SB620	Stanley	Nurse practitioners; eliminates requirement that they practice as part of patient care team.	Died
SB622	Dunnavant	Military medical personnel; pilot program for personnel to practice medicine.	Died
SB627	Stanley	Direct primary care agreements.	Died
SB631	Wagner	Workers' compensation; fee schedules for medical services.	Signed by the Governor
SB641	Stanley	Certificate of public need.	Died
SB777	Barker	Certificate of public need; establishes program to address cost containment.	Died

Issues of Importance to the Virginia Society of Anesthesiologists

Of all the bills tracked for the VSA this Session, the following were the most important:

1. **APRN Bill (HB580)** – As you may recall, the CRNAs have been pushing for bill to change their title to “Advance Practice Registered Nurse” for several years. We have always successfully defeated these bills. This year, the CRNAs approached us about introducing the bill again. Their concern was that current language in the Code defined them as “nurse practitioners,” which did not distinguish them from other types of NPs. We negotiated for several months, and finally agreed not to oppose their bill if they would:
 - a. Define CRNAs as APRNs and include the supervision requirement *in the definition* (making this bill the second place in the Code where the supervision requirement is specifically spelled out); and
 - b. Prohibit CRNAs from working under collaborative practice agreements, like other types of NPs.

- c. Agree not to join the independent practice fight that was being waged by other NPs.

Although the CRNAs were initially reluctant to accept these changes, they did eventually agree to do so. We worked jointly on the bill during Session, and were pleased when the Governor signed it into law last month. The bill will go into effect July 1, 2016. You can view the full text of the bill here: <http://lis.virginia.gov/cgi-bin/legp604.exe?161+ful+HB580ER>

2. **Independent Practice Bills** (SB264, SB369, SB620 were the main bills that survived) – There was a groundswell of legislation this year introduced to allow NPs to practice outside of the patient care team model. Disappointingly, several of our physician legislators were supportive of these efforts. It was the main objective of the Medical Society, and all of its specialty societies like the VSA, to fight these bills. In the end, all of these bills were successfully defeated or watered down. Of those that were amended, some were revised to only allow NPs whose supervising physician has died or retired to contract with the Director of the Department of Health to serve as his/her supervising physician for a 60 day temporary period. Others were amended to simply create a pilot program for physicians to serve via telemedicine as patient care team physicians to NPs practicing in medically underserved areas of Virginia. The Department of Health has been required to consult all stakeholders outside of Session to create this pilot program. **These bills will not impact CRNAs in any way, since CRNAs are no longer considered NPs under the Code (see #1 above).**
3. **Prescription Monitoring Program Bills** (HB657 and SB 513 were the main bills that survived) – These bills placed stricter requirements on physicians to obtain information from the Prescription Monitoring Program at the time of initiating a new treatment of opioids to last more than 14 days (previously 90 days). The bills also allow a prescriber to delegate the duty to request information from the Prescription Monitoring Program to another licensed, registered, or certified health care provider who is employed at the same facility under the direct supervision of the prescriber or dispenser who has routine access to confidential patient data and has signed a patient data confidentiality agreement. There are several exemptions from the new requirement, including in cases where opioids are prescribed as part of treatment for a surgical procedure, provided the prescription is not refillable.
4. **COPN Bills** (HB 350 was the main bill that survived) – There was a year-long study in 2015 examining whether to repeal or partially repeal Virginia's COPN process. Ultimately, the COPN Workgroup recommended specific partial repeals. At the beginning of Session, legislators introduced dozens of bills going farther – many of which fully repealed COPN. Not surprisingly, the Virginia Hospital and Healthcare Association opposed any repeal, while many physician groups advocated for it. After hearing testimony from all sides, legislators worked on developing amended language to tackle some, but not all, of the proposed reforms. Ultimately, however, the legislature voted to “continue” the bills to 2017, to allow more time for study.
5. **Associate Physician Bill** (HB900) – This bill, which was introduced by physician legislator Chris Stolle, would have authorized the Board of Medicine to issue a two-year license to practice as an associate physician to an applicant who is 18 years of age or older, is of good moral character, has successfully graduated from an accredited medical school, has successfully completed Step 1 and Step 2 of the United States Medical Licensing Examination, and has not been engaged in a postgraduate medical internship

or residency training program. The bill would have required all associate physicians to practice in accordance with a practice agreement entered into between the associate physician and a physician licensed by the Board and provides for prescriptive authority of associate physicians in accordance with regulations of the Board. The bill was opposed by the Medical Society, which argued that the only other state to take such a step – Missouri – has already started to repeal it because of negative unintended consequences. Ultimately, the Medical Society prevailed by having the bill continued to 2017.

6. **Budget Language:** As you may recall, the VSA advocated for budget language that would tie future increases in primary care reimbursement rates to increases in anesthesia reimbursement rates. Currently, Medicaid reimburses anesthesia services at 58% of Medicare rates. For other specialties, the average is 86.8%. If the anesthesia rate were similar, this would increase the anesthesia conversion rate from \$12.84 to \$18.60 per unit, which equals a \$3.4 million increase per year. Despite the fact that physician legislator John O'Bannon was our chief co-patron, and that we had every other member of the Health and Human Resources subcommittee agree to serve as co-patrons, our language did not make it into the proposed Legislative budget. We were told that this was because legislators are considering across-the-board physician increases in the next year or two, and do not want to do piecemeal increases before that time.

Aside from our disappointment over the budget result, this was a very good year for the VSA. We were able add the requirement for direct supervision over CRNAs into the Code for a second time, we were able to prohibit CRNAs from practicing under collaborative practice agreements, and were able to keep CRNAs out of the NP scope of practice fight. To be sure, many of these issues will be brought back with a vengeance next year. In particular, there seems to be a sea change in legislators' attitudes towards NP independent practice, and that effort looks like it is going to get harder and harder to fight. As always, however, we will keep the VSA posted about any threats to your specialty during the off-Session months.

If you have any questions/comments, please feel free to reach out to Katie Payne: 804-420-6492 or kpayne@williamsmullen.com.