Report of the 2017
Kentucky General Assembly

The 2017 Session of the Kentucky General Assembly adjourned sine die just before midnight on the 30th legislative day – March 30. This session was pioneering in that it was the first time in almost 100 years that the Republicans controlled both houses of the legislature and the office of Governor. KHA is delighted with the progress made on many key issues for hospitals as identified with the input of member hospitals. This success was made possible through the advocacy assistance of the Association’s members. When hospitals combine their strength and collectively express their concerns to elected officials, more can be accomplished. It is critical for KHA and its members to continue to advocate on behalf of all hospitals and their patients.

Two out of the three of KHA’s liability reform priorities this session were passed as a first step toward making even greater strides to reform the medical liability climate in Kentucky. SB 4 (Alvarado), for the establishment of medical review panels, was signed into law by Governor Matt Bevin as well as HB 223 (Fischer), for the lowering of the statutory interest rate on post judgment awards from 12 percent to six percent. There was a lost opportunity with SB 18, the protection of peer review proceedings, which passed the Senate but was not called for a vote in the House. KHA has commitments from the sponsor, Senator Ralph Alvarado (R-Winchester), and a top House member that they will introduce the bill again, have an interim hearing on the issue and will make it a top priority in the 2018 Session.

Other priorities as approved by the membership passed as well, including HB 304, the revised Nurse Licensure Compact, and HB 227, a Physical Therapist Licensure Compact. SB 42 passed, which permits a peace officer to make an arrest for assault against a hospital worker when the violation occurs in a hospital or hospital’s parking lot and the officer has probable cause.

Governor Bevin vetoed three bills and line-item vetoed a provision of an amendment to the current Executive Budget on March 27 (SB 91, HB 471, SJR 57 and HB 471 respectively). The Legislature handily overrode the Governor’s veto of all four bills. After the General Assembly adjourned, the Governor vetoed two more bills: a line-item veto of HB 13 (Meredith), for the bonding for a veterans’ nursing home in Bowling Green, and a veto of SB 219 (Buford), for the licensure of recreational therapists. Since the Legislature is not in session, the last actions will stand.

All legislation passed by the 2017 General Assembly will become effective on June 30 (90 days post close of the session) unless the legislation contained an emergency clause or another stated effective date. The Legislature begins its interim legislative session on June 1.

With the session over, the focus is now on the road ahead, which Governor Bevin stated will include a special session this fall on reforming the state’s antiquated tax code and pension reform. The Governor and his administration are working on a plan to craft their approach for a comprehensive tax reform package.
Medical Liability Reform

SB 4 (Alvarado) – Medical Review Panels – Establishes a medical review panel system for use in civil litigation relating to health care providers, defined to include any health facility or a provider not limited to those who are licensed, certified or registered, and the officers, directors, administrators, agents or employees of any such persons or entities, acting within the course or scope of their office, employment or agency. SB 4 includes the following:

- All malpractice claims against a health care provider shall be reviewed by a medical review panel unless all parties named as defendants in the action agree in writing and with signature that the claim will not go before a panel.
- If the panel has not given its opinion within nine months after filing the proposed complaint, the plaintiff may commence action in court.
- A medical review panel shall consist of one attorney, who shall act as chairperson in an advisory capacity but not vote, and three health care providers.
- The director of the Kentucky Bar Association shall provide a list of attorneys eligible to serve as chairperson of a medical review panel to the Cabinet for Health and Family Services (CHFS).
- The CHFS shall notify the parties to select a panel chairperson by agreement. If no agreement can be reached within 20 days, any party may request the CHFS to select a potential chairperson through a defined process.
- Health care providers, whether in the teaching profession, or otherwise, who hold an active license to practice in his or her profession, shall be eligible for selection as a member of the medical review panel.
- Depositions from parties and witnesses may be taken with the approval of the chairperson after the formation of the panel.
- Upon request of any party or panel member, the chairperson of the panel may issue administrative subpoenas for taking deposition and production of evidence or both.
- The chairperson of the panel shall advise the panel relative to any legal questions and shall prepare the opinion of the panel. The panel, within 30 days of receipt of defendants’ evidence, shall give one of the following opinions:
  1. The defendant failed to comply with the appropriate standard of care and was a substantial factor in producing a negative outcome;
  2. The defendant failed to comply with the standard of care, but was not a substantial factor in a negative outcome; or
  3. The evidence does not support the conclusion that the defendant failed to meet the applicable standard of care.
- The trial court shall admit the panel’s opinion into evidence as an expert opinion, subject to cross-examination. If the opinion is not conclusive, either party may call the medical review panel as a witness, and shall be entitled to reasonable compensation by the party calling the witness.
- Each member of the panel shall be paid up to $350 for all work, exclusive of time involved if called as a witness. The chairperson shall receive $250 per diem, not to exceed $2,000 per case, with all receiving reasonable travel expenses.
- Fees and expenses are to be paid by the winning party.

HB 223 (Fischer) – Lowers the Statutory Interest Rate from 12 percent to six percent on most civil judgments, including judgments for prejudgment interest and establishes a six percent interest rate for workers’ compensation orders and settlements, but allows the administrative law judge (ALJ) to raise the interest rate to 12 percent if there are willful actions by insurance companies.

Health Professionals

SB 42 (Schickel) – Permits a peace officer to make an arrest for a violation of assault against a hospital worker, in the 4th degree, when the violation occurs in a hospital or hospital parking lot and the officer has probable cause. This is a change from current law that only covers the emergency department. The new law now covers the “hospital,” which includes any property owned or used by a hospital including a parking lot or parking garage.

HB 304 (Wuchner) – Revises the Multi-State Nurse Licensure Compact to allow Kentucky to enter into a compact with all other jurisdictions that legally join in the compact; recognize a multi-state licensure privilege to practice for registered nurses or practical nurses; and permit the Kentucky Board of Nursing to limit or
revoke the multistate licensure privilege of any nurse to practice in Kentucky. Law requires states to conduct a fingerprint-based state and federal background check on nurses they license. This Compact facilitates the exchange of information between party states in the areas of nurse regulation, investigation and adverse actions. The Kentucky Board of Nursing is to promulgate a rule adopted by the Interstate Commission of Nurse Licensure Compact Administrators (ICNLCA) as an administrative regulation. In the event the ICNLCA exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this Compact, the action by the Commission shall be invalid and have no force or effect.

HB 227 (Prunty) – Approves a Physical Therapist (PT) Licensure Compact to facilitate interstate practice of physical therapy.

SB 116 (Meredith) – Assures continued licensure of medical imaging professionals. Requires individuals licensed or certified in another state in the field of medical imaging and radiation therapy to be licensed by the board if they have graduated from a postsecondary institution, passed a national certifying examination and have at least five years of experience. This bill was passed with an emergency clause, so it became effective on March 10.

SB 79 (Alvarado) – Defines an agreement between an individual and a physician (amended to include APRNs) for primary care treatment financed by direct payment outside of insurance and not regulated by the Department of Insurance as an insurance product.

SB 101 (Adams) – Allows pharmacists to administer immunizations for patients age 9-17.

SB 146 (Adams) – Establishes requirements to license genetic counselors under the Board of Medical Licensure.

SB 205 (Meredith) – Allows pharmacists to dispense a 90-day supply of non-controlled maintenance drugs without a new prescription from physician.

SB 129 (Hornback) – Family Caregiver Act – Establishes a process where a hospital shall provide each patient or, the patient’s legal guardian if applicable, with at least one opportunity to designate one lay caregiver following the patient’s admission into a hospital and prior to the patient’s discharge. AARP accepted a compromise with KHA that reflects proposed federal regulations and current hospital discharge.

## Workforce

- **HB 1 (Hoover and 23 co-sponsors)** – Creates right-to-work provisions to prohibit mandatory membership in, or financial support of, a labor organization as a condition or continuation of employment. This bill included an emergency clause, and became effective on January 9.

- **HB 3 (Hoover and 20 co-sponsors)** – Prohibits local governments from requiring employers to pay prevailing wage to employees in public works (including government-owned hospitals). This bill applies to public works projects for which bids have not yet been awarded as of the effective date of the Act, which was January 9 due to an emergency clause.

- **HB 14 (Bratcher and 33 co-sponsors)** – Classifies an offense committed as a result of a hate crime to include offenses committed against an individual because of the individual’s actual or perceived employment as a city, county, state or federal peace officer, fire department or emergency medical services personnel.

- **SB 120 (Westerfield)** – Felony Re-entry Program – Creates a drug supervision re-entry pilot program where hiring or licensing authorities shall not disqualify an individual from pursuing or engaging in an occupation for which a license is required solely because of the individual’s prior conviction of a crime, unless the authority provides the individual with a written notice that the authority has determined that the prior conviction may disqualify the person and demonstrates the connection between the prior conviction and the license being sought.

## Mental Health

- **SB 91 (Adams)** – Establishes process for court-ordered outpatient mental health treatment for patients previously involuntarily hospitalized twice in the last 12 months, to prevent re-admission.

## Smoke Free

- **SB 89 (Adams)** – Requires insurers, Medicaid and managed care organizations (MCOs) to cover all FDA-approved smoking cessation products and treatment services, including counselors.
Controlled Substances

- **HB 314 (Bentley)** – Enacts a CHFS proposal that requires hospitals to report all Schedule II drugs dispensed by an emergency department to patients (Schedule III-IV drugs dispensed by a practitioner at a facility if the quantity dispensed is for a maximum of 48 hours and not dispensed by the emergency department are exempt); requires reporting of all positive toxicology tests conducted by an emergency department, but will allow the toxicology reports hospitals send to KHIE to be routed to KASPER. At KHA’s request, a requirement for practitioners that administer drugs to register and report all controlled substances administered to patients to KASPER was deleted.

- **SB 32 (D. Carroll)** – Requires the Administrative Office of the Courts to forward drug conviction data to the CHFS to include in KASPER reports.

- **HB 333 (Moser)** – Imposes a three-day limit on prescription of Schedule II controlled substances. The bill was amended to allow exemptions for the following:
  1. More than a three (3) day supply of a Schedule II controlled substance if the physician documents that it is medically necessary to treat the patient's pain and the practitioner adequately documents the acute medical condition and lack of alternative treatment options, or treat chronic pain;
  2. Treat pain associated with a cancer diagnosis;
  3. Patient is receiving hospice or end-of-life treatment;
  4. Part of a narcotic treatment program licensed by the CHFS;
  5. Major surgery or the treatment of significant trauma, as defined by the Kentucky Board of Medical Licensure (KBML) in consultation with the Kentucky Office of Drug Control Policy; and
  6. Is dispensed or administered directly to an user in an inpatient setting; or
  7. Any additional treatment scenario deemed medically necessary by the KBML in consultation the Kentucky Office of Drug Control Policy.

Other Health Bills of Interest

- **HB 309 (Prunty)** – Allows residential tenants who hold a domestic violence order to terminate a lease with at least 30 days' notice to landlords. **SB 86 (Alvarado)**, which addressed domestic violence law revisions, did not pass, but its provisions were amended into HB 309. SB 86 included changes that health care professionals no longer are required to report domestic abuse of an adult to the CHFS, but will report to law enforcement only if the victim agrees and requests such a report. It does not change existing reporting requirements for child abuse or abuse of a mentally impaired adult. This should reduce the burden of reporting for abuse related to competent adults as it will only be upon their request. While professionals are to provide information to victims on resources, the local domestic abuse agencies are to compile such information for professionals to use and there is no requirement for documenting such counseling in the medical record.

- **HB 78 (DuPlessis)** – Requires patient notification of dense breast tissue.

- **SB 21 (Embry)** – Establishes the conditions for use of experimental treatments.

Workers’ Compensation

- **HB 299 (Castlen)** – Reorganizes the Workers’ Compensation Nominating Commission.

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State Government

- **HB 226 (Wuchner)** – Reorganizes CHFS to move the responsibility for legislation, policy and administrative regulations to the Office of Legislative and Regulatory Affairs.

- **HB 50 (Imes)** – Establishes that beginning July 1, 2017, an ordinary administrative regulation shall expire seven years after its last effective date; provides that an administrative regulation that has a last effective date prior to July 1, 2012, shall expire on July 1, 2019; and establishes requirements for an administrative body that does not want an administrative regulation to expire.

- **HB 276 (Moffett)/HB 249 (T. Moore)** – Deletes state boards and commissions. These bills along with Governor Bevin's Executive Order issued on March 23 deleted 65 boards and commissions as part of the Governor’s Red Tape Reduction Initiative. Among the Boards and Commissions dissolved by Governor Bevin’s Executive Order or legislation are:
  - The Kentucky Emergency Communications Committee
  - The Health Services Data Advisory Committee
Medical Liability Reform

SB 18 (Alvarado), legislation to protect peer review proceedings, passed the Senate but was not called for a vote by the House. Amendments supported by trial lawyers sought to include the words “any person,” which could include the peer reviewer and may be interpreted by Courts in a manner so that the privilege is effectively nullified and would have gutted the legislation. The amendments also proposed to add “factual statements,” which may include statements that mix facts with opinions.

Senator Alvarado sent an amendment to House Leaders to take care of the stated concern expressed by some House attorneys regarding if a physician perjured him/herself by what is said in a peer review proceeding being different than what is testified to in court, but it was never heard.

The protection of the peer review privilege extends only to communications and not to facts. The facts of a case are always discoverable through the ordinary course of litigation and the existence of a peer review privilege does not change this.

- Peer Review proceedings provide for physicians to have a frank and honest discussion in a structured setting for colleagues to improve quality of care. Facts are the facts and are fully available in the medical record for a potential lawsuit.
- There are already many confidential communications or proceedings granted (e.g., attorney-client privilege, psychiatrist/psychologist-patient privilege or clergy privilege), so this is not new, and such peer review proceedings are held to be confidential in 48 other states.

SB 85 (Alvarado) – Prohibited expressions of sympathy from being introduced as evidence in medical malpractice actions.

Health Professions

HB 148 (Webber, R)/SB 105 (Buford) – Established licensing for certified professional midwives (CPM); established the Kentucky Board of Midwifery and allowed the board to establish scope of practice for a licensed CPM midwife; required informed consent for practice and required disclosures; removed midwifery from the purview of the CHFS; amended the definition of medicine and osteopathy to remove a reference to the CHFS’s oversight of midwifery.

SB 55 (Buford, T) – Permitted a physician assistant (PA) to prescribe or dispense all legend drugs and Schedule II through V controlled substances to the extent delegated by the supervising physician; permitted a physician assistant to sign for and distribute professional samples of drugs; required physician assistants authorized to prescribe drugs to register with the DEA, KASPER, the Prescription Drug Monitoring Program and any applicable state-controlled substance regulatory authority; mandated that dispensing activities of a physician assistant comply with state and federal law and to only occur in an emergency; added physician assistants to the definition of a “practitioner.”

HB 19 (Elliott, D) – Established prescriptive authority to permit PAs to prescribe and dispense controlled substances.

SB 158 (Hornback) – Gave APRNs prescriptive authority to prescribe and dispense controlled substances.

Mental Health

HB 305 (Moser) – Revised existing drug and alcohol treatment laws for involuntary commitments.

Workers’ Compensation

HB 296 (Koenig) – Established workers’ compensation reform that was pro-business.

Controlled Substances

HB 308 (Wuncner) – Regulated the use of abuse-deterrent opioid analgesic drug products.

SB 123 (Schickel) – Required hospital physicians and APRNs to report data on patients treated for opioid overdose to the Department of Motor Vehicles, including name, address, date of birth and social security number, if known.
Legislation That Did NOT Pass but Will Likely Be Back in the Interim and 2018 Sessions

- **SB 174 (Buford)** – Required hospitals to provide a cost estimate within two business days to an insured individual upon request; required insurers to provide comparative cost data for consumer use and incentives for using lowest priced provider, without providing any quality data.

- **HB 297 (Blanton)** – Mandated that hospitals and nursing facilities can be fined by the CHFS for not following CHFS prescribed pressure sore guidelines.

- **SB 108 (Adams)/HB 84 (Meeks)** – Established the Palliative Care Interdisciplinary Advisory Council within the CHFS; established the Palliative Care Consumer and Professional Information and Education Program within the CHFS; and permitted health facilities, including hospitals, to establish systems for identifying patients or residents who could benefit from palliative care and provide information, and gave the CHFS the authority to take into account factors that may impact the development of such a system by hospitals and health facilities and its ability to facilitate access to palliative care.

RESOURCES

KHA member participation is critical in the legislative and regulatory processes, so the Association provides its members with the communication tools and resources to be an active participant in the legislative process.

Visit the KHA Advocacy page on www.kyha.com for the latest on Hot Bills KHA is following during the session, links to contact your legislators, *Legislative Bulletin* archives and more. There are also links to the Kentucky Legislature Home Page, www.lrc.ky.gov, which provides information on each of the commonwealth’s senators and representatives, including phone numbers, addresses and committee assignments. Additionally, the site provides bill texts, a bill-tracking service and committee meeting schedules.

For further information about this legislation and KHA’s Government Relations, please contact:

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