Pennsylvania Issues

Legislation

- **S.B. 747**: Punitive Damages. On June 25, 2015, the Pennsylvania Senate approved legislation that would limit punitive damages against an individual physician to 200% of the compensatory damages awarded and against a personal care home, assisted living community or long-term care nursing facility to 250% of the compensatory damages awarded, except in lawsuits alleging intentional misconduct. The bill was sponsored by Senator Elder Vogel (R-Beaver, Butler, Lawrence), and Senator Bob Mensch (R-Bucks) served as a co-sponsor. According to Senator Vogel, frivolous lawsuits and the lack of caps on damages drain valuable resources and negatively impact care delivery. Senators David Argall (R-Schuylkill), Lisa Boscola (D-Lehigh, Northampton), Pat Browne (R-Lehigh, Northampton), Bob Mensch (R-Bucks) and Mario Scavello (R-Monroe) all voted in favor of the bill, which has been sent to the House Judiciary Committee for consideration. The Hospital & Healthsystem Association of Pennsylvania (HAP) supports the bill. St. Luke's University Health Network is advocating for an amendment to include hospitals in the legislation.

Advocacy

- **State Budget**: The Pennsylvania State Constitution requires budget approval by June 30th of each year. However, state legislators failed to meet the budget deadline this year, and Pennsylvania has been without a budget since July 1, 2015. Governor Tom Wolf (D-PA) and legislative leaders have held several budget negotiations, but a large divide still remains. The Governor continues to advocate for increases to school funding and for new taxes to allow for a reduction in property taxes. Republicans are insisting that the budget include pension reform and privatization of the wine and liquor stores and not include any new taxes. Although many essential state services such as food stamps, cash assistance and Medicaid are largely unaffected, state payments to counties, public schools and not-for-profit social services providers are expected to be held until the budget is approved.

New Jersey Issues

Advocacy

- **Tax Exemption Opinion**: On June 25, 2015, the Tax Court of New Jersey held that Morristown Memorial Hospital, a federally tax exempt organization formed as a not-for-profit corporation under New Jersey law, had failed to satisfy the criteria for exemption from state real estate taxes. As a result, the tax court denied the hospital's claim for property tax exemption for tax years 2006 through 2008.

  New Jersey law allows property tax exemption if a property is used for hospital purposes and owned by an entity organized exclusively for tax-exempt purposes. However, if any portion of a building used for hospital purposes is leased to profit-making organizations or otherwise used for purposes which are not themselves exempt from taxation, that portion is subject to taxation.

  In reaching its decision, the tax court explained that it was unable to determine the difference between the hospital's not-for-profit activities and the for-profit activities carried out by the hospital's private, non-employed physicians. At the time, about 83% of the hospital's staff included independent physicians. Because those physicians were able to "use" the entirety of the hospital property to general private medical bills, the tax court could not delineate between the "profit making" and the not-for-profit portions of the property. The tax court also found problems with the compensation packages for the hospital's employed

physicians. Although the hospital had a compensation policy that applied standard metrics for physician compensation, the tax court asserted that certain incentive compensation programs that involved sharing of incentive pools based on department expenses and profits were evidence of the "profit-making purpose" of the hospital.

The tax court reviewed the many entities within the hospital system and determined that some of them were conducted for profit. In addition, the tax court analyzed the compensation paid to some of the hospital's executives and opined that it was unreasonable. Finally, the tax court reviewed several of the hospital's ancillary service contracts, including its parking garage management agreement, its contract with Aramark, its gift shop, its day care and fitness centers and its auditorium and determined that these were not conducted solely without regard to profit.

The decision could cost the hospital between $2.5 million to $3 million per year for each year covered in the decision. The hospital is evaluating whether to appeal the decision. If the hospital elects not to appeal the decision, or if it is ultimately upheld on appeal, the decision could have broad implications for many New Jersey hospitals.

Legislation

- **A. 4476**: Limiting Out-of-State Ambulatory Surgery Facilities. As reported previously, current New Jersey law permits a hospital operating outside the state to open an ambulatory surgery facility within the state. On June 1, 2015, Assemblyman Herb Conaway (D-Burlington) introduced legislation requiring that ambulatory surgery facilities licensed in New Jersey must be owned by a hospital or a medical school located in New Jersey. During testimony on the Senate floor, Senator Michael Doherty (R-Warren, Hunterdon) spoke in opposition of the measure. He asserted that the bill would limit investments by out of state hospitals, reduce job growth and encourage New Jersey residents to seek medical treatment in Pennsylvania. On June 25, 2015, the bill passed by a vote of 76 to 5 in the State Assembly. On June 29, 2015, the State Senate approved the bill by a margin of 22 to 14. Assemblymen Erik Peterson (R-Warren, Hunterdon) and John DiMaio (R-Warren, Hunterdon) voted in favor of the bill, and Senator Doherty opposed it. The bill has been sent to Governor Chris Christie (R-NJ) for his approval. The New Jersey Hospital Association strongly supports the bill and has urged the Governor to sign it.

Federal Issues

Legislation

- **H.R.6**: The 21st Century Cures Act. On July 10, 2015, the House passed legislation which would increase funding to the National Institutes of Health by about $9 billion over five years for research and development of cures for rare diseases. The bill would also accelerate the drug and device approval process through the Food and Drug Administration, establish new requirements for electronic health record vendor interoperability and require the Centers for Medicare and Medicaid Services to provide additional payments to hospitals using new antimicrobial treatments. The bill would be financed, in part, through reimbursement reductions for traditional (i.e., non-digital) x-rays and the sale of 16 million barrels of crude oil from the Strategic Petroleum Reserve. Congressmen Charles Dent (R-15-PA), Matt Cartwright (D-17-PA) and Leonard Lance (R-7-NJ) voted in favor of the bill. Congressman Mike Fitzpatrick (R-8-PA) opposed the bill, which has been sent to the Senate for consideration.

- **H.R. 876**: The Notice of Observation Treatment and Implication for Care Eligibility (NOTICE) Act. As reported previously, the House passed legislation on March 16, 2015 requiring hospitals to provide notice of a patient's observation status when receiving care under observation status for at least 24 hours rather than being admitted as an inpatient. Notice would be made orally, with written notification required within 36 hours. On July 27, 2015, the bill was passed unanimously by the Senate without amendments, and the President signed the bill into law on August 6, 2015. The American Hospital Association and HAP opposed the legislation, since: (1) the bill does not include exceptions for situations beyond control of the hospital, such as subsequent decisions to reclassify a patient; (2) the bill includes an onerous patient signature requirement; and (3) hospital staff may be unable to explain the financial implications, including the cost-sharing requirements, associated with the classification, as required by the bill. HAP plans to meet with member hospitals to discuss the new law, which goes into effect on August 6, 2016.