

Government Relations Update – February 26, 2019

Pennsylvania Issues

Legislation

- **HB 81:** Central Service Technician and Surgical Technologist Regulation Act. On January 3, 2019, Representative Rob Kauffman (R-Franklin) reintroduced legislation that would require central service technicians and surgical technologists working in hospitals, ambulatory surgical centers and freestanding surgical outpatient facilities to pass a nationally accredited exam and maintain continuing education requirements. These standards are already being followed at some St. Luke's campuses, and, if the bill is passed, they would need to be adopted at other sites. The legislation passed the House on February 21, 2019, and the bill now resides in the Senate.

Miscellaneous

- **FY 2019-2020 Budget:** On February 5, 2019, Governor Tom Wolf (D) presented his proposed FY2019-20 state budget of \$34.1 billion, representing a planned spending increase of \$927.36 million, or 2.79%, compared to the current state fiscal year. The proposed budget would maintain funding levels for Medical Assistance supplemental payments for critical access hospitals, obstetrics/neonatal units, burn care centers and trauma centers. The budget proposal includes funding to address Pennsylvania's opioid abuse crisis, including an additional \$1.5 million for the opioid overdose-reversal drug naloxone and \$3.18 million for the state's Prescription Drug Monitoring Program. The budget proposal preserves hospital payments through the Tobacco Settlement Fund. The budget proposal also includes a tax on ambulatory surgery centers (ASCs), which is projected to generate \$12.5 million in state revenue. Last year, the Pennsylvania Medical Society (PAMED) was part of a coalition led by the Pennsylvania Ambulatory Surgery Association which successfully opposed a similar assessment on ASCs and endoscopy centers.

In connection with the budget, Governor Wolf unveiled a package of proposed policies and investments entitled the "Statewide Workforce, Education, and Accountability Program." The program would include the creation of the Keystone Economic Development and Workforce Command Center, designed to match employer needs with potential employees and potential employees with necessary training. Along with the workforce development program, Governor Wolf proposed increasing the state minimum wage to \$12 per hour by July 1, 2019.

The Hospital & Healthsystem Association of Pennsylvania (HAP) applauded the Governor's commitment to and support of Pennsylvania's hospitals. HAP staff is currently reviewing the entirety of the Governor's proposed budget and will provide additional analysis to members during the upcoming weeks.

- **Proposal to Change Venue Rules for Medical Malpractice Cases:** On December 22, 2018, the Civil Procedural Rules Committee of the Pennsylvania Supreme Court announced that it is considering whether to eliminate Pennsylvania Rule of Civil Procedure 1006(a.1), which requires that medical malpractice actions against healthcare providers be filed only in the county where the cause of action occurred. If the rule is eliminated, legal actions against providers could be brought in any county where a defendant could be served, which allows plaintiffs' attorneys significant flexibility to choose a favorable venue for suit.

Pennsylvania Rule of Civil Procedure 1006(a.1) was adopted in 2002 in reaction to Pennsylvania's medical liability insurance crisis. It was the result of a lengthy review and final recommendation by the Pennsylvania Legislature Interbranch Commission on Venue, and it was supported by the Governor, the General Assembly and the Supreme Court. The rule helped stabilize the medical malpractice insurance market in Pennsylvania. St. Luke's has been working with HAP and local legislators to voice its concern regarding the potential repeal of the venue rule. St. Luke's also joined the Pennsylvania Coalition for Civil Justice Reform, which is leading a coalition of healthcare providers, insurers and other businesses to oppose the change.

On February 1, 2019, Senate Judiciary Chair Lisa Baker (R-Luzerne) introduced Senate Resolution 20, directing the Legislative Budget and Finance Committee (LBFC) to conduct an analysis of the proposed rule change. Pursuant to the resolution, the LBFC would be required to hold at least one public hearing and to provide the General Assembly with its final report by January 1, 2020. The study would allow the legal community, the medical community, the business community and the public an opportunity to weigh in on the issue. Resolution 20 was passed by the Senate on February 7, 2019. Senator Lisa Boscola (D-Lehigh, Northampton) was one of only three Democrats to vote with the Republicans in favor of the Resolution.

On February 14, 2019, St. Luke's Chief Medical Litigation Officer Mark Zolfaghari testified before the House Republican Policy Committee in Harrisburg and warned the committee about the negative impacts the proposed rule change would have on patient care in the state. Later that day, Chief Justice Thomas Saylor (R) sent a letter to House Speaker Mike Turzai (R-Allegheny) and House Majority Leader Bryan Cutler (R-Lancaster) explaining that "a majority of the Court has determined to await the report of the Legislative Budget and Finance Committee, as envisioned by Senate Resolution 20, before proceeding to consider any amendatory provisions to the current venue provisions regarding medical malpractice actions." St. Luke's will continue to monitor this issue closely.

- **Reginelli v. Boggs**: In March 2018, the Pennsylvania Supreme Court established new limits to the evidentiary privilege given to peer review analysis for physician group practices in *Reginelli v. Boggs*. The court held that a physician practice group that employed physicians does not qualify for peer review privilege protection under the Commonwealth's Peer Review Protection Act, either for its own internal peer review activities or for peer review activities conducted on a hospital's behalf. In addition, the court expressly stated that hospital credentialing review is not peer review privileged under the Peer Review Protection Act.

Following the *Reginelli* decision, substantial doubt exists on the availability of peer review privilege protection in a wide range of settings, including: (1) credentialing review in any setting; (2) peer review conducted by contracted providers for hospital-based services such as emergency medicine, radiology, anesthesiology, laboratory medicine, hospitalist services, intensivist services, and other service lines; (3) peer review conducted by entities that employ physicians; (4) peer review conducted by and on behalf of ACOs and other clinically integrated networks; and (5) peer review conducted by healthcare facilities that do not require state licensure. In an effort to mitigate the decision's impact, HAP began working with the PAMED to amend the Peer Review Protection Act to expand the definition of peer review and address the impact of the *Reginelli* decision. St. Luke's is reviewing the draft language and will be providing feedback to the proposed amendment.