

Government Relations Update – July 30, 2019

Pennsylvania Issues

Advocacy

- **Proposal to Change Venue Rules for Medical Malpractice Cases:** As previously reported, on December 22, 2018, the Civil Procedural Rules Committee of the Pennsylvania Supreme Court announced that it was 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, allowing 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.”

On July 16, 2019, Mark Zolfaghari and Melissa Shafer met with members of the House Democratic Policy Committee, including Committee Chairman Mike Sturla (D–Lancaster) and Representatives Peter Schweyer (D–Lehigh), Maureen Madden (D–Monroe), Mark Longietti (D–Mercer), Chris Sainato (D–Lawrence), Danilo Burgos (D–Philadelphia), and Kevin Boyle (D–Montgomery), to discuss the proposed rule change. St. Luke's will continue to monitor this issue closely.

- **Reginelli v. Boggs:** As previously reported, 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. In efforts to mitigate the impact of the decision, HAP began working with the Pennsylvania Medical Society to expand the protections provided under the Peer Review Protection Act. Mark Zolfaghari and Melissa Shafer discussed St. Luke's support of the amendment during their meeting with members of the House Democratic Policy Committee.

New Jersey Issues

Legislation

- **S1072/A1504**: Aid in Dying for the Terminally Ill Act. On January 22, 2018, Senator Nicholas Scutari (D–Union) and Assemblyman John Burzichelli (D–Gloucester County) introduced legislation to permit a qualified terminally ill patient to self-administer medication to end his/her life. A patient would be eligible if he/she is in the terminal stage of an irreversibly fatal illness, disease or condition with a prognosis, based upon reasonable medical certainty, of a life expectancy of six months or less. A health care professional would not be required to comply with a patient’s request to self-administer medication to end his/her life, and a patient could seek to transfer care to another provider if the first provider is unwilling to comply. The bill was signed into law by Governor Phil Murphy (D) on April 12, 2019, and it will become effective on August 1, 2019. St. Luke’s Hospital – Warren Campus has convened a working group to develop policies and procedures to prepare for implementation, and the NJHA has released an implementation toolkit to assist its members.
- **A5369/S3816**: Patient Protection Act. On May 24, 2019, Senator Steve Sweeney (D–Gloucester County) and Assemblyman Nicholas Chiaravalloti (D–Hudson) introduced legislation to impose new requirements on hospitals, physicians and other health care providers who transfer patients for services outside the State of New Jersey. Prior to transferring a patient outside the state, providers would be required to inform patients of the availability of appropriate facilities within the state, disclose the nature of the relationship between the facilities, inform the patient of his/her out-of-pocket costs at the out-of-state facility, notify the patient’s insurance company of the pending transfer, and report the transfer and the clinical necessity for such transfer to the New Jersey Department of Health. St. Luke’s Hospital – Warren Campus advocated for an amendment to permit a complete waiver if the patient is unconscious or incapacitated, but the amendment was not considered. Assemblyman John DiMaio (R–Warren) voted against the bill, which is expected to be passed and signed into law by Governor Murphy. St. Luke’s Hospital – Warren Campus has convened a working group to develop policies and procedures to prepare for implementation.

Federal Issues

Legislation

- **Surprise Balance Billing**: As previously reported, a number of bills have been introduced in Congress to limit patient exposure to out-of-network bills. On July 17, 2019, the House Energy and Commerce Committee voted to advance House Resolution 3630, entitled the “No Surprises Act” and sponsored by Representative Frank Pallone (D–NJ). The bill would prohibit balance billing by out-of-network providers for all emergency services, as well as when a patient is treated in an in-network facility but cannot reasonably choose his/her provider. The bill initially established a minimum payment standard for out-of-network emergency care and care provided by out-of-network ancillary providers during otherwise in-network care at the median of the negotiated rates for the service in the geographic area in which the service was delivered, with an inflationary increase that references the urban consumer price index. However, an amendment instead established a hybrid approach which establishes a set rate for bills less than \$1,250 and an option to pursue arbitration for larger amounts in controversy.

The AHA has raised several concerns with the bill, including the inclusion of monetary penalties for non-compliance, the process to set rates and the resolution process for rate disputes. HAP has been supporting AHA’s advocacy initiative, and St. Luke’s has begun contacting federal legislators to reiterate these concerns. St. Luke’s will continue to monitor this bill.