



## 2011–2012 Session

# The PAMED State Legislative and Regulatory Agenda

The 2011-2012 session of the General Assembly will be filled with both challenges and opportunities for the Pennsylvania Medical Society (PAMED). On the one hand, the state's financial difficulties bring the threat of cuts to important programs impacting patient access to care. On the other hand, a new Republican governor and Republican-controlled legislature may facilitate the enactment of pro-physician and pro-patient measures like tort reform. Below are highlights from PAMED's 2011-2012 legislative and regulatory agenda.

### Legislative Agenda

#### Improving Public Health

As always, PAMED is focused on legislation that will improve public health. Key measures include:

1. "Opt out" testing of patients for HIV
2. Regulation of tanning salons
3. A ban on texting and cell phone use while driving
4. Implementation of a Pennsylvania Health Information Exchange (PHIX)
5. Statutory authority for the Chronic Care Commission (CCC)
6. Funding for transportation of blood cord samples from hospital collection sites to public blood cord banks
7. Statutory determination that needle electromyography is the practice of medicine
8. Physician oversight of non-physician providers to protect patient safety
9. Regulating board certification advertising by physicians

#### Budget Cuts

By all accounts the state is facing a budget deficit of at least \$4 billion (out of a total \$28 billion budget) that will have to be closed when the next state budget is enacted. Gov. Corbett and top Republican legislators have publicly expressed their opposition to balancing

the state budget via tax increases, making it likely that massive spending cuts will be forthcoming. These cuts will undoubtedly be felt across the board, even in areas like education that have been immune from cuts in the past. Programs that are important to Pennsylvania physicians and patients are unlikely to be spared, but PAMED will work to prevent, or at least limit, cuts to these key programs. Critical programs that PAMED will seek to protect include:

1. Department of Public Welfare
  - a. Office of Medical Assistance programs
  - b. Office of Mental Health & Substance Abuse Services (this would also apply to the newly created Department of Drug and Alcohol Programs)
2. Department of Health
  - a. Bureau of Managed Care
  - b. Bureau of Health Planning
  - c. Bureau of Health Promotion and Risk Reduction
3. Pennsylvania Health Care Cost Containment Council
4. adultBasic Program (terminated—formerly funded by Blues)
5. Governor's Office of Health Care Reform (GOHCR). The GOHCR is likely to be consolidated into the Department of Health as a cost cutting measure. If that occurs, meritorious GOHCR programs including the following should be continued:
  - a. Pennsylvania Health Information Exchange (PHIX) and related issues
  - b. Analysis of physician workforce
  - c. Physician payment methodologies
  - d. Health care delivery options

#### Improving the Practice Environment

Creating an improved practice environment for physicians will aid in physician recruitment and retention, and have a meaningful impact on access to care.

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Improvements in reimbursements, contracting provisions, credentialing and other administrative issues are all needed if Pennsylvania is to earn a reputation as a good place to practice medicine. Practice/payer reforms include:

1. Fair contracting legislation (PAMED has a comprehensive proposal)
2. Physician credentialing reform
3. Limits on retroactive denial of payment for services rendered
4. Invalidation of indemnification and hold harmless clauses imposing liability for hardware and software problems on physicians in electronic medical records contracts
5. Prohibition of restrictive covenants in employer contracts
6. Economic credentialing reform
7. Recruiting/retention incentives, including student loan forgiveness
8. Reform of the MOM law
9. Whistleblower protection
10. Independent peer review

### **Tort Reform**

Tort reform is an essential element of PAMED's effort to improve the practice environment for physicians and expand access to care for Pennsylvania's 12 million citizens. Key reforms sought by PAMED include:

1. A constitutional amendment permitting caps on pain and suffering awards
2. Limits on plaintiffs' attorney fees
3. An apology law prohibiting apologies by physicians to injured patients from being used in court
4. Requiring the expert report supporting a Certificate of Merit to be filed concurrently with the filing of the complaint in medical liability actions
5. Absolute immunity for physicians who provide uncompensated care
6. Tightening the exception (loophole) in the expert witness requirement

### **Mcare**

Pennsylvania's troubled medical liability insurance system also demands attention. Phasing out the Mcare Fund and retiring the Fund's \$1.34 billion unfunded liability without cost to physicians remains a top priority. The veto last year by Gov. Rendell of Senate Bill 1280 kept the current phase-out process in place, with the insurance commissioner reviewing the capacity of the private insurance market every two years. PAMED will continue to seek funds to retire the unfunded liability, while at the same time trying to prevent the implementation of the

phase-out until that funding is secured. Additional Mcare priorities include:

1. Requiring year-end surpluses to be used to reduce the following year's assessments
2. Seeking a performance audit of the Fund, either by the Legislative Budget and Finance Committee or Auditor General Jack Wagner
3. Assuring that physicians who make timely remittance of their Mcare assessment to their primary carrier are not penalized if the carrier does not forward the payment to the Mcare Fund

### **Playing Defense**

PAMED must work equally hard to defeat or amend to our satisfaction problematic legislation that would harm the practice environment for physicians or put patient safety at risk, such as these likely legislative proposals. Of course, PAMED will have to deal with other initiatives as they arise. Topics of concern include:

1. Physician self referral
2. Trial lawyer tort bills, including arguing dollar amounts of pain and suffering to the jury, and invalidating pre-treatment agreements with patients to resolve disagreements through arbitration
3. Requiring medical test results to be sent directly to patients
4. Certificate of need
5. Lyme disease legislation statutorily authorizing specific treatment protocols
6. Inappropriate expansion of scope of practice for non-physician health care providers
7. Proposals to tax school tuition by any governmental entity

### **Regulatory Agenda**

PAMED will also be active in the regulatory arena in 2011-2012. It goes without saying that actions taken by the Departments of Health, Public Welfare, Insurance, and others have a major impact on the practice of medicine and the delivery of health care. Other state agencies, including the health-related licensing boards, the Health Care Cost Containment Council, and the Patient Safety Authority also play an important role. Following is a sampling of regulatory areas/issues in which PAMED will be actively involved.

### **Hospital Regulations**

PAMED will seek to jumpstart a stalled update of outdated hospital regulations at the Department of Health. We will be vigilant in our efforts to ensure that any amend-

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ments do not erode existing requirements for an independent self-governing medical staff, restrictions on medical staff membership to MDs and DOs, or requirements for physician oversight of allied health professionals, such as the supervision requirement for CRNAs.

### **Implementation of ID Badge Legislation**

Newly enacted Act 110 of 2010 requires the Department of Health to promulgate regulations implementing an ID badge requirement for licensed and certified health care providers, with the goal of reducing patient confusion over the type of provider who is treating them. PAMED has been, and will remain, involved in that process.

### **Internet Prescribing**

The State Board of Medicine is discussing regulations governing the prescribing of non-controlled substances over the Internet. PAMED will be involved in that process.

### **Definition of Surgery**

The State Board of Medicine is expected to discuss possible regulations on the definition of surgery and medicine, which may also include information on telemedicine. As always, PAMED's focus will be on maintaining patient safety.

### **Allied Health Care Board**

The State Board of Medicine may discuss the creation of a separate allied health care board or sub-board for some non-physician providers.

### **School Nutrition Guidelines**

The Departments of Health and Education are considering nutrition guidelines for school lunch programs, along with recommended hours of physical activity. PAMED is following that action closely.

### **PennDOT Mandatory Reporting of Driver Impairment**

PAMED will continue its efforts to modify PennDOT reporting regulations regarding impaired drivers, seeking the right balance between patient care and public safety.

### **Responding to Subpoenas**

PAMED will consider seeking regulations clarifying whether confidentiality requirements in current licensing regulations permit physicians to comply with subpoenas as long as HIPAA requirements are followed. This will require a policy determination as to whether to advocate for a court order to protect patient privacy.

### **Drug Diversion**

PAMED will continue to seek clarification as to whether confidentiality requirements in licensing regulations permit physicians to report drug diversion to law enforcement agencies as long as a HIPAA exception applies, such as a crime committed in the office or risk of imminent harm.

### **CRNP Regulations**

The State Board of Medicine has approved updated regulations governing, among other things, physician interaction with CRNPs. Those regulations have languished and are still not finalized. PAMED will work to push that process along and achieve final approval of the regulations.

### **Midwife Regulations**

Regulations relating to nurse midwives are likely to be proposed by the State Boards of Medicine next year. PAMED will closely monitor those regulations and respond as appropriate.