Message from the Outgoing Co-Chair

by Lisa M. Benzie-Woodburn

It truly has been my pleasure over the last year to serve as co-chair of the PBA Health Care Law Committee. Prior to being co-chair of the newly formed committee, I was chair of the PBA Medical and Health-Related Interdisciplinary Committee from June 2009 to January 2011, and vice chair from June 2008 to May 2009. In 2010 the Medical and Health-Related Interdisciplinary Committee and the Health Care Law Committee unanimously voted to merge, keeping the Medical and Health-Related Interdisciplinary Committee as a sub-committee of the newly formed Health Care Law Committee. The merger has been a success.

The committee’s next meeting will be held in conjunction with PBA Committee/Section Day in Lancaster on Thursday, May 10, from 11:00 a.m. to 12:30 p.m. The agenda will include a discussion of the PBA's Constitutional Review Commission Report, various pieces of legislation that touch on health care and discussion of the Committee’s first proposed resolution to the PBA Board of Governors and House of Delegates (see Page 2) concerning the consolidation of the Patient Safety Authority and the Department of Health. Call-in capability will be available.

Throughout the years I have watched the evolution of this committee. We have a variety of members with vast experiences ranging from government regulatory agencies and policy-making agencies to members working within the health care field for hospitals, nursing homes and physicians’ offices, as well as civil trial lawyers representing both plaintiffs and defendants. I believe within the last year the committee has been reinvigorated and I look forward to continuing my service as a member of the committee and congratulate the incoming co-chairs and vice chair.

MISSION STATEMENT:

The PBA Health Care Law Committee shall review, study and make recommendations concerning legislative proposals for reform in the health care system and address ethical considerations as related to the medical and legal professions. The committee shall propose additional recommendations relating to litigation involving medical and hospital practices.

NEXT MEETING:

The PBA Health Care Law Committee will meet at 11 a.m. on Thursday, May 10 at the Lancaster Marriott, Lancaster, as part of PBA Committee/Section Day.

Download the registration form at www.pabar.org:

REGISTRATION DEADLINE IS APRIL 27.
Resolution in Support of the Board of the Pennsylvania Patient Safety Authority

By Lisa M. Benzie-Woodburn

At the request of the members of the Health Care Law Committee, a telephone conference was held at 1:30 p.m. on March 27, to discuss the status of the Pennsylvania Patient Safety Authority (PSA). The committee’s proposed resolution was in support of the PSA’s resolution dated March 6, 2012. Essentially, the proposed resolution opposes any merger between the PSA and the Pennsylvania Department of Health.

There was a brief presentation on the conference call in support of the resolution by Clifford Rieders and in opposition by Matt O’Donnell. Rieders is a member of the board for the PSA. O’Donnell is an attorney with the Pennsylvania Department of Insurance. Both participants are members of this committee. The call was then opened for questions and comments. There was brief discussion and a vote was called.

Based upon the vote and as this committee’s co-chair, I prepared a resolution in support of the board of the PSA’s resolution to be circulated to other PBA committees and sections for input and then to be submitted to the PBA House of Delegates for a vote. This committee’s position is not the policy of the PBA. The Resolution will be submitted to the PBA House of Delegates for consideration at their next meeting, which will be held on May 11, in Lancaster.

Determining the Precise Claim Made Date

by John C. Cameron

In Wolfson v MCARE Fund, No. 317 M.D. 2010, the Commonwealth Court of Pennsylvania considered when a claim was first made to determine provider eligibility for excess coverage under the MCARE Act. The psychiatrist who was a participating health care provider filed exceptions to the Department of Insurance hearing examiner’s recommended decision. The MCARE Fund denied excess coverage for the failure of the provider to timely pay the MCARE assessment.

The provider received a medical records request from an attorney representing a former patient’s estate together with a medical authorization signed by the decedent’s wife. The provider was not sure how to respond to the records request and promptly faxed the information to counsel at the provider’s risk management service for advice. Subsequently the provider paid his revised and abated MCARE Fund assessment in full by check, which was received by the MCARE Fund.

Nearly two years later, a civil action was commenced against the provider by writ of summons and a complaint alleging that the provider failed to adequately treat the patient, which resulted in his suicide. The provider was unaware that a (Continued on Page 3)
The number of medical liability claims has dropped 60 percent, to 1,491 filed claims in 2010. What we do not know is whether the PSA has improved the status of health care delivery in Pennsylvania. Everyone at the retreat agreed that this goal needs to be a priority.

There was also discussion for the need for the Pennsylvania Department of Health to become fully staffed so that it can coordinate its activities with the PSA. There has been much change of leadership in the Department of Health, and when this situation becomes stabilized it is hoped that the two organizations can work together as contemplated by statute.

According to the executive director, the only person who received a letter of reappointment was myself, which was made by the minority leader of the Pennsylvania Senate.

The strategic planning discussion, which was most worthwhile, was centered on CMS policy intended to drive patient safety improvement through the withholding of monetary reimbursements. This approach is expected to change not only the delivery of health care services, but may also have a broad impact on patient safety measures.

There were many fine presentations at the retreat by the PSA contractor ECRI, as well as a representative from CMS.

The staff of the PSA will consider the strategic planning discussion and decisions made at the retreat, and develop an approach towards implementing the strategic plan, which will be presented to the PSA board.

To view the most recent Patient Safety Advisory, visit the Authority website at www.patientsafetyauthority.org.

### Determining the Precise Claim Made Date

(Continued from Page 2)

The precise claim made date for medical malpractice was being brought against him until he was served with the writ of summons. The MCARE Fund concluded that the claim was first made when the provider first received the medical records request and forwarded it to the provider’s risk management service. The court disagreed with this interpretation and ruled that the medical records request was insufficient to constitute a claim. The court found that the actual receipt of the writ of summons was the earliest date the claim was made. The court determined that the provider was entitled to excess coverage for the claim because the MCARE Fund assessment was remitted before the date of the claim.
The PBA Legislative Department seeks to inform section members about adopted or pending legislation that affect our practice areas. The section encourages members to express opinions regarding any pending legislation’s importance or impact by contacting appropriate legislators, the PBA Legislative Department or the leaders of the section. To obtain copies of any act cited below, please email Steven Loux at steven.loux@pabar.org, call him at 800-932-0311, ext. 2246, or directly access bills and other legislative information online at www.legis.state.pa.us.

**NEW LAW**

Informal Dispute Resolution Process for Long-Term Care Nursing Facilities, Act 128 of 2011 (HB 1052) – The Long-Term Care Nursing Facility Independent Informal Dispute Act establishes an independent informal dispute resolution process for long-term care nursing facilities to dispute Department of Health (DoH) survey deficiencies; and providing for the powers and duties of the DoH.

Amendments to the Accident and Health Filing Reform Act, Act 134 of 2011 (SB 1336) – This act amends the Accident and Health Filing Reform Act, dividing the act into federal compliance and commonwealth exclusivity; in federal compliance, further providing for definitions, for required filings, for review procedure, for notice of disapproval, for use of disapproved forms or rates, for review of form or rate disapproval, for disapproval after use, for filing of provider contracts, for record maintenance, for public comment and for penalties and providing for regulations and for expiration; in commonwealth exclusivity, providing for regulations and for action by the Insurance Commissioner; and making editorial changes.

**LEGISLATION**

Below find bills of relevance to the Health Care Law Committee, listed by topic. Reference to a committee means a House committee for House bills, a Senate committee for Senate bills, except where specified otherwise. Unless otherwise noted, the PBA has no position on the bills and is providing each summary for informational purposes only. All dates refer to 2011 unless otherwise noted.

**Health Insurance**

**HB 42**, sponsored by Rep. Matthew E. Baker (R-Bradford and Tioga), the Freedom of Choice in Health Care Act, provides that citizens shall have the right to enter into private contracts with health care providers for health care services and to purchase private health care coverage. The General Assembly may not require any individual to participate in any health care system or plan, nor may it impose a penalty or fine, of any type, for choosing to obtain or decline health care coverage or for participation in any particular health care system or plan. Further, 1) a law or rule shall not compel, through penalties and fines, directly or indirectly, any individual, employer or health care provider to participate in any health care system, and 2) an individual or employer may pay directly for lawful health care services and shall not be required to pay penalties or fines for paying directly for lawful health care services. The Fairness in Health Care Services Act provides that health care services shall not be provided to any eligible dental patient. The legislation lays out certain stipulations and requirements of carriers, patients and insurers. The bill was referred to the Insurance Committee on Feb. 8.

**HB 532**, sponsored by Rep. Stanley E. Saylor (R-York), the Children and Special Needs Patient Access to Quality Dental Care Act, requires that every health insurance policy cover general anesthesia and associated medical costs provided to an eligible dental patient. The legislation lays out certain stipulations and requirements of carriers, patients and insurers. The bill was referred to the Insurance Committee on Oct. 26.

**HB 663 and HB 1527**, related bills sponsored by Rep. Stephen Barrar (R-Chester and Delaware), amend The Insurance Company Law providing for retroactive denial of reimbursement of payments to health care providers by insurers. HB 663 was referred to the Insurance Committee on Feb. 14, and HB 1527 was referred to the Insurance Committee on May 11.

**HB 717**, sponsored by Rep. Robert F. Matzie (D-Allegheny and Beaver), amends The Administrative Code to create the position of Consumer Advocate for Health Insurance in the Department of Community and Economic Development. The powers and duties of the position are detailed. The Consumer Advocate for Health Insurance shall apply for all grant monies available from the federal government through the Patient Protection and Affordable Care Act and other related laws and may expend all the moneys obtained from grant awards. He or she cannot... (Continued on Page 5)
must submit a report to the governor and General Assembly each year on the conduct of the office. The bill was referred to the Insurance Committee on Feb. 16.

HB 1551, sponsored by Rep. Bryan Cutler (R-Lancaster), the Physician Credentialing Act, requires health insurers and physicians to adhere to minimum enumerated standards relating to credentialing. Physician payment during credentialing is provided for and health insurers must accept a Council for Affordable Quality Healthcare application from a provider when applying to be on their health panel. The DoH is given powers to promulgate rules and regulations. Inconsistent acts are repealed. The bill was referred to the Insurance Committee on May 18.

HB 1560, sponsored by Rep. Daniel J. Deasy Jr. (D-Allegheny), the Uniform Health Carrier External Review Act, provides uniform standards for the establishment and maintenance of external review procedures so that covered persons have the opportunity for an independent review of an adverse determination or final adverse determination. The act further provides for notice of right to external review; request for external review; exhaustion of internal grievance process; standard and expedited external review; external review of experimental or investigational treatment adverse determinations; binding nature of external review decision; approval of independent review organizations; minimum qualifications for independent review; hold harmless for independent review organizations; external review reporting requirements; funding of external review; and disclosure requirements. The hold harmless provision provides that no independent review organization or clinical reviewer working on behalf of an independent review organization or an employee, agent or contractor of an independent review organization shall be liable in damages to any person for any opinions rendered or acts or omissions performed within the scope of the organization’s or person’s duties under the law during or upon completion of an external review conducted pursuant to this act, unless the opinion was rendered or act or omission performed in bad faith or involved gross negligence. The act is intended to satisfy the requirements of the federal Patient Protection and Affordable Care Act. The bill was referred to the Insurance Committee on May 18.

HB 1763, sponsored by Rep. Nick Miccarelli (R-Delaware), the Fair Health Care Provider Contracting Act, provides for physician contracts with health insurers. The bill outlines criteria that shall apply to the availability of fee schedules and scheduled payment dates. A health insurer shall develop and implement a plan to reasonably permit its participating physician, participating physician group or participating physician organization to view on a confidential basis, complete fee information showing the applicable fee schedule amounts for the participating physician, participating physician group or participating physician organization pursuant to that participating physician’s, participating physician group’s or participating physician organization’s direct written agreement with the health insurer. Each health insurer shall post to its provider website those services or supplies for which precertification is routinely required for its products, and shall update the posting to the extent the services or supplies for which precertification is routinely required changes. Notice of 90 days is required for any material adverse changes in the terms of its contracts, participating physician groups or participating physician organizations. The legislation provides for disclosure of and written agreement with the health insurer. Each health insurer shall develop and implement a plan to reasonably permit its participating physician, participating physician group or participating physician organization to view on a confidential basis, complete fee information showing the applicable fee schedule amounts for the participating physician, participating physician group or participating physician organization pursuant to that participating physician’s, participating physician group’s or participating physician organization’s direct written agreement with the health insurer. Each health insurer shall post to its provider website those services or supplies for which precertification is routinely required for its products, and shall update the posting to the extent the services or supplies for which precertification is routinely required changes. Notice of 90 days is required for any material adverse changes in the terms of its contracts, participating physician groups or participating physician organizations. The legislation provides for disclosure of and commitments concerning claims payment practices and outlines a dispute resolution process for physician billing disputes. The bill was referred to the Insurance Committee on June 29.

SB 214, sponsored by Sen. Mike Folmer (R-Berks, Chester, Dauphin, Lancaster and Lebanon), the State-mandated Health Care Insurance Expiration Act, provides for the expiration of certain state-mandated health care insurance benefits and the provisions of certain act that impose mandatory covered providers and covered persons; and requires the Health Care Cost Containment Council to submit a periodic report to the General Assembly.

SB 215, sponsored by Sen. Folmer, also known as the State-mandated Health Care Insurance Expiration Act, provides for the expiration of certain State-mandated health care insurance benefits and the provisions of certain act that impose mandatory covered providers and covered persons on qualified high-deductible health plans; and requires the Health Care Cost Containment Council to submit a periodic report to the General Assembly. Both bills were referred to the Banking and Insurance Committee on Jan. 21.

Medical Apology

HB 495, sponsored by Rep. Keith Gillespie (R-York), amends Title 42 (Judiciary & Judicial Procedure) adding that a benevolent gesture or admission by health care provider or assisted living residence or personal care home prior to the start of a professional liability action shall be inadmissible as evidence of liability or an admission against interest. The bill passed the House 171-27 on March 1, and was then referred to the Senate Judiciary Committee.

SB 565, sponsored by Sen. Patricia H. Vance (R-Cumberland and York), amends the Medical Care Availability and Reduction of Error (MCARE) Act adding a new section providing that in any liabil-

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Liability Issues

HB 140 and SB 895, similar bills sponsored, respectively, by Rep. Gene DiGirolamo (R-Bucks) and Sen. Michael J. Stack (D-Philadelphia), the Methadone Death and Incident Review Act, establish the Methadone Death and Incident Review Team and provide for its powers and duties. The act requires the team to review each death where methadone was either a primary or secondary cause of death and review methadone-related incidents. The legislation provides that an individual or agency that in good faith provides information or records to the team shall not be subject to civil or criminal liability as a result of providing the information or record. Further, the proceedings, deliberations and records of the team are privileged and confidential and shall not be subject to the Right-to-Know Law, discovery, subpoena or introduction into evidence in any civil or criminal action. HB 140 passed the House 197-0 on April 11, received first consideration as amended in the Senate on June 8, was re-referred to the Senate Appropriations Committee on June 14, and was then reported as amended from the Senate Appropriations Committee on June 29. SB 895 was referred to the Public Health and Welfare Committee on March 25.

HB 182, sponsored by Rep. Robert W. Godshall (R-Montgomery), amends the MCARE Act providing for hospital care or assistance necessitated by traumatic injury immunity by adding that a hospital that in good faith renders care or assistance necessitated by a traumatic injury demanding immediate medical attention, for which the patient enters the hospital through its emergency room or trauma center, may not be held liable for noneconomic and punitive damages to or for the benefit of any claimant arising out of any act or omission in rendering that care or assistance if the care or assistance is rendered in good faith and in a manner not amounting to gross negligence or reckless, willful or wanton conduct. The bill provides for certain exceptions and definitions. The bill was referred to the Insurance Committee on Jan. 24.

HB 1192, sponsored by Rep. Rick Saccone (R-Allegheny and Washington), amends 42 Pa.C.S. § 8332 (relating to nonmedical good Samaritan civil immunity), adding that an individual who is not covered under this section shall receive the benefit of the exemption from civil liability provided by the section if all of the following apply: 1) the assistance or aid is provided in a reasonably prudent manner; 2) the assistance or aid is provided without fee or compensation; and 3) the individual relinquishes care of the victim when an individual becomes available to take responsibility who is a holder of a current certificate evidencing the successful completion of a course in first aid, advanced life saving or basic life support sponsored by the American National Red Cross or the American Heart Association or an equivalent course of instruction approved by the DoH in consultation with a technical committee of the Pennsylvania Emergency Health Services Council. The bill passed the House 199-0 on Oct. 3, and was then referred to the Senate Judiciary Committee. SB 748, sponsored by Sen. Lawrence M. Farnese Jr. (D-Philadelphia), amends § 8332 to apply immunity to an individual who, at the time of rendering the emergency care, first aid or rescue or moving the person receiving emergency care, first aid or rescue to a hospital or other place of medical care possesses a reasonable belief that the circumstances would result in the death or serious bodily injury of the victim if no action is taken. The bill was referred to the Judiciary Committee on March 4.

HB 431, sponsored by Rep. Matthew Smith (D-Allegheny), amends the public school code, in school health services, providing for training of school employees in diabetes care and treatment, for diabetes medical management plans, for independent monitoring and treatment and for certain immunity from civil liability. The legislation provides that no physician, nurse, school employee, trained diabetess personnel or school entity shall be liable for civil damages as a result of the activities authorized by this legislation when such acts are performed as an ordinary reasonably prudent person would have acted under the same or similar circumstances. The bill was referred to the Education Committee on Feb. 3.

HB 1338 and SB 391, sponsored, respectively, by Rep. Baker and Sen. Jane Clare Orie (R-Allegheny and Butler), amend the Public School Code, in school health services, further providing for definitions; and providing for training of school employees in diabetes care and management and for possession and use of diabetes medication and monitoring equipment. The legislation provides that nothing in §§ 1414.2 (relating to training of school employees in diabetes care), 1414.3 (relating to diabetes care in schools) or 1414.4 (relating to possession and use of diabetes medication and monitoring equipment) shall be construed to create, establish or expand any civil liability on the part of any school entity or person...
School employee. HB 1338 was referred to the Human Services Committee on April 13, was reported from the Human Services Committee on June 7, received first consideration in the House on June 7, was re-referred to the Rules Committee on June 7, and was reported from the Rules Committee on Sept. 26. SB 391 was referred to the Education Committee on Feb. 4, was reported from the Education Committee on June 14, received first consideration in the Senate on June 14, and was then re-referred to the Appropriations Committee.

HB 1419, sponsored by Rep. Cutler, amends Title 42 providing for certificates of merit in professional liability actions. The bill was referred to the Judiciary Committee on April 28.

HB 1610 and SB 1367, similar bills sponsored, respectively, by Rep. Mike Vereb (R-Montgomery) and Sen. John P. Blake (D-Lackawanna, Luzerne and Monroe), the Sudden Cardiac Arrest Prevention Act, establish standards for preventing sudden cardiac arrest and death in student athletes; assign duties to the DoH and the Department of Education; and impose penalties. Both bills provide that nothing in this act shall be construed to create, establish, expand, reduce, contract or eliminate any civil liability on the part of any school entity or school employee. HB 1610 passed the House 199-0 on Oct. 3, and was then referred to the Senate Education Committee. SB 1367 was referred to the Education Committee on Jan. 3, 2012.

HB 1651 and SB 1300, sponsored, respectively, by Rep. DiGirolamo and Sen. Stack, amend Title 44 (Law and Justice) to add a chapter entitled the Pharmaceutical Accountability Monitoring System Act. The purpose is to reduce the abuse of controlled substances and fraud by providing a tool that will ensure that practitioners making prescribing decisions have complete and reliable information about what, if any, other prescription drugs have recently been prescribed to their patients. It is the purpose of the act to provide reporting mechanisms, with full confidentiality protections, in which dispensers report prescription information to a central repository, in order to identify patient and practitioner behaviors that give rise to a reasonable suspicion that prescription drugs are being inappropriately obtained or prescribed, so that appropriate ameliorative and corrective action, including treatment for individuals suffering from drug and alcohol addiction, may be taken. The act is further intended to help detect, refer to law enforcement and regulatory agencies and deter prescription drug fraud and diversion. An individual who has submitted to or received information from the Pharmaceutical Accountability Monitoring System established by the act in accordance with this section may not be held civilly liable or disciplined in a licensing board action for having submitted the information or for not seeking or obtaining information from the prescription monitoring program prior to prescribing or dispensing a controlled substance to a patient. HB 1651 was referred to the Human Services Committee on June 8, was reported as amended from the Human Services Committee on Dec. 6, and then received first consideration in the House. SB 1300 was referred to the Public Health and Welfare Committee on Jan. 3, 2012.

SB 41, sponsored by Sen. Stewart J. Greenleaf (R-Bucks and Montgomery), amends Title 42 by adding that a hospital is not subject to civil liability arising from the nature or condition of medicine, medical supplies, and equipment that were reasonably believed to be in good condition and donated by the hospital in good faith for humanitarian assistance. The legislation shall not apply to an injury or death to a person that results from an act or omission of a hospital constituting gross negligence, recklessness or intentional misconduct; and may not be construed as establishing any liability. The bill was referred to the Judiciary Committee on Jan. 12.

SB 93, sponsored by Sen. Greenleaf, amends the Pharmacy Act to provide for the donation of unused prescription drugs. The DoH and the Health Care Cost Containment Council shall develop a pilot program, consistent with the public health and safety, in which unused prescription drugs (other than controlled dangerous substances) may be donated from nursing facilities operated by the commonwealth to residents who are medically indigent. The program shall be reviewed after 18 months and a report submitted to the governor and General Assembly. Rules and regulations shall be adopted consistent with provisions in the bill and, in accordance with these rules and regulations, unused prescription drugs (other than dangerous controlled substances) shall be donated to medically indigent residents of commonwealth-operated nursing facilities. The legislation also provides that no physician, pharmacist and other health care professional shall be subject to liability for participation in the program when acting within the scope of practice of his or her license and in good faith compliance with the rules promulgated. Further, “medically indigent” is defined as persons who have no health insurance or who otherwise lack reasonable means to purchase prescribed medications. The bill was referred to the Consumer Protection and Professional Licensure Committee on Jan. 12.

SB 244, sponsored by Sen. Richard A. Kasunic (D-Fayette, Somerset, Washington and Westmoreland), amends the Public School Code adding a new section

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requiring a school entity to have at each school within its jurisdiction, except in extenuating circumstances, one person certified in the use of cardiopulmonary resuscitation (CPR) during hours when school is in session. The legislation further provides that the provisions of 42 Pa.C.S. §§ 8332 (relating to nonmedical good Samaritan civil immunity) and 8337.1 (relating to civil immunity of school officers or employees relating to emergency care, first aid and rescue) shall apply to a person who renders CPR. The bill was referred to the Education Committee on Jan. 24, was reported from the Education Committee on Feb. 8, received first consideration in the Senate on May 3, and was then re-referred to the Appropriations Committee.

SB 1045, sponsored by Sen. John C. Rafferty Jr. (Berks, Chester and Montgomery), amends Title 18 (Crimes and Offenses), in sports and amusements, providing for an offense relating to helmets for certain persons engaged in winter sporting activities. A commercial venue or recreational facility operator that offers a winter sporting activity (sledding or snowboarding) to members of the public for a fee shall offer a person under 12 years of age who intends to engage in the winter sporting activity a helmet meeting the standards of the American National Standards Institute, the American Society for Testing and Materials, the Snell Memorial Foundation’s Standards for Protective Headgear for Use in Bicycling or any other nationally recognized standard for helmet approval. This provision shall not apply if the child in question provided the operator with a statement from the family’s church authorities attesting that it is against the tenets of the family’s religion to wear a helmet. In no event shall a violation or alleged violation of this provision be used as evidence in a trial of any civil action; nor shall any jury in a civil action be instructed that any conduct did constitute or could be interpreted by them to constitute a violation of this provision; nor shall failure to use a helmet be considered as contributory negligence nor shall failure to use a helmet be admissible as evidence in the trial of any civil action. Notwithstanding any other provisions of law, any violation of this provision is punishable by a fine, including all penalties, assessments and court costs imposed on the convicted person not to exceed $25. The bill was referred to the Judiciary Committee on May 16.

**Tort Caps**

**HB 1620 and HB 1907,** sponsored by Rep. Glenn R. Grell (R-Cumberland), both amend the MCARE Act. HB 1620 further defines health care provider to include an assisted living residence licensed by DPW and a home health care agency licensed by the DoH pursuant to the Health Care Facilities Act. The legislation also further provides from punitive damages, specifying that except in cases alleging intentional misconduct, punitive damages against a health care provider [an individual physician] shall not exceed 200 percent of compensatory damages. HB 1907 further provides for punitive damages, specifying that except in cases alleging intentional misconduct, punitive damages against the following shall not exceed 200 percent of compensatory damages and shall not be less than $100,000 unless a lower verdict amount is returned by the trier of fact: 1) a personal care home or assisted living community licensed by DPW, 2) a long-term care nursing facility licensed by the DoH under the Health Care Facilities Act, 3) and an officer, employee or agent of any of these entities while acting in the scope and course of their employment. HB 1620 was referred to the Judiciary Committee on June 6, and was passed over in the Judiciary Committee on June 21. HB 1907 passed the House 103-89 on Jan. 18, 2012, and was then referred to the Senate Judiciary Committee. The PBA opposes both bills.

**Miscellaneous**

**SB 750 and HB 100,** sponsored, respectively, by Sen. Greenleaf and Rep. Joseph A. Petrarca (D-Westmoreland), amend Title 20 (Decedents, Estates & Fiduciaries) extensively revising provisions on anatomical gifts in the areas of authorizations, procedure, amendment, revocation, refusal, receipt, for rights and duties of hospitals and organ procurement organizations, prohibitions, limited immunity, the Gov. Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund, and providing for contributions to the fund; and making editorial changes. The bills provide for the Revised Uniform Anatomical Gift Act. The immunity provisions provide that 1) a person that acts in accordance with Chapter 86 (relating to anatomical gifts) or with the applicable anatomical gift law of another state or attempts in good faith to do so is not liable for the act in a civil action, a criminal prosecution or an administrative proceeding; and 2) neither the person making an anatomical gift nor the donor’s estate is liable for injury or damage which results from the making or use of the anatomical gift. SB 750 was referred to the Judiciary Committee on March 8, was reported from the Judiciary Committee on May 3, received first consideration in the Senate on May 3, and was then re-referred to the Appropriations Committee. HB 100 was referred to the Judiciary Committee on Jan. 26.

**HB 184**, sponsored by Rep. Godshall, amends Title 42, adding and changing definitions; further providing for the unified judicial system; establishing the appellate division of Medical Professional Liability awareness trust fund.
Court; further providing for transfers between intermediate appellate courts, for lien of judgments for money, for direct appeals to the Supreme Court from courts of common pleas, for allowance of appeals from Superior and Commonwealth Courts, for appeals to Superior Court from courts of common pleas, for original jurisdiction of the Commonwealth Court, and for appeals to the Commonwealth Court from courts of common pleas; providing for the jurisdiction of the appellate division of Medical Professional Liability Court and for the organization and jurisdiction of the Medical Professional Liability Court; establishing the Medical Professional Liability Court Qualifications Commission and prescribing its powers and duties; further providing for selection of judicial officers, for vacancies in judicial offices and for retention election of judicial officers; providing for selection and retention of judges of the Medical Professional Liability Court and for salaries of judges of the Medical Professional Liability Court; establishing the Medical Professional Liability Court Fund and providing for receipts and payments; further providing for right to appellate review and for appeals generally; and making editorial changes. The bill was referred to the Judiciary Committee on Jan 24. **The PBA opposes this legislation.**

**HB 225**, sponsored by Rep. Phyllis Mundy (D-Luzerne), amends the Health Care Facilities Act reenacting and amending provisions relating to definitions, powers and duties of the DoH and state health services plan; changing “state health services plan” to “state health improvement plan”; reenacting provisions relating to regulations; reenacting and amending provisions relating to certificates of need and issuance of license; adding the certificate of need review board to the scope of the act and providing for its duties; prohibiting certain referrals and claims of payment; increasing certain penalties; and repealing the sunset provisions. The DoH shall develop qualitative and quantitative standards and criteria for the review and approval of certificate of need applications; develop a certificate of need exceptions process that permits exceptions to be granted to the standards and criteria in order to reflect local experience or ensure access or to respond to circumstances that pose a threat to public health and safety; and establish and publish in the Pennsylvania Bulletin a detailed schedule of the review process for each certificate of need application submitted to the DoH. The bill was referred to the Aging and Older Adult Services Committee on Jan. 25, was reported from the Aging and Older Adult Services Committee with the request to re-refer the bill to the Health Committee on Feb. 9, and was re-referred to the Health Committee on Feb. 9.

**HB 1570**, sponsored by Rep. Douglas G. Reichley’ (R-Berks and Lehigh), amends the Health Care Facilities Act, in licensing of health care facilities, to further provide for definitions and to disallow a person from holding himself out as a health care facility or provider of specialized services without a license from the DoH. Requirements for licensure are provided along with the requirements to be able to perform ambulatory surgery on pediatric prior authorization requirements. DPW shall draft guidelines to update lists and processes on a regular basis. The bill passed the House 123-72 on Nov. 14, and was then referred to the Senate Public Health and Welfare Committee.

**HB 1480**, sponsored by Rep. Michael T. Peifer (R-Monroe, Pike and Wayne), the HealthChoices Act, provides for legislative intent and definitions. The HealthChoices program provides mandatory managed health care to recipients in specified areas of the commonwealth through contracts with managed care organizations. DPW shall administer and implement the program and the program shall not affect behavioral health services already offered by DPW. The program shall cover all Medical Assistance covered health benefits in the amount, duration, and scope as in the Public Welfare Code in the following categories: supplemental security income, temporary assistance for needy families, healthy beginnings, general assistance and their successors. Exclusions and program regions are detailed. Expansion provisions and sections relating to payments to hospitals are detailed. DPW shall submit a report to the Speaker of the House and President Pro Tempore of the Senate on the program within 12 months of the effective date. The bill was referred to the Health Committee on May 9, and passed over in the Health Committee on May 10.
patients. The DoH shall annually determine the specialized practices requiring licensure. The criteria for determining which practices require licensure are provided. Considerations for the adoption of rules and regulations are also provided, along with the terms and content of licenses. The bill was referred to the Health Committee on May 23.

*Resigned from the House on Dec. 30, 2011.

SB 8, sponsored by Sen. Folmer, the Pennsylvania Health Information Technology Act, establishes the E-Health Partnership Authority and provides for its composition, powers, and duties. The authority is an independent agency set to expire on Dec. 31, 2018. The act further establishes the E-Health Partnership Account to be administered by the Authority. Health care providers are authorized to obtain medical records without consent as long as they are necessary to the care of the patient. The legislation provides for confidentiality of patient medical records. The Authority shall create a form to allow a patient to deny the release of such medical records. The act also provides that the Authority may not be subject to legal process related to lawsuits to which the authority is not a party. The bill was referred to the Communications and Technology Committee on Feb. 13, 2012, was reported as amended from the Communications and Technology Committee on April 3, and then received first consideration in the Senate.

SB 23, sponsored by Sen. Greenleaf, amends the MCARE Act, in insurance. Beginning in 2012, a health care provider, other than a hospital, that would otherwise be required to annually insure or self-insure its professional liability in the amount mandated by this section may elect to be insured or self-insured below the mandated amount. A health care provider who elects to be insured or self-insured below the mandated amount must:
1) provide annual written notice to the Insurance Department of the election but is not required to provide proof of insurance to the department, and
2) provide notice to his or her patients of the amount of medical professional liability coverage that he or she maintains. The bill was referred to the Banking and Insurance Committee on Jan 14.

SB 24, sponsored by Sen. Greenleaf, amends the MCARE Act, in insurance, by stipulating that beginning in 2012, a health care provider may elect to pay the annual assessment in equal installments, not exceeding four, if the health care provider informs the primary carrier of the election to pay in installments. The bill was referred to the Banking and Insurance Committee on Jan 14.

SB 219, sponsored by Sen. Folmer, amends the MCARE Act to provide for the basic insurance coverage for plans renewed in 2011-14. A different basic insurance coverage applies to plans renewed in 2015. For 2015 and all following calendar years all assessments shall cease and the fund shall be funded according to the Health Care Provider Rate Stabilization Fund, which is established in the bill. The fund is to be used to fund MCARE and other enumerated missions. Certain responsibilities are given to the Insurance Commissioner to manage the fund and money in the Tobacco Settlement Fund is to be transferred to the Health Care Provider Rate Stabilization Fund effective Jan. 1, 2012. The bill was referred to the Banking and Insurance Committee on Jan. 21.

SB 388, sponsored by Sen. Vance, amends the Dental Law providing for professional liability insurance. A person licensed to engage in the practice of dentistry shall purchase medical professional liability insurance in the minimum amount of $1 million per occurrence or claim and $3 million per annual aggregate; or provide self-insurance. An applicant for licensure or license renewal shall provide proof of medical professional liability insurance. The bill outlines acceptable coverage. The legislation also provides definitions for “community-based clinic” and “volunteer license.” The bill passed the Senate 50-0 on June 21, and was then referred to the House Insurance Committee.

SB 999, sponsored by Sen. Stack, amends the MCARE Act providing for mandatory arbitration. The bill provides that if an action commenced against a healthcare provider cannot be settled by the parties then the parties shall submit the case to mandatory arbitration under the authority of the court of common pleas of the relevant jurisdiction and venue. The bill further provides for appeals from arbitration, arbitration awards, and jury trial. The legislation also provides for a study of the mandatory arbitration process to be conducted by the Legislative Budget and Finance Committee four years after the effective date of this act. The bill was referred to the Banking and Insurance Committee on May 2.

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