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## REPORT 4 BOARD OF TRUSTEES

(Referred to Reference Committee D)

Resolution 16-406: Hepatitis C Screening Act and Discretion of Physician Practice – Resolution 16-406, introduced at the 2016 annual meeting and referred for study to the Board of Trustees, called on the Society to seek legislative amendment to Act 87-2016 to prohibit the imposition of any liability, criminal or civil penalty, or licensure sanctions before any applicable State board for failure by a physician, health care practitioner, health care provider, hospital, health care facility, or physician's office to comply with Act 87.

### **BACKGROUND ON HOUSE BILL 59**

Act 87, the Hepatitis C Screening Act, was introduced as HB 59 by Representative Matthew E. Baker (R-68). Representative Baker serves as the Chairperson of the House Health Committee. In his co-sponsorship memo outlining his goals for passage of this act, Representative Baker highlighted that Pennsylvania has one of the highest rates of Hepatitis C in the nation and that Hepatitis C is the leading cause of liver cancer and liver transplantation.<sup>1</sup> Due to the high rates of Hepatitis C, the U.S. Centers for Disease Control and Prevention (CDC) released guidelines in 2012 recommending anyone born between 1945 through 1965 get tested for Hepatitis C.

Representative Baker introduced HB 59 on January 21, 2015. His legislation required individuals born between 1945 and 1965 to be offered Hepatitis C testing when receiving health services as an inpatient in a hospital or when receiving primary care services in an outpatient department of a hospital, health care facility or physician's office. There were three exceptions placed within this bill where the offering of Hepatitis C screening or diagnostic tests were not required when the health care practitioner providing services reasonably believed at least one of the following: 1) the individual is being treated for a life-threatening emergency; 2) the individual has previously been offered or has been the subject of a Hepatitis C screening test; or 3) the individual lacks capacity to consent to a Hepatitis C screening test.

HB 59 did not mandate that an individual take the test; it only required the offering of the test. If the individual accepted the offer of the test and the screening was reactive, HB 59 required the health care provider to either offer the individual follow-up care or refer the individual to a health care provider who was able to provide follow-up health care.

HB 59 was signed into law as Act 87-2016 on July 20, 2016 and became effective on September 18, 2016.

### **PAMED'S CORRESPONDENCE WITH THE DEPARTMENT OF HEALTH**

Due to various questions that it received from members soon after PAMED published an article on this law in August 2016, PAMED staff drafted a letter to the Department of Health (DOH) dated August 31, 2016. Within that letter, PAMED sought answers to several questions, including:

- What is considered "primary care services" under Act 87, and specifically, whether OB-GYN services met that definition?

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<sup>1</sup> Co-sponsorship Memo for HB 59-2015, introduced on January 21, 2015.

<http://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=H&SPick=20150&cospoId=15893>

- Whether there is a timeframe for individuals that have previously been offered Hepatitis C screening tests, thus negating the requirement to offer another test?
- What constitutes “culturally and linguistically” appropriate Hepatitis C screening tests given that DOH has not yet issued regulations on this issue?
- Whether physicians are required to explain to patients that their insurance may not cover the test?
- Whether the requirement for the “offering” of a Hepatitis C screening test is met if a physician writes an order or prescription for a patient to go to another facility for the test?

DOH did not respond to PAMED’s letter and it is unlikely that regulations will be promulgated by DOH any time soon under this law.

## **CURRENT STATUS**

PAMED’s legal staff has not received inquiries on this bill since the Fall of 2016, soon after PAMED published its article in August 2016. PAMED is also unaware of any physician that has been sanctioned by the State Board of Medicine or State Board of Osteopathic Medicine for a violation of this act.

## **POLITICAL CLIMATE**

Revisiting recently passed legislation that would, in essence, negate the bill’s original intent would be a heavy lift and would likely not be successful. However, approaching the legislature and the author of the enabling legislation with a proposal to enhance the existing law would be a more advisable pathway forward.

## **RECOMMENDATION**

It is unlikely that PAMED will be able to successfully get an amendment enacted that basically exempts physicians from the requirements of this act. This act is specific to physicians and other health care practitioners in that it requires the offering of a Hepatitis C screening test if certain parameters are met. PAMED should not spend political capital attempting to seek an amendment that in essence allows physicians to ignore the mandates of this bill and face no penalties for doing so.

However, there are issues with the law that could be addressed with a possible amendment, among them the following:

- A better definition of “primary care services” and what services are specifically exempt from this definition.
- A timeframe for when the offering of a Hepatitis C screening test negates the requirement to offer another test.
- Clarification on whether physicians are required to discuss insurance/payment-related issues with patients.
- Clarification on whether physicians may write an order for a Hepatitis C screening test that allows a patient to go elsewhere for the test or whether the test has to be given in the office of the physician.

Discussing these issues with members of the legislature, and specifically Rep. Baker, may open up the possibility of amending Act 87 and better clarifying what a physician must do under this law.

## **CONCLUSION**

Given the political climate, the unlikely success in getting this type of amendment enacted, while at the same time recognizing that there are issues with this law, it is recommended that PAMED does not seek

1 an amendment to Act 87 that essentially exempts physicians from having to comply with the law. In the  
2 alternative, it is recommended that PAMED seek to work with the legislature to draft an amendment to  
3 Act 87 that clarifies the issues that were highlighted by PAMED in its letter to DOH. By seeking this  
4 type of amendment, physicians will have a better understanding of when they must offer a Hepatitis C  
5 screening test and under what circumstances.

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7 **RECOMMENDATION**  
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- 9 1. The Board of Trustees recommends that this report be adopted in lieu of Resolution 16-406.

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11 David A. Talenti, MD  
12 Chair