



HAP

STATEMENT OF
THE HOSPITAL ASSOCIATION
OF PENNSYLVANIA

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Statement of
THE HOSPITAL ASSOCIATION OF PENNSYLVANIA
to the
HOUSE JUDICIARY COMMITTEE HEARING ON
HOUSE BILL 2122
June 13, 1996

The Hospital Association of Pennsylvania is pleased to submit this statement on House Bill 2122. HAP has nearly 250 acute care general and specialty hospitals as members and is the representative and advocate in the public policy arena for those hospitals and the patients and communities they serve.

The current medical liability system in the Commonwealth costs far too much and takes too long to resolve claims; provides exorbitant awards to some patients, while not providing fair compensation to others; encourages the practice of defensive medicine; and threatens access to health care in certain specialties (e.g., obstetrics), particularly for rural or other medically under served areas of the state. Ultimately, the current liability system adds costs to the health care system. As a result, medical malpractice reform has been receiving increased attention at both the national and state level as an essential component of health care reform.

The objectives of medical malpractice reform are assurance of fair and reasonable

compensation to malpractice victims, improvement in the efficiencies of the system, and more predictability in liability insurance underwriting. House Bill 2122 contains a series of reforms which, if enacted, would greatly improve the efficiency and fairness of Pennsylvania's tort system.

The following strengths of H.B. 2122 will improve timely and fair claim adjudication, enhance predictability in premiums and insurability of risks, reduce costs associated with defensive medicine and the tort system, and improve risk management. These strengths include the offset of awards when collateral sources exist, provisions for periodic payment of future damages, binding arbitration alternative to the court system, and tightening of the definition of expert witnesses.

Currently, defendants are prohibited from introducing evidence that the damages suffered by a plaintiff have been paid through a source other than from the defendant, such as disability compensation, income protection insurance, etc. The collateral source rule should be changed so that damages awarded by a judge take into account all collateral sources of payment received by the plaintiff. This would assure that the plaintiff receives reasonable and fair compensation, without allowing double recovery.

Traditionally, malpractice judgements have required lump-sum payments for a plaintiff's past and future losses. Lump-sum payments are made even though the award often is intended to compensate the plaintiff for uncertain future medical expenses or lost ability to earn wages in the future. A periodic payment or structured settlement would

recognize a plaintiff's future needs and at the same time prevent a windfall that may be dissipated prematurely or spent by persons for purposes not intended. Periodic payments may be funded through the purchase of an annuity which can provide payments for expenses that are anticipated to occur over a plaintiff's life. This costs far less than the current system of making lump-sum payments and would aid in making malpractice premium costs more predictable over time.

The civil justice system can be inefficient and costly, and can lead to unpredictable results. Medical malpractice reform cannot solely focus on controlling the amount of damage awards, but rather must incorporate mechanisms that will enable timely and appropriate resolution of claims. Arbitration and alternative dispute resolution mechanisms can expedite the timely resolution of medical liability claims. The goal of these mechanisms is to create a more cost-effective, efficient, and predictable means of handling claims. Efforts to reform the medical malpractice system must encourage the continued development of alternative means of settling disputes in an expeditious manner.

A serious problem with the current tort system for medical malpractice has been the proliferation of expert expert witnesses. House Bill 2122 appropriately delineates the qualifications for expert witnesses in medical malpractice cases to licensed physicians actively practicing in the field of medicine about which they are testifying.

In our review of H.B. 2122 we have identified two weaknesses: the issue of joint and

several liability is not addressed and the rollback in primary coverage rates.

The rule of joint and several liability allows a plaintiff to collect the entire judgement against any of the defendants regardless of the culpability of that defendant. This punishes the co-defendant who is either fully-insured or has substantial assets with which to satisfy the judgement. Further, the rule of joint and several liability also makes settling by a minimally negligent defendant difficult or impossible when a co-defendant is either uninsured or underinsured. Abolition of the rule of joint and several liability would mean that defendants would have to satisfy the portion of the judgement equal to their share of the negligence. This should reduce both the amount of judgements and the number of frivolous lawsuits filed against minimally negligent defendants. We recommend that specific language from H.B. 2123 for abolishing joint and several liability be amended into H.B. 2122.

The rate rollback contained in H.B. 2122 may exacerbate current funding problems experienced by the Pennsylvania Medical Professional Liability Catastrophe Loss Fund (CAT Fund). Over the past several years, the CAT Fund's surcharge base has been eroded due to competitive pressure in the private medical professional liability coverage market in the Commonwealth. In light of the potential adverse impact of the rate rollback on the CAT Fund, we recommend that the rate rollback language in H.B. 2122 be reevaluated.

Thank you for this opportunity to submit a written statement on H.B. 2122. The Hospital Association of Pennsylvania would like to work with the General Assembly and the Administration to enact meaningful medical malpractice reforms in the Commonwealth.

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