



THE HOSPITAL & HEALTHSYSTEM
ASSOCIATION OF PENNSYLVANIA

Statement of The Hospital & Healthsystem Association of Pennsylvania

Before the
House Judiciary Committee

Presented by:

Frank J. Trembulak
Executive Vice President and Chief Operating Officer
Geisinger Health System

Harrisburg, PA
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Chairman Marsico and members of the committee, I am Frank Trembulak, executive vice president and chief operating officer of the Geisinger Health System. Geisinger Health System is a physician-led health care system, dedicated to health care, education, research, and service spanning 43 counties of 20,000 square miles and serving 2.6 million people. I am a past chairman of the Board of Directors of The Hospital & Healthsystem Association of Pennsylvania (HAP), and I chair HAP's Medical Liability Task Force.

HAP represents and advocates for nearly 250 acute and specialty care hospitals and health systems in the commonwealth, as well as for the patients and communities they serve. I appreciate the invitation to present the hospital community's views on medical liability reform, especially joint and several liability and House Bill 1.

Overview

Pennsylvania is consistently identified as having one of the worst legal climates in the nation, and Pennsylvania's physicians and hospitals face some of the highest medical liability costs in the nation. The high legal costs paid by Pennsylvania employers, health care providers, and governments stunt the commonwealth's economic growth, job creation, and access to medical care. An important legal reform adopted in most other states is joint and several liability rule reform.

Pennsylvania follows the rule of joint and several liability, or the "deep pocket" rule, which makes each at fault defendant in a civil lawsuit liable for the entire amount of the plaintiff's damages regardless of the defendants' relative degrees of fault. For example, if a plaintiff sues three defendants, two of whom combined are 95 percent responsible for the defendant's injuries, but are bankrupt, the plaintiff may recover 100 percent of the damages from the solvent defendant that is only 5 percent responsible for the injuries.

The effect of joint and several liability is to convert lawsuits into searches for financially viable defendants. This causes defendants to settle out of court for fear of being found fully liable for substantial judgments.

The Fair Share Act

There have been two previous efforts to enact legislation establishing that each defendant in a claim is “severally” liable. Each defendant should only be required to pay his or her proportionate share of the plaintiff’s loss.

In 2002, with bipartisan support, the Pennsylvania General Assembly passed, and Governor Schweiker signed, the “Fair Share Act,” a law that would have provided significant and meaningful reform and substantially improved Pennsylvania’s legal climate. The law was held to be unconstitutional on a procedural issue. The same legislation passed the General Assembly in 2006, and Governor Rendell vetoed the bill. Both bills were the result of compromises reached with lawmakers.

House Bill 1 includes the same language that passed in 2002 and 2006 and eliminates joint and several liability in the recovery of all damages—making damage awards proportional to responsibility for the injury or loss—except in cases when a defendant is: (1) found liable for intentional fraud or tort; (2) held liable for environmental hazards; (3) held civilly liable as a result of drunk driving; or (4) held more than 60 percent liable for the injury or loss.

Hospitals and health systems throughout the commonwealth support House Bill 1.

Conclusion

The high legal costs paid by Pennsylvania health care providers, employers, and governments limit access to medical care, inhibit job growth, and increase health care costs. Various medical liability reforms enacted in other states have been shown to contain costs and increase the availability of physician services.

On behalf of The Hospital & Healthsystem Association of Pennsylvania, we look forward to working with the General Assembly to enact meaningful legal reforms that will inject fairness, common sense, and personal responsibility into our legal system.

Thank you for the opportunity to address you on this very important topic.