



Maryland
Hospital Association

MEDICAL LIABILITY RAISES COSTS, THREATENS ACCESS PATIENTS BEAR BRUNT OF HIGHLY LITIGIOUS CLIMATE

THE ISSUE

A highly litigious medical liability environment in Maryland significantly raises the cost of health care and makes it difficult to attract and retain the doctors necessary to provide the highest quality care.

In 2016, Maryland ranked 12th in the nation in per capita medical malpractice payouts, with a total payout of \$92 million. This encourages providers to practice defensive medicine — the overuse of tests and procedures to guard against potential lawsuits. With defensive medicine accounting for 13 percent of all hospital costs, in Maryland that translates to an additional \$2.1 billion in unnecessary health care spending.

This increases costs to patients and does not improve patient care. A significant percentage of neurologists, emergency room physicians, obstetricians, and other specialists report they would perform a procedure that is not medically warranted due to malpractice fears.

All of this is driven by Maryland's "litigation lottery," in which incentives to obtain astronomical jury awards are the name of the game. Lost is a good-faith effort to provide those who deserve compensation with timely, hassle-free funds to address their needs.

It doesn't have to be this way. Maryland has a cap on awards for non-economic damages that rises \$15,000 annually and will be \$800,000 in 2018 – one of the highest among states with caps. There is no need to increase the cap because there is ***no cap on economic damages***, such as medical expenses, lost income and compensation for future earnings, all of which provide for the lifelong needs of patients.

For a handful of cases that would qualify each year, a No-Fault Birth Injury Fund (similar to ones that already operate in Florida and Virginia) would provide compensation in a timely, efficient manner — without asking injured parties to play the litigation lottery where results are uncertain and won't be determined for years. Families that are suffering need rapid relief, rather than a prolonged litigation process that typically lasts many years.

We can do better for Maryland's patients and families while encouraging health care providers to deliver appropriate, high-quality care.

WHAT HOSPITALS ARE FOR

The General Assembly should support a bill to create a No-Fault Birth Injury Fund and reject attempts to raise the state's appropriate and effective cap on non-economic damages, which was upheld in 2010 by the state Court of Appeals.

