



Maryland  
Hospital Association

**Senate Bill 1037 – Health Care Malpractice Qualified Expert – Limitation on Testimony in Personal Injury Claims – Repeal**

**Position: *Oppose***

**Bill Summary**

SB 1037 would repeal the requirement that a health care provider who attests in a certificate of a qualified expert or who testifies in relation to a proceeding before an arbitration panel or a court concerning compliance with or departure from standards of care devote no more than 20 percent of the provider's professional activities to activities that directly involve testimony in personal injury claims.

**MHA Position**

Maryland's hospitals oppose efforts that would exacerbate an already litigious climate in Maryland. This bill, which would weaken the quality of expert witnesses, will do just that. Removing the 20 percent rule has the potential to create a class of full-time professional witnesses. For our system to function properly, judges and juries require experts with practical expertise in their field, not expertise in providing testimony.

Further, this proposal runs counter to the American College of Physicians position of encouraging "broad participation" (as opposed to full-time or majority-time participation) by the physician community in testifying, a concept Maryland's hospitals strongly support. Other professional medical societies, such as the American Academy of Pediatrics also recommend against the removal of such protections.

In 2015, Maryland ranked ninth in the nation in per capita medical malpractice payouts. The total payout amount, \$109 million, means that Maryland was one of only nine states with more than \$100 million in payouts, putting the Free State in the company of New York, New Jersey, and Illinois. And because defensive medicine – the overuse of tests and procedures as doctors and other providers seek to protect themselves from potential lawsuits – accounts for 13 percent of all hospital costs, that translates into an additional \$2.1 billion in unnecessary health care spending in Maryland.

Fostering this atmosphere by creating a class of "full-time expert witnesses" would add to this great burden and detract from the core mission of physicians and other health care providers: to heal. Current Maryland law, which caps the time spent by actively practicing physicians in the courtroom to 20 percent of their time, helps protect against the creation of a niche culture of professional witnesses.

For these reasons, we urge you to give SB 1037 an *unfavorable* report.