



Maryland
Hospital Association

House Bill 1323 – Health Care Malpractice Claims – Life Care Act 2019
Position: Support

Bill Summary

HB 1323 would require an award or verdict for future medical expenses to be based on reimbursement rates provided in statute including Medicare rates in effect for the locality in which the care is to be provided, Medicaid rates for services provided in skilled nursing facilities and rates set by the Health Services Cost Review Commission (HSCRC) for services provided in hospitals. Additionally, HB 1323 would require that testimony provided in a medical liability case be based on sufficient facts or data, is the product of reliable principles and methods and that the witness has applied the principles and methods reliably to the facts of the case that have been or will be admitted into evidence before the trier of fact.

MHA Position

Maryland's hospital medical malpractice damages climate is hurtling out of control. A recent survey found that in 2018, annual hospital payouts (closed claims) were \$176 million — nearly 140 percent higher than in 2008 — despite the frequency of claims remaining relatively stable.¹ This large increase in payouts is a result of increases in economic damages being awarded, which directly benefits plaintiff attorneys, who receive up to 40 percent in contingency fees. The Life Care Act 2019 (HB 1323) offers an opportunity for Maryland to ensure objectivity and predictability in the medical liability climate, a benefit to both plaintiffs and defendants.

The bill has two key components. The first adopts the *Daubert* standard for medical liability cases. This standard would align Maryland's threshold for acceptable expert witness testimony with the federal courts and 31 states and the District of Columbia. The *Daubert* standard requires the testimony of an expert witness to be based on 1) sufficient facts or data; 2) is the product of reliable principles and methods; and 3) the principles and methods have been applied reliably to the facts of the case. *Daubert* requires that the conclusion of the expert's witness testimony sufficiently relies upon generally accepted facts or data through a logical/scientific methodology. By utilizing the *Daubert* standard in medical liability cases, the accuracy and validity of expert testimony in Maryland can be more objectively relied upon.

The second key component provides for a benchmark that ties future medical expenses to reimbursement rates already in statute. Given that there are no caps on economic damages including future medical expenses in Maryland, it's important that damages awards reflect the actual cost for medical services. For most future medical expenses, HB 1323 would tie the damages amount to the average national Medicare reimbursement rate in effect on the date of the award for the locality in which the care is to be provided. By tying the rate to the locality in which services are provided, the amount allocated would be the actual cost Medicare would reimburse for the care being provided. Services provided in skilled nursing facilities would be

¹ MHA Medical Liability Survey (2018), includes medical liability claims by service type representing about 90 percent of Maryland's hospitals and includes claims from 2004 – 2018.

ties to the statewide average Medicaid rate. And for those services provided in hospitals, the damages award would be tied to rates approved by the Health Services Cost Review Commission (HSCRC) on the date in which the award was given for the hospital facility that the care would be provided.

The Life Care Act 2019 would help create more predictability with medical liability payouts. More predictability provides the means for hospitals and other health care providers to fully grasp the out year potential financial risk of pending litigation related to medical liability. More predictability also offers a clear expectation of the potential value of a lawsuit for plaintiffs seeking justice. For both parties, this means decisions on pending litigation can be made with sound information readily at hand.

HB 1323 adopts a common-sense approach in mitigating the volatile medical liability climate in Maryland. By adopting the *Daubert* standard in Maryland, the state will ensure that expert testimony is scientifically sound; and by implementing a system that can objectively assess the value of future medical expenses, both plaintiffs and defendants can enter pending litigation with eyes wide open.

For these reasons, we urge you to give HB 1323 a *favorable* report.