

TO: The Honorable Delores G. Kelley, Chair
Senate Finance Committee

The Honorable William C. Smith, Jr., Chair
Senate Judicial Proceedings Committee

FROM: Kevin Sowers, M.S.N, R.N., F.A.A.N.
President, Johns Hopkins Health System
Executive Vice President, Johns Hopkins Medicine

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INTRODUCTION

The Maryland General Assembly has the opportunity to provide urgently needed stability to Maryland's healthcare system and to secure a common sense, common-ground approach to a long-intractable problem. **Most importantly, however, legislators have the opportunity to establish a mechanism by which Maryland's most vulnerable infants are guaranteed the medical care and supportive services that they will need for life.** Therefore, on behalf of the Johns Hopkins Health System, I offer the following testimony in strong support of **Senate Bill 879, Public Health – Maryland Infant Lifetime Care Trust Funded by HSCRC and Maryland Patient Safety Center Duties**

A NEW, COMMON-SENSE PROPOSAL: SENATE BILL 879

The approach proposed by SB 879 is simple, straightforward and would benefit everyone. Families would still be able to hold hospitals and doctors accountable and would still receive direct compensation for non-economic damages, past medical expenses, legal fees, and lost earnings. None of that would change.

Instead, the bill creates the Infant Lifetime Care Trust, which would assume the payment responsibilities for all future medical expenses for infants who suffer birth injuries. The Trust would be funded by an annual assessment on Maryland's hospitals that deliver babies and would be required to cover all costs of care as determined solely by the patients' own physicians in perpetuity.

Through this one change, Senate Bill 879 provides certainty to what is today uncertain. It provides certainty to families that their loved ones will receive the care they need for life. It provides certainty to insurers that hospitals won't receive astronomical verdicts that will drive up premiums to unsustainable levels. And it provides certainty to Marylanders that they will be able to access high quality maternity care when and where they need it.

In addition, the Trust would commit \$1 million each year to study maternal and fetal health disparities through the Office of Minority Health and Health Disparities. This investment nearly doubles the current budget and sends a clear signal that Maryland is committed to making sure that every mother – regardless of race or socioeconomic status – is able to access high quality pre-natal care.

Finally, by designating the Infant Lifetime Care Trust as the party responsible for paying for medical care, Senate Bill 879 would relieve Maryland’s Medicaid system of paying for this care. Under current law, when a plaintiff obtains a settlement or wins a jury verdict for medical liability, the proceeds generally go into a ‘Special Needs Trust’ (SNT). That SNT allows the family to protect those proceeds and still qualify for medical care from the Maryland Medicaid Program. Initially under this new Infant Lifetime Care Trust, the costs for Medicaid will increase by a small amount because of the hospital rate adjustment to fund the Trust. However, it is estimated that funding a child’s lifetime care through the Infant Lifetime Care Trust rather than from the state Medicaid program will produce significant annual savings to the state general fund after the first few years.

MARYLAND’S STATUS QUO

Tens of thousands of babies are born in Maryland each year, and Johns Hopkins Health System is a leader in providing world-class obstetric care to Marylanders. Our hospitals deliver more than 7,200 babies each year, and we receive more than 350 high-risk transfers from around the state. The Johns Hopkins Hospital and Johns Hopkins Bayview Medical Center are two of a limited number of Maryland hospitals with level III and level IV neonatal intensive care units (NICU) that are equipped to handle the most complex births. As a result, we frequently receive patients – transferred from other hospitals throughout the state – whom our physicians and nurses have never treated before and with whom we have no prior relationship. Our clinical teams care for these patients – as we do all our patients – with expertise, compassion, and a single goal: ensuring their safety and wellbeing.

Though extremely rare, in a very small number of complex cases, an infant may require long-term medical care and specialized support services as a result of neurological injuries that occur at birth. It is these cases, and the lifelong health of the infants in question as well as the broader impact on the health system, that are the focal points of this testimony.

Maryland has the second highest quality hospitals in the country according to independent rankings, and the Johns Hopkins Hospital is nationally recognized as one of the top three hospitals in the country. Yet despite the exceptional care provided by the state’s hospitals -- Maryland has half the national average of medical liability claims – Maryland hospital payouts are double the national average. This is one indication of a long-term trend that has destabilized the liability insurance market in Maryland. Another is that over the last 12 years as claim amounts in all other states went up by 50 percent, claim amounts in Maryland surged by more than 300 percent.

Let me be clear at the outset that infants who have suffered injuries at birth should be guaranteed the care they need for life. And it is equally clear that if a mistake has been made, those responsible should be held accountable. But in Maryland today a jury can only guess at how much a child’s future medical care will cost, and an attorney is incentivized to inflate that number, because he or she gets a large percentage of the total amount awarded (usually 40 percent). Whereas other parts of a jury award are capped by law (such as non-economic or “pain and suffering” damages), this part is completely open-ended.

THE PROBLEMS WITH MARYLAND'S STATUS QUO

The current system has a critical flaw: future medical expenses are impossible to accurately predict. The needs of a critically ill patient from birth to childhood to adolescence and adulthood are unknowable. At the same time, the pace of technological and clinical change increases seemingly every day, with new and potentially expensive therapies that cannot today be imagined becoming available in future years and decades. Juries are ill-equipped to provide accurate estimates of the cost of care over the full lifetime of an infant.

As a result, in some cases their estimate may be too little, leaving families unable to pay for a lifetime of expensive medical care without the necessary funds to do so. No family should have to hold fundraisers to raise money to care for their child. Yet today's system offers no guarantee against such an outcome.

Conversely, in other cases, the estimate may be too much, stretching the ability of hospitals and their liability insurance companies to pay. **As one example, a recent high-profile medical malpractice case against Johns Hopkins resulted in a \$229 million verdict -- the largest medical malpractice verdict in US history -- after a Maryland jury awarded the plaintiff more than five times what the plaintiff's own attorney claimed would be necessary to provide for future medical expenses.** Although this case is clearly an outlier, it illustrates a volatility that fundamentally destabilizes the healthcare system in Maryland. Claims exceeding \$10 million appeared for the first time ten years ago and the frequency of their occurrence in Maryland has risen sharply since.

The uncertainty of this environment, and the potential for juries to estimate an astronomical amount to cover the care of the infant, has led to a crisis for Maryland's hospitals.

Insurance companies abhor uncertainty. That is as true for automobile insurance as it is for hospital liability insurance. In a market where risk is uncertain, as in Maryland's current hospital liability market, insurers may choose to simply leave the market rather than provide coverage. In fact, this has already happened and some of the nation's largest malpractice insurers are now declining to cover hospitals in Maryland.

As a result, insurance rates continue to rise for Maryland's hospitals. At Johns Hopkins Health System, which, with four Maryland hospitals employing nearly 30,000 Marylanders, is among the state's largest private employers, **in 2012, our insurance liability costs were \$39 million. Today, less than ten years later, they have risen to \$151 million. On January 1, our insurance premium went up by \$40 million.** To put this new, \$40 million insurance increase in context, the average Hopkins compensation of salary plus benefits in Baltimore City is about \$80,000. **A \$40 million charge is equivalent to 500 good-paying Johns Hopkins jobs in Baltimore City.**

Adding to the pressure facing our health system, our hospital revenues are capped by agreement between Maryland and the federal government. As part of Maryland's unique All Payer agreement with the federal government, Maryland hospitals must adhere to a global budget, which requires them to operate under a fixed annual revenue cap. That revenue cap means Johns Hopkins Health System, or any other hospital in Maryland, is unable to simply 'see more patients' or 'just increase prices' to cover the cost of higher malpractice insurance.

This environment has left Johns Hopkins Health System in an unsustainable position: our fixed costs are ballooning due to higher liability premiums while our revenue is limited. Put

simply, this environment is making it increasingly urgent that to continue our core mission of caring for communities across Maryland, we will have to make a series of difficult choices as we work to reconcile our financial and budgetary realities.

This unsustainable trend in Maryland's liability system makes it increasingly challenging to attract obstetricians to practice in Maryland, and maternity program closures are now more likely. Due in part to the rising costs of delivering obstetrical care, **several hospitals in Maryland have significantly reduced or eliminated their obstetrics programs in recent years and similar closures in Washington, DC further threaten access for Marylanders.**

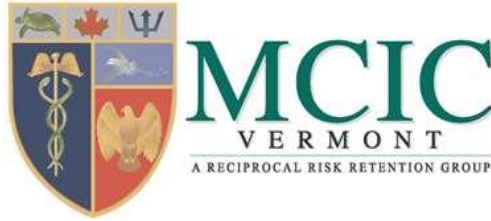
We cannot wait for this crisis to deepen. The Johns Hopkins Health System – along with a broad coalition of Maryland hospitals, physicians, nurses, and patient safety advocates – believes there is a better way to ensure that infants with birth injuries are provided the care they need for life, while simultaneously creating a sustainable liability environment that holds hospitals and doctors accountable. Senate Bill 879 offers such a solution.

CONCLUSION

With Senate Bill 879, the Maryland Senate has the opportunity to put our state's most vulnerable infants first while taking an important step to stabilize and secure the state's healthcare system. The Infant Lifetime Care Trust is a smart approach to addressing a pressing issue facing the state. It is also **an approach strongly favored by Maryland's voters.** In a recent survey conducted by Braun Research Incorporated, **Marylanders supported a new approach that would provide guaranteed lifetime care for infants over the status quo by overwhelming margins: 85 percent to 15 percent.** Support is bipartisan and comes from every corner of the state. The message from Maryland voters is clear: the status quo no longer works. The state needs a new approach, like the Infant Lifetime Care Trust, to provide guaranteed care to infants.

For the above reasons we strongly urge a **favorable report on Senate Bill 879.**

cc: Members, Senate Finance Committee
Members, Senate Judicial Proceedings Committee



Chris Smith
Chief Executive Officer

February 25, 2020

To whom it may concern,

I am writing on behalf of MCIC Vermont, a Vermont Risk Retention reciprocal, that insures Johns Hopkins Medicine for its medical malpractice risk. MCIC insures over 4,000 physicians and approximately 25,000 employees in the state of Maryland.

We believe it is imperative that the Maryland legislature pass some form of tort reform in the state to mitigate runaway medical malpractice costs. Baltimore, along with Cook County, Illinois, Philadelphia and Miami, is now one of the worst cities/counties in the U.S. for large medical malpractice lawsuits. This status is verified by Willis Towers Watson, the leading actuarial firm in the country.

These results are driving medical malpractice premiums to unsustainable levels and has most insurers considering not writing this business in Baltimore in the future. Several important insurance companies, including Berkshire Hathaway and CNA, have already declined to write in the city of Baltimore or have significantly reduced the amount of coverage they will provide. MCIC utilizes many of these companies for reinsurance purposes and without such insurance being available brings into question the viability of companies like ours.

Medical malpractice coverage is critical for large healthcare systems in Maryland to operate effectively. The potential risks to healthcare in the state are significant as certain healthcare services may become unsustainable from a cost perspective. In addition, these cost increases have made national news in many medical communities, which may also affect physicians' views of Maryland as a state in which to practice. Patient care could suffer significantly as a result.

We urge you to please pass significant tort reform as quickly as possible before these dramatically rising claim costs negatively impact provider services and patient care.

Sincerely,

Christopher D. Smith
Chief Executive Officer