



Maryland
Hospital Association

**Senate Bill 879 - Public Health - Maryland Infant Lifetime Care Trust Funded by HSCRC
and Maryland Patient Safety Center Duties**

Position: *Support*

March 5, 2020

Senate Finance Committee

MHA Position

Maryland's 61 nonprofit hospitals and health systems care for 5 million people each year, treating 2.3 million in emergency departments and delivering more than 67,000 babies.

The birth of a child is one of the most joyous moments in a family's life. However, in a small number of complex cases, an infant may require long-term medical care as a result of neurological injuries that occur at birth. These incidents are tragic and devastating for everyone involved.

That is why Maryland hospitals want to guarantee these vulnerable infants receive the care they need—for life. That is the goal of SB 879, which would establish a fund paid for by hospitals to ensure families receive the resources to provide the care patients' personal physicians recommend.

This is a common-sense solution to rescue Maryland's medical liability climate.

While our state has half the number of medical liability claims as the national average, our payouts are double the national average.¹ In fact, payouts for claims above \$10 million increased by 2,179% from 2016-2018 compared to the previous nine years.² As a result of these dramatic spikes in payouts, Maryland is now considered one of the four worst venues for medical malpractice in the country.

Maryland is seeing an exodus of reinsurers willing to write policies in our state. Reinsurers who have remained in the market are requiring far greater risk retention (essentially a deductible), dramatically increasing premiums, and imposing extensive coverage exclusions and restrictions. Maryland hospitals operate under fixed global budgets and are then forced to consider reductions to programs, service lines, and/or staffing to address these rising costs.

Maryland hospitals support SB 879, to provide comprehensive and as-needed relief to families who suffer an injury during childbirth and stabilize Maryland's medical liability climate. The Maryland Infant Lifetime Care Trust ensures families have guaranteed medical care prescribed by their own physician throughout the course of the injured child's lifetime. This system better serves these families, who currently receive a lump-sum payment based on a jury's best estimate

¹ Aon/ASHRM Hospital and Physician Professional Liability Benchmark Analysis, October 2018

² Willis Towers Watson analysis

of the future medical needs of an injured child. The legislation simply changes the mechanism for how future medical expenses are paid.

There are no changes to the existing legal process—families can still hold providers accountable in court and attorneys still receive contingency fees.

This proposal better serves families while also taking a significant step to improve a medical liability climate under which hospitals struggle to access and maintain reinsurance. The new approach is right for families, right for infants, and right for Maryland.

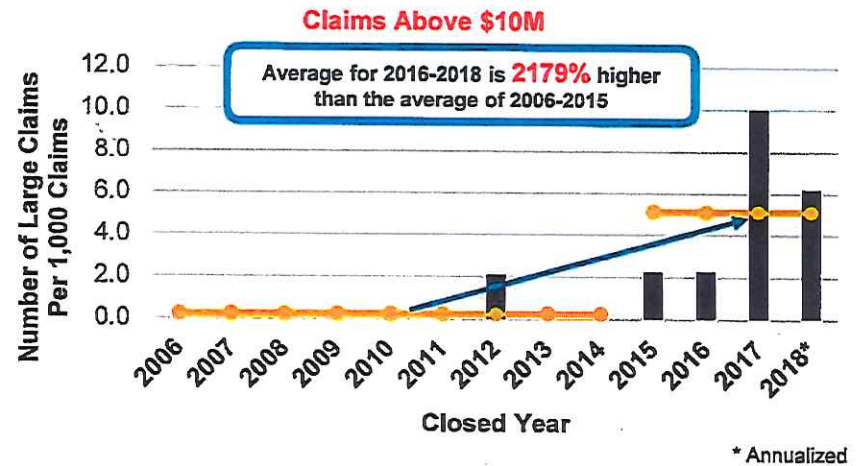
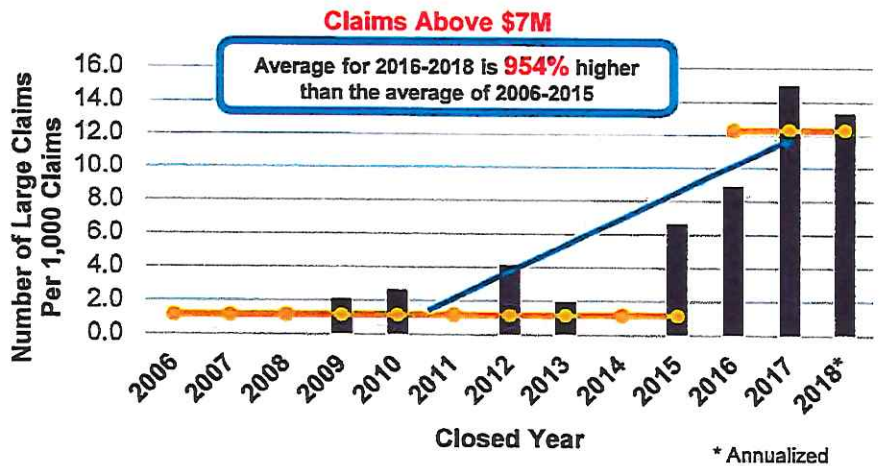
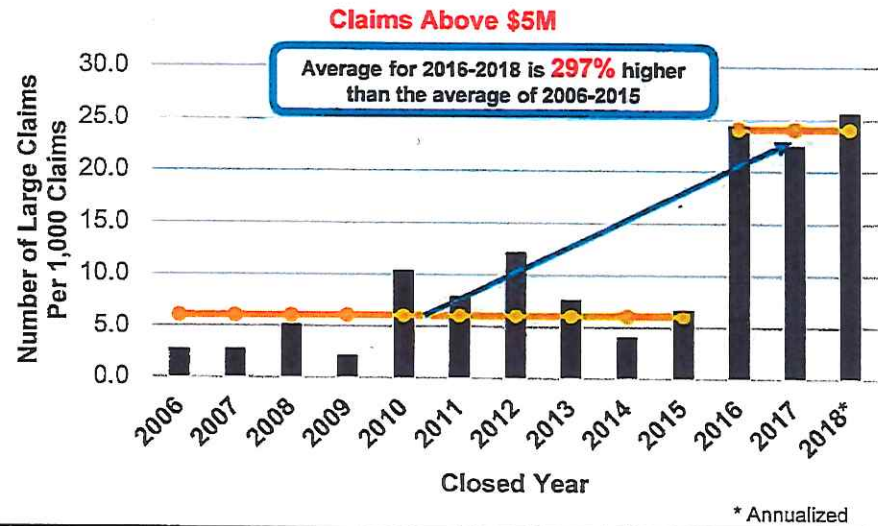
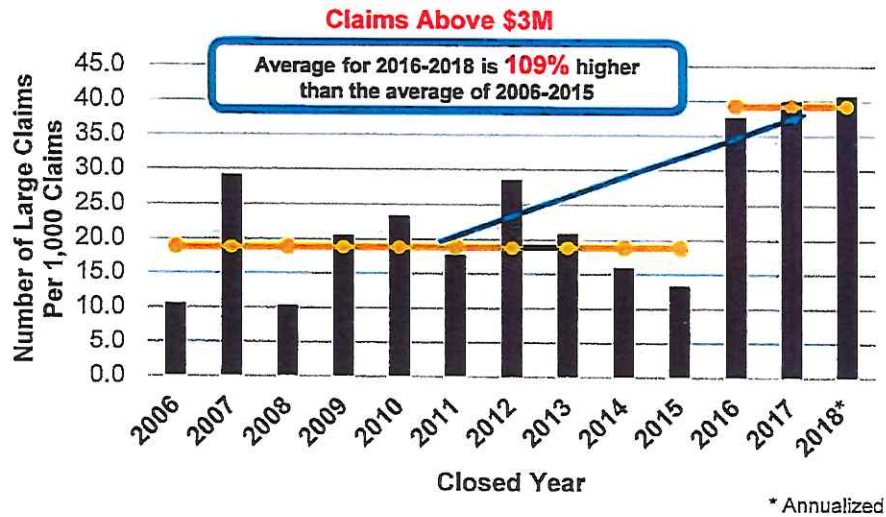
For these reasons, we urge a *favorable* report.

For more information, please contact:

Nicole Stallings

Nstallings@mhaonline.org

Maryland closed claim data shows an even more dramatic spike and the same increase at higher layers



06 February 2020

To whom it may concern

Medical Malpractice Insurance coverage in Maryland

The recent spate of high value Medical Malpractice settlements and verdicts in Maryland - and in particular Baltimore City - is making the procurement of Insurance and Reinsurance protection extremely challenging.

Insurers and Reinsurers are withdrawing &/or are reducing the amount of limits (capacity) that they are willing to provide to Healthcare providers based in the State. Zurich Insurance have withdrawn and other significant US Domestic Insurance carriers namely Berkshire Hathaway, W R Berkley, C N A, and Chubb have either declined to participate on certain risks based in this jurisdiction or have markedly reduced capacity. The market for USA Medical Malpractice insurance is a global one; The Bermuda and London Insurance markets are important providers of capacity and major carriers such as Sompco, and AXA, have materially cut back the amount of capacity that they are willing to provide, London Insurers particularly based in Lloyd's have followed suit.

The insurers and reinsurers that are still willing to take on Baltimore based risks are requiring

- Far greater risk retention (Self insurance) by the Healthcare Providers
- Dramatically increased premiums
- The imposition of coverage exclusions and restrictions.

A recent settlement of \$190 million and verdict of \$229 million in Maryland has caused considerable concern within the specialist US Medical Malpractice insurance industry; these widely publicized values engender fear within the healthcare provider community that has the effect of driving up settlement values. These increased values in combination with \$100 million plus verdicts make the provision of insurance in Maryland commercially unsustainable.

Yours Sincerely



Charles F Pearch
Managing Director



UNIVERSITY of MARYLAND
SCHOOL OF MEDICINE

March 5, 2020

Senator Delores G. Kelley
Chair, Finance Committee
11 Bladen Street
Annapolis, Maryland 21401

E. ALBERT REECE, MD, PhD, MBA
Executive Vice President for Medical Affairs, UM Baltimore
John Z. and Akiko K. Bowers Distinguished Professor and
Dean, University of Maryland School of Medicine

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Dear Chairperson Kelley:

Good afternoon, my name is Dr. E. Albert Reece, and I am the Executive Vice President for Medical Affairs, University of Maryland Baltimore, and Dean of the School of Medicine. I am also an obstetrician-gynecologist, with sub-specialty training in high-risk obstetrics. In addition, I also serve as Co-chair of the Maryland Medicine Comprehensive Insurance Program, a joint venture self-insurance program of the clinical faculty organization of the School of Medicine and the University of Maryland Medical System.

I have committed my career to caring for patients and educating the next generation of physicians in Maryland and the nation. I testify today in strong support of SB 879.

Marylanders deserve high-quality obstetric care, yet the medical liability environment in the state has produced a profound chilling effect on the ability of our hospitals and universities to retain top talent, particularly in this critically important field.

It's important to note, despite what some may contend, that most adverse outcomes at delivery are NOT caused by specific and preventable actions by a physician. Adverse birth outcomes cannot just be labeled bad medicine.

The bottom line is this---it is simplistic, and simply wrong, to think that the external, indirect, and often subjective means of assessing fetal health and well-being will pick up the precise fetal condition, and that intervention can avoid injury 100% of the time.

Our medical students and physicians in training have options for where to practice, and it should be our shared goal to ensure that they stay and care for patients here in our state.

A 2017 report surveyed more than 4,000 Ob-Gyns and found:

- 85% of them had been named in a lawsuit
- 44% of those ob-gyns indicated that the threat of malpractice influences their actions ALL or MOST of the time



All of these issues cause extreme difficulty for those of us encouraging medical students to go into obstetrics, and to recruit and retain doctors in the field of obstetrics.

SB 879 is a common-sense proposal that brings rationality to this issue.

Under this bill, families may still hold hospitals accountable. At the same time, this bill provides reassurance to hospitals and providers that they will not face skyrocketing, career-ending insurance premiums. Most importantly, it provides guaranteed lifetime care to patients who need it most.

On behalf of the University of Maryland School of Medicine, I strongly support Senate Bill 879.

Sincerely yours,



E. Albert Reece, MD, PhD, MBA

*Executive Vice President for Medical Affairs, UM Baltimore
John Z. and Akiko K. Bowers Distinguished Professor and
Dean, University of Maryland School of Medicine*



SOMPO INTERNATIONAL

March 4, 2020

Susan Durbin Kinter
Vice President Claims, Litigation & Risk Management
Maryland Medicine Comprehensive Insurance Program
250 West Pratt Street
Suite 1200
Baltimore, MD 21201

Re: Maryland Tort Reform

Dear Ms. Kinter,

Sompo International writes concerning the increasingly hostile legal environment in Maryland and the critical need for meaningful tort reform in the state. Sompo International is particularly concerned about the increasing severity of non-economic damage awards and the impact it has on (re)insurers ability to do business in the state going forward. Sompo International proffers its full endorsement of significant tort reform legislation to address this growing problem. We believe such legislation is necessary in order to stabilize the Maryland (re)insurance market and to stem the tide of (re)insurers pulling their business from the state.

Should you have any questions or need any additional information I may be reached at 212-209-6508 or rappel@sompo-intl.com. Thank you.

Sincerely,

Richard M. Appel
Senior Counsel

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www.sompo-intl.com

**MARYLAND'S LIABILITY CLIMATE:
A HOSPITAL PROFESSIONAL LIABILITY
(RE)INSURER PERSPECTIVE**

From: Nat Cross <[redacted]>
 Sent: Friday, February 7, 2020 11:52 AM
 To: Smith, Larry L <[redacted]>
 Cc: Leyko, Rachel A <[redacted]>
 Subject: Beazley Healthcare - US Hospitals Focus Group - Current Perception of Maryland including Baltimore City and Baltimore County

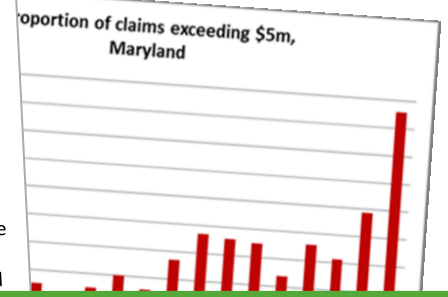
Dear Larry,
 You have asked me to provide an excess Hospital Professional Liability (re)insurer's perspective of Maryland including the City and County of Baltimore given local, as well as national, trends of increasing medical malpractice ("medmal") severity. Beazley is a Lloyd's based specialist insurer, with 500 people. In addition to our Lloyd's and a licensed

largely caught up, and the insurance press is awash with from our perspective we first noticed this increasing to provide bespoke analytical reports to our insureds such as Philadelphia. With the benefit of hindsight, the major: the suppression of the medical plaintiff's bar in the form, patient safety and quality, and increased risk (other vehicles), and the undermining (through global economic downturn) of their attempts to this in the latter part of the decade. However, come increased liquidity, and a new strategy finalised, they

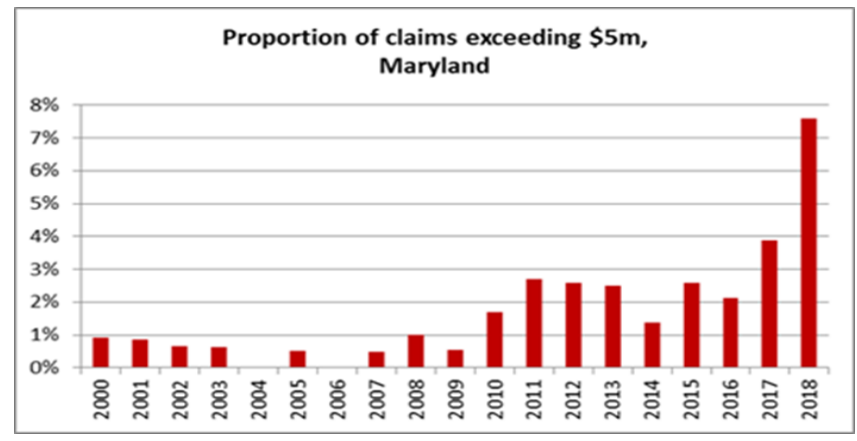
in the following chart where the number of non-zero cases for \$5m has risen in the region of 300% in recent years (c. 2.5%

(frequency) of claims. Pleasingly, actuarially we have been able Unfortunately, our analysis has further indicated that ability have no bearing whatsoever on the value or quantum of course has meant that Beazley and Medstar have held integrity of our book, and you as steward of malpractice d for recognition of your efforts. My understanding is that ent renewal for your overall programme were particularly wal of carriers that had historically provided capacity ill as the actions of others to reduce as (re)insurers

firstly bypass the impact of damage caps by non-economic damages, and focus on claims with the (cases involving high earners with the and a licensed



300% Increase in Claims over \$5m



Maryland is outstripping the US nationwide

