



CARE BRAVELY

SB187 – Civil Actions - Health Care Malpractice Claims (Life Care Act 2020)

Senate Judicial Proceedings Committee – January 29, 2020

Testimony of Martha D. Nathanson, Vice President, Government Relations and Community Development LifeBridge Health

Position: **SUPPORT**

I am writing in strong SUPPORT of SB187. LifeBridge Health is a regional health system comprising Sinai Hospital of Baltimore, an independent academic medical center; Levindale Geriatric Center and Hospital in Baltimore; Northwest Hospital, a community hospital in Baltimore County; Carroll Hospital, a sole community hospital in Carroll County, and; Grace Medical Center in Baltimore (formerly Bon Secours Hospital). Numerous factors impact the size of payouts by hospitals and other healthcare providers for alleged medical malpractice. Two of those factors are the estimated cost of medical treatment and high attorney contingency fees. SB187 addresses the first of these issues – life care plans developed to represent medical needs – with the second addressed indirectly as one of the drivers of disproportionately high amounts for proposed life care plans.

Provide Reasonable, Objective Guidance to Both Plaintiffs and Defendants by Facilitating Use of Scientific Evidence. Costs of lifelong care can be reasonably estimated using objective, scientific criteria and standards rather than relying upon arbitrary and wildly differing proposals that may, in some part, reflect a desire to circumvent established and appropriate limits on noneconomic damages. To this end, SB187 updates the evidence standard for developing life care plans from “Frye-Reed” to “Daubert.” Daubert admits scientific, technical or other specialized knowledge as long as the testimony is based on sufficient facts or data, is the product of reliable principles and methods, and the witness applies the principles and methods reliably to facts. Proposed plans, valued at \$50M or more in some cases, may be only tenuously related to recommendations of a patient’s treating providers or with the actual current or anticipated cost of the care. Applying the Daubert standard will ensure that claims regarding future needs of plaintiffs are well-rooted in reality.

Acknowledge Impact of Excessive Awards on Operations. As caps on non-economic damages continue to be upheld in the courts, the proposed value of medical malpractice cases has increased through estimates of life care plans. As a result, hospital “deductibles” (aka self-insurance) increase, often by millions of dollars, as reinsurers are unwilling to write insurance except at catastrophic levels. **These dollars come out of operations and are better used to enhance our primary goal: to provide sufficient staff, facilities and equipment to allow us to provide safe, quality care through services identified and needed by our communities, and to implement appropriate initiatives for patient safety.**

Address Impact of Excessive Awards on Insurance. As indicated, the increasing severity of malpractice claims has led to a tightening of the malpractice market, such that insurance is now only available for the most catastrophic of claims. Thus, despite plaintiff's claims in advertisements, there is no insurance available to pay a large part of these claims, as a result of high deductibles/self-insurance/retention levels. This fact cannot be shared with juries, just as the collateral source rule prevents introduction of the fact that much of the projected future medical costs for plaintiffs are often covered by Medicare, Medicaid, or insurance. This inequity leads to cavalier estimates of amounts that may not reflect the true needs of patients. When awarded money in these cases, plaintiffs often shield much of the money in special needs trusts to in part ensure that third parties continue to pay for the bulk of expenses claimed.

Address Attorney's Fees: While plaintiff attorneys argue that life care plans reflect the true future needs of their clients, the reality is that attorneys take 40-50% of any award or settlement, sometimes clearing more money in a case than their clients. This means that plaintiffs may not even be left with sufficient funds to finance the life care plans proposed by their counsel, and further indicates that the plans are not representative of the true needs of injured parties.

Objectivity, Reliability, Predictability, Efficiency. These principles argue for the changes proposed in SB187, to best serve the interests of justice by obtaining accurate and reasonable life care recommendations. Injured parties in need will thereby be assured of equitable relief at appropriate levels that neither unjustly enriches their attorneys nor causes undue pressure on hospitals and providers charged with furnishing health care services to Maryland patients.

For all of the above stated reasons, we request a **FAVORABLE** report for SB187.