Testimony of Larry L. Smith, VP of Risk Management Services
MedStar Health, Inc. in Support of Senate Bill 187
Health Care Malpractice Claims (Life Care Act 2020)
Senate Judicial Proceedings Committee
January 29, 2020

Mr. Chairman and members of the Committee, my name is Larry Smith, I am a resident of Howard County and the Vice President of Risk Management Services at MedStar Health.

I am here today to urge you to support Senate Bill 187.

Maryland's medical liability damages climate is out of control. A recent professional liability claim analysis found that in 2018, Maryland's hospitals paid nearly 140 percent more than in 2008 for the claims closed during that year – $176 million vs. $73.5 million. This despite the number of claims being about the same. Maryland's claim frequency (number of claims) is about half the national average, and yet the claim severity (payouts) is approximately double the national average.

A significant reason for this increase is the use by plaintiff lawyers of greatly exaggerated so-called "life care plans".

It is important to note that before the early 1980's there were no life care plans or life care planners. A PhD from Florida developed this concept as a way to increase the economic damages in civil liability cases. The plaintiff bar quickly saw this as a way to off-set the decrease in non-economic damages resulting from the non-economic damage caps that many states put in place as a way to reduce the rising cost of malpractice suits. The plaintiff bar has embraced this concept and have used it to drive the economic damages in medical liability claims to a point that is not sustainable.

Maryland has become infamous around the country as one of the most difficult and expensive venues for a hospital or physician to be a defendant.

By the way, this is not just a Baltimore City issue. This is a Maryland issue. MedStar has hospitals and ambulatory facilities in St. Mary's County, Prince George's County, Baltimore City, Anne Arundel County, Baltimore

County and Montgomery County. The over-heated litigation environment and severe loss cost inflation are affecting each of these venues. This is a state-wide problem.

Why is this so important to Maryland's hospitals?

Virtually all of Maryland's hospitals fund their medical professional liability costs through wholly-owned self-insurance programs. Virtually all of the $176 million that I indicated was spent in 2018 by Maryland hospitals was paid for directly by Maryland hospitals through these self-funded programs. Therefore, most of the cost for medical malpractice liability in Maryland is being borne directly by hospitals not by commercial insurance companies.

The $229 million award in the Byrom case, the largest jury award of its kind ever in this country, is certainly a wake-up call, but by itself it is not the problem. In Maryland over the past few years there have been a number 7 and 8 figure jury verdicts. What you don't see, however, are the number of 7 and even 8 figure settlements being driven by these awards.

Senate Bill 187 would require that estimates of future care needs provided to a Court be subject to a well-established standard of reliability.

This will not totally solve the problem, but it is one step towards reigning in an inflationary trend that is leading us to a statewide crisis. For these and other reasons you will hear today, MedStar urges you to support Senate Bill 187.