

SB 187 – Civil Actions – Health Care Malpractice Claims (Life Care Act)

Position: *Support*

Bill Summary

SB 187 specifies that expert witnesses in medical liability cases may testify in the form of an opinion only if:

1. The expert’s scientific, technical, or other specialized knowledge will help the trier of fact understand the evidence or determine a fact in issue;
2. The testimony is based on sufficient facts or data;
3. The testimony is the product of reliable principles and methods; and
4. The expert has reliably applied the principles and methods to the facts of the case.

The bill also limits the amount that a plaintiff’s attorney can take as part of their contingency fee from the award for future economic damages.

Position Rationale

Maryland’s hospital medical liability damages climate is hurtling out of control. A recent survey found that in 2018, Maryland’s annual hospital payouts (closed claims) were nearly 140 percent higher than in 2008 – \$176 million vs. \$73.5 million, despite the frequency of claims remaining relatively stable. Maryland’s claims frequency (number of claims) is about half the national average in most years, and yet the claim severity (payout) is approximately double the national average in most years. While hospitals struggle with access and affordability of liability coverage, attorneys typically take 40 percent of each verdict, plus expenses, which in 2018 diverted more than \$70 million from patients’ health care.

One factor driving the significant increase in the payouts is attributable to tactics used to artificially inflate economic damages. Actuarial predictions regarding life expectancy, lost wages, future care needs, etc. are often based on unrealistic and inaccurate assumptions. This is particularly evident in outlays for birth injuries and surgical injuries where life care planners are used to project future economic damages. Contributing to these higher outlays is a lack of objective criteria to determine the needs and total costs of a life care plan. Life care plans offered at trial by expert witnesses (life care planners) are based on their opinion about future medical needs of an injured person.

The current standard in Maryland for determining whether the life care plan (the Frye/Reed standard) allows far too much leeway by requiring only that the plan not be novel, and the expert testimony is deduced from a well-recognized scientific principle or discovery. The Daubert standard, used in federal court and in 31 states and the District of Columbia, relies on a “scientific knowledge” approach to determine whether expert testimony is not only relevant, but also *reliable*, and, therefore, admissible as evidence. The Daubert standard provides litigants with the opportunity to more thoroughly vet expert testimony and prevent decisions based on junk science.

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Restricting plaintiff's attorney from taking 30-40 percent of the future economic damages awarded to care for the plaintiff will help ensure that the first and foremost funds are available to provide the care that is needed. It also removes the incentive to artificially inflate future medical expenses.

For the reasons above, we ask that you give SB 187 a ***favorable*** report.