SB681 Health Care Malpractice Claims_Health Care P
Uploaded by: Brandon Floyd
Position: FAV

JOHNS HOPKINS
UNIVERSITY & MEDICINE

TO: The Honorable Will Smith, Chair
Judicial Proceedings

SB681
Favorable

FROM: Brandon Floyd
Associate Director, *Maryland Government Affairs*

DATE: February 18, 2025

RE: SB681 Health Care Malpractice Claims - Health Care Provider - Definition

Johns Hopkins supports **SB681 Health Care Malpractice Claims - Health Care Provider - Definition**. This bill expands the scope of a health care provider by including employees, agents, or contractors of a hospital who are licensed, certified, registered, or otherwise authorized to render health care services in Maryland.

Johns Hopkins Medicine, a leading healthcare institution employing over 50,000 full-time professionals and providing care for more than 95,000 patient admissions annually, is dedicated to protecting our patients and staff. The current Maryland Health Care Malpractice Claims statute restricts its coverage to a narrowly defined list of healthcare providers, therefore creating limitations on liability protections that can be provided. Many dedicated clinical professionals, who play an essential role in patient outcomes, would be excluded from the statutory protections—exposing them to personal liability.

Clinicians such as x-ray, cardiac, radiology, and anesthesia technicians, along with respiratory and radiation therapists and other non-listed clinicians, are not encompassed by the current statute. These healthcare providers are integral to the clinical teams that deliver quality care to patients. Excluding these providers from malpractice protections arguably undermines their individual contributions. Hopkins' leadership acknowledges that the provision of high-quality care is a collaborative effort, heavily reliant on the expertise of each member of a clinical team. Each professional, regardless of their specific role, contributes uniquely to patient safety and care quality. It is therefore paramount that these clinicians receive the same legal safeguards afforded to other healthcare providers under the Statute.

We strongly advocate for an expansion of the healthcare provider definition to include all hospital healthcare providers who administer medical care. By broadening the definition of a healthcare provider, we can ensure that our healthcare providers are adequately protected.

Accordingly, Johns Hopkins respectfully requests a **FAVORABLE** committee report on **SB681**.

SB 681_Health Care Malpractice Claims - Health Car
Uploaded by: Hannah Allen
Position: FAV

MARYLAND
Chamber of Commerce

Senate Bill 681

Date: February 18, 2025
Committee: Senate Judicial Proceedings
Position: Favorable

Founded in 1968, the Maryland Chamber of Commerce is the leading voice for business in Maryland. We are a statewide coalition of more than 7,000 members and federated partners working to develop and promote strong public policy that ensures sustained economic health and growth for Maryland businesses, employees, and families.

Senate Bill 681 (SB 681) seeks to clarify the definition of "health care provider" under the Maryland Health Care Malpractice Claims Act to include certain hospital employees, agents, or contractors who provide health services.

SB 681 clarifies that individuals providing medical services in hospitals, such as x-ray technicians and respiratory care specialists, are covered under the health care malpractice statute. Currently, these providers are not listed as one of the health professionals under the definition of "health care provider". By clarifying the definition of "health care provider" to include those providing medical services, the bill ensures a more consistent and fair application of legal standards among all health care professionals working at hospitals.

The Chamber supports this narrow and targeted clarification, as it addresses a gap in the current law without over-extending the definition to non-medical personnel. It aligns with the goal of ensuring that lawsuits against health care providers are handled within the established medical malpractices framework, providing clarity and fairness to all parties involved.

For these reasons, the Maryland Chamber of Commerce respectfully requests a **favorable report** on **SB 681**.

SB0681 - Health Care Malpractice Claims - Health C

Uploaded by: Jake Whitaker

Position: FAV

Maryland
Hospital Association

Senate Bill 681 - Health Care Malpractice Claims - Health Care Provider - Definition
Position: *Support*
February 18, 2025
Senate Judicial Proceedings Committee

MHA Position:

On behalf of the Maryland Hospital Association's (MHA) member hospitals and health systems, we appreciate the opportunity to comment in support of Senate Bill 681. SB 681 aims to clarify the definition of "health care provider" to ensure all employees working at hospitals who are licensed, certified, registered, or otherwise authorized to deliver health care services are subject to the Maryland Healthcare Malpractice Claims Act. This bill does not limit a patient's ability to file a claim—it simply ensures that all medical professionals are subject to the same legal process when claims arise from the delivery of medical care.

Under current Maryland law, there is a distinction between personal injury and wrongful death claims and medical malpractice claims. Maryland's dedicated medical malpractice statute was designed to address the unique challenges associated with health care-related legal claims. Medical malpractice cases involve complex medical evaluations that require specialized knowledge, making expert testimony essential. These standards should apply across all hospital-based providers to promote fairness and legal consistency.

SB 681 simply clarifies the definition of a health care provider to include only those individuals who provide direct health services within hospitals. The bill does not extend these provisions to non-clinical hospital staff, such as administrative personnel or security workers, ensuring the scope remains focused on professionals actively involved in patient care. This bill promotes fairness by ensuring that all professionals delivering patient care are treated equitably under the law while also upholding the integrity of the health care system through a consistent and comprehensive malpractice framework.

Maryland hospitals are engaging in creative and collaborative efforts to grow the workforce to meet the needs of patients and adapt to new care delivery models. For example, MHA supported 2024 legislation to create a new category of health care workers: limited scope X-ray machine operators. This bill would support innovation at Maryland hospitals by ensuring that claims against new health care provider types, like limited scope X-ray machine operators, would be filed under Maryland's medical malpractice statute.

For these reasons, we request a favorable report SB 681.

For more information, please contact:
Jake Whitaker, Assistant Vice President, Government Affairs & Policy
Jwhitaker@mhaonline.org

SB 681 - Healthcare Malpractice Claims - Health Ca

Uploaded by: Kimberly Routson

Position: FAV

MedStar Health

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Kimberly S. Routson
Assistant Vice President
Government Affairs - Maryland

SB 681 – Health Care Malpractice Claims - Health Care Provider - Definition

Position: ***Support***
Senate Judicial Proceedings Committee
February 18, 2025

MedStar Health is the largest healthcare provider in Maryland and the Washington, D.C. region. MedStar Health offers a comprehensive spectrum of clinical services through over 400 care locations, including 10 hospitals, 33 urgent care clinics, ambulatory care centers and an extensive array of primary and specialty care providers. We are also home to the MedStar Health Research Institute and a comprehensive scope of health-related organizations all recognized regionally and nationally for excellence. MedStar Health has one of the largest graduate medical education programs in the country, training 1,150 medical residents annually, and is the medical education and clinical partner of Georgetown University. As a not-for-profit healthcare system, MedStar Health is committed to its patient-first philosophy, emphasizing care, compassion, and clinical excellence, supported by a dedicated team of more than 35,000 physicians, nurses, and many other clinical and non-clinical associates.

SB 681 seeks to amend the definition of "health care provider" under the Health Care Malpractice Claims Act (HCMCA) to include all healthcare providers. The legislation aims to update the law to match the constant evolution of the healthcare industry and staffing realities. The current statute defines those health care providers covered under the cap by listing specific provider groups such as physicians, nurses, dentists, etc. The bill proposes to broaden the definition to include employees, agents, or contractors of hospitals who are licensed, certified, registered, or authorized to render health care services in Maryland.

Without the expanded definition, healthcare providers who are in a group not specifically listed in HCMCA may be exposed to claims of higher or even unlimited damages. The intent of the HCMCA was to ensure that all those who render healthcare to patients have the same liability protections under the law. Ensuring that all who are authorized to render care have the liability protection established by HCMCA, will encourage the continued development of innovative staffing and care models that will enable healthcare organizations to meet the staffing challenges they face today.

For the reasons above, MedStar Health urges a ***favorable*** report on **SB 681**.

2025 ACNM SB 681 Senate Side.pdf
Uploaded by: Robyn Elliott
Position: FAV

AFFILIATE OF
AMERICAN COLLEGE of NURSE-MIDWIVES
With women, for a lifetime®

Committee: **Senate Judicial Proceedings Committee**

Bill Number: **Senate Bill 681 – Health Care Malpractice Claims – Health Care Provider Definition**

Hearing Date: **February 18, 2025**

Position: **Support**

The Maryland Affiliate of the American College of Nurse Midwives (ACNM) supports *Senate Bill 681 – Health Care Malpractice Claims – Health Care Provider Definition.* The legislation recognizes that the definition of health care provider related to malpractice claims law should include all members of a patient care team. Certified nurse-midwives work in hospitals alongside physicians, nurses, and other healthcare providers. The law should treat all members of the team equally.

We ask for a favorable report. If we can provide any further information, please contact Robyn Elliott at relliott@policypartners.net or (443) 926-3443.

2025 SB681 Opp Health Care Malpractice Claims.pdf
Uploaded by: Deborah Brocato
Position: UNF

SB681
2025

Opposition Statement SB681
Health Care Malpractice Claims – Health Care Provider - Definition
Deborah Brocato, Legislative Consultant
Maryland Right to Life

We Oppose SB681
On behalf of our Board of Directors and members across the state, we strongly object to any bill that would be used to force hospitals to provide abortions or hospital personnel to participate in abortion services.

In July 2022, the Biden administration used the 1986 Emergency Medical Treatment and Labor Act (EMTALA) to require hospitals and emergency rooms to perform abortions. The General Assembly is also trying to force Hospital emergency rooms to perform abortions and staff the emergency departments with personnel for that purpose. Maryland Right to Life objects to any bill that strips away conscience protections. Abortion is not an emergency treatment.

Abortion is not healthcare and is never medically necessary – and therefore, does not deserve public funding. A miscarriage is the ending of a pregnancy *after* the baby has died; an ectopic pregnancy is not a viable pregnancy and the baby cannot continue to develop. Abortion is the intentional killing of a developing human being and often causes physical and psychological injury to the mother. Sometimes, it is necessary for a woman to have a dilatation and curettage (D&C) to complete the miscarriage so she does not develop infection, sepsis or possibly die. This is NOT the same as using D&C for abortion. Nonviable pregnancies, such as ectopic and molar pregnancies, are just as stated - nonviable – the baby has not survived or will not survive. It is necessary to remove such pregnancies for the health of the mother. Again, these are not the same as abortion because the pregnancy is not healthy and developing – the baby has died or is dying. There are no laws to prevent physicians from treating these cases.

Abortion always kills a human child and often causes physical and psychological injury to women and girls. Abortion enables the exploitation of women and girls by sexual abusers and sex traffickers to continue in the course of their crimes and victimization.

Pregnancy is not a disease and abortion cures no illness or disease and therefore is not healthcare. 85% of obstetricians and gynecologists refuse to commit abortions as their medical oath requires them to first do no harm to their patients – either mother or baby. In the rare cases when continuation of pregnancy threatens the physical life of the mother, medical providers may induce birth, but have a duty to treat both the mother and the baby. There is no law in any state that prohibits medical intervention to save the physical life of the mother in the case of medical emergency, such as ectopic pregnancy or abortion. **These medical interventions do not constitute intentional abortion and are performed in hospitals when a woman or girl is admitted an evaluated. Emergency departments should not be forced to become abortion clinics.**

SB681
2025

Recent radical enactments of the Maryland General Assembly have completely removed abortion from the spectrum of "healthcare". Because of the Abortion Care Access Act of 2022, the state is denying poor women access to care by licensed physicians making abortion unsafe in Maryland. With the unregulated proliferation of chemical "Do-It-Yourself" abortion pills, women are self-administering back-alley style abortions, where they suffer and bleed alone, without examination or care by a doctor. When women experience complications from abortion, they are typically refused care by the abortionist and referred to hospital emergency rooms where medical providers are often coerced into completing abortions against heir rights of conscience. Amber Thurman of Georgia died from sepsis caused by the incomplete abortion initiated by the deadly abortion pills. Abortion pills are promoted as safe and easy. This young girl had no idea how serious her condition was until it was too late.

Abortion is about revenue. The state of Maryland forces taxpayers to subsidize the abortion industry through direct Maryland Medicaid reimbursements to abortion providers, through various state grants and contracts, and through pass-through funding in various state programs. Health insurance carriers are required to provide reproductive health coverage to participate with the Maryland Health Choice program.

MDH is Failing Pregnant Women: The Maryland Department of Health has consistently failed to meet the needs of pregnant women and families in Maryland and appropriations should be withheld until the Department provides the annual report to the Centers for Disease Control to measure the number of abortions committed each year in Maryland, abortion reasons, funding sources and related health complications or injuries.

- The Department has routinely failed to enforce existing state health and safety regulations of abortion clinics, even after two women were near fatally injured in botched abortions.
- The Department has routinely failed to provide women with information and access to abortion alternatives, including the Maryland Safe Haven Program (see Department of Human Services), affordable adoption programs or referral to quality prenatal care and family planning services that do not promote abortion.
- The Department has demonstrated systemic bias in favor of abortion providers, engaging in active partnerships with Planned Parenthood and other abortion organizations to develop and implement public programs, curriculum and training. In doing so the department is failing to provide medically accurate information on pregnancy and abortion.
- The Department systemically discriminates against any reproductive health and education providers who are unwilling to promote abortion and in doing so, suppresses pro-live speech and action in community-based programs and public education.
- The Department fails to collect, aggregate and report data about abortion and the correlation between abortion and maternal mortality, maternal injury, subsequent preterm birth, miscarriage and infertility.
- The Department is failing to protect the Constitutionally-guaranteed rights of freedom of conscience and religion for health care workers, contributing to the scarcity of medical professions and personnel in Maryland.

- The Department is failing to protect women and girls from sexual abuse and sex trafficking by waiving reporting requirements for abortions, waiving mandatory reporter requirements for abortionists, and failing to regulate abortion practices.

Caring for pregnant women and girls costs money. Maryland is failing pregnant women and girls by favoring the funding of the abortion industry over access to abortion alternatives , including the Maryland Safe Haven Program (see Department of Human Services), affordable adoption programs or referral to quality prenatal care and family planning services that do not promote abortion. The Assembly promotes legislation that funds the killing of unborn children instead of legislation that respects and protects life. According to the Guttmacher Institute, a pro-abortion research organization, a baby is killed by abortion every 97 seconds, about 2,700 babies killed by abortion every day.

Funding restrictions are constitutional. The Supreme Court of the United States, in *Dobbs v. Jackson Women's Health* (2022), overturned *Roe v. Wade* (1973) and held that there is no right to abortion found in the Constitution of the United States. As early as 1980 the Supreme Court affirmed in *Harris v. McRae*, that *Roe* had created a limitation on government, not a government funding entitlement. The Court ruled that the government may distinguish between abortion and other procedures in funding decisions -- noting that "*no other procedure involves the purposeful termination of a potential life*", and held that there is "*no limitation on the authority of a State to make a value judgment favoring childbirth over abortion, and to implement that judgment by the allocation of public funds*."

For these reasons, Maryland Right to Life urges an unfavorable report on SB681.

SB 681 UNF.pdf
Uploaded by: George Tolley
Position: UNF

Testimony of George S. Tolley III

SB 681 – Health Care Malpractice Claims
– Health Care Provider – Definition

UNFAVORABLE

Dear Chairman Smith and Members of the Senate Judicial Proceedings Committee:

Fifty years ago, the General Assembly enacted the Health Care Malpractice Claims Act, Md. Cts. & Jud. Procs. Code Ann. §§ 3-2A-01 *et seq.* (HCMCA), in response to a perceived nationwide "crisis" in the availability and affordability of medical professional liability insurance coverage in this State.

Today, we better understand that the "crisis" in 1975 was a predictable result of the cyclical nature of insurance markets. When insurance markets predictably become "soft," the premiums charged by insurers decrease due to increased competition. Predictably, insurance markets also "harden" from time to time (about every ten years or so), and insurance rates temporarily increase during those times.

As initially enacted, the HCMCA provided special tort protections for certain "health care providers," as defined in § 3-2A-01(f). Specifically, tort protections were afforded to those health care providers specifically impacted by the perceived "crisis" in 1975. Over time, the Legislature has added other providers to that list (and, on occasion, has refused to add certain providers).

Protecting health care providers from liability for the consequences of professional malpractice comes at a cost – patients who suffer injury from professional malpractice, and the families of patients who die, are deprived of access to justice in Maryland's courthouses. Accordingly, the General Assembly must not grant special tort protections to everyone who asks.

SB 681 seeks to expand special tort protections broadly, in a way that would extend protections to providers who have ***never*** experienced a "crisis" in availability or affordability of liability insurance. There is no evidence, for example, that occupational therapists have ever had any difficulty securing affordable liability insurance. In addition, SB 681 is vaguely drafted, which will spawn costly appellate litigation as the courts struggle to identify who is, and is not, entitled to special tort protection.

As currently drafted, and in the continuing absence of a rational basis for expanding special tort protections for hospital-based health care providers, I respectfully ask for an **UNFAVORABLE** report on **Senate Bill 681**.

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Uploaded by: Patrice Clarke
Position: UNF

2025 WRITTEN TESTIMONY
SB681/HB926

Health Care Malpractice Claims - Health Care Provider - Definition

SB681/HB926 – UNFAVORABLE

The Maryland Association for Justice respectfully requests an unfavorable report on SB681/HB926. Maryland citizens have the right to pursue civil claims before a jury pursuant to Article 23 of the Maryland Declaration of Rights. "Generally, a party cannot be required to submit any dispute to arbitration that it has not agreed to submit."[1] The Healthcare Malpractice Claims Act ("the Act"), codified at Section 3-2A-01 *et seq.* of the Courts and Judicial Proceedings Article, creates a limited exception to that general rule. Under the Act, victims of medical negligence are required to submit claims exceeding the jurisdictional limit of the District Court to the Healthcare Alternative Dispute Resolution Office of Maryland as a prerequisite to exercising their right to a jury trial.

Moreover, the Act imposes a "Special Cap" on the recovery of victims of medical malpractice. Cts. & Jud. Proc. § 3-2A-09. The Special Cap is significantly lower than the cap on non-economic damages that currently applies in all other personal injury claims. *See* Cts. & Jud. Proc. § 11-108. In wrongful death cases, the cap on the recovery of victims of medical negligence can be less than halfof victims of other types of negligence.

The Act is limited to claims "against a health care provider for medical injury." Cts. & Jud. Proc. § 3-2A-02(a)(1). "'Medical injury' means injury arising or resulting from the rendering or failure to render health care." *Id.* at 3-2A-01(g).

Currently, "health care provider" is specifically defined as "a hospital, a related institution as defined in § 19-301 of the Health--General Article, a medical day care center, a hospice care program, an assisted living program, a freestanding ambulatory care facility as defined in § 19-3B-01 of the Health--General Article, a physician, a physician assistant, an osteopath, an optometrist, a chiropractor, a registered or licensed practical nurse, a dentist, a podiatrist, a psychologist, a licensed certified social worker-clinical, and a physical therapist, licensed or authorized to provide one or more health care services in Maryland."

SB681 and HB926 seek to expand the definition of "health care provider" even further to include "an employee, agent, or contractor of a hospital who is licensed, certified, registered, or otherwise authorized to render healthcare services in Maryland."

The proposed language is overly broad and ambiguous. "Healthcare services" is not a defined term in the Act or elsewhere in the Maryland Code. Moreover, there is no description of ***how*** a potential "employee, agent, or contractor" must be "otherwise authorized to render healthcare services in Maryland." The proposed language will inevitably lead to hospitals use of the vague language of the bill to avoid full liability under traditional theories of negligence (such as premises liability) for the acts and omissions of <u>all</u> of their employees, agents and even independent contractors in an effort to minimize their exposure.

For example, a hospital might claim that it has the power to "authorize" a janitor that it employs to provide

[1] *Weidig v. Crites*, 323 Md. 408, 411 (1991) (quoting *Gold Coast Mall v. Larmar Corp.*, 298 Md. 96, 103 (1983)) (and citing as *accord United Steelwkrs. of Am. v. Warrior & Gulf N. Co.*, 363 U.S. 574, 582 (1960); *C.W. Jackson & Associates v. Brooks*, 289 Md. 658, 666 (1981)).

"healthcare services" by cleaning a patient's room. If that janitor negligently leaves a puddle of water, causing the patient to fall and sustain injuries, hospitals could argue that the patient is required to submit their claims to arbitration under the Act (and thus be subject to the lower cap on damages).

The Supreme Court of Maryland has explained: "[I]t is clear to us that the legislative intent [of the Act] was to submit to Medical Liability Mediation only claims arising out of those acts or conduct which are peculiarly malpractice . . . ***It does not include janitorial negligence."***[2] The language in SB681 and HB926 will dramatically expand the impact of the Act. It will allow hospital corporations to unilaterally "authorize" any or all of its "employees, agents, and contractors" to render "healthcare services" in an effort to avoid appropriately compensating victims of negligence. It is not good legislative policy to indiscriminately shield hospital corporations from responsibility for preventable harms caused by the negligence of their employees, agents, and contractors.

The Maryland Association for Justice urges a UNFAVORABLE Report on SB681/HB926

About Maryland Association for Justice

The Maryland Association for Justice (MAJ) represents over 1,250 trial attorneys throughout the state of Maryland. MAJ advocates for the preservation of the civil justice system, the protection of the rights of consumers and the education and professional development of its members.

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[2] *Weidig*, 323 Md. at 416 (quoting *Zobac v. Southeastern Hospital Dist., Etc.*, 382 So.2d 829 (Fla.Ct.App.1980)) (emphasis added).