



Maryland
Hospital Association

Senate Bill 323- Medical Malpractice - Discovery

Position: Support

Bill Summary

SB 323 establishes that a defendant in a claim filed with the Health Care Alternative Dispute Resolution Office may seek discovery as to the basis of a certificate of a qualified expert filed by the claimant or plaintiff without prejudice to later discovery if the attesting expert is designated as a trial expert. The bill also prohibits a deposition of a defendant health care provider from being required until the claimant has filed and served a certain certificate of a qualified expert.

MHA Position

Maryland's hospitals support efforts that ensure fair and objective litigation proceedings to help stabilize the state's volatile liability environment, lower the costs of health care, and reduce malpractice premiums to ensure access to high-quality care throughout the state.

A recent survey found that total hospital payouts (closed claims) are nearly 140 percent higher in 2018 than in 2008 — \$176 million annually vs. \$73.5 million — despite the frequency of claims remaining relatively stable.¹ In fact, the total number of claims in Maryland is about half the national average in most years, while the overall claim payout is approximately double the national average most years.² Unfortunately, while providers are struggling with access and affordability of insurance coverage, attorneys typically take up to 40 percent of each verdict, plus expenses, which in 2018 diverted over \$70 million from patient care. To offset medical liability risk, many physicians in Maryland practice defensive medicine, which is an overuse of tests and procedures to avoid liability. Defensive medicine accounts for 13 percent of all hospital costs, which results in \$2.1 billion in unnecessary health care spending in Maryland.³

Under Maryland's new Total Cost of Care (TCOC) agreement with the federal government, Maryland's hospitals are working to lower costs and improve overall health. In order to reach aggressive savings and quality targets required under the TCOC agreement, hospitals are identifying opportunities throughout the system, including within the liability climate, to create predictability so that limited funding can be invested into programs that directly improve the health of the community and the patients we serve.

This bill offers an opportunity to save time and resources for both parties in a medical liability case. SB 323 provides a tool for attorneys to fully vet the certificate of a qualified expert prior to going to trial. Further, SB 323 clarifies deposition requirements prior to filing a certificate of a qualified expert. SB 323 is a common-sense bill that helps establish the qualifications of experts and clarifies deposition rules, which will improve the efficiency and effectiveness of the litigation process.

For these reasons, we urge you to give SB 323 a *favorable* report.

¹ MHA Medical Liability Survey (2018), includes medical liability claims by service type representing about 90 percent of Maryland's hospitals and includes claims from 2004 – 2018.

² AON/ASHRM Hospital and Physician Liability Benchmark Analysis, October 2018. Available at <https://www.aon.com/risk-services/thought-leadership/2018-report-hospital-professional-liability-overview.jsp>

³ Rothberg MB, Class J, Bishop TF, Friderici J, Kleppel R, Lindenauer PK. The Cost of Defensive Medicine on 3 Hospital Medicine Services. *JAMA Intern Med.* 2014;174(11):1867-1868