



Maryland
Hospital Association

Senate Bill 869 – Maryland No-Fault Birth Injury Fund
Position: *Support*

Bill Summary

SB 869 establishes a system for adjudication of a claim involving a birth-related neurological injury. The No-Fault Birth Injury Fund provides certain benefits and compensation of a complainant and requires certain premiums and insurance surcharges to be used to finance and administer the Fund. SB 869 also requires the Maryland Patient Safety Center to convene a certain Perinatal Clinical Advisory Committee.

MHA Position

Maryland's hospitals support efforts that can both provide rapid, comprehensive relief to families who have suffered an injury during childbirth and offer more objectivity and predictability in Maryland's medical liability climate. A recent survey found that in 2018, overall annual hospital payouts (closed claims) were \$176 million — nearly 140 percent higher than in 2008 — despite the frequency of claims remaining relatively stable.¹ Obstetrics claims made up nearly one-third of all medical liability payouts in 2018.² These large payouts are a result of increases in economic damages being awarded for future medical care. Unsustainable increases in payouts directly threaten the ability for doctors and health care providers to continue to deliver babies, especially those who are high risk.

The proposed Maryland No-Fault Birth Injury Fund offers an opportunity to provide access to necessary services for plaintiffs and protects care providers from the untenable liability climate. It ensures objectivity and predictability by providing up to \$500,000 in immediate compensation for expenses, as well as unlimited lifetime medical, therapeutic, rehabilitation, and other care; lifetime earnings reimbursement; and compensation for legal expenses. Actuaries estimate that approximately seven families would qualify and benefit from the Maryland No-Fault Birth Injury Fund each year. These families deserve hassle-free compensation to address their needs rather than a time-consuming, uncertain legal process that can take years and is not certain to provide relief.

While the Maryland Hospital Association prefers a no-fault approach, given the unstable reality of the medical liability climate in the state, we acknowledge the need to consider alternative approaches that show promise. One such option could incorporate some parts of the Medical Indemnity Fund in New York. Unlike the no-fault approach used in Virginia and Florida, the New York model would provide the means for a plaintiff to litigate a negligence cause of action; however, the mechanism to compensate for future medical care is far more predictable than in Maryland's unregulated tort environment.

For these reasons, we urge a *favorable report* on SB 869.

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 *Ibid.*