



Maryland
Hospital Association

February 26, 2020

To: The Honorable Luke Clippinger, Chairman
House Judiciary Committee

From: Brian Frazee, Vice President, Government Affairs
Maryland Hospital Association

Re: Letter of Opposition- House Bill 1037 – Civil Actions – Noneconomic Damages –
Personal Injury or Wrongful Death

Dear Chairman Clippinger:

On behalf of the Maryland Hospital Association's (MHA) 61 member hospitals and health systems, we appreciate the opportunity to comment on House Bill 1037. Maryland's hospitals oppose efforts that would make the state's highly litigious environment even more volatile. HB 1037 would needlessly raise the cost of health care and make it difficult to attract and retain the doctors necessary to continue to provide the highest quality care.

A plaintiff in Maryland is currently able to seek economic and non-economic damages for an injury. **Compensation for economic damages, which are calculated to include lost wages or earning capacity and future medical care, is unlimited.** These damages ensure the plaintiff will be cared for and that any income losses are adequately compensated not only to the plaintiff, but also to their family.

Non-economic damages, on the other hand, are not established using traditional methods. These damages purport to consider the plaintiff's pain and suffering as a result of the injuries sustained. But there is no consistent methodology used to determine non-economic damages; instead, these numbers are the result of emotional provocation rather than substantive proof. Recognizing the variability of these awards and their devastating impacts on health care providers' insurability, half the states in the country have enacted non-economic damages caps for medical malpractice suits.¹ **Even so, Maryland currently has one of the highest caps in the country at \$830,000. Furthermore, this cap escalates each year by \$15,000 in perpetuity, meaning that with every year, Maryland inches higher on that list.** By 2030, the cap will be nearly one million dollars.

Moreover, despite being considered a tort reform state, **Maryland is ranked in the bottom of the nation for its liability climate.**² Now is not the time to introduce more instability into

¹ Center for Justice and Democracy at New York Law School, "Caps on Compensatory Damages: A State Law Summary." Available at <https://centerjd.org/system/files/CAPSCOMPENSATORYDAMAGESF2.pdf>.

² U.S. Chamber Institute for Legal Reform, "2019 Lawsuit Climate Survey – Ranking the States: A Survey of the Fairness and Reasonableness of State Liability Systems." Available at

Maryland’s medical liability climate, given the reinsurance crisis currently facing the largest providers of health care in the state: Maryland’s hospitals. As the cap escalates, the risk to Maryland’s health care system grows exponentially, not only because the cost to practice skyrockets due to malpractice insurance premiums, but also because providers resort to using “defensive medicine.” The use of defensive medicine—the overuse of tests and procedures as protection against potential lawsuits—makes up 13% of all hospital costs, translating into an additional two billion dollars in unnecessary health care spending in Maryland. As a result, this unnecessary inflation in health care costs threatens the ability for hospitals and other providers to succeed under the aggressive cost saving targets of the Total Cost of Care Model, which went into effect on January 1, 2019. If the Model is lost due to failure to meet these fiscal limits, Maryland stands to lose an estimated two billion dollars each year in federal funding

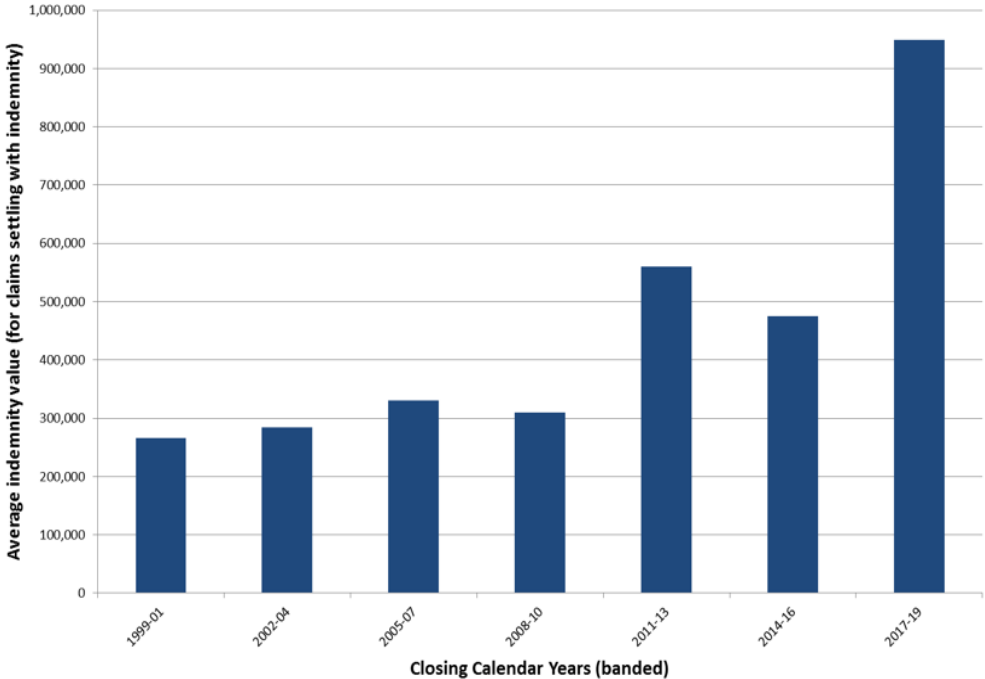
Finally, in response to proposed legislation in 2016, the House Speaker convened the Punitive Damages Work Group, which advised against the raising the cap for non-economic damages.

For these reasons, we urge the committee to give HB 1037 an *unfavorable* report.

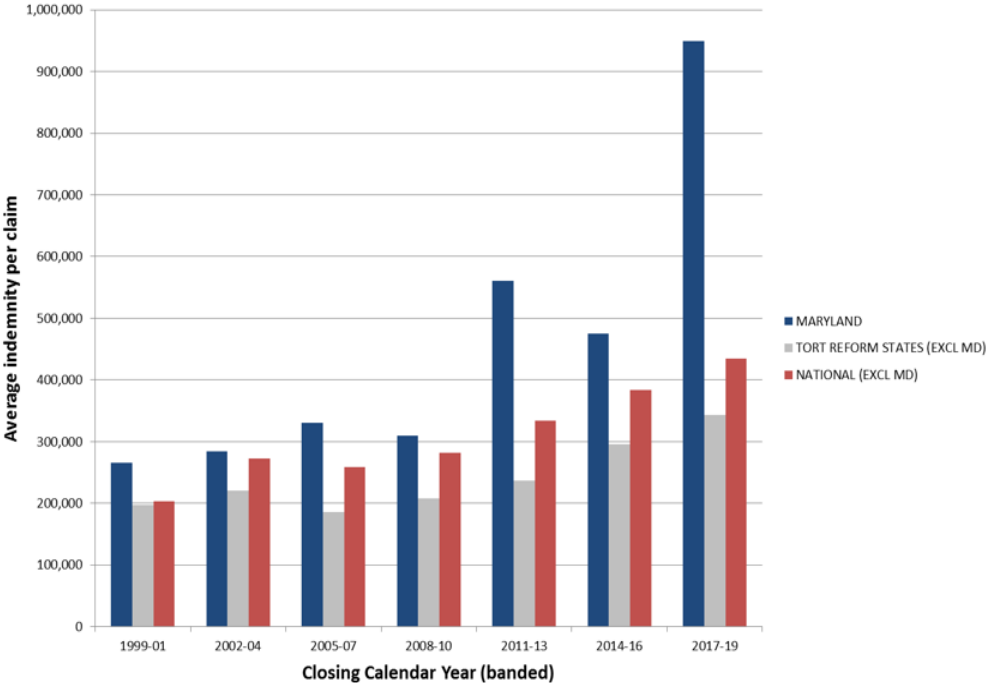
For more information, please contact:
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https://www.instituteforlegalreform.com/uploads/pdfs/2019_Harris_Poll_State_Lawsuit_Climate_Ranking_the_States.pdf.

HPL claim trends in MD: average indemnity (banded years)



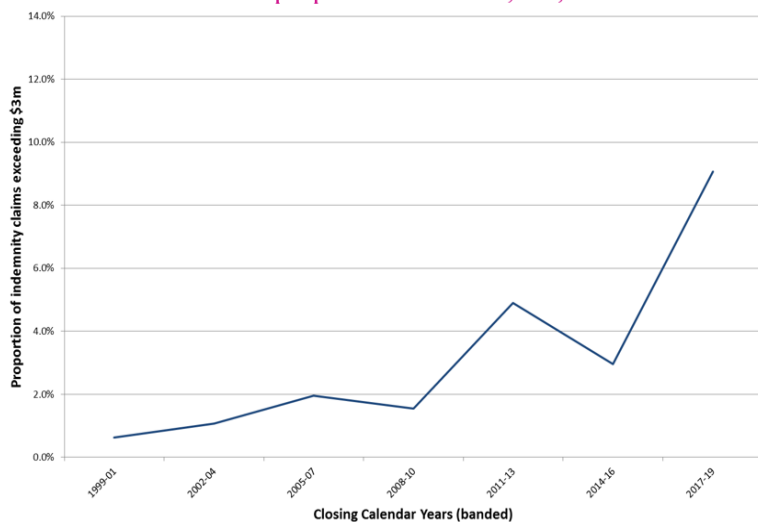
HPL claim trends in MD: comparison vs rest of US (indemnity)



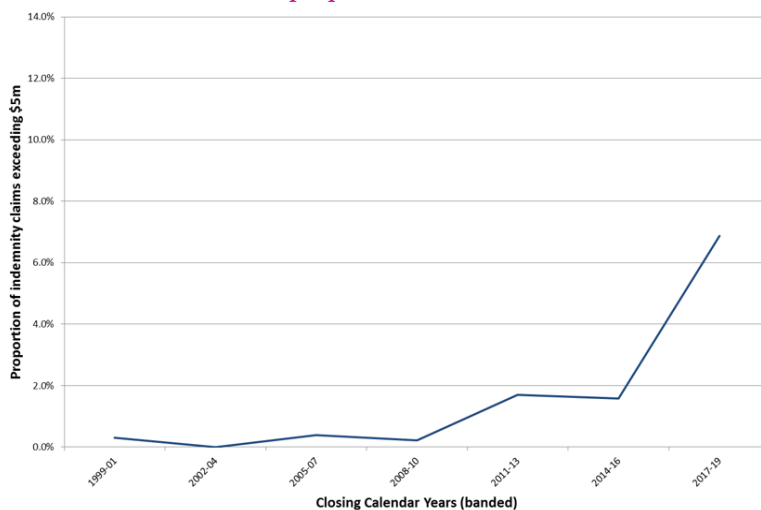
Source: Insurer Hospital Claims Database representing nearly 60% of Maryland hospital beds.

Note: Data does not include pending appeals or the jury award in *Byrom v. Johns Hopkins Bayview Medical Center*

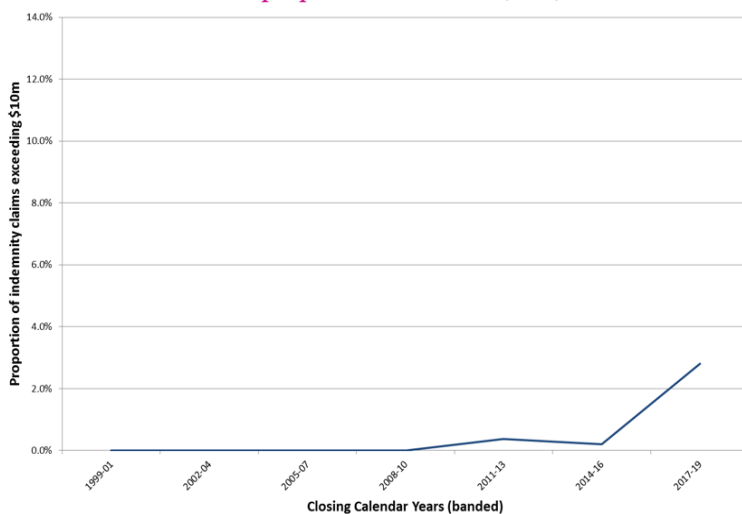
HPL claim trends in MD: proportion above \$3,000,000



HPL claim trends in MD: proportion above \$5,000,000



HPL claim trends in MD: proportion above \$10,000,000



Source: Insurer Hospital Claims Database representing nearly 60% of Maryland hospital beds.

Note: Data does not include pending appeals or the jury award in *Byrom v. Johns Hopkins Bayview Medical Center*

Maryland's Non-economic Damages Cap Works...



and compensation for economic damages has **NO LIMIT**

How the cap works:

2020 Cap
\$830,000
Rises each year by
\$15,000



Maryland's caps are among the **highest** in the U.S.



Passed by the legislature and upheld by the Maryland Court of Appeals

Unlimited economic damages means



All past & future medical expenses are **COVERED**

Lost wages/income are fully compensated

How you can help: **Reject unneeded increase to Maryland's cap** on non-economic damages