



Maryland  
Hospital Association

## **Senate Bill 187- Civil Actions-Health Care Malpractice Claims (Life Care Act)**

**Position: *Support***

January 29, 2020

Senate Judicial Proceedings Committee

### **MHA Position**

Maryland's 61 nonprofit hospitals and health systems care for millions of people each year, treating 2.3 million in emergency departments and delivering more than 67,000 babies. The 108,000 people they employ are [caring for Maryland](#) around-the-clock every day—delivering leading edge, high-quality medical service and investing a combined \$1.75 billion in their communities, expanding access to housing, education, transportation, and food.

Maryland's hospital medical malpractice climate is reaching a crisis level. A recent MHA survey found annual hospital payouts (closed claims) in 2018 were \$176 million— nearly 140% higher than in 2008— despite the frequency of claims remaining relatively stable.<sup>1</sup> Maryland has half the national average of medical liability claims, yet our state's payouts are double the national average.<sup>2</sup> Inflated life care plans are driving the economic damages being awarded, which directly benefits plaintiff attorneys, who receive up to 40% in contingency fees. As a result, Maryland is seeing an exodus of reinsurers willing to write policies in our state. Insurance premiums are skyrocketing for hospitals (some as high as 60% increase from the prior year) among insurers who still offer policies in Maryland. These trends are not sustainable.

The Life Care Act 2020 adopts the Daubert standard for medical liability cases. This standard aligns with Maryland's threshold for acceptable expert witness testimony with the federal courts as well as a vast majority of states and the District of Columbia. The Daubert standard requires the testimony of an expert witness to be based on 1) sufficient facts or data; 2), is the product of reliable principles and methods; and 3) the principles and methods have been applied reliably to the facts of the case. Daubert requires that the conclusion of the expert's witness testimony sufficiently relies upon generally accepted facts or data through a logical/scientific methodology. By applying the Daubert standard in medical liability cases, the accuracy and validity of expert testimony in Maryland would be more objective.

This change would offer more consistency between the state and federal courts on the admissibility of expert testimony and promote fairness and predictability in the legal system—benefiting both plaintiffs and defendants.

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<sup>1</sup> 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.

<sup>2</sup> Aon/ASHRM Hospital and Physician Professional Liability Benchmark Analysis, October 2018

SB 187 adopts a common-sense approach to mitigate the volatile medical liability climate in Maryland. By adopting the Daubert standard, the state will improve expert witness testimony by establishing more credibility, reliability and consistency in the process—an important step toward rescuing Maryland’s medical liability climate.

For these reasons, we urge you to give SB 187 a *favorable* report.

For more information, please contact:

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# INCREASING CLAIMS SEVERITY IN MARYLAND



Excerpts from National Benchmark Studies



# 2018 HOSPITAL LIABILITY ANALYSIS

- MD in top 5 states with highest claims severity (payout) per occupied bed equivalent (OBE)
- Claim severity is approximately double the national average most years
- Claim frequency is about half the national average in most years

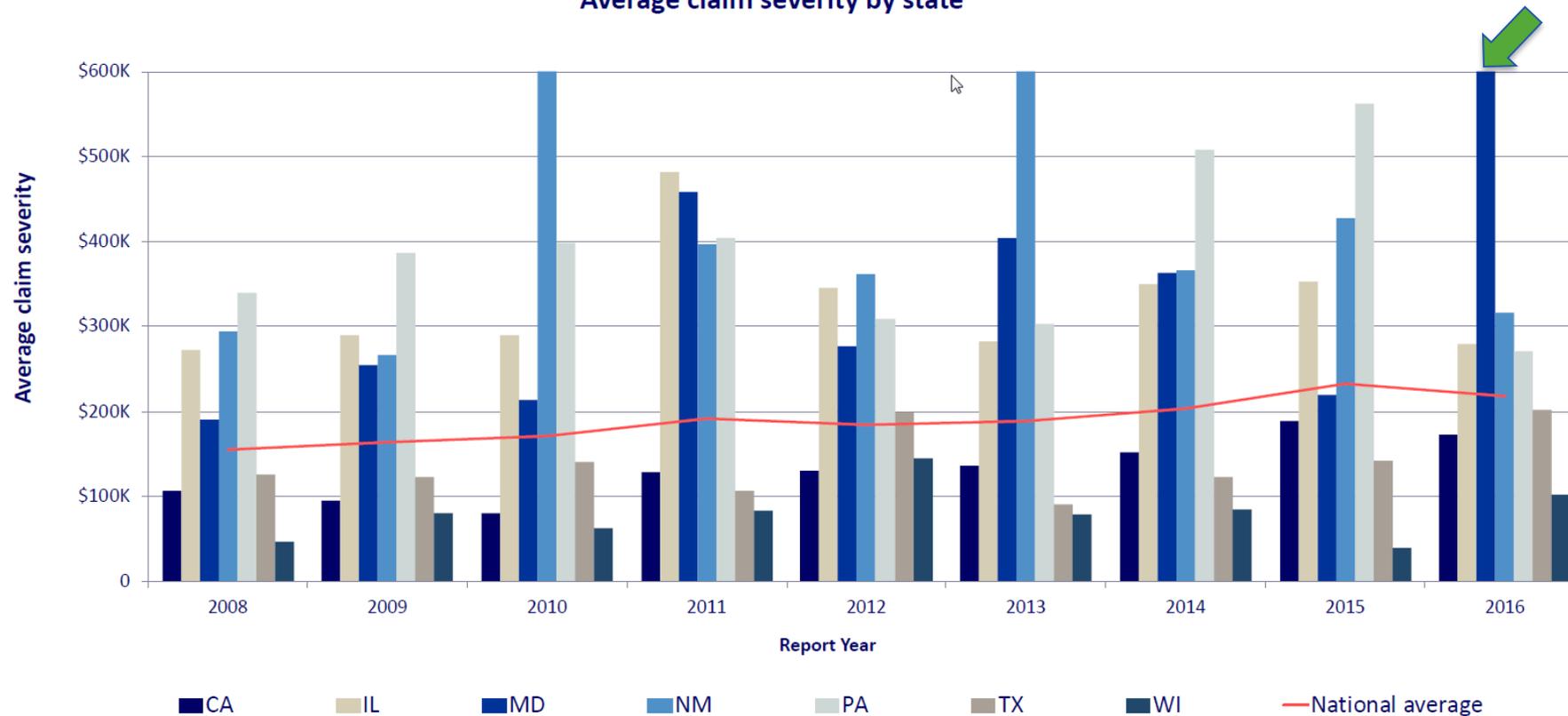
# 2019 HOSPITAL LIABILITY ANALYSIS

## Maryland Claim Severity Limited to \$2M per Occurrence



# INCREASING HEALTH CARE PROFESSIONAL LIABILITY CLAIMS

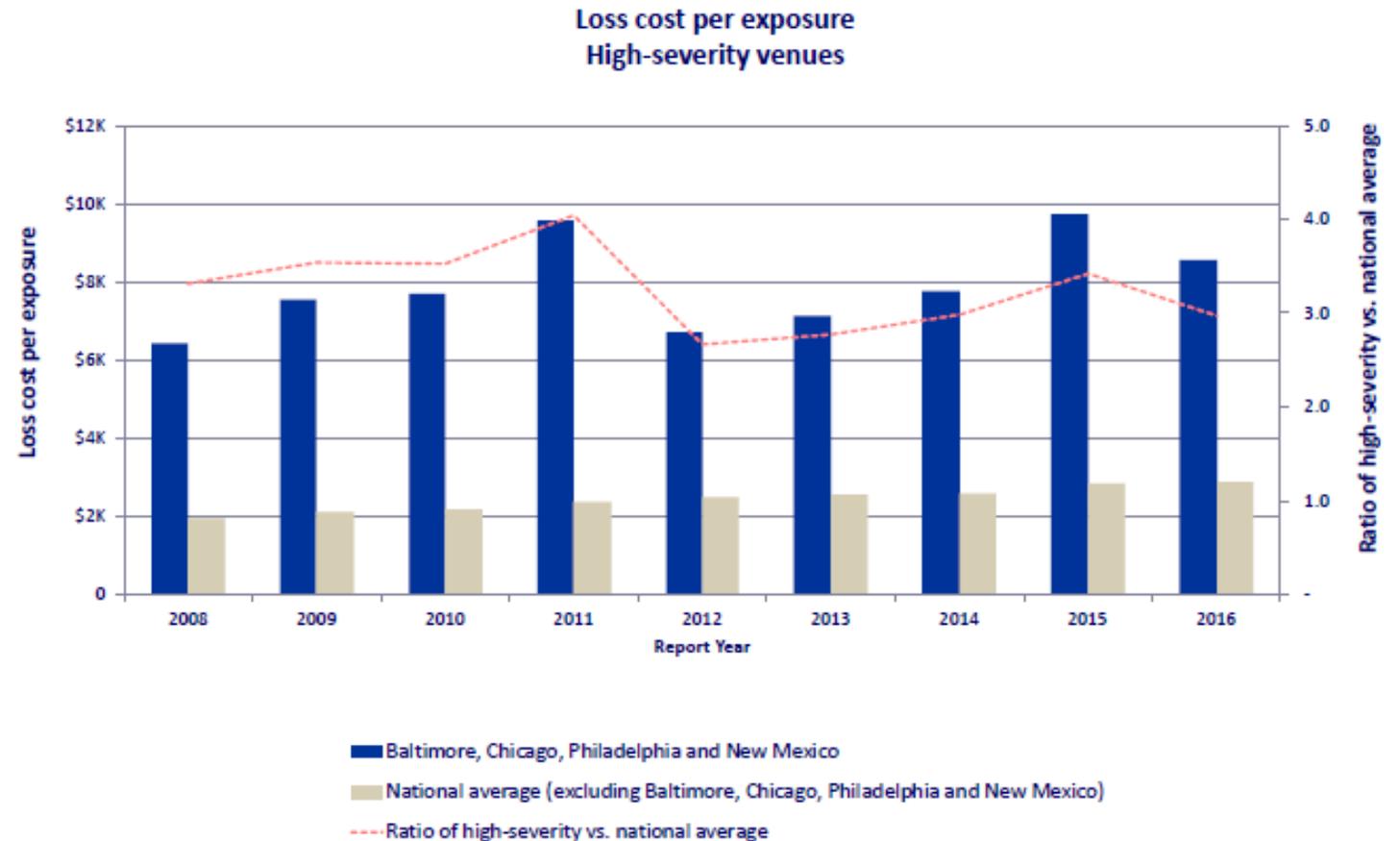
Average claim severity by state



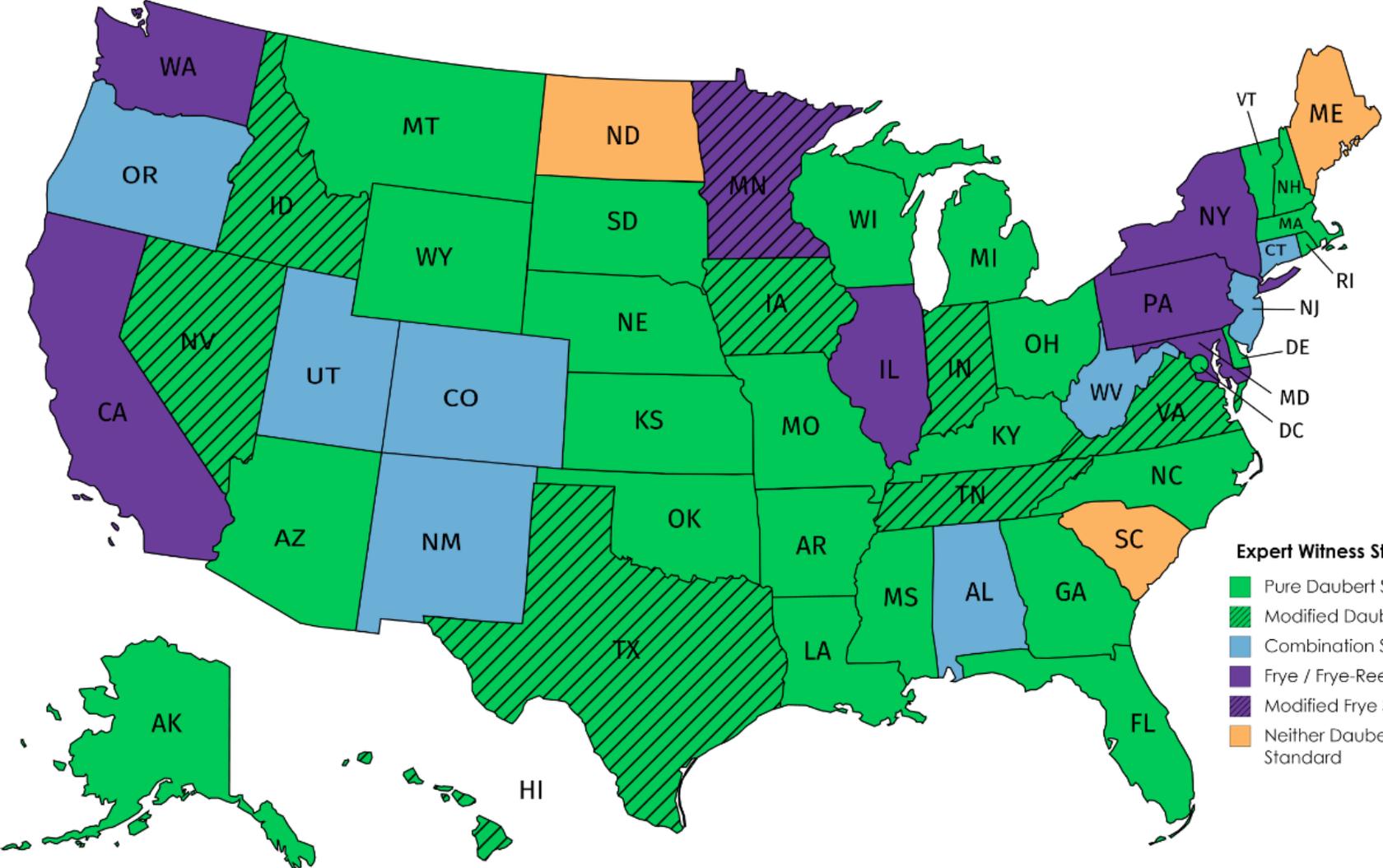
\* Note: In the graph above, the national average severity is unlimited. However, we have capped the severity at \$600,000 by state for graphical purposes.

# HEALTH CARE PROFESSIONAL LIABILITY CLAIMS

- Baltimore listed as high-severity venue with average unlimited severity approx. **3x** national average
- Other venues include Chicago, Philadelphia, and New Mexico







- Expert Witness Standards**
- Pure Daubert Standard
  - ▨ Modified Daubert Standard
  - Combination Standard
  - Frye / Frye-Reed Standard
  - ▨ Modified Frye Standard
  - Neither Daubert or Frye Standard

State	Standard
AK	Pure Daubert Standard
AL	Combination Standard
AR	Pure Daubert Standard
AZ	Pure Daubert Standard
CA	Frye / Frye-Reed Standard
CO	Combination Standard
CT	Combination Standard
DC	Combination Standard
DE	Combination Standard
FL	Pure Daubert Standard
GA	Pure Daubert Standard
IA	Modified Daubert Standard
IL	Frye / Frye-Reed Standard
IN	Modified Daubert Standard
KS	Pure Daubert Standard
KY	Pure Daubert Standard
LA	Pure Daubert Standard
MA	Pure Daubert Standard
MD	Combination Standard
ME	Neither Daubert or Frye Standard
MI	Pure Daubert Standard
MN	Modified Frye Standard
MO	Pure Daubert Standard
MS	Pure Daubert Standard
MT	Pure Daubert Standard
NC	Pure Daubert Standard
ND	Neither Daubert or Frye Standard
NE	Pure Daubert Standard
NH	Pure Daubert Standard
NJ	Combination Standard
NM	Combination Standard
NV	Modified Daubert Standard
NY	Frye / Frye-Reed Standard
OH	Pure Daubert Standard
OK	Pure Daubert Standard
OR	Combination Standard
PA	Frye / Frye-Reed Standard
RI	Combination Standard
SC	Neither Daubert or Frye Standard
TN	Modified Daubert Standard
TX	Modified Daubert Standard
UT	Combination Standard
VA	Modified Daubert Standard
VT	Pure Daubert Standard
WA	Frye / Frye-Reed Standard
WI	Pure Daubert Standard
WV	Combination Standard
WY	Pure Daubert Standard