Legislative Budget and Finance Committee
A Study of the Impact of Venue for Medical Professional Liability Actions

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Chairwoman Baker, Minority Chairman Farnese and Members of the Senate Judiciary Committee, I am here today to present a summary of the Legislative Budget and Finance Committee report on the impact of medical professional liability actions.

Senate Resolution 2019-20 (SR20) directed LBFC to determine the impact of venue on access to medical care; determine the effects of the 2003 changes governing venue in medical professional liability actions on the availability of physicians, hospital services, and medical professional liability insurance in Pennsylvania; determine the effects of the 2003 changes on the prompt determination of, and fair compensation for, injuries and death resulting from medical negligence by health care providers; and to determine the effects of the proposed amendment to Pa.R.C.P No. 1006, which would revert to the prior court rule on venue, on these concerns.

The Medical Care Availability and Reduction of Error Act, known as MCARE, included other changes, for example, the amount of insurance medical practitioners were required to purchase decreased from $1.2 million to $1 million; the collateral source rule; and the certificate of merit.

Methodology

In order to determine the impact of venue on access to health care, we reviewed numerous studies including a 2003 study completed by the United States Government Accountability Office regarding medical malpractice insurance rates and their impact on access to health care. This particular study included Pennsylvania in its scope.

To measure the 2003 changes on the availability of doctors in the Commonwealth, we reviewed Pennsylvania Department of Health (PDH) data on the number of active medical staff with clinical privileges at hospitals, and the number of full-time medical interns and residents on hospital payrolls. We performed a simple linear regression analysis between the number of active medical staff in the medical specialties of obstetrics and gynecology (OB/GYN), general surgery, and internal medicine along with rates for those specialties published by the Medical Liability Monitor, which conducts an annual rate survey of major writers of medical malpractice insurance. We also reviewed several studies published in peer reviewed journals regarding medical malpractice tort reforms in other states and nationally, as well as perceived physician shortages in Pennsylvania.

To measure the 2003 changes on the availability of hospital services, we obtained information from the PDH Annual Hospital Questionnaire for each year we reviewed. In addition to this data from the questionnaire, we reviewed PDH hospital reports that include data on all general acute

care hospitals, specialty hospitals, beds set up and staffed, and the availability of hospital services. Likewise, we performed a simple linear regression analysis between the number of OB/GYN beds in each county compared to medical malpractice insurance rates for the specialty.

To determine the effects of the 2003 changes on the prompt determination of, and fair compensation for, injuries and death resulting from medical negligence, we obtained publically available information from the Administrative Office of the Pennsylvania Courts on medical malpractice filings and jury awards for calendar years 2000 through 2017. We also reviewed all available verdict slips for every case determined by a jury in an effort to assess the prompt determination of medical malpractice claims. In addition, we reviewed Philadelphia Court of Common Pleas' annual reports in an effort to gain insight into that county's medical malpractice case inventory.

We obtained claims paid data from MCARE and reviewed their annual reports from 1998 to 2018.

Because the research indicated the vast majority of medical malpractice claims are settled out of court, we reviewed 22 years of data from the National Practitioner Data Bank for all physicians in Pennsylvania and nationwide. The data was used to determine the value and number of payments made on behalf of all practitioners and physicians in Pennsylvania and compare that to national trends.

We reviewed a series of studies conducted by the Pew Charitable Trust to help us understand the pre- and post-reform changes in Pennsylvania. In an attempt to define the term "fair compensation," we reviewed studies conducted by the Institute of Medicine, the United States Department of Health and Human Services and other peer reviewed research.

To determine the effect of changing the venue rule back to its pre-2003 version, we reviewed the number of MD and DO graduates, first year residency quotas, and the match rate of open residency positions. We researched where Pennsylvania physicians received their graduate medical education and compared that to the practice locations of physicians who completed their education in Pennsylvania.

To determine the potential effect of the proposed venue rule change on the availability of hospital services, we used information from the Hospital and Healthsystem Association of Pennsylvania, United States Agency for Healthcare Research and Quality, American Hospital Association, and Pennsylvania Department of Health.

To determine the effects of the proposed rule change on the availability, cost, and affordability of medical professional liability insurance in Pennsylvania, we used information we obtained from the Medical Liability Monitor and the Pennsylvania Insurance Department's Annual Statistical Report. The data was used to calculate the change in cost of medical professional liability insurance from 1996 to 2018 for all counties in Pennsylvania; determine the number of insurers offering coverage in Pennsylvania and their market share; and determine the amount of direct premiums.

At this point it is important to note, that statistically speaking, it is largely not possible to isolate one variable if multiple changes are occurring (in this case, the changes provided for in the MCARE Act) at the same time. In order to do so, one would have to assume that all changes, save the one we would wish to isolate, must be held equal. This is an assumption that we are unwilling to make.

The various changes in the MCARE Act are very likely to affect each county differently. For example, the venue change, theoretically, had no impact on Philadelphia. Plaintiffs were not rushing to get their claims heard outside of Philadelphia. Yet medical malpractice insurance premiums dropped significantly more in Philadelphia after the 2003 MCARE changes. Therefore, it is reasonable to conclude that the remaining changes to the law – certificate of merit, for example – had a greater impact in Philadelphia than in other counties.

Another example is the collateral source rule. That rule would likely affect counties differently depending on the number of residents who have health insurance and the income level of the residents. A county with fewer residents with health insurance and higher rates of poverty may have a higher reduction in medical malpractice claims because those claims are not as economically viable. Thus, the collateral source rule may have a larger impact on Philadelphia than Montgomery County, for example.

To assume that all of the MCARE changes affect all of the counties equally, save the change in the venue rule, is not prudent.

Findings

Regarding access to medical care and maintenance of health care systems, we found the following:

1. Access to health care and availability of health care are two different terms and are not interchangeable.
2. Access to health care is a complicated concept without a universal definition. We further found the data collection necessary to provide an appropriate analysis was beyond what could be accomplished given time constraints in the resolution.
3. Availability of health care services – i.e. physicians and hospitals – is measurable, and therefore, was applied to our analysis.

Regarding venue in medical professional liability actions and the availability of physicians, we found the following:

1. There is a lack of comprehensive and detailed data on the number of physicians practicing in Pennsylvania.
2. Based on the available data, there were no statewide trends between medical malpractice insurance rates and the number of active medical staff with clinical privileges.

3. The available data leads to the conclusion that medical malpractice insurance rates may have an effect on a physician's decision on where to practice, however, there are many other variable that may influence those decisions.
4. The number of full-time medical interns/residents on payroll at hospitals appeared unaffected by the 2003 tort reforms.
5. The data indicates there were no measureable effects of venue on the availability of physicians across the Commonwealth from the 2003 tort reforms; however, the health care landscape in Pennsylvania has significantly changed for physicians since that time.

Regarding venue in medical professional liability actions and availability of hospital services, we found the following:

1. The total number of GACHs in Pennsylvania has declined by 23.4 percent from FY 1996-97 to CY 2018; Specialty Hospitals have increased by 25.0 percent.
2. Statewide, the total number of GACH beds set up and staffed declined by 16.6 percent from FY 1996-97 to CY 2018.
3. The Southeast and Southwest health care districts have the highest concentration of GACHs and Specialty hospitals in the Commonwealth.
4. Southeast and Southwest health care districts had the highest number of hospital beds set up at staffed.
5. The ratio of beds set up and staffed per 10,000 persons by Health Care District from FY 1996-97 to CY 2018, was consistently higher among the Southwest and Northeast districts.
6. In only 5 of 67 counties (Philadelphia, Blair, Jefferson, Northumberland, and Schuylkill) did we observe a negative correlation (linear relationship) between medical liability insurance rates and the number of OB/GYN hospital beds set up and staffed; as insurance rates increased among OB/GYN's, the number of OB/GYN beds decreased.
7. Due to the multiple variables involved, such as the number of hospitals located in a region, the data did not lead to a conclusion about the effect the proposed change to venue would have on the availability of hospitals and/or hospital services.

Regarding determination and compensation for injuries and death resulting from medical negligence by health care providers, we found the following:

1. In Pennsylvania from the period 2000 to 2002 compared to the period 2015 to 2017 there was a 44.9 percent decrease in medical malpractice filings. The shift in claims from Philadelphia and Allegheny Counties is prominent and at least one surrounding county has also shown a dramatic increase in claims.
2. The Medical Care Availability and Reduction of Error Fund (MCARE) total claims paid from 1996 to 2018, experienced an overall decrease of 21.9 percent. Pre-tort reform (1996 to 2002) total paid claims increased by 28.8 percent; and post-tort reform (2003 to 2018) total paid claims decreased by 44.2 percent.

3. Our analysis of data from the National Practitioner Data Bank (NPDB) from CY 1996 through CY 2018, showed that the value of payments made on behalf of all medical practitioner types increased by 17.5 percent, while the number (count) of payments decreased by 43.5 percent.
4. Pre-tort reform (1996 to 2002) the value of payments made on behalf of Pennsylvania physicians (MD/DO) increased by 21.6 percent; and the total number (count) of payments decreased by 9.9 percent.
5. Post-tort reform (2003 to 2018) the value of payments made on behalf of Pennsylvania physicians (MD/DO) decreased by 13.7 percent; and the total number (count) of payments decreased by 39.9 percent.

Regarding the availability, cost, and affordability of medical professional liability insurance, we found the following:

1. The available data does not support a conclusion that changes in the availability, cost, and affordability of medical professional liability insurance are the result of changes in Pennsylvania law. The changes may be the result of national trends.
2. The availability of medical professional liability insurance has increased since 2002:
    a. The number of insurance companies writing more than $1,000 in direct premiums increased from 89 in 2002 to 144 in 2017.
    b. The number of insurance companies writing more than $1 million in direct premiums increased from 39 in 2002 to 70 in 2017.
    c. The market share of the 10 largest medical professional liability insurers (as measured by direct written premium) decreased from 71.6 percent in 2002 to 49.4 percent in 2017.
3. The cost of medical professional liability insurance increased dramatically from 1996 through 2007 before declining. However, this change appears closely aligned to a national trend:
    a. Total direct premiums fluctuated over time, from a low of $499 million in 2002, peaking at $768 million in 2006, and declining to $646 million in 2017.
4. Since 2007, the cost of medical professional liability insurance decreased, and therefore became more affordable. This change also appears closely aligned to a national trend. Whether insurance is more affordable varies by county.
5. The benefits in the reduction in rates were not realized equally across Pennsylvania. Only three counties Bucks, Delaware, and Montgomery, saw their rates improve as a percentage of the Philadelphia rate. We used Philadelphia as a type of benchmark in this way for two primary reasons. First, medical malpractice insurers use Philadelphia as the base rate from which rates for the other counties are derived. Second, the Philadelphia rate is the rate to which doctors and hospitals regularly refer when raising their concerns. Therefore, if, post venue reform, the difference in rates between a certain county and Philadelphia increased, that would be considered more affordable. If, on the other hand,

the difference in rates between a certain county and Philadelphia decreased, that would be considered less affordable.

6. Many counties saw their rates become more closely aligned with Philadelphia.

With that, I'm happy to address any questions Members of the Committee may have.