



## Protect Pennsylvanians' Health Care, STOP VENUE SHOPPING

### Pennsylvanians are facing a real threat to health care access. Why?

The Pennsylvania Supreme Court Civil Procedural Rules Committee has proposed an abrupt change to public policy, calling for the elimination of a 2002 venue reform rule that addressed a medical liability crisis and stabilized the state's medical liability system.

During the crisis, Pennsylvanians' access to health care services, especially obstetrics and specialty care, was impacted:

- Insurers **left the market**
- Providers faced **skyrocketing premiums** they could not afford
- Hospitals were **forced to cut services**
- Physicians and medical residents **left the commonwealth**

The committee proposal would allow trial lawyers to return to venue shopping. Venue shopping allows personal injury lawyers to move medical liability claims from the counties where the claims are filed, to counties that have a history of awarding higher payouts to plaintiffs.

### Venue Shopping was eliminated to Protect Access to Health Care

During 2002, the Governor's office, the state legislature, and the Pennsylvania Supreme Court **all supported** a study that concluded venue shopping was a leading cause of the liability crisis. They **all agreed** to end venue shopping. Through law and a judicial rule, they required that medical liability claims can only be filed in the county where the alleged medical liability occurred.

After 17 years, the committee suddenly says that the current rules are denying justice to plaintiffs, citing select data showing that the number and size of verdicts has decreased.

### 2002 Crisis in Numbers

Pennsylvania's venue shopping practices resulted in trends that far-exceeded national averages, making the state one of the least attractive places for physicians and other health care providers to practice.



- During 2002, the percentage of medical liability Philadelphia jury verdicts was 44 percent (i.e., more than twice the national average that year) and, from 1999 through 2001, more than half such verdicts exceeded \$1 million<sup>1</sup>
- Philadelphia's number of \$1 million medical liability cases was 87, slightly below the number of such cases that year for the entire state of California<sup>2</sup>
- Philadelphia County was home to more medical liability trials during 2001 than any other county in the nation. (Philadelphia had 117 and the second-highest county was New York with 72)<sup>3</sup>
- Certain physician specialties, such as obstetrics and gynecology, were hit particularly hard. Between 1999 and 2000, median medical liability awards increased nearly 43 percent<sup>4</sup>
- Philadelphia's medical liability cases accounted for only 28 percent of the medical liability filings statewide, a 66 percent drop in Philadelphia filings from 2002 to 2017<sup>5</sup>



**We disagree** with this proposed change in public policy, and here's why:

- **Access to health care was a real issue during the medical liability crisis and it will be a problem again under this proposal**

- Between 1999 and 2005, the number of obstetrics units in hospitals fell 17 percent<sup>6</sup>
- According to data from the Medical CAT Fund during 2001, physicians in active clinical practice decreased by nearly 11 percent from 1997 to 2000
- The current average statewide medical liability costs and insurance rates for physicians in Pennsylvania could increase by 15 percent, and many individual counties could see increases in physician medical liability costs and rates of 5 percent, while counties surrounding Philadelphia could see larger increases of 45 percent<sup>7</sup>

- **Committee data does not support the conclusion**

- The reduction in court filings actually reflects an increase in often less-costly and quicker alternative resolution strategies to settle claims, such as arbitration, mediation, and settlements

- **There is no data demonstrating that the current rule deprives alleged victims of justice**

- There has been no public outcry or demand for change for 17 years. There is no evidence that the counties where liability actions are being litigated are not rendering fair results

- The 2002 reform led to a more balanced legal climate, and made Pennsylvania a more attractive state to practice medicine

- **The proposal does not recognize changes in health care since 2002**

- **Workforce shortages**—Pennsylvania will face a deficit of approximately 1,000 primary care physicians by 2025, or about 10 percent less than the estimated primary care physicians needed to serve Pennsylvania's population<sup>8</sup>
- **Quality and safety reforms**—Creation of the Patient Safety Authority, apology law, disclosure requirements, and major quality improvements
- **Hospital consolidations**—Since 2000, the number of hospitals affiliated with health systems has risen by 88 percent<sup>9</sup>; trial lawyers will try to pull even more cases to Philadelphia and Allegheny counties in search of higher payouts

### HAP POSITION: Protect Access to Health Care

HAP requests that the Supreme Court Rules of Civil Procedure Committee protect Pennsylvanians access to health care and withdraw its proposal to once again allow venue shopping.

HAP supports Senate Resolution 20, sponsored by Senator Lisa Baker (R-Luzerne) calling for a study of the issue by the Legislative Budget and Finance Committee.

#### References

<sup>1</sup>Bovbjerg RR and Bartow A. [Understanding Pennsylvania's Medical Malpractice Crisis: Facts about Liability Insurance, the Legal System, and Health Care in Pennsylvania](#). Pew Charitable Trusts Project on Medical Liability in Pennsylvania. 2003. Last accessed: 1/25/2019.

<sup>2</sup>Trial Lawyers, Inc. Philadelphia. Center for Legal Policy, Manhattan Institute. No. 10, October Update. Last accessed: 1/24/2019

<sup>3</sup>Ibid.

<sup>4</sup>Prepared statement of Shelby L. Wilbourn, MD, representing the American College of Obstetricians and Gynecologists, on "Patient Access Crisis: The Role of Medical Litigation," a joint hearing before the Committee on the Judiciary and the Committee on Health, Education, Labor, and Pensions (Senate Hearing 108-253) on "[Examining the Status of Patient Access to Quality Health Care, Focusing on the Role of Medical Litigation and Malpractice Reform](#)." 2/11/2003. Last accessed 1/24/2019.

<sup>5</sup>Medical Malpractice Statistics. The Unified Judicial System of Pennsylvania. Last accessed: 1/24/2019

<sup>6</sup>HAP analysis of Pennsylvania Department of Health, Division of Health Informatics Annual Hospital Survey data, 1999 through 2005.

<sup>7</sup>Milliman Research Report, Review of Proposed Amendment of Pennsylvania Rules of Civil Procedure Nos. 1006, 2130, 2156, and 2179: Governing Venue in Medical Professional Liability Actions in Pennsylvania February 18, 2019, Thomas Ryan, Principal, FCAS, MAAA Carissa Lorie, Analyst

<sup>8</sup>Based upon state-level projections of physician supply and demand performed by the U.S. Department of Health and Human Services' Health Resources and Services Administration

<sup>9</sup>Hospital Consolidation: Longitudinal Trends of Pennsylvania's Independent and System-Affiliated General Acute Care Licensed Hospitals." HAP's 2018 analysis of Pennsylvania Department of Health, Division of Health Informatics' Annual Hospital Survey data, 2000 through mid-Q4 2017.