

REPORT HIGHLIGHTS

A Study of the Impact of Venue for Medical Professional Liability Actions

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Senate Resolution 2019-20 (SR 20) directs the LBFC to conduct a study of the impact of venue for medical professional liability actions on access to medical care and maintenance of health care systems in Pennsylvania. Our study covered the period 1996 through 2018. Highlights of our report include the following:

- ❖ **In 2018 the Pennsylvania Supreme Court Civil Procedural Rules Committee (CPRC) proposed amending Rule of Civil Procedure 1006 to eliminate the special rule for venue (the geographic location where a legal case can be heard) in medical professional liability actions.** That rule, which restricted venue in these actions, was part of tort reform efforts in 2003 that included requiring a certificate of merit to pursue the action and changes in the determination of damage awards and payments, among others. The proposed rule change would expand venue options for medical professional liability cases to the same as for other civil actions, i.e., claims can be filed where the cause of action arose, anywhere a defendant may be served, where any matter related to the claim took place, or where a defendant company regularly conducts business.
- ❖ **Access to health care involves many different variables: timeliness, health outcomes, health insurance coverage, geographic locations, and personal relationships with providers.** Access is a complicated concept and the expansive data collection and analysis needed to determine access is outside the scope of this study. A 2003 U.S. Government Accountability Office (GAO) report regarding access to health care and medical malpractice premiums relied on anecdotal information, which we did not find reliable to support conclusions nearly two decades later.
- ❖ **Statewide, the availability of active medical staff with clinical privileges increased both pre- and post-tort reform.** The available data indicates no statewide trends between medical malpractice insurance rates and the number of active medical staff with clinical privileges. There were some localized trends (three to five counties, depending on the specific specialties) that indicated rates were one variable in the availability of active medical staff with clinical privileges. Without widespread trends, and access to detailed physician data, we could not measure the specific effects of tort reform on physician availability, including the specific effect of the venue change alone.
- ❖ **The availability of General Acute Care Hospitals decreased while Specialty Hospitals increased statewide both pre- and post-tort reform.** The health care landscape, much like that nationally, has changed in Pennsylvania. There has been an increase in the number of hospitals in health systems and those health systems extend beyond a single county. The data did not lead to a conclusion on the effect of venue on the availability of hospitals and/or hospital services statewide.
- ❖ **In Pennsylvania, the number of medical malpractice filings has decreased by 44.9 percent between the period of 2000-2002 and 2015-2017; compensation for injuries from medical negligence by physicians (MD/DO) decreased by 13.7 percent from 2003 to 2018.** The MCARE fund total paid claims from 1996 to 2018 decreased by 21.9 percent, and total claim count(s) decreased 27.2 percent for all health care providers. Due to many data limitations, however, a comprehensive analysis could not be completed. Therefore, the effects of the proposed rule change on the number of medical malpractice filings and/or the value of medical malpractice payments could not be determined.
- ❖ **Prompt determination of medical malpractice cases could not be measured.** Due to the complexity of, and limited data available on, medical malpractice case duration from the time of filing to award or settlement, we were unable to determine if medical malpractice cases were promptly concluded or the effect of venue on case duration.
- ❖ **The cost of medical professional liability insurance in Pennsylvania increased significantly from 1996 to its peak around 2007, before decreasing.** These changes in costs appeared to be closely aligned to a national trend; however, whether insurance is more affordable varies by county. Available data does not support a conclusion that changes in the availability, cost, and affordability of medical professional liability insurance are the result of the 2003 venue rule change. However, insurance companies value stability and predictability. A change in the venue rule, coupled with the regionalization of hospital services, would likely create a less predictable market in the near term. If insurance companies have a more difficult time predicting their costs, rates may destabilize soon after as they adjust to the new rule.
- ❖ **Premiums earned and payments made to claimants by the Pennsylvania Professional Liability Joint Underwriting Association (JUA) decreased from 2003 to 2017.** JUA direct premiums earned decreased from \$39 million in 2003 to \$3 million in 2017. Additionally, payments made to claimants (losses) declined from \$21 million to \$2 million over the same time period.

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