

Written Testimony of

HCR ManorCare & the Pennsylvania Health Care Association

Delivered by

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For A

Public Hearing on the Proposed Rule Change to Allow

‘Venue Shopping’ in Medical Malpractice Cases

Delivered at St. Luke’s Hospital

Before the

House Republican Policy Committee

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Good afternoon and thank you, Chairwoman Oberlander and members of the House Republican Policy Committee, for the opportunity to come before you today to testify on the proposed state Supreme Court rule change to allow 'venue shopping' for medical malpractice cases in Pennsylvania.

My name is Diane Johnson, and I am the Regional Director of Operations for HCR ManorCare, a long-term care company that currently operates in 30 states throughout the country. HCR ManorCare is the largest not-for-profit skilled nursing and rehabilitation, memory care, hospice care, home health care, and outpatient rehab provider in the country.

Today, my company's largest footprint is right here in Pennsylvania. We operate 42 skilled nursing facilities and 10 memory care facilities, stretching from the city of Pittsburgh to here in the Lehigh Valley. In fact, many of the residents cared for in my region come from this hospital. We also have locations in southeastern Pennsylvania, including Delaware, Montgomery and Bucks Counties. You'll notice I auspiciously left off one southeast county from the list.

Overall, there are nearly 700 skilled nursing facilities in Pennsylvania, and more than 1,200 assisted living residences and personal care homes. There are more than 88,000 nursing home residents and 66,000 assisted living and personal care residents. And the long-term care sector employs more than 83,000 people throughout the state.

Pennsylvania is the fourth oldest state in the entire country, and we currently have 2.2 million residents age 65 and older. By 2030, Pennsylvania's 60 and older population is expected to be almost 30% of the total population—approximately 4 million people. The number of Pennsylvanians age 85 or older is expected to exceed 400,000 residents in 2030—that's a segment of the population that will be the most intensive users of nursing home and other long-term care services. Those figures are important, because with the total number of senior citizens on the rise, nursing facilities across Pennsylvania are struggling to survive right now.

One of our biggest challenges is the horrific legal climate in Pennsylvania.

For the last ten years, the long-term care sector has been under attack from predatory, out-of-state law firms who have come here from other states with one goal in mind: to file hundreds of lawsuits against providers. Big or small, national chain or a single facility, they don't care—everybody is a target.

(SHOW COPY OF ADVERTISEMENT)

You've probably seen ads like this in your local newspaper. This is what providers fight against on a daily basis. An ad like this is good for, on average, 5-7 lawsuits against one of our buildings.

These law firms troll for clients with these advertisements, and the firms file frivolous suits against us based on the number of phone calls they receive. And in every single case, they ask for punitive damages on top of compensatory damages.

When the MCARE law was enacted in 2003, the long-term care sector benefitted from some of the protections that physicians fought so persistently for—but not all of them. We do enjoy the protection against venue shopping, or the rule allowing attorneys to bring action against a health care provider **only** in the county in which the cause of action arose. However, physicians currently have caps on punitive damages, at 200%, or two-times the amount of compensatory damages. There are no limits on punitive damage awards for long-term care providers, and it's an important point to understand.

HCR ManorCare owns arguably one of the most infamous punitive damage awards in the history of nursing home litigation.

A few years ago, we took a case to court in West Virginia in which a resident, who was in one of our buildings for just a few weeks, passed away. We lost that case and were asked to pay **\$80 million** in punitive damages. That would wipe out most of the providers in Pennsylvania.

While we haven't seen awards like that here in the Commonwealth, the risk certainly exists. It's why providers settle cases today: the threat of a jackpot award, even for a frivolous claim, is very much a 'dark cloud' that hangs over our sector and affects the way we operate.

I mentioned earlier that our total footprint in Pennsylvania includes some southeastern counties, but not all of them. We do not currently operate in the city of Philadelphia.

But you better believe that if the state Supreme Court repeals the rule against venue shopping for medical malpractice cases, my staff and I will be dragged into Philadelphia's judicial system to defend ourselves against claim after claim.

That's staff time, travel time, deposition time, and hundreds of thousands of dollars that will all be stripped from resident care, and instead put towards a court system in which the verdicts may be more favorable to plaintiffs, and the awards will almost certainly be higher.

The current legal environment has absolutely decimated the sector here in Pennsylvania. Extendicare, which was also a national chain, just like HCR ManorCare, had more than twenty buildings in Pennsylvania as recently as four years ago. They're now gone. They've fled the state.

Companies have sold, filed bankruptcy or reorganized. There are more new owners than ever in Pennsylvania, and the established knowledge base that is so important to providing and improving quality care is almost gone.

It has become so bad that there are companies operating in the Commonwealth who now spend more on litigation costs **than on food for their residents**.

Providers have been forced to operate with scarce resources and limited funding from the state for years. Our sector has not received a funding increase since 2014, and when providers like HCR ManorCare rely on Medicaid funding for 70, 80, or even 90% of our residents, those dollars make a difference.

And for every Medicaid resident we care for, \$5.39 comes out of their daily rate to help pay to defend the barrage of frivolous lawsuits. So, last year, our sector spent more than \$100 million **Medicaid dollars** to help pay litigation costs and liability insurance.

To put it simply, this rule change would make a bad situation worse. I'm thankful this committee brought long-term care to the table to discuss this important issue. We're very much a part of the broad healthcare spectrum of this state, and we're an integral part to the continuum of care, especially to our residents age 65 and older.

Chances are the members of this committee know someone who has been involved with long-term care. Whether it's a parent or grandparent in a nursing facility, a friend working as a bedside aide, or a family member who can no longer care for themselves at home, long-term care is truly the safety net for our aging population.

But what happens if that safety net is pulled out from under us?

This proposed rule change does nothing but harm those entrusted with the care of our frail elderly and disabled population, not to mention our residents with behavioral health issues and victims of the opioid epidemic.

Philadelphia courts equal more favorable jury verdicts and higher awards for trial attorneys...**NOT** better care for Pennsylvanians. Allowing this rule change will simply make things worse and drive up healthcare costs across the state. Higher verdicts for trial attorneys will result in fewer resources to provide high quality care for our residents. And access to care will undoubtedly be put at risk. Especially in rural Pennsylvania, prospective residents and family members will have to spend hours traveling to the nearest long-term care facility. It shouldn't be that way.

In closing, I want to thank you again for the opportunity to testify this afternoon.

I understand that a separation of powers exists in our government. I also understand there's limited legislative authority, especially before the February 22nd deadline for comments, to truly affect the Supreme Court's decision. But please know that, if you choose to take steps to protect us against this proposed rule change, you will have the entirety of the long-term care sector behind you.

My colleagues and I look forward to working with the members of this Committee, and I'm happy to take questions once our panel is finished.