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To: The Honorable Members of the House Republican Policy Committee

From: Noah K. Karn

Re: Venue for Medical Malpractice Claims – possible repeal of Rule 1006(a)

Thank you for the opportunity to speak today. We're here not just on behalf of our members insuring providers for medical malpractice claims, but on behalf of all our members. Whatever the type of coverage, every insurer depends on a stable, responsive, predictable, and accessible legal system to resolve disputes. We believe the repeal of the medical malpractice venue rule invites just the opposite in our legal system, and that's a broad concern.

Owing to the work this committee has already done, most of you are already aware of the issue: The Supreme Court Civil Procedural Rules Committee has asked for public comment by next Friday on a proposal to repeal Rule 1006(a.1), which limits venue in medical malpractice suits to the county in which the cause of action arose.

To understand the significance of this rule and the ramifications of its repeal, let's first understand the circumstances under which it was conceived.

- In the late the 1990s and early 2000s, the medical malpractice insurance market was beset by instability and unpredictability. This manifested itself in insurer insolvencies, unsustainable loss ratios, and soaring premiums.

- Malpractice insurance was either unaffordable or unavailable in the voluntary market, which had serious implications for consumer access, particularly in urban markets (where demand exceeded supply) and in high-risk specialties like obstetrics and neurosurgery. You'll hear more about that from the providers who are here today.

In response, the General Assembly enacted Act 13 of 2002 (the MCARE Act), a series of reforms – including venue reform – which, in the intervening 17 years, have reached their intended goal of stabilizing the market.

In addressing venue reform, Act 13 established the Interbranch Commission to study the issue before coming up with the specifics of a reform. The Commission included all three branches of government and Republicans as well as Democrats, and it conducted a comprehensive and open review.

- As a result of the Commission's review (and following the enactment of a matching venue reform in Act 127 of 2002) the Supreme Court adopted what is now Rule 1006(a.1): **Venue is in the county where the cause of action arises.**

The rule was intended to mitigate the practice of "venue shopping" (also known as "forum shopping") – lawyers looking for a favorable jurisdiction, not one with a real connection to the alleged malpractice.

Venue shopping wasn't an imagined or exaggerated problem, and it wasn't one only studied by the Interbranch Commission. It was a problem the General Assembly took the unique step of expressly noting in statute, stating in Section 514(a) of Act 13 that the venue rule at the time was unduly expansive as hospitals were evolving, and it was hurting PA's ability to attract and train new physicians.

You don't usually make that factual finding. The courts may interpret your laws, but they can't ignore or dismiss your findings of an underlying condition – and neither can an advisory committee of the Supreme Court.

In fact, the factual determinations the General Assembly made in Act 13 have grown, not shrunk, especially in hospital consolidations. A case in point: In 2002, Lancaster General Hospital was a local hospital. Since then, it has become part of the Penn Health System based in Philadelphia. If the current venue rule is repealed, cases against Lancaster General would be brought in Philadelphia even no care was performed there.

Thankfully, the venue reform in Acts 13 and 127 and Rule 1006(a.1) have worked.

- The medical malpractice litigation climate has cooled, the voluntary market for medical malpractice insurance has returned, premiums have dropped and stabilized, and providers are practicing across the state.

- Just as important, those alleging malpractice have not been denied access to the courts. This isn't an issue of whether the current venue rule makes it too inconvenient or cumbersome for a plaintiff to file a suit. The motivation behind this change isn't about being denied access to the court with the most logical connection to the underlying complaint; it is about being denied access to a court with no logical connection beyond being perceived as a favorable forum.

    - That's the definition of venue shopping the General Assembly found to exist in 2002, and that the General Assembly and the Court addressed in Acts 13 and 127 and Rule 1006(a.1) respectively.

    - That's what we're trying to prevent. People talk about the "insurance cycle." The venue reform in 2002 broke that cycle – let's not go back.

As to what we've heard on the reason for this repeal:

- Its proponents say the problem either never existed or no longer exists. We're waiting for some facts on that – and we're waiting to see why that justifies repealing the rule, as opposed to praising it for solving a problem, and extending it to solve venue abuses in other areas.

- Its proponents say smaller counties are too deferential to hospitals because they are major employers. They are in Philadelphia, too. Maybe the answer is to establish jurisdiction in some remote rural county where hospitals aren't a major employer – we doubt that's what the proponents mean.

Since we learned in late December of the proposed repeal of the venue reform, we and some from the provider community have focused on the venue rule's unique impact on medical liability insurance.

- To that end, we have commissioned an outside actuarial firm to study the impact of the venue rule and the implications of its repeal. Preliminary findings indicate repeal of the venue rule will have a significant impact on medical malpractice premiums, especially in urban and suburban markets with high-end specialists being most directly impacted.

- We expect to have the full report before the February 22nd public comment deadline and will share it with you at that time.

- We realize proponents of repealing the venue rule will try to discredit this. That goes to the question for them: What studies have they conducted to establish their contention that repealing this venue rule won't mean much, if anything?

I'll close with a few comments on process.

- In 2002, the burden was on the proponents of change, and the process for adopting change was both transparent and inclusive. That was fair then, and it is fair now.

- The law isn't meant to be stationary - but it is meant to be stable, with changes occurring only after due deliberation and the chance to examine and question different views. No one benefits from an unstable and unpredictable legal climate.

- The Civil Procedural Rules Committee should provide the Supreme Court and the public with empirical evidence on the impact of the repealing of the medical malpractice venue rule. If it doesn't have the resources to do this, the Legislative Budget & Finance Committee might be the appropriate agency. That's what the Senate recommended when it passed Senate Resolution 20 with a bipartisan 31-18 vote on February 5.

- Uniformity in a law sounds nice. But it isn't to be imposed when the underlying conditions aren't uniform. All three branches of government realized that in 2002 and worked together on a solution to a unique problem. We hope government hasn't become so splintered that this can't happen again. As we've seen from the results of the 2002 venue reform, it works.

Thank you again for your attention to this. I'm happy to take any questions.