

COMMON GOOD

1730 Rhode Island Avenue, NW, Suite 308 * Washington, DC 20036

DATE: WEDNESDAY, MARCH 5, 2008

**COMMITTEE: HOUSE JUDICIARY COMMITTEE
THE HONORABLE JOSEPH F. VALLARIO, JR., CHAIR**

**BILLS: HOUSE BILL 1124 – TASK FORCE ON ADMINISTRATIVE COMPENSATION
FOR BIRTH-RELATED NEUROLOGICAL INJURY**

POSITION: SUPPORT

My name is Paul Barringer and I am the General Counsel of Common Good, a nonpartisan legal reform coalition in Washington, D.C. We have been active nationally in promoting the development of specialized administrative processes for resolving medical injury disputes. With the support of the Robert Wood Johnson Foundation, we are currently collaborating with researchers from the Harvard School of Public Health and the Harvard Medical School to refine a conceptual framework for developing pilot projects to test the feasibility of this idea.

The debate over medical malpractice reform consistently remains one of the most polarized in American politics. Frequently lost in the talking points and partisan bickering is this key fact: America's approach to resolving medical injury disputes works poorly for both patients and health care providers. Resolving cases takes a long time for injured patients, and the system is very inefficient. When attorney fees and administrative costs are included, only 46 cents of every dollar spent in tort cases in 2003 reached injured claimants.¹

The existing system also fails health care providers. In particular, today's system does a poor job in distinguishing between negligent and non-negligent care. It provides ambiguous signals to health care providers about what standards are necessary to avoid litigation and this encourages costly defensive medicine. Moreover, the system discourages providers from disclosing information about errors or "near misses" in treatment. This is unfortunate, as patient safety experts identify such reporting as a key element in improving quality of care in our health system. This chilling effect on information disclosure has led the national Institute of Medicine and others to identify the existing legal system as a major impediment to system-wide patient safety enhancements.

The creation of a specialized process for compensating birth-related injuries could have major benefits for Maryland. Properly constructed, such a program could compensate patients and families on an equitable, efficient, and expedited basis, while also enhancing patient safety and promoting provider accountability. Similar programs in several other states (Florida and Virginia) have a number of strengths and several shortcomings. These programs represent important models for proposals in other states, and their strengths and weaknesses can help to guide the design of future reforms.

Legislation that would facilitate discussion about the creation of such a system in Maryland – such as House Bill 1124 – can lay the groundwork for making Maryland's medical justice system more fair and effective for physicians and patients alike.

¹ *U.S. Tort Costs: 2003 Update* 17 (Tillinghast-Towers Perrin 2003)