



THE HOSPITAL & HEALTHSYSTEM ASSOCIATION OF PENNSYLVANIA

## **Strengthening Certificate of Merit Requirements Frequently Asked Questions**

Pennsylvania's physicians and hospitals face some of the highest medical liability costs in the nation. The high legal costs paid by Pennsylvania health care providers, employers, and governments inhibit job growth, increase health care costs, and limit access to medical care. Medical liability reform is necessary to support patient access to health care and to help reduce health care costs. An important reform is to reduce the number of frivolous medical liability claims by strengthening Pennsylvania's certificate of merit requirements.

### **Why is additional medical liability reform necessary?**

Pennsylvania's physicians and hospitals face some of the highest medical liability costs in the nation. Medical liability reform is necessary to support patient access to health care and to help reduce health care costs. A nationwide shortage of physicians and an aging physician workforce in Pennsylvania signals a potential significant shortage of physicians. Young physicians faced with growing student loan debt will be attracted to other less hostile legal environments and where practice costs are less.

### **What is certificate of merit?**

Certificate of merit laws protect professionals from baseless claims made against them. A review of the facts of a claim ensures that false claims are terminated in the early stages, which will reduce both expenses as well as congestion in the court system.

### **What are the requirements in Pennsylvania?**

Rule 1042.3 of the Pennsylvania Supreme Court, adopted January 27, 2003, requires that in any action based upon an allegation that a licensed professional deviated from an acceptable professional standard, the attorney for the plaintiff shall file with the complaint, or within sixty days after the filing of the complaint, a certificate of merit signed by the attorney or party that an appropriate licensed professional has supplied a written statement that there exists a reasonable probability that the care, skill or knowledge exercised or exhibited in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional standards, and that such conduct was a cause in bringing about the harm.

### **What additional requirements exist in Pennsylvania law regarding medical experts?**

Section 512 of Act 13 of 2002 states that no person shall be competent to offer an expert medical opinion in a medical professional liability action against a physician unless that person possesses sufficient education, training, knowledge and experience to provide credible and competent testimony. No cause of action asserting a professional liability claim may be filed with the court unless a certificate of merit is included with the complaint and contains a written and signed statement from an appropriate licensed professional, identified by name





and professional designation. An expert testifying on a medical matter, including the standard of care, risks and alternatives, causation and the nature and extent of the injury, must (1) possess an unrestricted physician's license to practice medicine in any state or the District of Columbia; (2) be engaged in, or retired within the previous five years from, active clinical practice or teaching; and (3) practice in the same subspecialty as the defendant physician or in a subspecialty which has a substantially similar standard of care for the specific care at issue.

### **Why is the legislation necessary?**

The existing certificate of merit rule could be strengthened to reduce the number of frivolous cases. The filing of a meritless suit results in mental anguish and significant expense for the wrongly accused defendant, his or her insurer, or self-insured entity, as well as indeterminate permanent damage to his or her reputation. Additional safeguards are required, such as, requiring the filing of preliminary expert reports, with accompanying curriculum vitae of the expert, as opposed to the filing of attorney certifications. This requirement ensures that the critical qualifications are provided up front, removing any questions or concerns about the professional background of the expert.

### **Are there plans to address this issue in 2011?**

Last session, Representative Mike Turzai (R-Allegheny) introduced [House Bill 530](#), which strengthens the certificate of merit rule. Legislation is expected to be introduced in the 2011-2012 legislative session.

### **Who supports such legislation?**

The following organizations support this type of legislation:

- Pennsylvania Medical Society
- The Hospital & Healthsystem Association of Pennsylvania