

Statement of
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Good morning, Chairman Dush, Chairman Santarsiero, members of the committee. Thank you for the opportunity to address this issue of considerable concern to our health system as well as those across the state.

Penn Medicine consists of 7 hospitals (6 of which are in the Commonwealth) and nearly 5,000 physicians and advanced practice providers. 2900 are in our multi-disciplinary faculty practices and 2000 physicians and advanced practice providers are in our multi-disciplinary community practices. Importantly, we provide training for thousands of medical students, residents and fellows who are the future of health care delivery in our state. We are a critical safety-net provider for the communities we serve providing almost 20 percent of care to Medicaid patients in the Commonwealth.

Our health system is uniquely qualified to address the impact of a medical liability system that is not serving the needs of the people of our state. In April, 2023, a Philadelphia jury awarded a staggering \$182.7 million verdict against one of our hospitals in favor of a single plaintiff in an obstetrical malpractice case. The jury awarded over \$100 million for future medical expenses, an amount we believe was untethered to the actual anticipated costs of care for the child, and a stunning \$80 million for pain and suffering that was unmoored to the actual testimony presented at trial. Although we certainly agree that children impacted by neurological injuries at or around birth should receive the care they need and deserve, in the current litigation environment, hospitals essentially have become guarantors of care outcomes regardless of fault and subjected to judgments that bear no resemblance to reasonable compensation. This only serves to underscore the importance of establishing a no-fault birth injury fund in Pennsylvania.

Even though this was the largest medical malpractice verdict ever rendered in Pennsylvania and it well exceeded the available insurance coverage, the trial court was unwilling to conduct a hearing on the potential impact of this verdict on access to health care in the community notwithstanding that the legislature had contemplated exactly that type of analysis in cases such as this one in section 515 of the MCARE Act. Other trial courts also have not construed the Act as requiring a hearing when assessing the impact of a medical malpractice verdict on access to care and their decisions reflect uncertainty as to how the issues should be analyzed under the Act. The courts could benefit from further guidance from the legislature on the intent of this section of the MCARE Act.

The real-world impact of verdicts such as the one rendered against one of our hospitals on access to health care cannot be understated. Verdicts such as these—which often exceed available insurance coverage—drive up the cost of providing health care services which can result in a reduction or

discontinuation of services and, in some instances, health care deserts. Just earlier this year, UPMC-Cole closed its maternity unit expanding a maternity care desert to seven counties in the north-central part of our state. 21 of 67 counties in Pennsylvania have no hospitals with maternity services and nearly half of Pennsylvania counties rely on only one hospital for maternity care. Although Philadelphia is not yet a maternity care desert, the trend in southeastern Pennsylvania nonetheless is concerning. In the last twenty-seven years, 14 Philadelphia hospitals have discontinued providing obstetrical services or have closed altogether, including Hahnemann University Hospital, Mercy Philadelphia Hospital and Episcopal Hospital, due in large part to their inability to absorb the financial risks associated with the provision of these services. Our health system now delivers approximately 50 percent of the Philadelphia area's 20,000 annual newborns at two of the remaining five hospitals delivering babies in the Philadelphia area. Although our health system has continued to provide obstetric services, a medical liability system that perpetuates these outsized awards is not sustainable even for the most financially stable healthcare systems.

The impact of these excessive verdicts and the pattern of inflated settlements they engender on the individual healthcare providers who are essential to the provision of high-quality obstetrical services cannot be minimized. In our health system, the enormous exposure associated with birth injury cases in particular has impacted the willingness of our faculty to continue practicing obstetrics in Philadelphia, or in some cases, at all. It likewise is a significant issue in recruitment of new faculty clinicians. It also has negatively impacted our ability to convince our resident and fellow trainees, who not only are critical to sustaining our program but also the programs at other Philadelphia area hospitals and health systems that still offer obstetrical care, to remain in Philadelphia following completion of their training to provide obstetrical care.

The dramatic increase in malpractice expense also limits the ability of our health system and others to provide low-cost or no cost services in underserved areas and to step in when local and state governments request assistance in ensuring the continuation of vital services in the community. Our own experience is illustrative with a 71 percent increase in malpractice expenses in the last three years, exclusive of a \$90 million reserve posted in 2024 due in part to the impact of a single case. In the absence of a safety net hospital structure in our state, Penn Medicine has repeatedly stepped in to stabilize the availability of health care in the West Philadelphia community. An example of this type of engagement that could be jeopardized if this trend continues is Penn Medicine's agreement, in the midst of the pandemic, to step in to ensure continued provision of vital emergency and behavioral health services in the West Philadelphia community with the closure of Mercy Philadelphia Hospital. Since then, Penn Medicine has made capital and infrastructure investments to support the continued provision of these essential services of over \$50 million, and, to date, has sustained operating losses of close to \$74 million as a result of this undertaking. It also invested millions of dollars to reopen a behavioral health crisis response center at this location in late 2023 with an operating loss of \$4 million per year. This is in addition to millions of dollars of investment in other low cost/no cost health care services in West Philadelphia including the Dickens Clinic which provides women's health services, the University City Internal Medicine clinic and the Family Practice and Counseling Network, a federally qualified health center. The current state of medical liability in the Commonwealth, and in Philadelphia in particular, is eroding the available funds for similar undertakings that enhance the availability of and access to care in Philadelphia area communities.

The significant increase in malpractice expense also has restricted the available funds for reinvestment in our operations and provision of health care services. Health care is being impacted by multiple financial pressures. In response, our health system implemented a program (Repair Refocus Reimagine) to achieve greater efficiencies in our organization and to reinvest those savings in our workforce, information technology systems and ambulatory practices. Regrettably, a portion of those savings this year needed to be used instead to fund the health system's malpractice expense.

Another issue of concern is the impact of outsized verdicts and the associated inflationary settlement demands on the availability and cost of insurance. Like other Philadelphia hospitals and health systems, Penn Medicine has encountered significant difficulty in securing professional liability insurance coverage due, in part, to excessive verdicts rendered by Philadelphia juries. Due to the venue rule change, which now has exposed hospitals and health systems outside of Philadelphia to malpractice actions filed in Philadelphia, those hospitals and health systems likewise are experiencing challenges in securing insurance coverage. Although Penn Medicine ultimately has been able to secure insurance coverage, in order to do so, it has been required to shoulder more of the upfront risk notwithstanding the fact that our premiums have more than doubled over the course of the last three years. If this trend continues, there is concern that hospitals and health systems will not be able to secure adequate insurance coverage, thereby increasing the amount of risk they will need to absorb in their respective operating budgets. This, in turn, will force hospitals and health systems to make difficult decisions on whether to continue to provide high-risk services to the potential detriment of all Pennsylvanians.