IN THE GENERAL ASSEMBLY STATE OF _____

Medical Liability Reform Act

Be it enacted by the People of the State of _____, represented in the General Assembly:

Section 1. Title. This act shall be known as and may be cited as the "Medical Liability Reform Act."

Section 2. Bifurcated trial. At the request of any party, the court will conduct a bifurcated trial. The trial will then be conducted in two phases: an initial phase to determine the liability, if any, of a defendant; and if necessary, a subsequent phase to determine any compensation to be awarded to the plaintiff.

(A) In the initial phase of any medical liability trial, the trier of fact shall determine the fault of each defendant, and if the trier of fact finds that any defendant is at fault for the plaintiff's injuries or wrongful death, the trier of fact shall further determine through an appropriate form of the verdict the percentages of fault of all persons or entities that contributed to such injuries or wrongful death prior to any determination of the total amount of damages to be awarded. The evidence and arguments of counsel in the first phase of the trial shall be limited to the issues provided for in this paragraph.

(B) If the trier of fact finds in the first phase of the medical liability trial that any defendant is at fault for the plaintiff's injuries or wrongful death, then the second phase of the trial shall be commenced. In the second phase of the trial, the trier of fact shall determine all compensatory damages to be awarded to the plaintiff, if any, and the evidence and arguments of counsel shall be limited to this issue.

(C) The trier of fact may not prejudice a defendant by knowing or considering evidence of the plaintiff's alleged losses for past medical expenses or the cost of medical equipment before:

(1) liability for the alleged losses has been established; and

(2) any claim for or award of noneconomic damages, if any, for the alleged losses has been fully adjudicated or entered.

Drafting note: States should review and conform the bifurcated trial provisions to their own negligence framework, including pure contributory negligence, pure comparative negligence, or modified comparative negligence, because those rules may materially affect apportionment of fault and the operation of the bifurcated trial. Section 6 is a contributory negligence provision.

Section 3. Prohibited references to noneconomic damages. In any medical liability action or other proceeding attempting to recover damages for bodily injury or wrongful death, counsel shall not argue the worth or monetary value of noneconomic damages, and counsel shall not, in the hearing of the jury or any prospective juror, elicit any testimony regarding, or make any reference to, any specific amount or range of amounts of noneconomic damages, the measure of such damages being the enlightened conscience of an impartial jury.

(A) If counsel elicits any testimony, or makes any argument or reference, prohibited by this Section 4 in the hearing of the jury or one or more prospective jurors, the court shall:

(1) prohibit such statements, rebuke counsel and instruct the jury to remove the improper impression from their minds; or

(2) with respect to prospective jurors, excuse the prospective jurors.

The court, in its discretion, may order a mistrial if the plaintiff's attorney is the offender.

Section 4. Limitations on civil damages.

Drafting note. The American Medical Association Advocacy Resource Center has developed charts showing which states have either caps on noneconomic damages or total damage caps and describing how those caps are structured.

Section 5. Venue. Venue for a medical liability action shall be in the county where the plaintiff was first injured by the acts or conduct alleged in the action.

Section 6. Contributory negligence. In all medical liability actions, the plaintiff shall be barred from recovering damages if the fault of the plaintiff is one (1) percent or more of the proximate cause of the injury for which recovery is sought.

Section 7. Periodic payments. In a medical liability action a district court shall, at the request of either party, enter a judgment ordering money damages for future damages shall be paid by periodic payments rather than by a lump-sum payment if the award equals or exceeds $50,000 in future damages. "Future damages" includes damages for future medical treatment, care or custody, loss of future earnings, loss of bodily function, or future pain and suffering of the plaintiff. The defendant's obligation to make periodic payments terminates upon the plaintiff's death.

Section 8. Alleged violations of regulations of standards.

(A) In this section, "regulation or standard" includes a statute, regulation, rule, or order regulating the practice of medicine adopted or promulgated by the federal government, a state government, governmental agency or authority.

(B) In a medical liability action under this Act, evidence of a physician's failure to comply with a regulation or standard is admissible in the first phase of a trial bifurcated under Section 3 only if:

(1) the evidence tends to prove that failure to comply with the regulation or standard was a proximate cause of the bodily injury or death for which damages are sought in the action; and

(2) the regulation or standard is specific and is an element of a duty of care applicable to the physician.

Section 9. Threats or actions against personal assets prohibited.

(A) A plaintiff may not pursue, collect, or execute on a judgment against an individual physician's personal income or assets, unless the court finds that:

(1) the physician's conduct was willful and malicious or intentionally fraudulent; or

(2) the physician failed to maintain an insurance policy with a policy limit of at least $_____ (*amount to be determined by the physician advocate*).

(B) Prior to any award of damages to a plaintiff, a plaintiff may not make allegations that the court finds:

(1) are irrelevant to the adjudication of the claims at issue;

(2) are made primarily to coerce or induce settlement in an individual defendant physician; and

(3) pertain to a physician's personal income or assets.

Section 10. Punitive damages. The initial claim for relief in a medical liability claim shall not include punitive damages. A claim for punitive damages may be asserted by amendment to the pleadings only after the plaintiff has presented sufficient evidence to the court that it is more likely than not that the claim has a triable issue after substantial completion of discovery. Punitive damages may only be awarded in a medical liability claim if the plaintiff provides clear and convincing evidence demonstrating that the acts of the physician were malicious, willful, wanton, reckless, fraudulent or in bad faith.

Section 11. Compensation for medical expenses.

(A) The purpose of this section is to abrogate the common law collateral source rule, court decisions, and all prior statutes applicable to determining the amounts recoverable by plaintiffs as damages for medical services or treatment.

(B) Notwithstanding any other law to the contrary, in an action that alleges a medical liability claim, the following apply:

(1) The damages recoverable for past medical expenses or rehabilitation service expenses shall not exceed the actual damages for medical care that arise out of the alleged medical liability.

(2) Except for evidence of the actual damages for medical care, the court shall not permit a plaintiff to introduce evidence of past medical expenses or rehabilitation service expenses at trial.

(C) As used in this section:

(1) "Actual damages for medical care" means both of the following:

(a) The dollar amount actually paid or incurred but not yet paid for past medical expenses or rehabilitation service expenses by or on behalf of the individual whose medical care is at

issue, including payments made or to be made by any source, but excluding any contractual discounts, price reductions, or write-offs by any person.

(b) Any remaining dollar amount that the plaintiff is liable to pay for the medical care.

(2) "Person" means an individual, partnership, corporation, association, governmental entity, or other legal entity.

(D) Compensation for future medical expenses.

(1) Evidence admissible to establish the reasonable value of future medical services or treatment is limited to evidence identifying the amounts actually necessary to satisfy the financial obligation for any reasonable and necessary future medical services or treatment of the plaintiff. This evidence may not include any reference to sums that exceed the amount for which the future charges of health care providers could be satisfied if submitted to any health insurance covering the plaintiff or any public or government-sponsored health care benefit program for which the plaintiff is eligible.

(2) Damages for future medical services or treatment shall not exceed amounts actually necessary to satisfy the financial obligation for any reasonable and necessary future medical services or treatment of the plaintiff. Damages may not exceed the amount for which the future charges of health care providers could be satisfied if submitted to any health insurance covering the plaintiff or any public or government-sponsored health care benefit program for which the plaintiff is eligible.

Section 12. Attorneys' fees and costs.

(A) In any medical action, no party shall recover the same attorney's fees, court costs, or expenses of litigation more than once pursuant to one or more statutes authorizing awards of attorney's fees, court costs, or expenses of litigation, whether such statute or statutes authorize such awards for compensatory or punitive purposes, unless the statute or statutes specifically authorize the recovery of duplicate attorney's fees, court costs, or expenses of litigation.

(B) In any medical liability if a party seeks to recover attorney's fees pursuant to any statute authorizing an award of reasonable attorney's fees, a contingent fee agreement between such party and such party's attorney shall not be admissible as proof of the reasonableness of the fees.

(C) The court must award attorney fees and costs to a defendant physician if a prelitigation review panel renders an opinion that a claimant's claim has no merit and the claimant did not substantially prevail in a subsequent medical liability action.

Drafting note. Many states do not have pre-trial screening panels. This provision has been included for those states that do

(D) A claimant in a malpractice action against a physician, or the claimant's attorney, is liable for the reasonable attorney fees and costs incurred by the defendant physician, or by the defendant physician's insurer, in connection with any filing, submission, panel review, arbitration, or judicial proceeding in which the claimant makes an allegation that the court or arbitrator finds that the claimant knew, or should have known, to be baseless or false.

(E) The contract for representation of a client in a medical liability matter may provide for a contingent fee arrangement as agreed on by the client and the lawyer, except as limited by the following provisions: (1) thirty-five percent (35%) of the first $100,000; (2) twenty-five percent (25%) of the next $100,000; and (3) ten percent (10%) of any remaining award.

Section 13. Pre-trial screening panels.

Drafting note. Some states have enacted pre-trial screening panel laws. A great deal of variation exists when it comes to how each such state operates its screening panels, making it impractical to distill any one set of requirements that can be recommended in a model bill. However, the American Medical Association Advocacy Resource Center has developed charts and other resources showing which state uses pre-trial screening panels and the legal citations where the federation advocate can access each state panel requirements.

Section 14. Expert witness and qualifications; affidavit/certificate of merit; joint and several liability; arbitration; statutes of limitation.

Drafting note. The American Medical Association Advocacy Resource Center has developed charts and other resources showing which states have laws concerning expert witnesses and their qualifications, affidavits or certificates of merit, joint and several liability, arbitration, and statutes of limitations.