



**MEDICAL PROFESSIONAL
LIABILITY ASSOCIATION**

March 20, 2023

The Hon. Bernie Sanders, Chair
Cmte. on Health, Education, Labor, and Pensions
United States Senate
428 Senate Dirksen Office Building
Washington, DC 20510

The Hon. Bill Cassidy, M.D., Ranking Member
Cmte. on Health, Education, Labor, and Pensions
United States Senate
725 Senate Hart Office Building
Washington, DC 20510

Subject: Addressing America's Healthcare Workforce Shortage Crisis

Dear Chairman Sanders and Ranking Member Cassidy:

On behalf of the Medical Professional Liability (MPL) Association and its members that insure approximately one million healthcare professionals and ten thousand hospitals and facilities throughout the United States, I would like to thank you for giving us this opportunity to comment on your request for information on how Congress can best address our nation's growing healthcare workforce shortage crisis. We can all agree that America's healthcare workforce is a pillar of America's healthcare system.

Over the past three years, the COVID-19 pandemic has severely stress-tested our nation's healthcare workforce. During this time, physicians, nurses, and other medical professionals on the front lines in their communities have often worked around the clock to deliver healthcare services to sick patients. In addition, changes in state laws and judicial decisions in many jurisdictions are reshaping America's tort law landscape, making it easier for plaintiffs to pursue meritless claims seeking exorbitant financial awards. Such claims, two-thirds of which are eventually dropped, withdrawn or dismissed as non-meritorious, take a substantial toll on health professionals and their practices. These factors have contributed to a spike in healthcare provider "burnout" in recent years and could adversely impact our nation's healthcare workforce that is already projected to experience a shortage of between 37,800 and 124,000 physicians by 2034, according to a [2021 report](#) published by the Association of American Medical Colleges (AAMC). The MPL Association would advise Congress to enact the following bills to help stave off further workforce attrition.

ACCESS Act

The MPL Association believes that the adoption of reasonable medical liability reforms to address non-meritorious claims will reduce stress on the healthcare workforce and assist patients with meritorious claims to have their issues resolved more promptly. This hypothesis has proven to be true in Texas where the adoption of medical liability reforms in 2003 resulted in 18,437 more licensed physicians, according to the Texas Medical Board. The data also shows that the number of high-risk specialists in Texas grew by 77.52 percent, and sixty-two rural

Addressing America's Healthcare Workforce Shortage Crisis

counties added at least one emergency medicine physician since the passage of the 2003 reforms. Across the border, New Mexico is experiencing an exodus of healthcare professionals after the state enacted legislation in 2021 to roll back existing MPL reforms. We believe that these case studies illustrate the positive impact that reasonable medical liability reforms could have on our healthcare workforce nationwide.

The *Accessible Care by Curbing Excessive lawSuitS (ACCESS) Act* (H.R. 9584 in the 117th Congress) strives to fix our medical professional liability (MPL) system with proven reforms that have a long history of enhancing patient access to care and lowering healthcare costs in the states. The bill includes traditional reforms, such as placing reasonable limits on subjective, noneconomic damages, a sliding scale for legal contingency fees to ensure that damage or settlement awards go primarily to the injured patients, collateral source rule reform allowing evidence of outside payments to be admissible in court to avoid double payments, a reasonable statute of limitations for injured patients to file medical liability actions, and allowing for the periodic payment of future damages. Furthermore, the bill contains substantial flexibility for states to adjust any of these provisions to best fit their own legal environments.

Additionally, the *ACCESS Act* encompasses supplemental reforms that have been proven to have a positive effect on the medical liability system in the states, including legal protections for compassionate communications to allow healthcare providers to express sympathy following an adverse outcome, the establishment of cooling-off periods before claims can be filed to allow time for natural resolution, the adoption of certificates of merit to verify that claims are meritorious before proceeding to litigation, and the enactment of expert witness standards to ensure that only true experts in the appropriate field of medicine may testify in medical liability cases.

Good Samaritan Health Professionals Act

During the earliest phase of the pandemic Congress was wise to enact, through the *CARES Act*, limited civil liability protections for medical volunteers who responded to the outbreak. These protections, however, were only applicable to the pandemic, potentially exposing future healthcare volunteers to unwarranted liability lawsuits when the next public health emergency or national catastrophe occurs. This reality will further exasperate the medical professional workforce crisis that is engulfing our healthcare system. As you consider proposing ways to address our nation's healthcare workforce crisis, we would urge you to consider enacting the *Good Samaritan Health Professionals Act* (H.R. 5239/S. 2941 from the 117th Congress) to ensure that Americans have access to an adequate supply of medical volunteers when the next large-scale catastrophe strikes.

The *Good Samaritan Health Professionals Act* would proactively provide the same civil liability protections found in the *CARES Act* to medical volunteers during future, federally declared disasters and public health emergencies, while preserving patients' access to the courts if they are injured due to a medical volunteer's egregious behavior. Additionally, the measure

Addressing America's Healthcare Workforce Shortage Crisis

encourages cooperation between federal and state agencies and promotes volunteer registries like the Emergency System for Advance Registration of Volunteer Health Professionals (ESAR-VHP) to expedite the deployment of essential medical volunteers and resources in times of need. If enacted, this legislation will help ensure that disaster victims have access to an adequate supply of licensed and trained medical professionals who will be ready to volunteer their services at a moment's notice without hesitation.

Protecting healthcare volunteers from unwarranted liability lawsuits may not address the overall health professional shortage, but it will help alleviate immediate shortages occurring in areas hit by large-scale emergencies, something which all stakeholders should be able to agree is vitally important.

In closing, the MPL Association firmly believes that the enactment of the aforementioned measures as standalone bills or as part of a broader legislative package would help address our nation's growing healthcare workforce shortage crisis. We appreciate this opportunity to provide input and welcome you to contact our Government Relations Department at 301.947.9000 or via email at governmentrelations@mplassociation.org should you need any further information.

Sincerely,

A handwritten signature in blue ink that reads "B. K. Atchinson". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Brian K. Atchinson
President & CEO