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NEWS

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PHCA to House Judiciary: Enact Reforms to End Lawsuit Abuse in PA *Measures would spur reduce litigation costs for businesses, spur growth*

HARRISBURG --- Pennsylvania's legal climate is a magnet for aggressive, out-of-state law firms who move here to file volumes of lawsuits they hope will result in cash settlements – at the expense of Pennsylvania taxpayers. That is one of the reasons why Pennsylvania must immediately enact lawsuit abuse reform, said Stuart Shapiro, MD, President and CEO of the Pennsylvania Health Care Association (PHCA) and the Center for Assisted Living Management (CALM) told members of the House Judiciary Committee at a hearing this morning.

“You’ve seen the billboards, the newspaper advertisements, the TV commercials. The fact is that Pennsylvania is nationally recognized as having among the most favorable legal climates for trial lawyers in the nation, and tragically that’s inhibiting economic growth, hampering business and driving up the cost of all services and goods, including health care,” Dr. Shapiro said.

Dr. Shapiro showcased a sampling of full page, misleading advertisements that recently were published in newspapers across Pennsylvania, broadly targeting nursing homes. The ads were paid for by a Florida law firm that moves from state to state suing health care providers.

“This isn’t about a law firm getting a day in court. In court, a jury would see that the quality of Pennsylvania’s nursing homes is above the national average and continues to steadily improve. And it isn’t about seeking justice for patients or families,” Dr. Shapiro said.

“This is a law firm that paid \$4 million to families of nursing home residents in Tennessee because the lawyers were keeping 40-45 percent of settlements when Tennessee limits their fees to 33 percent. These lawyers don’t care about the people behind their lawsuits. They only care about making money,” Dr. Shapiro said.

States that have passed real legal reforms have seen litigation costs plummet and access to care improve.

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For example, in Florida, after a law firm began to target nursing homes there – the same firm now targeting Pennsylvania nursing homes – insurers and providers fled the state, causing real access to care concerns. After Florida enacted legal reforms, the insurance market stabilized, and seniors' access to care improved.

Texas also enacted reforms and, according to AON's August 2010 analysis, the loss costs in Texas for nursing homes plummeted 81 percent between 2003 – the year prior to legal reforms taking effect – and 2009. The loss cost per occupied nursing home bed for Texas was \$460 in 2009, compared to Pennsylvania's loss cost per occupied bed of \$940 in 2009.

Pennsylvanians spend \$200,000 a day for nursing homes to defend themselves against litigation.

“That's \$200,000 a day that could be going toward care,” Dr. Shapiro said. “It's time for Pennsylvania to pass real legal reforms that would keep our businesses alive, and send these out-of-state lawyers packing their bags. Not only would we have a fairer legal system, not only would we generate savings, not only would we generate jobs, but doctors and nurses and hospitals and nursing homes could spend their time caring for people, not giving depositions in fishing expeditions by trial lawyers.”

PHCA supports a package of lawsuit abuse reforms including:

- **Repeal of Joint and Several Liability** – Ensure that Pennsylvania adheres to the basic premise that liability equals fault and a defendant should only pay their fair share in a lawsuit.
- **Apology Legislation** – Permit medical professionals to express empathy for and take ownership of an unforeseen outcome without the risk of retaliatory litigation based solely on statements made at the time of an apology.
- **Limits on Punitive Damages** – Conforming the MCARE Act so that all health care providers have the same protections as do doctors today.
- **Certificate of Merit** – Require that the plaintiff file a certificate of merit from a licensed professional at the time a lawsuit is filed.
- **Caps on Attorney Fees** – Amend the state Constitution to allow the General Assembly to establish caps on attorney fees in liability cases.
- **Caps on non-economic damages** – Amend the state Constitution to allow caps on non-economic damages.

Additionally, PHCA supports prohibiting the hostile use of annual nursing home survey results as evidence in liability suits. Ohio has enacted similar legislation, stating a survey should be used solely to determine the nursing facility's compliance with certification requirements, and is not permissible in any court proceeding unless it centers on administrative actions by the regulatory agency.

To view Dr. Shapiro's full testimony, go to www.phca.org.

PHCA and the Centers for Assisted Living Management (CALM) are statewide advocacy organizations for Pennsylvania's most vulnerable older residents and their providers of care. Members comprise for-profit, nonprofit and government providers. Together, they represent more than 330 long-term care and senior service providers that care for more than 33,000 elderly and disabled individuals. For more information call 717-221-1800 or visit www.phca.org or www.calmpa.org.