

Written Testimony of



Delivered by

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President and CEO

**For a Public Hearing on
the Return of 'Venue Shopping'**

**Delivered before the
House Republican Policy Committee**

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Chairman Causer and members of the House Republican Majority Policy Committee,

Thank you for the opportunity to testify today. The title of this hearing could not be more appropriate: 'The Supreme Court Strikes Again'.

This decision by our state's Supreme Court, and this change to allow 'venue shopping' for medical malpractice cases in Pennsylvania, will destroy the good work of so many members of this committee, as it relates to your support for long-term care.

I'm Zach Shamberg, the President & CEO of the Pennsylvania Health Care Association.

We represent long-term care in Pennsylvania, including nursing homes, personal care homes and assisted living communities. We represent the providers, the vulnerable residents they serve, and the workers – our healthcare heroes.

As we've told various members of this committee – especially throughout the past two years – Pennsylvania is one of the oldest states, in terms of our population, in the entire country. Our fastest growing demographic is age 85 and older, and we're very quickly approaching a 'silver tsunami', or the time when the baby boomers will age into the demographic most in need of long-term care.

We must be ready to care for that population in the years to come. But I fear we're already in danger of failing our aging population *today*.

The past two years – and the COVID-19 pandemic – have created an access-to-care crisis in Pennsylvania's long-term care continuum. Due to our workforce shortages, due to nursing home closures, due to skyrocketing operating expenses, providers are being forced to turn away vulnerable residents who need care.

So, why make a bad situation worse?

But that's exactly what our state Supreme Court has done.

January 1, 2023 should be a landmark date for long-term care in Pennsylvania. Just a few weeks ago, members of this committee, as well as the entire House and Senate, approved a state budget that Governor Wolf signed into law – a budget that included a 17.5% Medicaid rate increase for nursing homes, the first across-the-board rate increase for nursing homes in nearly a decade.

That funding will be allocated to providers beginning on January 1, 2023.

That funding is meant for our frontline caregivers. It is meant for our residents. It is meant for our providers to meet the demands of today's operating environment.

But this rule change will ensure these dollars are funneled right into the pockets of trial attorneys – many of those trial attorneys from out-of-state.

Let's go back: prior to the pandemic, the long-term care sector was under attack from predatory, out-of-state law firms that came here from other states with one goal in mind: to file hundreds of lawsuits against long-term care. Big or small, national chain or a single facility, they didn't care—everybody was a target.

These law firms trolled for clients with advertisements in newspapers, on television and on billboards, and firms filed frivolous suits against providers.

Because there are no limits on punitive damage awards for long-term care providers in Pennsylvania, the threat of a jackpot award, even for a frivolous claim, forced providers to settle case after case. The average settlement amounted to \$250,000.

And with the return of venue shopping for medical malpractice cases, our providers will have to choose between settling cases, or being dragged into Philadelphia's judicial system to defend themselves.

That's staff time, travel time, deposition time, and hundreds of thousands of dollars that will all be stripped from resident care, and instead put towards a court system in which the verdicts may be more favorable to plaintiffs, and the awards will almost certainly be higher.

Prior to the pandemic, the legal environment decimated our sector. Facilities sold, companies filed for bankruptcy or outright closed.

It was so bad that there were providers operating in the Commonwealth who spent more on litigation costs **than on food for their residents**.

We can now expect that, just as there will be a silver tsunami, there will be a tidal wave of COVID-19—related lawsuits. And the horror stories that we heard so often, prior to the pandemic, regarding our legal climate will only grow worse.

Once again, PHCA fought for – and you supported – a historic investment in Medicaid reimbursement this year for nursing home providers, workers, and residents. Make no mistake – if 'venue shopping' is allowed, those critical dollars will ultimately be used to defend the barrage of frivolous lawsuits.

In 2019, our sector spent more than \$100 million **dollars** to help pay litigation costs and liability insurance in Pennsylvania. That will destroy our sector in a post-pandemic environment.

This rule change will drive up healthcare costs. It will result in fewer resources to provide high quality care for our residents. And access to care will undoubtedly be put at risk.

It shouldn't be that way. And it doesn't have to be. But we'll need your help.

Thank you.