

PA Certificate of Merit Reform: Right Idea, Wrong Approach

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Healthcare Client Alert

3.23.26

Pennsylvania legislators have long grappled with striking the right balance between maintaining open courts to allow individuals truly injured by medical negligence to receive fair compensation against the equally important goal of maintaining a functioning healthcare system that can deliver high quality services to everyone in the Commonwealth.

In 2003, the Pennsylvania legislature passed the Medical Care Availability and Reduction of Error ("MCARE") Act for the express purpose of reforming medical malpractice litigation in Pennsylvania by, among other things, reducing the number of frivolous lawsuits. A key component of the Act was the requirement that, in order to initiate a case, any medical malpractice lawsuit in Pennsylvania must be accompanied by a Certificate of Merit from a licensed physician attesting to its legal and factual merit.

Although Certificate of Merit requirements have reduced the number of pro se filings, the Rule, as currently constituted, has not done enough to vet frivolous cases. As a result, medical malpractice cases which rest on very thin medical support are permitted to progress through the court system for years, costing healthcare providers money, and diverting resources from the patients they serve. Accordingly, proposals to strengthen the Certificate of Merit requirement have often been considered.

The most recent proposal, House Bill No. 2088 of the 2025 Session, proposed a new requirement that the physician providing the Certificate of Merit be specifically identified and that provider must meet the MCARE qualification standards. In other words, the expert who provides the Certificate of Merit must be legally qualified to testify in Court regarding the subject matter of the lawsuit. This change would bring Pennsylvania in line with its neighboring state of New Jersey. In New Jersey, Affidavits of Merit must identify the expert providing the affidavit as well as his or her area of expertise. Only properly qualified experts can execute Affidavits of Merit in New Jersey.

Unfortunately, this common sense reform was stymied by the inclusion of another provision that likely made the bill unpassable. Specifically, the proposed House Bill sought to allow only providers licensed to practice medicine in Pennsylvania to provide a Certificate of Merit. Opponents of the legislative reform were able to target this provision and make a compelling case that it was both unworkable and unnecessary. Accordingly, for now, the status quo is likely to remain. However, legislators would be wise to revisit Certificate of Merit reform with a specific focus on the issues that really matter – early identification of the plaintiffs' Certificate of Merit expert and confirmation that the expert is, in fact, qualified to opine on the merits of the case.

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