Maryland
Hospital Association

August 12, 2026

Marie Grant
Insurance Commissioner
Maryland Insurance Administration
200 St. Paul Place, Suite 2700
Baltimore, Maryland 21202

Re: July 29 Public Hearing on the Affordability and Availability of Medical Professional Liability Insurance

Dear Commissioner Grant:

On behalf of the Maryland Hospital Association (MHA) and its member hospitals and health systems, we appreciate the opportunity to participate in the Maryland Insurance Administration's (MIA) July 29 hearing on the availability and affordability of medical professional liability coverage. We welcome MIA's attention to this critical issue.

Hospitals are increasingly financing risk and liability costs directly with their own funds, relying on more insurers to assemble adequate excess coverage, and paying significantly more for that coverage. As liability exposure and claim costs increase, hospitals must commit more of their own resources to pay claims, maintain adequate reserves, and cover risks for which commercial insurance is unavailable or unaffordable. At the same time, obtaining excess coverage above those retained risks has become more costly and complex. The liability risks are unavoidable, but the increased cost to cover those risks reduces the resources hospitals have available to support other operational needs and patient care.

This environment underscores the importance of hospitals having access to affordable options to indemnify their own risks. It also emphasizes the need for additional state reporting about the Maryland medical professional liability insurance market and state policies that recognize these growing financial pressures and the unique way hospital costs are funded under Maryland's unique hospital reimbursement system.

Hospitals Cover a Substantial Portion of Their Liability Risk

Hospital liability risk differs from that of many other organizations in both scale and structure. A severe clinical event at a hospital can result in tens of millions of dollars in damages. Hospitals also face significant liability exposure associated with cyber events, premises liability, and other operational risks. Importantly, hospitals generally cannot purchase affordable commercial

coverage for the first several million dollars of a claim. Instead, hospitals must set aside their own funds to pay claims before excess insurance responds. This retention is not insurance paid by a third-party carrier; it is the hospital's own money, held available to meet its liability obligations. Only after that retention is exhausted do the layers of excess coverage begin to respond, which requires hospitals to build a coverage tower above their retention using multiple carriers with different terms, exclusions, and limits.

MHA data illustrates the scale of this shift. The average primary retention, or attachment point for excess coverage, increased from approximately $8 million in 2013 to approximately $28 million in 2023, a 265% increase. In practical terms, hospitals must now have far more of their own funds available before outside coverage begins to pay. It is how hospitals pay the first several million dollars of a claim because commercial coverage is unaffordable. These are funds that could go to support Maryland's health care workforce or patient care but instead must go to risk management financing.

The Excess Market Is More Costly and More Difficult to Assemble

The excess market has become more fragmented at the same time that hospitals are retaining more risk. In 2013, the median hospital needed approximately five excess insurers to build its coverage tower. By 2024, the median hospital needed approximately 13, with some MHA members needing as many as 35 layers to obtain sufficient protection against catastrophic claims. An insurance tower is the stack of separate excess policies a hospital assembles above its own retention, with each carrier covering a defined amount of coverage. Each additional layer may involve another insurer, negotiation, set of terms, exclusions, and renewal decisions. This signals a deteriorating market, as insurers are willing to assume smaller and smaller portions of hospital risk, forcing hospitals to retain more themselves and to assemble coverage from a growing number of carriers to reach the same level of protection.

Costs have risen accordingly. Maryland hospitals reported average insurance premiums of approximately $14.3 million in 2023—up from $6.6 million in 2013—and those premiums are paid in addition to the hospital-funded retention. The claims data presented at the hearing show that these pressures are not principally the result of increased claim frequency, which has remained relatively stable and declined in recent years. Rather, the share of claims with awards exceeding $1 million increased from 3.9% in 2015 to 16.6% in 2022. Increasing severity makes excess coverage more expensive and more difficult to obtain even when the number of claims remains stable, and these pressures are especially acute for smaller hospitals and health systems with less capacity to absorb a large retention or an unexpected premium increase.

Hospitals Prop Up a Market that Doesn't Support Them

While MIA's annual report on the availability and affordability of health care professional liability insurance found the Maryland market is generally stable, that stability rests in part on risk that hospitals have absorbed. In cases involving independent contractors working at hospitals, Maryland hospitals effectively serve as the umbrella policy for individual provider

medical professional liability policies. The standard Maryland medical professional liability policy provides limits of $1 million per claim and $3 million in annual aggregate. Those limits may be adequate for routine claims but are exhausted almost immediately by catastrophic ones. Hospitals are routinely named in, and ultimately bear financial responsibility for, claims arising from care delivered by physicians who are not hospital employees because courts may hold hospitals liable for contracted and affiliated providers practicing within the hospital. For example, when a catastrophic claim involves a hospital contracted provider, the provider's carrier pays its $1 million limit and its exposure ends. The balance, which may reach eight figures, falls to the hospital. This removes severity from the individual practitioner market, allowing those carriers to maintain stable prices, while hospitals remain effectively excluded from the commercial market they help stabilize.

HSCRC Recognition of Risk-Financing Costs Is Necessary

Maryland hospitals operate under a system where their total annual revenue is set by HSCRC. Though hospitals report detailed financial information to HSCRC, including malpractice insurance costs, this information is used to ensure hospital rates set by HSCRC are reasonably related to costs, rather than for the purpose of recalculating their global budget revenue (GBR). This reporting may not fully capture the liability costs a particular hospital faces, including commercial premiums, rising self-insured retentions, and other self-insurance obligations.

Each hospital's GBR is updated through HSCRC's annual update factor, which is intended, in part, to recognize changes in the costs hospitals incur in delivering care. A key component of the update factor is the inflation allowance based on S&P Global's forecasts of hospital market basket growth. While medical professional liability costs are one of the expense categories reflected in the market basket, they represent a relatively small component of the overall inflation update and are based on national trends. As a result, the inflation allowance included in HSCRC's update factor does not fully account for significant increases in medical professional liability costs experienced by Maryland hospitals, particularly if those costs are growing at a faster rate than elsewhere in the nation. When these costs, which can total tens of millions of dollars annually for an individual hospital, are not adequately accounted for in GBR, the hospital must absorb them using funds that would otherwise support its operations. Every dollar used to pay insurance premiums, fund retained claims, or maintain reserves is a dollar unavailable for patient care, staffing, clinical training, and other services Maryland communities rely on.

MHA respectfully requests that MIA work with HSCRC to determine whether the current framework adequately recognizes the full cost of hospital liability risk and provides a meaningful way to address material increases in those costs. That review could include whether significant, documented increases in the cost to self-insure, in addition to commercial insurance costs, should be considered when hospital global budget revenue is updated.

MHA Recommendations

MHA respectfully requests that MIA consider the following recommendations:

- *Support affordable options to finance risk:* Hospitals need affordable ways to finance substantial risks they must retain, whether through captives, trusts, pooling arrangements, and other compliant risk-financing mechanisms.

- *Improve reporting on the hospital liability market:* We recommend MIA expand its market reporting to include information available from insurers and reinsurers on coverage availability, attachment points, capacity, pricing, declinations, restrictions, and renewal terms. MHA will work with its members to identify information to provide a fuller picture of hospitals' coverage challenges.

- *Coordinate with HSCRC on liability costs:* We request that MIA and HSCRC examine whether hospital global budgets adequately recognize the cost for hospitals to cover their own risks and the increasing cost to acquire adequate excess commercial coverage. This would help hospitals meet their liability obligations without diverting resources from patient care and workforce.

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MHA appreciates MIA's consideration of these comments and its continued engagement on this important issue.

Sincerely,

Andrew Nicklas,
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General Counsel