Illinois Health and Hospital Association

March 18, 2021

Since January, IHA has been working aggressively on behalf of the hospital community to push for a gubernatorial veto of onerous legislation on Pre-Judgment Interest in civil cases, including medical malpractice cases. That included our testimony yesterday morning in a hearing of the Illinois House Executive Committee, where we strongly opposed the legislation.

We greatly appreciate the outstanding support and response of members in reaching out to legislators and to the Governor urging a veto. That positioned us well for negotiations on this issue – negotiations that the Governor asked IHA to engage in with the bill's sponsors and proponents.

Since yesterday's committee hearing, IHA has been engaged in intense negotiations with the sponsors and proponents of the bill. As a result of our collective advocacy, we were able to secure important concessions, embodied in *House Amendment 2 to Senate Bill 72*. This compromise legislation just passed the House tonight. Because of those concessions, we have withdrawn our opposition to the legislation. Key concessions include the following issues:

Effective Date of Act
Original proposal: The act and Pre-Judgment interest would start immediately after enactment.
Concession: *The Act and Pre-Judgment Interest start July 1st.*

Time When Pre-Judgment Interest Begins to Accrue
Original proposal: Pre-Judgment Interest begins to accrue on the date the defendant has notice of the injury from the incident itself or a written notice.
Concession: *Pre-Judgment Interest begins to accrue on the date the action is filed. This significantly lessens the impact of Pre-Judgment interest by shortening the potential accrual period.*

Pre-Judgment Interest Rate
Original proposal: 9% per annum.
Concession: *6% per annum, a reduction of 3%, which is aligned with the national median of 6% for Pre-Judgment Interest.*

In addition, IHA obtained several concessions on issues that were not addressed in the original legislation:

Equitable Limitations
Concession: *Added that Pre-Judgment Interest does not apply during the period of voluntary dismissals (i.e., from the time from the dismissal order to the date of the refiling), thereby shortening the accrual period. Also, because Pre-Judgment Interest now begins to accrue as of the filing date, the issues regarding minors (i.e., that minors have a longer statute of limitations and therefore under the prior version of the bill the Pre-Judgment Interest period could have been extremely long) have been addressed.*

Limitations
Concession: *Added the concept of settlement offers.*

If a defendant makes a settlement offer within 12 months of the filing date and it is not accepted or is rejected by the plaintiff, then:

i. *If the judgment is greater than the highest written settlement offer, then Pre-Judgment Interest only applies to the difference between the offer and the actual verdict.*
ii. *If the judgment is less than the highest written settlement offer, then no Pre-Judgment Interest applies.*

In all cases, the total Pre-Judgment Interest accrual period is capped at 5 years.

By both limiting the amount that Pre-Judgment Interest applies to and capping the accrual period, we have reduced the impact of Pre-Judgment Interest.

This was a very difficult issue for IHA and the hospital community to work through. We are committed to using this as a catalyst for a broader and more comprehensive discussion on the issue of medical liability reform. Thank you for your outstanding advocacy efforts to get to a much better outcome than what we were facing in January.
