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June 7, 2021

Honorable Therese M. Terlaje
Chairperson, Committee on Health
36th Guam Legislature, 173 Aspinall Avenue, Suite 207, Hagatna, Guam 96910
Email: speaker@guamlegislature.org

Dear Speaker Terlaje and members of the 36th Guam Legislature,

We are writing in *opposition* to Bill No 112-36 (COR), which would replace Guam's Medical Malpractice Mandatory Arbitration Act with a pre-trial screening proposal. The consequences of passing this bill will result in setbacks to our present healthcare system. As providers who take care of patients in our community, we look for ways to improve patient care on Guam. This bill does not do that. In fact, it will unintentionally adversely affect patient care by creating an environment that neither serves patients or providers. The question to ask is what is in the best interest of our community and what are better ways to help patients recover from injury?

In the US, the nation's medical liability system is broken. The current system has forced doctors out of practicing in certain specialties; it has caused trauma centers to close; and it has forced pregnant women to drive hours to find an obstetrician. Numerous bills in Congress seek to address these problems. Why are we trying to copy a medical liability system that does not work to help patients? A 2021 article by the American Medical Association, states that, "Sixty-five percent of claims that closed between 2016 and 2018 were dropped, dismissed, or withdrawn and out of six percent of claims that were decided by a trial verdict, the vast majority of them (89 percent) were won by the defendant in the case." How does this help the patient?

We need a system that promotes open communication between patients and providers. Many patients and their families often want to know what happened and why it happened. They want providers to help them understand. Instead, when entering the legal system, open communication stops and information stops being freely shared. As providers, we can improve by conducting case and peer reviews, improving our reporting of providers not practicing the standard of care, updating systems of care to help prevent medical errors and especially improving support and communication with our patients when adverse events occur. Legislators need to allocate more resources to allow local providers to have independent peer review to discuss cases of potential lack of standard of care while maintaining HIPAA compliance.

Guam is nationally recognized as a medically underserved area with low medical resources and a low number of providers and specialists per patient population. Recruiting qualified providers has been very difficult due to Guam's remote location and our lower salaries. The arbitration law has made practicing here more attractive and encouraged providers to move here. The arbitration law has allowed local providers to choose to come home rather than stay in the mainland where salaries are higher. In the past few years, we have seen an increase in newly trained local providers returning home. The loss of this protection will likely affect their willingness to return home and make recruiting more difficult.

Repeal of the mandatory arbitration law will likely increase medical malpractice insurance costs. Providers who cannot afford this insurance will choose to go stateside where higher salaries can offset the cost of malpractice insurance. Providers near retirement may consider closing or limiting their practices. Private practice providers who are already well established on island and choose to stay may decide not to take new patients and could limit their care of high risk or noncompliant patients. The arbitration law has allowed Guam to attract specialists and other off island providers to practice locally. If we cannot offer specialists some type of arbitration, they will choose not to come here as they see the higher risk and more complicated patients which will increase their liability.

Our clinic is the largest women's clinic on island. We see about 50% of the uninsured and limited insurance pregnant patients. The availability of maternity services will be affected if we must limit high risk and new patients. If malpractice costs increase it will be difficult to insure the number of providers that we employ. The new bill will also extend beyond the providers putting all our staff employed at MPG and Sagua Managu liable in a potential lawsuit.

According to the proposed bill, a complaint can be filed and heard by a Magistrate Judge who will decide whether the case has merit. If the judge decides that the standard of care has been followed, the plaintiff can still pursue trial. There is no deterrent to going to trial, even if the judge determined that the standard of care was appropriate. This puts a huge toll on our local providers. The cost, time and emotional strain of trial will take providers away from practicing medicine, may force them to seek off island employment and may negatively affect their chances of future employment. Attorney costs for plaintiffs will still be a limiting factor for many families who wish to seek trial, and many cases will end in settlement by the malpractice insurance company leading to more providers having guilty charges on their record without an opportunity for them to prove their innocence.

While, in theory, repealing the mandatory arbitration law seems like it will create affordable access to a fair trial for patients or families who feel they have been medically mistreated, the big picture and negative consequences for Guam's fragile and low resource healthcare system needs to be understood. This bill will lead to a decrease in the number of providers willing to stay on island or wanting to come to the island. If arbitration is no longer in existence, medical malpractice insurance will go up. Providers who cannot afford this insurance due to the lower salaries in Guam, will choose to go stateside where higher salaries can offset the cost of malpractice insurance. This will especially be true for our specialists and our recently trained local doctors. This change will lead to an increased burden on the public health system and Guam Memorial Hospital. In the end, the very people who the bill is intended to help will be hurt by less access to quality healthcare.

Respectfully,
The providers of MPG/Sagua Managu

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