Speaker Therese M. Terlaje <senatorterlajeguam@gmail.com>

Testimony in Support of Bill 112

1 message

Ron <govguam@gmail.com> Wed, Jul 7, 2021 at 2:35 PM
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Ron McNinch PhD, SPHR, CFE July 7, 2021

Memo to Speaker Terlaje and Senators

RE: Support for Bill 112 and Medical Malpractice Reform

Dear Speaker Terlaje,

My name is Ron McNinch and I am Chair of Public Administration and Legal Studies at the University of Guam. As a part of my duties, I oversee and teach in the Health Care Administration Certificate (and minor) program. I also worked with healthcare reform and reorganization in the Camacho Administration c. 2003-2006.

Regarding the current medical malpractice law, I have carefully reviewed the current law, 10 GCA 10 (1991), and the original law from 1977. I have also reviewed the proposal and suggested changes in the current bill, 36-112.

To assist with this discussion, I used the following questions to guide my inquiry:

1) Does the current medical malpractice policy function as intended?
2) If not, why?
3) Finally, are the suggested modifications to the process likely to result in an improved policy?

Regarding the first question, it is important to look at the original law and legislative intentions. The 1977 arbitration process had the intention to reduce litigation and provide a deliberate system to resolve medical malpractice disputes. As mentioned in Bill 112, the 1984 Awa Case struck down this law. The 1977 arbitration process was very well detailed in its design and function. In effect, it was a compact and deliberate remedy process. In 1991, the law was updated to reflect the concerns raised in the Awa Case. While certain stylings in these two laws are similar, it is obvious this law does not function as intended. I have characterized this 1991 law as, “a doorbell to nowhere.” It simply does not function.

The evidence this law doesn’t function is demonstrated by national statistics. According to data products from the National Practitioner Data Base, the federal data set for the medical doctors, the numbers are

clear. Per 100,000 persons, the high number for medical malpractice lawsuits is Louisiana with about 45/100,000 and the low state is Hawaii with about 5/100,000. If Guam used the lowest number possible from Hawaii, the results are reflective of this concern. Let's assume a straight line 150,000 person population for Guam since 1991. This would likely mean that Guam would have 7 or 8 medical malpractice lawsuits per year using the Hawaii number. This would be a cumulative total of 210-240 medical malpractice lawsuits during the thirty year timeframe of this current Guam law. Since Guam uses an alternative screening and arbitration process, how many filings were made between 1991 and the present? It should be fairly obvious to the voting public that this process is very broken. It is important to note that this example is arguable. But, it should speak for itself. If Guam were similar to Louisiana, we would have 66 malpractice cases per year. If we are more similar to Hawaii, we would have 7 or eight. The bottom line is that we appear to process -0- cases per year under this law.

For the second question, why doesn't the 1991 process work? All else equal, as a policy specialist I believe that unlike the 1977 law, the 1991 law does not contain the kind of operational instructions or details needed to navigate a screening. In effect, the 1991 law gives vague instructions to follow the American Arbitration Association process. At this point, the ability to seek relief for medical malpractice became a "doorbell to nowhere."

It is important to note that a patient at military care providers on Guam have full rights to litigate medical malpractice suits through the federal court. Our local citizens do not have these very basic rights with local courts. A few years ago, one of my paralegal students represented himself in the Guam Federal Court on a malpractice case. He appealed the decision to the 9thCircuit Court of Appeals, again representing himself. Finally, he was able to successfully appeal and have his case reviewed by the US Supreme Court. He was represented by a top law firm at the Supreme Court and he won his case. Our citizens on Guam do not have the strong protections that I mention here. Instead, there is a non-process with no functional rights for appeal.

Regarding the third question, the updates to the medical malpractice law are reasonable and constructive. From a policy view, I would suggest a policy charrette method be used to clarify and address some of the outrageous and inaccurate things said about Bill 112. Even moreso, some of the things said by certain medical doctors have been bombastic and not helpful. A charrette might also clarify and improve the bill from a policy perspective.

Finally, I want to point out that I did not intend to participate in this medical malpractice discussion at the legislature. I was asked for my opinion off the cuff on a local radio show on July 6, 2021. I said that the doctors had a strong business profit interest in maintaining this dysfunctional arbitration process. I also said that our citizens have a fundamental civil right to a process from the government on these types of questions. We should not block citizens from seeking relief from the courts if needed. A doctor called in and said, "[McNinch] is mouthing off stupidities, so blatantly…" He also said things like, 'McNinch is a full blown idiot." He also said that people should confront me in the streets on my opinions. While these kinds of comments do not affect me personally, it does indicate that the doctors need to regulate themselves. In this case, the doctor making these kinds of comments should have been regulated by his peers in his public professional conduct. This is, in my opinion, shorthand for problems with this profession and the greater process of arbitration used currently.

Sincerely, /s/ Ron McNinch