

## Improving Kentucky's Legal Liability System

### General Message

Kentucky's legal liability system is broken. The current structure places unlimited risk on providers, which puts a tremendous burden on individual physicians and on Kentucky's health care system as a whole; exacerbates our well-known provider shortage, particularly in rural areas; weakens quality control mechanisms designed to promote patient safety; and drives up health care costs, forcing the state and Kentuckians in general to pay more than they would for the same care in surrounding states. Kentucky desperately needs legal reform initiatives that promote more efficient health care and legal systems in addition to greater patient safety.

**The ISSUE** – Because Kentucky lacks even the most basic legal liability protections for businesses and health care providers, it has one of the nation's most litigation-friendly environments.

### Supporting Points:

- In 2015, the Institute for Legal Reform ranked Kentucky 39<sup>th</sup> in the nation for its lawsuit climate. It also found that 75 percent of company general counsels and senior attorneys said a state's legal environment likely impacts business decisions, including where a company locates or expands.

**The PROBLEM** – State legislators and legal reform advocates have spent decades trying to advance various judicial reforms to improve the state's legal climate and have been confronted with both constitutional and legislative obstacles. This stagnation has occurred as states surrounding Kentucky have enacted meaningful legal reform policies, which has put the Commonwealth at a disadvantage in terms of economic competitiveness, job growth, patient safety and access to affordable health care.

### Supporting Points:

- Each of the states surrounding Kentucky has adopted legal reform legislation.
- A 2011 Deloitte study on the state's health care workforce capacity commissioned by the Commonwealth of Kentucky specifically noted the state's legal liability climate as a significant problem.
- The Kentucky Supreme Court has held multiple medical liability reform measures invalid saying they undermined the jural rights doctrine (judicial limit on the power of the legislature).
- Kentucky is one of only two states that do not give medical professionals protected peer review discussions. Peer-to-peer review discussions are critical in allowing providers to identify and correct actions and procedures that enhance patient safety.
- In 2011, a study published by the *New England Journal of Medicine* found that lawsuits do not incentivize improved care.

**The SOLUTION** – The Kentucky General Assembly should adopt full tort reform to address our broken litigation system and reduce the negative economic impact on the both health care providers and the business community. KMA—as a member of the Partnership for Commonsense Justice, one of the state's leading voices supporting a balanced, efficient and fair legal system—advocates for a two-pronged approach: immediate passage of legislation in 2017 that addresses critical issues plaguing the health care community and passage of a constitutional amendment in 2018 that places caps on punitive and noneconomic damages.

### Supporting Points:

- The General Assembly can address in statute many of the legal reforms championed by Kentucky's business and health care communities, including independent medical review panels and peer review protections. Enacting these reforms will immediately and significantly improve Kentucky's legal liability climate, making the state a much more attractive destination for businesses and health care providers.
- Placing reasonable caps on punitive and noneconomic damages will finally put Kentucky in line with most of the other states in our region and create a more fair and consistent legal liability environment for consumers, businesses and health care providers. Enacting these proven and necessary reforms will help eliminate the "sky is the limit" mentality that trial lawyers have when deciding whether to sue providers.