

HOUSE BILL 20-1330

I am Gary Reiff, Chief Legal officer of University of Colorado Health (“UCHealth”), and am pleased to submit this written testimony in support of House Bill 20-1330, on behalf of UCHealth.

When I joined UCHealth two years ago, I began hearing questions and a bit of confusion in the legal community and patient rights community about when and how governmental immunity applies to UCHealth healthcare providers. As I researched the matter and discussed with our CEO, Elizabeth Concordia, and our Board, it became clear that we all had the same public policy view: UCHealth believes that providers at community hospitals in the UCHealth system should be treated the same as community providers outside of the UCHealth system in terms of liability to patients.

In this regard, when Poudre Valley Health System (“Poudre Valley”) and University of Colorado Hospital Authority (“UCHA”) came together to form UCHealth in 2012, both Poudre Valley and UCHA had employees. It did not make sense to keep two employers with two separate benefit and health plans. Nor did it make sense to create a new employer and form completely new benefit and health plans. So, they chose UCHA as the employer, for many reasons, including historical reasons when employees transitioned from the University of Colorado (“CU”) to UCHA when UCHA was formed in the late 1980s. UCHA is the paymaster for all UCHealth employees and leases employees to each of the separate hospitals in the UCHealth family of 12 hospitals and to the UCHealth Medical Group of doctors and advanced practice professionals. Using a single paymaster and leasing employees to subsidiary and affiliated entities is very common in corporations.

Because UCHA is a political subdivision of the state of Colorado, its employees are public employees and subject to the notice requirements and liability protections of the CGIA. However, UCHealth did not want its community hospitals to suddenly have governmental immunity, and instead wanted them to remain as close to community hospitals as they could. So, beginning upon formation of UCHealth in 2012, the UCHA Board of Directors exercised its statutory authority and actually waived the limits of governmental immunity from about \$150,000 (at that time) to \$1,000,000. The UCHA Board chose the \$1,000,000 limit because that is the cap on recovery under Colorado’s Health Care Availability Act for community health care providers.

Despite waiving the immunity limits up to \$1,000,000, questions and issues continued to arise about governmental immunity, including whether the notice provided by patients or their lawyers was adequate. That put UCHealth in the position of having to decide whether to raise the governmental immunity defense or whether to defend the case on the merits. And, that meant that community providers were not being treated the same. UCHealth does not want to pick and choose patients who must follow the statutory rules and those who do not. And, if the doctors directly are sued, UCHA may not even have authority to waive the notice requirements.

House Bill 20-1330 makes clear that the Colorado Governmental Immunity Act does not apply to UCHealth’s community healthcare providers. Rather, it confirms to the original intent of the University Hospital statute and the UCHealth Board that governmental immunity is only for health care practitioners and professionals providing services as an employee or volunteer of the University Hospital in a facility that is located on the Anschutz Medical Campus or a facility that is operating under the University Hospital state hospital license. Like other community

health care professionals, all other UCHHealth health care professionals and practitioners providing services at facilities located outside the Anschutz Medical Campus or not under the University of Colorado Hospital license are covered by the Health Care Availability Act.

We sometimes are asked how does this affect CU School of Medicine healthcare professionals at University Hospital. This change in law does not affect any of the University of Colorado employed providers, including those working for the CU School of Medicine—it leaves intact governmental immunity for those exceptional researchers and practitioners. Those practitioners have been employed by CU (not UCHA or UCHHealth) since the School of Medicine first was formed and are separate and fully independent from UCHHealth.

On behalf of UCHHealth, I would like to thank Senators Lee and Gardner for their thoughtful and bipartisan support of the legislation and the Colorado Trial Lawyers Association for their collegial effort to make the law clear.

Colorado Trial Lawyers Association Position in Support of House Bill 20-1330

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- The Colorado Trial Lawyers Association (CTLA) is dedicated to improving public safety by reducing preventable medical errors by healthcare providers in Colorado. CTLA believes this purpose is served by preserving the right to trial by jury guaranteed under the 7th Amendment of the U.S. Constitution.
- CTLA appreciates the leadership efforts of UHealth to work with CTLA on the important issues addressed in HB1313. This bill is a good example of what can happen when two groups who are often on opposite sides of policy issues find common ground and work together for the common good.
- CTLA agrees with UHealth that providers at community hospitals in the UHealth system should be treated the same as community providers outside of the UHealth system in terms of liability to patients harmed by medical errors.
- Many injured patients are unable to pursue compensation for their injuries when they unknowing fail to appreciate which medical providers are subject to the 6-month notice requirement for claims under the Colorado Governmental Immunity Act, or CGIA.
- For patients with serious and sometimes life-threatening injuries, the ability to understand the nature and extent of their injuries, obtain access to their voluminous medical records, and confer with an attorney who specializes in medical negligence cases and the CGIA, AND provide detailed notice of their claim to the state of Colorado within 182 days is a significant burden.
- CTLA agrees with UHealth that its community hospitals should not be entitled to broad governmental immunity when competing in the healthcare marketplace with other community hospitals. CTLA believes this legislation is necessary to codify the action of the UHealth Board of Directors to eliminate confusion about applicable notice requirements and limits on liability for those community hospitals.
- Colorado patients who receive medical and hospital care at community hospitals in this state should not have different sets of rules depending on where they receive their care. They should have similar time to investigate their potential claims with the advice of their lawyers and should not be rushed to file a statutory notice under CGIA just to preserve a potential claim, resulting in undue burden on the State of Colorado.
- While CTLA believes that all healthcare providers in the State of Colorado should be treated the same, regardless of whether they are public or private employees, CTLA supports this legislation as an important step in promoting broader patient safety and accountability when preventable medical errors occur in Colorado.
- CTLA understands that this legislation will clarify and codify that doctors and hospitals who are not providing services as an employee or volunteer of the University Hospital in a facility that is located on the Anschutz Medical Campus or a facility that is operating under the University Hospital state hospital license will not be subject to the Colorado Governmental Immunities Act, including CGIA's notice requirements and caps on damages.
- The bill makes clear that all other UHealth health care professionals and practitioners providing services at facilities located outside the Anschutz Medical Campus or not under the University of Colorado Hospital license are covered by the Health Care Availability Act.
- CTLA thanks our colleagues at UHealth for the collaborative way they approached this bill and respectfully requests your support of HB1330.