



Constitutionality of Reform Upheld

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Health care liability and “the continuum of reform” has often been my topic since first writing about legislative developments in this space beginning six years ago.

Looking back, I introduced our readers to pre-filing certification and notice reforms with passage of PC 425 enacted in 2008 before caps on damages became a reality with passage of the Civil Justice Act of 2011.

As the prime sponsor of these reforms, the ability to withstand legal challenges is always of paramount concern. The recent Tennessee Court of Appeals decision in *Webb v. Roberson* upholding PC 425 put us to the test.

The complaint alleged failure to timely diagnose and treat cancer. Plaintiffs challenged the constitutionality of Tenn. Code Ann. 29-26-121 (PC 425), requiring certain notice 60 days prior to filing suit, on several grounds. At issue was the constitutionality of the entire Tennessee Medical Malpractice Act in general and, specifically, whether the statute unconstitutionally infringes on the rule-making authority of the courts; whether it is pre-empted by the Health Insurance Portability and Accountability Act (HIPPA); and whether it violates the equal protection and due process provisions of state and federal law.

On April 17, 2013, writing for the Western Section, Judge Alan Highers upheld the statute on all fronts. In language reminiscent of the General Assembly’s rationale underpinning our legislative efforts along the continuum of reform, Judge Highers wrote:

“...(P)re-suit notice requirements bear a reasonable relation to the proper legislative objectives of preventing protracted litigation through early investigation, and possibly, facilitating early resolution through settlement...(W)e find that these objectives are of particular importance in the medical malpractice arena as, again, increased malpractice costs threaten both health care affordability and accessibility. Moreover, based upon our...finding that neither the statute-nor portions of it-are pre-empted by HIPPA, we reject Plaintiffs’ argument that the statute is ineffective to facilitate early case resolution. Accordingly, we conclude that section 29-26-121 passes substantive due process muster as it is

reasonably related to proper legislative purposes and it is neither arbitrary nor discriminatory.”

I am pleased that PC425 has been upheld. I am also pleased that it has significantly reduced the number of lawsuits filed and the costs of liability insurance to health care providers in Tennessee.

Senator Norris practices in commercial litigation and business matters with Adams and Reese LLP. He is Senate Majority Leader and represents West Tennessee in the State Senate. For more information on the firm, visit: www.adamsandree.com.



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