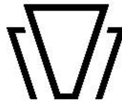

LEGISLATIVE BUDGET AND FINANCE COMMITTEE

EST. 1959

A Study Pursuant to Senate Resolution 27: Feasibility of a No-Fault Catastrophic Loss Fund for Birth-Related Neurological Injuries

Report Comments by Stevi Sprenkle, Deputy Executive Director
May 6, 2026

Good morning Madam Chair and members of the committee. I am pleased to present the results of the study pursuant to Senate Resolution 27 (SR 27) on the birth-related neurological injury funds (birth funds). SR 27 tasked LBFC with studying the feasibility of establishing a no-fault catastrophic loss fund to provide payment for claims brought as a result of birth-related neurological injuries in Pennsylvania.

Childbirth is an occasion that is emotional, difficult, and expected to end in a healthy mom and baby. Although rare, in some instances, complications during labor and delivery occur due to the provider's poor judgment, negligence, or accidents caused by unpredictable events. In those rare instances, it is possible that a newborn sustains birth-related injuries that can result in a spectrum of outcomes, ranging from minor effects to death. These rare instances are devastating for all involved and can result in civil legal action against providers and hospitals, and a lifetime of expensive care and needs for the injured infants and their families. Given the nature of the injuries and the plaintiff's age, providers and hospitals may face multimillion-dollar settlements or

judgments. Three states, Virginia, Florida, and New York, have implemented birth funds to reduce the burden of high payouts from the medical malpractice liability marketplace to a special state fund, and to provide lifelong care for infants and children affected by birth-related neurological injuries.

We made three recommendations in our report:

(1) The General Assembly should consider requiring LBFC to perform a performance audit to assess the commonwealth's efforts to address maternity care deserts, maternal and infant deaths, and the obstetrics and gynecology (OB-GYN) physician shortage.
(2) Should the General Assembly deem a birth-related neurological injury fund as a necessary public policy addition, the General Assembly should consider and institute many different factors, which we discuss in detail in the report.
(3) The General Assembly should consider legislation to require the annual tracking of specific birth-related injuries through the Pennsylvania Patient Safety Reporting System.

Every day in the United States, just under 10,000 babies are born, with about 3.5 percent of those babies born in Pennsylvania. According to Johns Hopkins, the US fertility rate (which is the number of children born to women of childbearing age) reached a record

low in 2024. From 2014 to 2024, the birth rate in Pennsylvania declined by 10.7 percent while the population increased by 2.3 percent. At the same time, access to health care also decreased in the commonwealth. From 2004 to 2024, 78 hospitals closed completely, 64 hospitals reduced OB or OB-GYN beds, and 41 hospitals closed OB or OB-GYN beds and have no alternate unit; therefore, they remain open but no longer provide labor and delivery (L&D) services.

Bringing life into the world comes with immense risks. OB-GYNs are more likely than other physicians to be sued during their careers. According to the American Medical Association, 62.4 percent of OB-GYNs have been sued to date (as of 2022) compared to 31.2 percent of all physicians. As a result, OB-GYNs generally face the highest medical malpractice premiums. In Pennsylvania, the average medical malpractice premium from 2015 to 2025 was over $97k for OB-GYNs, over $69k for general surgeons, and over $18k for internists.

We also compared OB-GYN medical malpractice premiums for the states with birth funds (Florida, New York, and Virginia) to those in Pennsylvania. From 2015 to 2025, all four states saw reductions in rates, with Virginia recording the largest decrease (32 percent) and Florida the smallest (13 percent). Florida had the highest average rates (over $154k), followed by New York (over $146k) and Pennsylvania (around $97k).

Virginia had the lowest rates (over $77k). While medical malpractice premiums offer an important benchmark, it is worth noting a shift toward OB-GYNs employed by health systems rather than practicing independently. This shifts the burden to health systems, which may affect their financial decision-making regarding liability coverage and services offered, rather than the more traditional view that liability costs affect physicians' decisions on where to practice medicine.

According to many of the health systems we spoke with, obtaining excess coverage beyond the Medical Care Availability and Reduction of Error (MCARE) Fund threshold is becoming more difficult for hospitals. An insurance broker for one of Pennsylvania's health systems stated that six large commercial insurance carriers left the state from 2019 to 2024. The broker also indicated that limits had decreased, with carriers reducing hospital risk capacity from $10 to $25 million to $5 to $10 million. This worries health systems, as there has been an increase in what are referred to as nuclear verdicts, or those over $10 million. From 2014 to 2024, the Administrative Office of Pennsylvania Courts (AOPC) reported 21 verdicts exceeding $10 million, with the most (8) occurring in Philadelphia County. AOPC's data does not include case details or specifics; however, from news articles, we noted that there were two recent birth-related verdicts in Philadelphia, one totaling $207 million ($183 million initially, with an increase to $207

million due to "delayed damages"), and another totaling over $108 million. Both cases are on appeal.

Virginia was the first state to establish a birth fund, creating the Virginia Birth Injury Fund (VBIF) in 1987. Florida followed soon after in 1988, creating the Florida Birth-Related Neurological Injury Compensation Association (FNICA). VBIF and FNICA are no-fault compensation programs and are intended to provide guaranteed, lifetime medical benefits for children with birth-related neurological injuries and their families in exchange for waiving their right to sue a provider, hospital, and/or health system for malpractice. When the birth funds were created, both states cited rising medical malpractice premiums and the unavailability of liability insurance as reasons for establishing the funds.

Despite Florida and Virginia's birth funds having existed for over three decades, their success in achieving their intended outcomes is unclear. A review of VBIF approximately 15 years after its implementation indicated that the program benefited participating physicians, hospitals, and medical malpractice insurers by reducing medical malpractice insurance rates, fewer birth injury-related lawsuits, and lower subsequent claims costs. However, it is important to note that Virginia also implemented liability caps on medical malpractice. The VBIF review further noted a lack of clarity about whether the program

was achieving the intended societal benefits, such as the availability of obstetrical care in rural areas of the state.

The third state to establish a birth fund was New York in 2011, when it created the New York State Medical Indemnity Fund (NYMIF) to cover health care costs associated with birth-related neurological injuries and to reduce medical malpractice insurance premiums. However, unlike Florida and Virginia, New York requires eligibility to be determined through a malpractice lawsuit, in which a court determination or a court-approved settlement confirms that medical negligence caused a child’s injury. In other words, NYMIF is not a no-fault system.

While NYMIF differs from Florida's and Virginia’s birth funds, all three have actuarial risks, Medicaid payment issues, and generally lack sufficient oversight and evaluation mechanisms to measure program success. Like Pennsylvania’s MCARE, all three birth funds have growing projected unfunded liabilities.

For this report, we defined feasibility as the legal, financial, administrative, and practical ability of Pennsylvania to establish and sustain a birth fund. Should the General Assembly deem a birth fund necessary to address medical malpractice rates for OB-

GYNs in the commonwealth, our report offers legislative considerations, including:

- Administration of the program through the Pennsylvania Department of Insurance (PID).
- The creation of a governing board.
- Existing legal frameworks, including the potential structure of a new law and potential legal challenges.
- Eligibility criteria, including defining birth-related neurological injuries, birth weight, types of birthing facilities, health care providers covered, types of disability applicable, and needs of the child.
- Internal controls, transparency, oversight, accountability, and evaluation.

There are no government sources of data to estimate exactly how many birth-related neurological injuries exist in Pennsylvania. We reviewed data on the three existing birth funds. From 2014 to 2024, FNICA ranged from 0.53 to 1.40 compensable claims per 10,000 births, whereas VBIF had fewer, ranging from 0.21 to 1.36 admitted participants per 10,000 births. Because NYMIF enrollees go through the traditional malpractice litigation process and the statutory criteria are broader, NYMIF had more admitted participants. From 2014 to 2024, in New York admitted participants ranged from 3.13 to 4.78 per 10,000 births.

In 2024, the Patient Safety Authority (PSA) conducted a study following a 92 percent increase in serious L&D events in Pennsylvania between 2018 and 2022. However, due to the study's limitations, PSA concluded that further research on neonatal complications would be beneficial, along with more comprehensive data reporting. We also reviewed data from the Pennsylvania Insurance Department's (PID) MCARE newborn claims data. Between 2014 and 2024, there was an average of 223.5 newborn claims per year, and the average number of newborn injury claims paid each year was 62.8. By comparison, there were 127,079 births in Pennsylvania in 2024, meaning 6.6 MCARE claims over $500,000 were paid per 10,000 births. However, PID only codes these claims as "newborn" and cannot break down the data by injury type.

I would like to thank the various stakeholders, including plaintiff and defense attorneys, health systems, and birth fund experts in the other states we reviewed, for providing information and data for this report. I would also like to thank LBFC Counsel Stephen Kramer and analysts Amy Hockenberry, Shanika Mitchell-Saint Jean, and James Wynne for their assistance with this study. At this time, I would be happy to answer any questions you may have.