



MASSACHUSETTS
MEDICAL SOCIETY

Every physician matters, each patient counts.

**TESTIMONY IN SUPPORT OF
H.3615, AN ACT RELATIVE TO THE DEFINITION OF DISCLOSURE, APOLOGY
AND EARLY OFFER PROGRAMS
BEFORE THE JOINT COMMITTEE ON PUBLIC HEALTH
SEPTEMBER 21, 2023**

The Massachusetts Medical Society is a professional association of over 25,000 physicians, residents, and medical students across all clinical disciplines, organizations, and practice settings. The Medical Society is committed to advocating on behalf of patients, to give them a better health care system, and on behalf of physicians, to help them provide the best care possible. To that end, the MMS wishes to be recorded in support of *H.3615, An Act Relative to the Definition of Disclosure, Apology and Early Offer Programs*.

H.3615 would expand on existing law relative to the disclosure, apology and early offer (DA&O) program signed into law in 2012 to help resolve medical malpractice cases by allowing healthcare professionals and institutions and their insurers disclose to patients and families when unanticipated adverse outcomes occur; investigate and explain what happened; establish systems to improve patient safety and prevent the recurrence of such incidents; and, where appropriate, apologize and offer fair financial compensation without the patient having to resort to legal action (Chapter 224, Acts of 2012).

More specifically, under the DA&O model, when unanticipated adverse outcomes occur, patients and their families are provided full disclosure of what happened, what it means for the patient medically, and what will be done to prevent the error from reoccurring.

Physicians and health care organizations are given the opportunity to apologize without fear of their words being later used against them in court. Organizations work may with their liability insurers to give patients a fair and timely offer of financial compensation when appropriate. By giving patients the opportunity to receive transparent information and prompt financial recourse, the DA&O model has successfully reduced the time for resolution of adverse medical outcomes and promotes improved patient safety.

Section 1 of this bill would define the DA&O program within the Board of Registration in Medicine as “a program implemented by a physician or healthcare organization where an

unanticipated outcome occurs, the incident causing the occurrence is investigated and patients and families are provided a full disclosure of what happened and what will be done to prevent a reoccurrence of the incident and to improve patient safety, the physician and healthcare organization are given the opportunity to apologize and where appropriate, their liability carrier offers a fair and timely offer of compensation.” Currently there is a statutory reference to these programs but there is no definition of such programs.

Section 2 amends provisions relative to medical malpractice insurers and risk management organizations requirements to report malpractice claims to the Board by adding in the definition of DA&O above and to exempt final judgments and settlements made as part of the DA&O program from such reporting requirements, absent a determination of substandard care rendered on the part of the physician, and final dispositions not resulting in payments. This language would be consistent with existing statutory language adopted in Chapter 224 of the Acts of 2012, as noted above, and clarifies that these incidents are not reportable to the Board.

The MMS urges the Committee on Public Health to report H.3615 out of committee favorably.