
By: **Delegates Zirkin, Morhaim, Myers, and Shank**

Introduced and read first time: January 21, 2005

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Health Care Malpractice Claims - Collateral Sources**

3 FOR the purpose of requiring that certain health care malpractice awards or verdicts
4 be itemized in a certain manner; requiring that a health care malpractice award
5 or verdict be modified to the extent of certain payments, reimbursements, or
6 indemnification for past medical expenses, less certain costs, under certain
7 circumstances; prohibiting certain recovery and certain claims of subrogation
8 relating to certain payments, reimbursements, or indemnification under certain
9 circumstances; defining a certain term; providing for the application of this Act;
10 making stylistic changes; and generally relating to modification of the collateral
11 source rule in health care malpractice claims.

12 BY repealing and reenacting, with amendments,
13 Article - Courts and Judicial Proceedings
14 Section 3-2A-01, 3-2A-05(e) and (h), and 3-2A-06(f)
15 Annotated Code of Maryland
16 (2002 Replacement Volume and 2004 Supplement)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
18 MARYLAND, That the Laws of Maryland read as follows:

19 **Article - Courts and Judicial Proceedings**

20 3-2A-01.

21 (a) In this subtitle the following terms have the meanings indicated unless the
22 context of their use requires otherwise.

23 (b) "Arbitration panel" means the arbitrators selected to determine a health
24 care malpractice claim in accordance with this subtitle.

25 (c) "Court" means a circuit court for a county.

26 (d) "Director" means the Director of the Health Claims Arbitration Office.

1 (e) (1) "Health care provider" means a hospital, a related institution as
2 defined in § 19-301 of the Health - General Article, a physician, an osteopath, an
3 optometrist, a chiropractor, a registered or licensed practical nurse, a dentist, a
4 podiatrist, a psychologist, a licensed certified social worker-clinical, and a physical
5 therapist, licensed or authorized to provide one or more health care services in
6 Maryland.

7 (2) "Health care provider" does not [mean] INCLUDE any nursing
8 institution conducted by and for those who rely upon treatment by spiritual means
9 through prayer alone in accordance with the tenets and practices of a recognized
10 church or religious denomination.

11 (f) "Medical injury" means injury arising or resulting from the rendering or
12 failure to render health care.

13 (G) "NONECONOMIC DAMAGES" MEANS:

14 (1) IN A CLAIM FOR PERSONAL INJURY, PAIN, SUFFERING,
15 INCONVENIENCE, PHYSICAL IMPAIRMENT, DISFIGUREMENT, LOSS OF CONSORTIUM,
16 OR OTHER NONPECUNIARY INJURY; OR

17 (2) IN A CLAIM FOR WRONGFUL DEATH, MENTAL ANGUISH, EMOTIONAL
18 PAIN AND SUFFERING, LOSS OF SOCIETY, COMPANIONSHIP, COMFORT, PROTECTION,
19 CARE, MARITAL CARE, PARENTAL CARE, FILIAL CARE, ATTENTION, ADVICE,
20 COUNSEL, TRAINING, GUIDANCE, OR EDUCATION, OR OTHER NONECONOMIC
21 DAMAGES AUTHORIZED UNDER SUBTITLE 9 OF THIS TITLE.

22 3-2A-05.

23 (e) (1) The arbitration panel shall first determine the issue of liability with
24 respect to a claim referred to it.

25 (2) If the arbitration panel determines that the health care provider is
26 not liable to the claimant or claimants the award shall be in favor of the health care
27 provider.

28 (3) If the arbitration panel determines that a health care provider is
29 liable to the claimant or claimants, it shall then consider, itemize, assess, and
30 apportion appropriate damages against one or more of the health care providers that
31 it has found to be liable.

32 (4) [The award shall itemize by category and amount any damages
33 assessed for incurred medical expenses, rehabilitation costs, and loss of earnings.
34 Damages assessed for any future expenses, costs, and losses shall be itemized
35 separately.] THE ARBITRATION PANEL SHALL ITEMIZE THE AWARD TO REFLECT THE
36 MONETARY AMOUNT INTENDED FOR:

37 (I) PAST MEDICAL EXPENSES;

38 (II) FUTURE MEDICAL EXPENSES;

- 1 (III) PAST LOSS OF EARNINGS;
- 2 (IV) FUTURE LOSS OF EARNINGS;
- 3 (V) NONECONOMIC DAMAGES;
- 4 (VI) IN A WRONGFUL DEATH ACTION, THE PECUNIARY LOSS OR
- 5 BENEFIT; AND
- 6 (VII) OTHER DAMAGES.

7 (h) (1) A party may apply to the arbitration panel to modify or correct an
8 award as to liability, damages, or costs in accordance with § 3-222 of this article.

9 (2) (I) The application may include a request that damages be reduced
10 to the extent that the claimant has been or will be paid, reimbursed, or indemnified
11 under statute, insurance, or contract for all or part of the damages assessed.

12 (II) The panel chairman shall receive such evidence in support and
13 opposition to a request for reduction, including evidence of the cost to obtain such
14 payment, reimbursement, or indemnity.

15 (III) After hearing the evidence in support and opposition to the
16 request, the panel chairman:

17 1. SUBJECT TO ITEM 2 OF THIS SUBPARAGRAPH, may modify
18 the award if satisfied that modification is supported by the evidence; AND

19 2. IF SATISFIED THAT MODIFICATION IS SUPPORTED BY THE
20 EVIDENCE, SHALL MODIFY THE AWARD FOR DAMAGES FOR PAST MEDICAL
21 EXPENSES, LESS THE COST TO OBTAIN THE PAYMENT, REIMBURSEMENT, OR
22 INDEMNITY.

23 (IV) 1. THIS SUBPARAGRAPH DOES NOT APPLY TO SUMS PAID OR
24 PAYABLE FOR PAST MEDICAL EXPENSES.

25 2. The award may not be modified as to any sums paid or
26 payable to a claimant under any workers' compensation act, criminal injuries
27 compensation act, employee benefit plan established under a collective bargaining
28 agreement between an employer and an employee or a group of employers and a
29 group of employees that is subject to the provisions of the federal Employee
30 Retirement Income Security Act of 1974, program of the Department of Health and
31 Mental Hygiene for which a right of subrogation exists under §§ 15-120 and 15-121.1
32 of the Health - General Article, or as a benefit under any contract or policy of life
33 insurance or Social Security Act of the United States. An award may not be modified
34 as to any damages assessed for any future expenses, costs, and losses unless the panel
35 chairman orders the defendant or the defendant's insurer to provide adequate
36 security or, if the insurer is authorized to do business in this State, maintains
37 reserves in compliance with rules of the Insurance Commissioner to assure the

1 payment of all such future damages up to the amount by which the award has been
2 modified as to such future damages in the event of termination.

3 (V) THE DAMAGES FOR PAST MEDICAL EXPENSES IN AN AWARD
4 MAY NOT BE MODIFIED AS TO ANY SUMS PAID OR PAYABLE TO A CLAIMANT:

5 1. UNDER ANY CRIMINAL INJURIES COMPENSATION ACT; OR
6 2. FOR WHICH A RIGHT TO RECOVER FROM THE CLAIMANT
7 OR FOR WHICH A RIGHT TO ASSERT A CLAIM OF SUBROGATION AGAINST A
8 DEFENDANT IS EXPRESSLY PROVIDED BY FEDERAL STATUTE.

9 (VI) [Except] NOTWITHSTANDING ANY OTHER PROVISION OF LAW,
10 EXCEPT as expressly provided by federal statute, no person may recover from the
11 claimant or assert a claim of subrogation against a defendant for any sum included in
12 the modification of an award.

13 3-2A-06.

14 (f) (1) [Upon timely request, the trier of fact shall by special verdict or
15 specific findings itemize by category and amount any damages assessed for incurred
16 medical expenses, rehabilitation costs, and loss of earnings. Damages assessed for
17 any future expenses, costs, and losses shall be itemized separately. If the verdict or
18 findings include any amount for such expenses, costs, and losses, a] THE TRIER OF
19 FACT SHALL ITEMIZE THE VERDICT TO REFLECT THE MONETARY AMOUNT
20 INTENDED FOR:

21 (I) PAST MEDICAL EXPENSES;
22 (II) FUTURE MEDICAL EXPENSES;
23 (III) PAST LOSS OF EARNINGS;
24 (IV) FUTURE LOSS OF EARNINGS;
25 (V) NONECONOMIC DAMAGES;
26 (VI) IN A WRONGFUL DEATH ACTION, THE PECUNIARY LOSS OR
27 BENEFIT; AND
28 (VII) OTHER DAMAGES.

29 (2) A party filing a motion for a new trial may object to the damages as
30 excessive on the ground that the claimant has been or will be paid, reimbursed, or
31 indemnified to the extent and subject to the limits stated in § 3-2A-05(h) of this
32 subtitle.

33 (3) The court shall hold a hearing and receive evidence on the objection.

34 (4) (I) If the court finds from the evidence that the damages are
35 excessive on the grounds stated in § 3-2A-05(h) of this subtitle, subject to the limits

1 and conditions stated in § 3-2A-05(h) of this subtitle, it may grant a new trial as to
2 such damages or may deny a new trial if the claimant agrees to a remittitur of the
3 excess and the order required adequate security when warranted by the conditions
4 stated in § 3-2A-05(h) of this subtitle.

5 (II) In the event of a new trial granted under this subsection,
6 evidence considered by the court in granting the remittitur shall be admissible if
7 offered at the new trial and the jury shall be instructed to consider such evidence in
8 reaching its verdict as to damages.

9 (III) Upon a determination of those damages at the new trial, no
10 further objection to damages may be made exclusive of any party's right of appeal.

11 (5) (I) ON MOTION BY A PARTY, DAMAGES FOR PAST MEDICAL
12 EXPENSES IN A VERDICT SHALL BE REDUCED ON THE GROUND THAT THE CLAIMANT
13 WILL BE PAID, REIMBURSED, OR INDEMNIFIED TO THE EXTENT AND SUBJECT TO
14 THE LIMITS STATED IN § 3-2A-05(H) OF THIS SUBTITLE.

15 (II) THE COURT SHALL HOLD A HEARING AND RECEIVE EVIDENCE
16 ON THE MOTION.

17 (III) IF THE COURT FINDS FROM THE EVIDENCE THAT THE
18 DAMAGES FOR PAST MEDICAL EXPENSES HAVE BEEN OR WILL BE PAID,
19 REIMBURSED, OR INDEMNIFIED AS DESCRIBED IN § 3-2A-05(H) OF THIS SUBTITLE,
20 SUBJECT TO THE LIMITATIONS AND CONDITIONS STATED IN § 3-2A-05(H) OF THIS
21 SUBTITLE, THE COURT SHALL MODIFY THE DAMAGES FOR THE PAST MEDICAL
22 EXPENSES IN THE VERDICT.

23 (6) [Except] NOTWITHSTANDING ANY OTHER PROVISION OF LAW,
24 EXCEPT as expressly provided by federal law, no person may recover from the
25 claimant or assert a claim of subrogation against a defendant for any sum included:

26 (I) [in] IN a remittitur or awarded in a new trial on damages
27 granted under this subsection; OR

28 (II) IN A MODIFICATION OF DAMAGES FOR PAST MEDICAL
29 EXPENSES IN A VERDICT.

30 (7) Nothing in this subsection shall be construed to otherwise limit the
31 common law grounds for remittitur.

32 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
33 construed to apply only prospectively and may not be applied or interpreted to have
34 any effect on or application to any cause of action arising before the effective date of
35 this Act.

36 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
37 October 1, 2005.