

SENATE BILL 399

D3, J1

5lr1040

By: **Senators Pugh and Muse**

Introduced and read first time: February 6, 2015

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Health Care Malpractice Claims – Use of Clinical Practice Guidelines**

3 FOR the purpose of requiring the Director of the Health Care Alternative Dispute
4 Resolution Office to maintain a record of the names of physicians willing to serve as
5 members of an independent medical review panel; establishing certain qualifications
6 for eligibility to serve on a panel; establishing procedures for selection of the
7 members of a panel; requiring a claim for damages due to medical injury to be
8 referred to the Director to select a panel if a defendant asserts as a defense that
9 certain clinical practice guidelines apply and the defendant acted in accordance with
10 the guidelines; requiring the parties to the claim to send certain information to the
11 Director; requiring a panel to make a certain written finding; requiring a panel to
12 make certain determinations; providing that certain determinations made by a panel
13 establish certain rebuttable presumptions; requiring the Secretary of Health and
14 Mental Hygiene to adopt regulations establishing clinical practice guidelines for
15 obstetrical and gynecological services; requiring the Secretary to consult with certain
16 medical professional organizations; requiring the Secretary to review and update the
17 guidelines at least annually; defining a certain term; providing for the termination
18 of this Act; and generally relating to clinical practice guidelines and health care
19 malpractice claims.

20 BY renumbering

21 Article – Courts and Judicial Proceedings
22 Section 3–2A–03A
23 to be Section 3–2A–03C
24 Annotated Code of Maryland
25 (2013 Replacement Volume and 2014 Supplement)

26 BY adding to

27 Article – Courts and Judicial Proceedings
28 Section 3–2A–03A and 3–2A–03B
29 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2013 Replacement Volume and 2014 Supplement)

BY adding to

Article – Health – General

Section 2–701 and 2–702 to be under the new subtitle “Subtitle 7. Clinical Practice Guidelines”

Annotated Code of Maryland

(2009 Replacement Volume and 2014 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 3–2A–03A of Article – Courts and Judicial Proceedings of the Annotated Code of Maryland be renumbered to be Section(s) 3–2A–03C.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Courts and Judicial Proceedings

3–2A–03A.

(A) THE DIRECTOR SHALL MAINTAIN A RECORD OF THE NAMES OF PHYSICIANS WILLING TO SERVE AS MEMBERS OF AN INDEPENDENT MEDICAL REVIEW PANEL.

(B) TO BE ELIGIBLE TO SERVE ON AN INDEPENDENT MEDICAL REVIEW PANEL, A PHYSICIAN SHALL:

(1) BE AN EXPERIENCED PHYSICIAN CERTIFIED BY THE AMERICAN BOARD OF OBSTETRICS AND GYNECOLOGY; AND

(2) FOR AT LEAST 2 YEARS BEFORE APPOINTMENT TO A PANEL, HAVE BEEN IN ACTIVE MEDICAL PRACTICE, DEVOTED A SUBSTANTIAL PORTION OF THE PHYSICIAN’S TIME TO TEACHING AT AN ACCREDITED MEDICAL SCHOOL, OR HAVE BEEN ENGAGED IN UNIVERSITY–BASED RESEARCH IN OBSTETRICS AND GYNECOLOGY.

(C) (1) WITHIN 20 DAYS AFTER A CASE IS REFERRED UNDER § 3–2A–03B OF THIS SUBTITLE, THE DIRECTOR SHALL DELIVER TO EACH PARTY A LIST OF THE NAMES OF 20 PHYSICIANS CHOSEN AT RANDOM FROM THE RECORD OF NAMES MAINTAINED BY THE DIRECTOR UNDER SUBSECTION (A) OF THIS SECTION, TOGETHER WITH A BRIEF BIOGRAPHICAL STATEMENT ABOUT EACH OF THE PHYSICIANS.

(2) (I) BEFORE DELIVERING THE LIST, THE DIRECTOR SHALL INQUIRE OF THE PHYSICIANS SELECTED WHETHER THEY HAVE A PERSONAL OR

1 ECONOMIC RELATIONSHIP WITH ANY OF THE PARTIES OR THEIR COUNSEL, OR ANY
2 CASES IN WHICH THEY ARE A PARTY BEFORE THE OFFICE, THAT CAN FORM THE
3 BASIS OF ANY PARTIALITY ON THEIR PART.

4 (II) IF, IN THE JUDGMENT OF THE DIRECTOR, A PHYSICIAN
5 SELECTED HAS A PERSONAL OR ECONOMIC RELATIONSHIP WITH A PARTY, THAT
6 PHYSICIAN'S NAME SHALL BE REPLACED BY ANOTHER CHOSEN AT RANDOM.

7 (3) THE BIOGRAPHICAL STATEMENTS SENT TO THE PARTIES UNDER
8 THIS SUBSECTION SHALL HAVE BEEN UPDATED WITHIN 2 YEARS BEFORE DELIVERY
9 OF THE LIST.

10 (D) (1) (I) WITHIN 15 DAYS AFTER DELIVERY OF THE LIST, A PARTY
11 MAY OBJECT IN WRITING, STATING THE REASONS FOR OBJECTION, TO THE
12 INCLUSION OF ANY PHYSICIAN ON THE LIST.

13 (II) IF THE DIRECTOR FINDS A REASONABLE BASIS FOR THE
14 OBJECTION, THE DIRECTOR SHALL REPLACE THE NAME OF THE PHYSICIAN WITH
15 THE NAME OF ANOTHER PHYSICIAN.

16 (III) WITHIN 30 DAYS AFTER DELIVERY OF THE INITIAL LIST OR,
17 IF A PHYSICIAN IS REPLACED, WITHIN 30 DAYS AFTER DELIVERY OF THE
18 REPLACEMENT LIST, EACH PARTY SHALL STRIKE FROM THE LIST ANY NAME OR
19 NAMES THAT ARE UNACCEPTABLE AND RETURN A COPY OF THE LIST WITH THE
20 PARTY'S STRIKES TO THE DIRECTOR.

21 (IV) THE DIRECTOR MAY REQUIRE THAT SUBSEQUENT STRIKES
22 BE MADE IN A LESSER PERIOD OF TIME.

23 (V) A PARTY MAY NOT STRIKE MORE THAN SIX NAMES FROM
24 THE LIST.

25 (2) IF:

26 (I) THE CLAIM IS AGAINST MORE THAN ONE HEALTH CARE
27 PROVIDER, WHETHER DIRECTLY BY A CLAIMANT OR AS A RESULT OF A THIRD-PARTY
28 CLAIM, THE HEALTH CARE PROVIDERS CLAIMED AGAINST SHALL BE TREATED AS A
29 SINGLE PARTY AND SHALL EXERCISE THEIR STRIKES JOINTLY;

30 (II) THERE IS MORE THAN ONE CLAIMANT, THE CLAIMANTS
31 SHALL BE TREATED AS A SINGLE PARTY AND SHALL EXERCISE THEIR STRIKES
32 JOINTLY;

1 **(III) WITHIN THE TIME PERIOD SPECIFIED IN PARAGRAPH (1) OF**
2 **THIS SUBSECTION, MULTIPLE CLAIMANTS OR MULTIPLE HEALTH CARE PROVIDERS**
3 **FAIL TO AGREE ON THEIR STRIKES, THEY SHALL NOTIFY THE DIRECTOR OF THEIR**
4 **DISAGREEMENT AND THE DIRECTOR MAY MAKE THE STRIKES ON THEIR BEHALF;**
5 **AND**

6 **(IV) ANY PARTY FAILS TO RETURN A COPY OF THE LIST WITH**
7 **THE PARTY'S STRIKES WITHIN THE TIME PERIOD SPECIFIED IN PARAGRAPH (1) OF**
8 **THIS SUBSECTION, THE DIRECTOR MAY MAKE THE STRIKES FOR THAT PARTY.**

9 **(E) (1) THE DIRECTOR SHALL COMPARE THE LISTS RETURNED BY THE**
10 **PARTIES AND THE LISTS FROM WHICH THE DIRECTOR HAS STRICKEN NAMES UNDER**
11 **SUBSECTION (D) OF THIS SECTION AND SHALL SELECT THE FIRST THREE MUTUALLY**
12 **AGREEABLE PHYSICIANS AS THE PANEL MEMBERS.**

13 **(2) (I) THE DIRECTOR SHALL ESTABLISH BY REGULATION**
14 **PROCEDURES FOR SELECTION OF ALTERNATES TO SERVE IN PLACE OF PANEL**
15 **MEMBERS UNABLE TO SERVE AFTER APPOINTMENT.**

16 **(II) PROCEDURES FOR THE SELECTION OF ALTERNATE PANEL**
17 **MEMBERS SHALL REQUIRE THAT ALTERNATE PANEL MEMBERS BE CHOSEN AT**
18 **RANDOM FROM THE LIST PREPARED BY THE DIRECTOR UNDER SUBSECTION (A) OF**
19 **THIS SECTION, AND MAY NOT BE CONFINED TO THE TIME LIMITATIONS IN**
20 **SUBSECTION (D)(1) OF THIS SECTION.**

21 **(III) THE DIRECTOR MAY REQUIRE THE ATTENDANCE OF AN**
22 **APPROPRIATE ALTERNATE AT ANY PANEL MEETING UNDER THIS SUBTITLE.**

23 **(F) A MEMBER OF AN INDEPENDENT MEDICAL REVIEW PANEL WHO ACTS IN**
24 **GOOD FAITH AND WITHIN THE PANEL'S DUTIES IS IMMUNE FROM CIVIL LIABILITY**
25 **FOR GIVING INFORMATION TO THE PANEL OR OTHERWISE PARTICIPATING IN ITS**
26 **ACTIVITIES.**

27 **3-2A-03B.**

28 **(A) (1) IF A DEFENDANT IN A CLAIM UNDER THIS SUBTITLE ASSERTS AS A**
29 **DEFENSE THAT THE CLINICAL PRACTICE GUIDELINES ADOPTED BY THE SECRETARY**
30 **OF HEALTH AND MENTAL HYGIENE UNDER § 2-702 OF THE HEALTH - GENERAL**
31 **ARTICLE APPLY TO THE ALLEGED ACTS OR OMISSIONS OF THE DEFENDANT GIVING**
32 **RISE TO THE CLAIM AND THAT THE DEFENDANT ACTED IN ACCORDANCE WITH THE**
33 **CLINICAL PRACTICE GUIDELINES, THE ARBITRATION PANEL OR COURT, AFTER**
34 **COMPLETION OF DISCOVERY, SHALL REFER THE CLAIM TO THE DIRECTOR TO**

1 SELECT AN INDEPENDENT MEDICAL REVIEW PANEL UNDER § 3-2A-03A OF THIS
2 SUBTITLE.

3 (2) WITHIN 30 DAYS AFTER THE CASE IS REFERRED TO AN
4 INDEPENDENT MEDICAL REVIEW PANEL, EACH PARTY SHALL SEND TO THE
5 DIRECTOR COPIES OF THE FOLLOWING INFORMATION OBTAINED BY DISCOVERY
6 UNDER THE MARYLAND RULES:

7 (I) TRANSCRIPTS OF DEPOSITIONS;

8 (II) WRITTEN INTERROGATORIES;

9 (III) DOCUMENTS PRODUCED;

10 (IV) RECORDS OF PHYSICAL EXAMINATIONS; AND

11 (V) RESPONSES TO REQUESTS FOR ADMISSION OF FACTS AND
12 GENUINENESS OF DOCUMENTS.

13 (B) WITHIN 60 DAYS AFTER ALL MEMBERS OF AN INDEPENDENT MEDICAL
14 REVIEW PANEL HAVE BEEN SELECTED, THE PANEL SHALL COMPLETE A REVIEW OF
15 THE INFORMATION SENT TO THE DIRECTOR UNDER SUBSECTION (A) OF THIS
16 SECTION AND SHALL MAKE A WRITTEN FINDING UNDER THIS SECTION.

17 (C) THE INDEPENDENT MEDICAL REVIEW PANEL SHALL DETERMINE, AS TO
18 EACH DEFENDANT, WHETHER:

19 (1) THE CLINICAL PRACTICE GUIDELINES ADOPTED BY THE
20 SECRETARY OF HEALTH AND MENTAL HYGIENE UNDER § 2-702 OF THE
21 HEALTH - GENERAL ARTICLE APPLY TO THE ALLEGED ACTS OR OMISSIONS OF THE
22 DEFENDANT GIVING RISE TO THE CLAIM; AND

23 (2) THE DEFENDANT ACTED IN ACCORDANCE WITH THE CLINICAL
24 PRACTICE GUIDELINES.

25 (D) THE DIRECTOR SHALL SEND A COPY OF THE INDEPENDENT MEDICAL
26 REVIEW PANEL'S WRITTEN FINDING TO THE ARBITRATION PANEL OR COURT THAT
27 REFERRED THE CLAIM AND TO ALL PARTIES.

28 (E) (1) IF THE INDEPENDENT MEDICAL REVIEW PANEL DETERMINES
29 THAT THE CLINICAL PRACTICE GUIDELINES APPLY TO THE ALLEGED ACTS OR
30 OMISSIONS OF THE DEFENDANT GIVING RISE TO THE CLAIM AND THAT THE
31 DEFENDANT ACTED IN ACCORDANCE WITH THE GUIDELINES, THERE IS A

1 REBUTTABLE PRESUMPTION THAT THE DEFENDANT COMPLIED WITH THE
2 STANDARD OF CARE.

3 (2) IF THE INDEPENDENT MEDICAL REVIEW PANEL DETERMINES
4 THAT THE CLINICAL PRACTICE GUIDELINES APPLY TO THE ALLEGED ACTS OR
5 OMISSIONS OF THE DEFENDANT GIVING RISE TO THE CLAIM AND THAT THE
6 DEFENDANT DID NOT ACT IN ACCORDANCE WITH THE GUIDELINES, THERE IS A
7 REBUTTABLE PRESUMPTION THAT THE DEFENDANT DEPARTED FROM THE
8 STANDARD OF CARE.

9 Article – Health – General

10 SUBTITLE 7. CLINICAL PRACTICE GUIDELINES.

11 2-701.

12 IN THIS SUBTITLE, “CLINICAL PRACTICE GUIDELINES” MEANS
13 SYSTEMATICALLY DEVELOPED STATEMENTS BASED ON THE REVIEW OF CLINICAL
14 EVIDENCE TO ASSIST A HEALTH CARE PROVIDER IN DETERMINING THE
15 APPROPRIATE HEALTH CARE IN SPECIFIC CLINICAL CIRCUMSTANCES.

16 2-702.

17 (A) ON OR BEFORE JANUARY 1, 2016, THE SECRETARY SHALL ADOPT
18 REGULATIONS ESTABLISHING CLINICAL PRACTICE GUIDELINES FOR OBSTETRICAL
19 AND GYNECOLOGICAL SERVICES.

20 (B) THE SECRETARY SHALL DEVELOP THE GUIDELINES IN CONSULTATION
21 WITH APPROPRIATE MEDICAL PROFESSIONAL ORGANIZATIONS.

22 (C) THE SECRETARY SHALL REVIEW AND UPDATE THE GUIDELINES AT
23 LEAST ANNUALLY.

24 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July
25 1, 2015. It shall remain effective for a period of 8 years and 6 months and, at the end of
26 December 31, 2023, with no further action required by the General Assembly, this Act shall
27 be abrogated and of no further force and effect.