

HOUSE BILL 1347

D3
HB 377/16 – HGO & JUD

7lr2418
CF SB 877

By: **Delegates Cullison, Kipke, Barve, Beitzel, Bromwell, Carey, Cluster, Dumais, Ebersole, Frick, Frush, Glenn, Healey, Kaiser, Kelly, Kittleman, Kramer, Krebs, Krimm, Lam, Lewis, Mautz, McComas, Morgan, Morhaim, Oaks, Reznik, Rose, Szeliga, West, B. Wilson, and P. Young**

Introduced and read first time: February 10, 2017

Assigned to: Health and Government Operations and Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland No-Fault Birth Injury Fund**

3 FOR the purpose of declaring certain findings and the intent of the General Assembly;
4 establishing a system for adjudication of a claim involving a birth-related
5 neurological injury; excluding certain rights and remedies of a claimant and certain
6 other persons; providing for certain procedures; providing for certain benefits and
7 compensation of a claimant under this Act; requiring the Maryland Patient Safety
8 Center to convene a certain Perinatal Clinical Advisory Committee; establishing the
9 Maryland No-Fault Birth Injury Fund; providing for the governance,
10 administration, and purposes of the Fund; providing for certain premiums to be used
11 to finance and administer the Fund; providing for certain credits for certain medical
12 liability coverage for the obstetrical practice or services of certain health care
13 practitioners and hospitals; providing for certain patient safety initiatives;
14 authorizing the Office of Health Care Quality, the State Board of Physicians, and the
15 State Board of Nursing to investigate a certain claim and take appropriate action
16 with respect to a certain health care facility, physician, or nurse; requiring the Office
17 of Administrative Hearings to provide certain training to certain administrative law
18 judges; defining certain terms; providing for the application of this Act; and generally
19 relating to establishment of a system of adjudication and compensation of a claimant
20 for a birth-related neurological injury through the Maryland No-Fault Birth Injury
21 Fund.

22 BY adding to

23 Article – Courts and Judicial Proceedings

24 Section 3-2D-01 through 3-2D-08 to be under the new subtitle “Subtitle 2D.
25 Maryland No-Fault Birth Injury Fund Claims”

26 Annotated Code of Maryland

27 (2013 Replacement Volume and 2016 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY adding to
2 Article – Health – General
3 Section 20–1801 through 20–1803 to be under the new subtitle “Subtitle 18. Birth
4 Injury Prevention”
5 Annotated Code of Maryland
6 (2015 Replacement Volume and 2016 Supplement)

7 BY adding to
8 Article – Insurance
9 Section 32–101 through 32–304 to be under the new title “Title 32. Maryland
10 No–Fault Birth Injury Fund”
11 Annotated Code of Maryland
12 (2011 Replacement Volume and 2016 Supplement)

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

15 **Article – Courts and Judicial Proceedings**

16 **SUBTITLE 2D. MARYLAND NO–FAULT BIRTH INJURY FUND CLAIMS.**

17 **3–2D–01.**

18 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
19 INDICATED.

20 (B) (1) “BIRTH–RELATED NEUROLOGICAL INJURY” MEANS AN INJURY TO
21 THE BRAIN OR SPINAL CORD OF A LIVE INFANT BORN IN A MARYLAND HOSPITAL
22 THAT:

23 (I) IS CAUSED BY OXYGEN DEPRIVATION OR OTHER INJURY
24 THAT OCCURRED OR COULD HAVE OCCURRED DURING LABOR, DURING DELIVERY,
25 OR IN THE RESUSCITATIVE PERIOD AFTER DELIVERY; AND

26 (II) RENDERS THE INFANT PERMANENTLY NEUROLOGICALLY
27 AND PHYSICALLY IMPAIRED.

28 (2) “BIRTH–RELATED NEUROLOGICAL INJURY” DOES NOT INCLUDE
29 DISABILITY OR DEATH CAUSED BY GENETIC OR CONGENITAL ABNORMALITY.

30 (C) “CLAIMANT” MEANS A PERSON WHO FILES A CLAIM IN ACCORDANCE
31 WITH § 3–2D–04 OF THIS SUBTITLE FOR BENEFITS OR COMPENSATION FOR A
32 BIRTH–RELATED NEUROLOGICAL INJURY THAT OCCURS IN THE STATE.

1 (D) "FUND" MEANS THE MARYLAND NO-FAULT BIRTH INJURY FUND.

2 (E) "HEALTH CARE PRACTITIONER" MEANS AN INDIVIDUAL LICENSED OR
3 CERTIFIED OR OTHERWISE AUTHORIZED TO PROVIDE OBSTETRICAL SERVICES OR
4 AN INDIVIDUAL LICENSED OR CERTIFIED UNDER THE HEALTH OCCUPATIONS
5 ARTICLE TO PRACTICE MIDWIFERY.

6 (F) "HOSPITAL" HAS THE MEANING STATED IN § 19-301 OF THE
7 HEALTH - GENERAL ARTICLE.

8 (G) "OFFICE" MEANS THE OFFICE OF ADMINISTRATIVE HEARINGS.

9 (H) "PHYSICIAN" MEANS AN INDIVIDUAL:

10 (1) LICENSED TO PRACTICE MEDICINE IN THE STATE; OR

11 (2) WHO LEGALLY PRACTICES MEDICINE WITHOUT A LICENSE UNDER
12 § 14-302(1), (2), (3), OR (4) OF THE HEALTH OCCUPATIONS ARTICLE.

13 (I) "QUALIFIED HEALTH CARE COSTS" MEANS REASONABLE EXPENSES OF
14 MEDICAL, HOSPITAL, REHABILITATIVE, FAMILY RESIDENTIAL OR CUSTODIAL CARE,
15 PROFESSIONAL RESIDENTIAL CARE, DURABLE MEDICAL EQUIPMENT, MEDICALLY
16 NECESSARY DRUGS, AND RELATED TRAVEL, AND RESIDENTIAL OR VEHICLE
17 MODIFICATIONS THAT ARE NECESSARY TO MEET A CLAIMANT'S HEALTH CARE
18 NEEDS AS DETERMINED BY THE CLAIMANT'S TREATING PHYSICIANS, PHYSICIAN
19 ASSISTANTS, OR NURSE PRACTITIONERS, AND AS OTHERWISE DEFINED BY
20 REGULATION.

21 3-2D-02.

22 (A) THE GENERAL ASSEMBLY FINDS THAT:

23 (1) BIRTHS OTHER THAN A NORMAL BIRTH SOMETIMES LEAD TO
24 CLAIMS AGAINST THE HOSPITAL WHERE THE BIRTH OCCURRED AND THE HEALTH
25 CARE PRACTITIONERS INVOLVED AND, CONSEQUENTLY, THOSE HOSPITALS AND
26 HEALTH CARE PRACTITIONERS ARE MOST SEVERELY AFFECTED BY MEDICAL
27 LIABILITY RISK AND ASSOCIATED COSTS;

28 (2) BECAUSE OBSTETRIC SERVICES ARE ESSENTIAL, IT IS
29 INCUMBENT ON THE GENERAL ASSEMBLY TO PROVIDE A PLAN DESIGNED TO
30 RESULT IN THE STABILIZATION AND REDUCTION OF MEDICAL LIABILITY RISK AND
31 ASSOCIATED COST IN ORDER TO PRESERVE ACCESS TO OBSTETRIC SERVICES IN
32 MARYLAND;

1 **(3) BIRTH-RELATED NEUROLOGICAL INJURIES ARE AMONG THE**
2 **MOST COSTLY AND DEVASTATING TYPES OF MEDICAL INJURIES AND WARRANT THE**
3 **ESTABLISHMENT OF AN EQUITABLE SYSTEM OF COMPENSATION REGARDLESS OF**
4 **FAULT; AND**

5 **(4) SOME BIRTH-RELATED NEUROLOGICAL INJURIES ARE**
6 **UNAVOIDABLE EVEN UNDER THE BEST CIRCUMSTANCES OF MEDICAL CARE.**

7 **(B) IT IS THE INTENT OF THE GENERAL ASSEMBLY TO PROVIDE FAIR AND**
8 **EQUITABLE COMPENSATION, ON A NO-FAULT BASIS, FOR A LIMITED CLASS OF**
9 **CATASTROPHIC INJURIES THAT RESULT IN UNUSUALLY HIGH COSTS FOR**
10 **CUSTODIAL CARE AND REHABILITATION, AND THE PLAN UNDER SUBSECTION (A)(2)**
11 **OF THIS SECTION SHALL APPLY ONLY TO BIRTH-RELATED NEUROLOGICAL**
12 **INJURIES.**

13 **3-2D-03.**

14 **(A) THIS SUBTITLE APPLIES TO BIRTHS OCCURRING ON OR AFTER JANUARY**
15 **1, 2019.**

16 **(B) THE RIGHTS AND REMEDIES UNDER THIS SUBTITLE EXCLUDE AND**
17 **SUPPLANT ALL OTHER RIGHTS AND REMEDIES OF THE INFANT, PERSONAL**
18 **REPRESENTATIVE OF THE INFANT, AND PARENTS, DEPENDENTS, OR NEXT OF KIN OF**
19 **THE INFANT ARISING OUT OF OR RELATED TO A BIRTH-RELATED NEUROLOGICAL**
20 **INJURY TO THE INFANT, INCLUDING CLAIMS OF EMOTIONAL DISTRESS RELATED TO**
21 **THE INFANT'S INJURY.**

22 **(C) NOTHING IN THIS SUBTITLE EXCLUDES OTHER RIGHTS AND REMEDIES**
23 **AVAILABLE TO THE MOTHER OF THE INFANT ARISING OUT OF OR RELATED TO A**
24 **PHYSICAL INJURY, SEPARATE AND DISTINCT FROM A BIRTH-RELATED**
25 **NEUROLOGICAL INJURY TO THE INFANT, SUFFERED BY THE MOTHER OF THE INFANT**
26 **DURING THE COURSE OF DELIVERY OF THE INFANT.**

27 **(D) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A CIVIL ACTION IS**
28 **NOT PROHIBITED AGAINST A HEALTH CARE PRACTITIONER OR HOSPITAL IF THERE**
29 **IS CLEAR AND CONVINCING EVIDENCE THAT THE HEALTH CARE PRACTITIONER OR**
30 **HOSPITAL MALICIOUSLY INTENDED TO CAUSE A BIRTH INJURY AND THE CLAIM IS**
31 **FILED BEFORE AND INSTEAD OF PAYMENT OF AN AWARD UNDER THIS SUBTITLE.**

32 **(E) IF A PARTY IN A CIVIL PROCEEDING BEFORE A CIRCUIT COURT ASSERTS**
33 **A CLAIM THAT INVOLVES AN ELIGIBLE BIRTH-RELATED NEUROLOGICAL INJURY, ON**
34 **THE MOTION OF SUCH PARTY IN THE CIVIL PROCEEDING, THE COURT SHALL:**

1 **(1) ORDER A PARTY TO FILE A CLAIM FOR A BIRTH-RELATED**
2 **NEUROLOGICAL INJURY WITH THE FUND; AND**

3 **(2) DISMISS THE CIVIL PROCEEDING WITHOUT PREJUDICE.**

4 **(F) IF A PARTY IN A PROCEEDING BEFORE THE HEALTH CARE**
5 **ALTERNATIVE DISPUTE RESOLUTION OFFICE ASSERTS A CLAIM THAT INVOLVES AN**
6 **ELIGIBLE BIRTH-RELATED NEUROLOGICAL INJURY, ON THE MOTION OF SUCH**
7 **PARTY IN THE PROCEEDING, THE DIRECTOR OF THE HEALTH CARE ALTERNATIVE**
8 **DISPUTE RESOLUTION OFFICE SHALL:**

9 **(1) ORDER A PARTY TO FILE A CLAIM FOR A BIRTH-RELATED**
10 **NEUROLOGICAL INJURY WITH THE FUND; AND**

11 **(2) DISMISS THE PROCEEDING BEFORE THE HEALTH CARE**
12 **ALTERNATIVE DISPUTE RESOLUTION OFFICE WITHOUT PREJUDICE.**

13 **(G) A CLAIM FOR COMPENSATION AND BENEFITS UNDER THIS SUBTITLE**
14 **SHALL BE FILED WITHIN THE TIME PERIODS ESTABLISHED UNDER § 5-109 OF THIS**
15 **ARTICLE.**

16 **(H) A CLAIM MAY BE FILED BY A LEGAL REPRESENTATIVE ON BEHALF OF AN**
17 **INJURED INFANT AND, IN THE CASE OF A DECEASED INFANT, BY AN ADMINISTRATOR,**
18 **A PERSONAL REPRESENTATIVE, OR ANY OTHER LEGAL REPRESENTATIVE OF THE**
19 **DECEASED INFANT.**

20 **(I) THE LIMITATIONS PERIOD WITH RESPECT TO A CIVIL ACTION THAT MAY**
21 **BE BROUGHT BY, OR ON BEHALF OF, AN INJURED INFANT FOR DAMAGES ALLEGEDLY**
22 **ARISING OUT OF, OR RELATED TO, A BIRTH-RELATED NEUROLOGICAL INJURY**
23 **SHALL BE TOLLED BY THE FILING OF A CLAIM UNDER THIS SUBTITLE, AND THE TIME**
24 **THE CLAIM IS PENDING OR IS ON APPEAL MAY NOT BE COMPUTED AS PART OF THE**
25 **PERIOD WITHIN WHICH THE CIVIL ACTION MAY BE BROUGHT.**

26 **3-2D-04.**

27 **(A) (1) A CLAIM FILED FOR COMPENSATION OR OTHER BENEFITS UNDER**
28 **THIS SUBTITLE SHALL COMMENCE BY THE CLAIMANT FILING A CLAIM WITH THE**
29 **FUND.**

30 **(2) A CLAIM SHALL INCLUDE THE FOLLOWING INFORMATION:**

1 **(I) THE NAME AND ADDRESS OF THE LEGAL REPRESENTATIVE**
2 **AND THE BASIS FOR THE LEGAL REPRESENTATIVE'S REPRESENTATION OF THE**
3 **INJURED INFANT;**

4 **(II) THE NAME AND ADDRESS OF THE INJURED INFANT;**

5 **(III) THE NAME AND ADDRESS OF EACH HEALTH CARE**
6 **PRACTITIONER WHO IS KNOWN TO HAVE BEEN PRESENT AT THE BIRTH AND THE**
7 **HOSPITAL AT WHICH THE BIRTH OCCURRED;**

8 **(IV) A DESCRIPTION OF THE DISABILITY FOR WHICH THE CLAIM**
9 **IS MADE;**

10 **(V) THE TIME AND PLACE THE INJURY OCCURRED; AND**

11 **(VI) A BRIEF STATEMENT OF THE FACTS AND CIRCUMSTANCES**
12 **SURROUNDING THE INJURY AND GIVING RISE TO THE CLAIM.**

13 **(B) THE CLAIMANT SHALL FILE WITH THE FUND THE FOLLOWING**
14 **INFORMATION WITHIN 45 DAYS AFTER THE FILING OF THE CLAIM AS SET FORTH IN**
15 **SUBSECTION (A) OF THIS SECTION:**

16 **(1) ALL AVAILABLE RELEVANT MEDICAL RECORDS RELATING TO THE**
17 **BIRTH-RELATED NEUROLOGICAL INJURY AND A LIST IDENTIFYING UNAVAILABLE**
18 **RECORDS KNOWN TO THE CLAIMANT AND THE REASONS FOR THE RECORDS'**
19 **UNAVAILABILITY;**

20 **(2) APPROPRIATE ASSESSMENTS, EVALUATIONS, AND PROGNoses**
21 **AND OTHER RECORDS AND DOCUMENTS REASONABLY NECESSARY FOR THE**
22 **DETERMINATION OF THE AMOUNT OF COMPENSATION TO BE PAID TO, OR ON BEHALF**
23 **OF, THE INJURED INFANT ON ACCOUNT OF THE BIRTH-RELATED NEUROLOGICAL**
24 **INJURY;**

25 **(3) DOCUMENTATION OF EXPENSES AND SERVICES INCURRED TO**
26 **DATE THAT IDENTIFIES THE PAYMENT MADE FOR THOSE EXPENSES AND SERVICES**
27 **AND THE PAYOR; AND**

28 **(4) DOCUMENTATION OF ANY APPLICABLE PRIVATE OR**
29 **GOVERNMENTAL SOURCE OF SERVICES OR REIMBURSEMENT RELATIVE TO THE**
30 **IMPAIRMENTS.**

31 **(C) WITHIN 10 DAYS AFTER RECEIPT OF A COMPLETE CLAIM AND THE**
32 **INFORMATION PROVIDED BY THE CLAIMANT IN ACCORDANCE WITH SUBSECTION (B)**

1 OF THIS SECTION, THE FUND SHALL PROVIDE COPIES OF THOSE MATERIALS TO THE
2 PERSONS AND ENTITIES IDENTIFIED IN SUBSECTION (A)(2)(III) OF THIS SECTION.

3 (D) (1) ON RECEIPT OF A CLAIM, THE FUND SHALL INVESTIGATE THE
4 CLAIM.

5 (2) WITHIN 90 DAYS AFTER THE DATE OF SERVICE OF A CLAIM FILED
6 IN ACCORDANCE WITH SUBSECTIONS (A) AND (B) OF THIS SECTION, THE FUND
7 SHALL SERVE ON THE CLAIMANT ITS RESPONSE TO THE CLAIM, INCLUDING
8 WHETHER THE FUND DETERMINES THAT THE INJURY ALLEGED IS A
9 BIRTH-RELATED NEUROLOGICAL INJURY.

10 (3) WITHIN 10 DAYS AFTER SERVING ITS RESPONSE TO A CLAIM, THE
11 FUND SHALL SUBMIT THE CLAIM, TOGETHER WITH ALL INFORMATION AND
12 MATERIALS SUBMITTED BY THE CLAIMANT AND THE FUND'S RESPONSE, TO THE
13 OFFICE FOR ADJUDICATION.

14 (4) AT THE TIME THE FUND SUBMITS THE CLAIM TO THE OFFICE, THE
15 FUND SHALL SUBMIT THE CLAIM, TOGETHER WITH ALL INFORMATION AND
16 MATERIALS SUBMITTED BY THE CLAIMANT AND THE FUND'S RESPONSE, TO THE
17 OFFICE OF HEALTH CARE QUALITY, THE STATE BOARD OF PHYSICIANS, AND THE
18 STATE BOARD OF NURSING FOR REVIEW.

19 3-2D-05.

20 (A) (1) EACH DETERMINATION OF ELIGIBILITY AND FOR COMPENSATION
21 AND BENEFITS SHALL BE DELEGATED TO THE OFFICE FOR ADJUDICATION AND
22 DECISION BY AN ADMINISTRATIVE LAW JUDGE.

23 (2) THE OFFICE SHALL PROVIDE SPECIALIZED TRAINING TO
24 ADMINISTRATIVE LAW JUDGES WHO ARE ASSIGNED TO ADJUDICATE CLAIMS
25 SUBMITTED UNDER § 3-2D-04(D)(3) OF THIS SUBTITLE.

26 (B) THE FUND SHALL PROVIDE WRITTEN NOTICE OF THE SUBMISSION OF A
27 CLAIM FOR ADJUDICATION TO THE CLAIMANT AND TO THE PERSONS AND ENTITIES
28 IDENTIFIED BY THE CLAIMANT UNDER § 3-2D-04(A)(2)(III) OF THIS SUBTITLE.

29 (C) THE OFFICE SHALL HAVE EXCLUSIVE JURISDICTION TO DETERMINE, ON
30 THE BASIS OF THE EVIDENCE PRESENTED IN A CONTESTED HEARING, THE
31 FOLLOWING ISSUES:

32 (1) WHETHER THE CLAIM INVOLVES AN ELIGIBLE BIRTH-RELATED
33 NEUROLOGICAL INJURY; AND

1 **(2) THE NATURE AND AMOUNT OF COMPENSATION AND BENEFITS, IF**
2 **ANY, TO BE PROVIDED TO THE CLAIMANT.**

3 **(D) THE CLAIM SHALL BE DISMISSED IF THE OFFICE DETERMINES THAT**
4 **THE INJURY ALLEGED IN THE CLAIM IS NOT A BIRTH-RELATED NEUROLOGICAL**
5 **INJURY.**

6 **3-2D-06.**

7 **(A) ON A DETERMINATION THAT AN INFANT HAS SUSTAINED A**
8 **BIRTH-RELATED NEUROLOGICAL INJURY, THE CLAIMANT MAY BE AWARDED ONE OR**
9 **MORE OF THE FOLLOWING BENEFITS AND COMPENSATION TO BE PAID OR PROVIDED**
10 **FROM THE FUND:**

11 **(1) ACTUAL LIFETIME EXPENSES FOR QUALIFIED HEALTH CARE**
12 **COSTS, LIMITED TO REASONABLE CHARGES PREVAILING IN THE SAME COMMUNITY**
13 **FOR SIMILAR TREATMENT OF INJURED PERSONS WHEN THE TREATMENT IS PAID**
14 **FOR BY THE INJURED PERSON, EXCLUDING:**

15 **(i) EXPENSES FOR ITEMS OR SERVICES THAT THE INFANT HAS**
16 **RECEIVED, OR IS ELIGIBLE TO RECEIVE, UNDER THE LAWS OF ANY STATE OR THE**
17 **UNITED STATES, EXCEPT TO THE EXTENT THAT THE EXCLUSION MAY BE**
18 **PROHIBITED BY FEDERAL LAW;**

19 **(ii) EXPENSES FOR ITEMS OR SERVICES THAT THE INFANT HAS**
20 **RECEIVED, OR IS CONTRACTUALLY ENTITLED TO RECEIVE, FROM A PREPAID**
21 **HEALTH PLAN, A HEALTH MAINTENANCE ORGANIZATION, OR ANY OTHER PRIVATE**
22 **INSURING ENTITY;**

23 **(iii) EXPENSES FOR WHICH THE INFANT HAS RECEIVED**
24 **REIMBURSEMENT, OR FOR WHICH THE INFANT IS ELIGIBLE TO RECEIVE**
25 **REIMBURSEMENT, UNDER THE LAWS OF A STATE OR THE UNITED STATES,**
26 **INCLUDING BENEFITS PROVIDED UNDER THE MARYLAND RARE AND EXPENSIVE**
27 **CASE MANAGEMENT PROGRAM, EXCEPT TO THE EXTENT THE EXCLUSION MAY BE**
28 **PROHIBITED BY FEDERAL LAW;**

29 **(iv) EXPENSES FOR WHICH THE INFANT HAS RECEIVED**
30 **REIMBURSEMENT, OR FOR WHICH THE INFANT IS CONTRACTUALLY ENTITLED TO**
31 **RECEIVE REIMBURSEMENT, UNDER THE PROVISIONS OF A HEALTH OR SICKNESS**
32 **INSURANCE POLICY OR OTHER PRIVATE INSURANCE PROGRAM; AND**

1 **(V) EXPENSES RELATED TO THE PROVISION OF HOUSING,**
2 **EXCEPT FOR THE MODIFICATION OF RESIDENTIAL ENVIRONMENT;**

3 **(2) WITHIN THE DISCRETION OF THE OFFICE, AN AWARD NOT**
4 **EXCEEDING \$500,000, PAYABLE IN PERIODIC PAYMENTS OR AS A LUMP SUM TO THE**
5 **INJURED INFANT OR TO THE PARENTS OR LEGAL GUARDIANS OF THE INJURED**
6 **INFANT FOR THE BENEFIT OF THE INJURED INFANT;**

7 **(3) LOSS OF EARNINGS CALCULATED UNDER SUBSECTION (B) OF THIS**
8 **SECTION TO BE PAID IN PERIODIC PAYMENTS BEGINNING ON THE 18TH BIRTHDAY**
9 **OF THE INFANT;**

10 **(4) IF THE INFANT DIES BEFORE ATTAINING THE AGE OF 18 YEARS, A**
11 **FUNERAL PAYMENT IN THE AMOUNT OF \$25,000; AND**

12 **(5) REASONABLE EXPENSES INCURRED IN CONNECTION WITH THE**
13 **FILING AND PROSECUTION OF A CLAIM TO ASSERT ELIGIBILITY AND FOR**
14 **COMPENSATION AND BENEFITS UNDER THIS SUBTITLE, INCLUDING REASONABLE**
15 **ATTORNEY'S FEES ON AN HOURLY BASIS, SUBJECT TO THE APPROVAL AND AWARD**
16 **OF THE ADMINISTRATIVE LAW JUDGE IN ACCORDANCE WITH SUBSECTION (C) OF**
17 **THIS SECTION.**

18 **(B) (1) AN INFANT FOUND TO HAVE SUSTAINED A BIRTH-RELATED**
19 **NEUROLOGICAL INJURY SHALL BE CONCLUSIVELY PRESUMED TO HAVE BEEN ABLE**
20 **TO EARN INCOME FROM EMPLOYMENT FROM THE AGE OF 18 YEARS THROUGH THE**
21 **AGE OF 65 YEARS, AS IF THE INFANT HAD NOT BEEN INJURED, IN THE AMOUNT OF**
22 **50% OF THE STATE AVERAGE WEEKLY WAGE AS DETERMINED BY THE DEPARTMENT**
23 **OF LABOR, LICENSING, AND REGULATION IN ACCORDANCE WITH § 9-603 OF THE**
24 **LABOR AND EMPLOYMENT ARTICLE.**

25 **(2) PAYMENTS FOR LOSS OF EARNINGS SHALL BE CALCULATED**
26 **BASED ON THE STATE REPORTING PERIOD IMMEDIATELY PRECEDING THE 18TH**
27 **BIRTHDAY OF THE INFANT AND SUBSEQUENTLY ADJUSTED BASED ON THE**
28 **SUCCEEDING ANNUAL REPORTS OF THE STATE AVERAGE WEEKLY WAGE.**

29 **(C) (1) IN DETERMINING AN AWARD FOR ATTORNEYS' FEES, THE**
30 **ADMINISTRATIVE LAW JUDGE SHALL APPLY THE STANDARDS SET FORTH IN**
31 **MARYLAND RULE 2-703(F)(3).**

32 **(2) THE ADMINISTRATIVE LAW JUDGE MAY AWARD ATTORNEYS' FEES**
33 **FOR THE PROSECUTION OF A CLAIM FOUND TO BE INELIGIBLE UNDER THIS**
34 **SUBTITLE IF THE CLAIM WAS NOT SUBMITTED IN BAD FAITH OR WITHOUT**
35 **SUBSTANTIAL JUSTIFICATION.**

1 (D) AN AWARD OF EXPENSES SHALL REQUIRE THE IMMEDIATE PAYMENT OF
2 EXPENSES PREVIOUSLY INCURRED AND SHALL REQUIRE THAT FUTURE EXPENSES
3 BE PAID AS INCURRED.

4 **3-2D-07.**

5 (A) (1) THE OFFICE SHALL SET THE DATE FOR A HEARING ON A
6 CONTESTED CASE NO SOONER THAN 60 DAYS AND NO LATER THAN 120 DAYS AFTER
7 THE WRITTEN NOTICE OF THE FUND'S SUBMISSION OF A CLAIM TO THE OFFICE FOR
8 ADJUDICATION.

9 (2) THE ADMINISTRATIVE LAW JUDGE SHALL NOTIFY IMMEDIATELY
10 THE PARTIES OF THE TIME AND PLACE OF THE HEARING.

11 (3) THE HEARING SHALL BE CONDUCTED IN ACCORDANCE WITH
12 ARTICLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

13 (B) (1) THE PARTIES TO THE HEARING SHALL INCLUDE THE CLAIMANT
14 AND THE FUND.

15 (2) ON REQUEST BY A PERSON OR AN ENTITY IDENTIFIED BY THE
16 CLAIMANT IN ACCORDANCE WITH § 3-2D-04(A)(2)(III) OF THIS SUBTITLE, THE
17 PERSON OR ENTITY SHALL BE PERMITTED TO PARTICIPATE AS A PARTY.

18 (C) (1) ON APPLICATION TO THE ADMINISTRATIVE LAW JUDGE SETTING
19 FORTH THE MATERIALITY OF THE EVIDENCE TO BE GIVEN, A PARTY TO A
20 PROCEEDING MAY SERVE INTERROGATORIES OR CAUSE THE DEPOSITIONS OF
21 WITNESSES RESIDING IN OR OUTSIDE THE STATE TO BE TAKEN.

22 (2) THE DEPOSITIONS SHALL BE TAKEN AFTER GIVING NOTICE AND
23 IN THE MANNER PRESCRIBED FOR THE TAKING OF DEPOSITIONS IN ACTIONS AT
24 LAW, EXCEPT THAT THEY SHALL BE DIRECTED TO THE ADMINISTRATIVE LAW JUDGE
25 BEFORE WHOM THE PROCEEDINGS MAY BE PENDING.

26 (3) THE COSTS OF INTERROGATORIES AND DEPOSITIONS SHALL BE
27 TAXED AS EXPENSES INCURRED IN CONNECTION WITH THE FILING OF A CLAIM.

28 **3-2D-08.**

29 (A) (1) A DECISION OF THE OFFICE UNDER THIS SUBTITLE SHALL
30 CONSTITUTE A FINAL DECISION FOR PURPOSES OF JUDICIAL REVIEW.

1 (C) "EXECUTIVE DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF THE
2 FUND.

3 (D) "FUND" MEANS THE MARYLAND NO-FAULT BIRTH INJURY FUND.

4 (E) "HEALTH CARE PRACTITIONER" MEANS AN INDIVIDUAL LICENSED OR
5 CERTIFIED OR OTHERWISE AUTHORIZED TO PROVIDE OBSTETRICAL SERVICES OR
6 AN INDIVIDUAL LICENSED OR CERTIFIED UNDER THE HEALTH OCCUPATIONS
7 ARTICLE TO PRACTICE MIDWIFERY.

8 (F) "HOSPITAL" HAS THE MEANING STATED IN § 19-301 OF THE
9 HEALTH - GENERAL ARTICLE.

10 (G) "PREMIUM" MEANS THE ANNUAL ASSESSMENT PAID BY HOSPITALS IN
11 ACCORDANCE WITH § 32-303 OF THIS TITLE.

12 (H) "SECRETARY" MEANS THE SECRETARY OF HEALTH AND MENTAL
13 HYGIENE.

14 SUBTITLE 2. POWERS; BOARD OF TRUSTEES; STAFF.

15 32-201.

16 (A) THERE IS A MARYLAND NO-FAULT BIRTH INJURY FUND.

17 (B) THE FUND IS AUTHORIZED TO:

18 (1) RECEIVE PREMIUMS COLLECTED UNDER § 32-303 OF THIS TITLE;

19 (2) ADMINISTER THE PAYMENT OF AWARDS UNDER TITLE 3,
20 SUBTITLE 2D OF THE COURTS ARTICLE;

21 (3) INVEST AND REINVEST SURPLUS MONEY OVER LOSSES AND
22 EXPENSES AS SET FORTH IN § 32-302 OF THIS TITLE;

23 (4) REINSURE THE RISKS OF THE FUND WHOLLY OR PARTLY;

24 (5) EMPLOY OR RETAIN PERSONS AS NECESSARY TO PERFORM THE
25 ADMINISTRATIVE AND FINANCIAL TRANSACTIONS AND OTHER NECESSARY AND
26 PROPER FUNCTIONS NOT PROHIBITED BY LAW; AND

27 (6) ENTER INTO CONTRACTS AS NECESSARY OR PROPER TO CARRY
28 OUT THE LEGAL AND PROPER BUSINESS OF THE FUND.

1 **32-202.**

2 (A) **THERE IS A BOARD OF TRUSTEES OF THE FUND.**

3 (B) (1) **THE BOARD OF TRUSTEES CONSISTS OF SEVEN MEMBERS**
4 **APPOINTED BY THE GOVERNOR WITH THE ADVICE AND CONSENT OF THE SENATE.**

5 (2) **OF THE SEVEN MEMBERS:**

6 (I) **ONE SHALL BE AN OBSTETRICIAN;**

7 (II) **ONE SHALL BE A PEDIATRIC NEUROLOGIST;**

8 (III) **ONE SHALL BE A REPRESENTATIVE NOMINATED BY THE**
9 **MARYLAND HOSPITAL ASSOCIATION;**

10 (IV) **ONE SHALL BE AN ATTORNEY;**

11 (V) **TWO SHALL BE CITIZEN REPRESENTATIVES; AND**

12 (VI) **ONE SHALL BE AN EXPERT IN DISABILITY CARE.**

13 (C) (1) **EACH MEMBER MUST BE A RESIDENT OF THE STATE.**

14 (2) **IN APPOINTING MEMBERS, THE GOVERNOR, TO THE EXTENT**
15 **PRACTICABLE, SHALL CONSIDER THE GEOGRAPHIC AND DEMOGRAPHIC DIVERSITY**
16 **OF THE STATE, INCLUDING RACE AND GENDER.**

17 (D) **BEFORE TAKING OFFICE, EACH APPOINTEE TO THE BOARD OF**
18 **TRUSTEES SHALL TAKE THE OATH REQUIRED BY ARTICLE I, § 9 OF THE MARYLAND**
19 **CONSTITUTION.**

20 (E) (1) **THE TERM OF A MEMBER IS 5 YEARS.**

21 (2) **AT THE END OF A TERM, A MEMBER CONTINUES TO SERVE UNTIL**
22 **A SUCCESSOR IS APPOINTED AND QUALIFIES.**

23 (3) **A MEMBER MAY NOT SERVE FOR MORE THAN THE GREATER OF:**

24 (I) **TWO FULL TERMS; AND**

25 (II) **A TOTAL OF 10 YEARS.**

1 **(4) IF A MEMBER OF THE BOARD OF TRUSTEES CEASES TO BE A**
2 **MEMBER OF THE BOARD, THE GOVERNOR SHALL APPOINT A SUCCESSOR FOR THE**
3 **UNEXPIRED TERM.**

4 **(F) THE BOARD OF TRUSTEES SHALL CHOOSE A CHAIR FROM AMONG ITS**
5 **MEMBERS.**

6 **(G) EACH MEMBER OF THE BOARD OF TRUSTEES IS ENTITLED TO**
7 **REASONABLE PER DIEM COMPENSATION FOR EACH DAY ACTUALLY ENGAGED IN THE**
8 **DISCHARGE OF FUND DUTIES.**

9 **(H) EACH MEMBER OF THE BOARD OF TRUSTEES IS ENTITLED TO**
10 **REIMBURSEMENT FOR REASONABLE EXPENSES.**

11 **(I) THE BOARD OF TRUSTEES:**

12 **(1) SHALL ADOPT RULES, BYLAWS, AND PROCEDURES; AND**

13 **(2) MAY ADOPT ANY POLICY TO CARRY OUT THIS TITLE.**

14 **32-203.**

15 **(A) (1) THE BOARD OF TRUSTEES SHALL APPOINT THE EXECUTIVE**
16 **DIRECTOR OF THE FUND.**

17 **(2) THE EXECUTIVE DIRECTOR SERVES AT THE PLEASURE OF THE**
18 **BOARD OF TRUSTEES.**

19 **(3) IF THE BOARD OF TRUSTEES FAILS TO AGREE ON A SUCCESSOR**
20 **EXECUTIVE DIRECTOR, THE GOVERNOR SHALL APPOINT THE SUCCESSOR.**

21 **(B) (1) THE EXECUTIVE DIRECTOR:**

22 **(I) IS THE ADMINISTRATIVE HEAD OF THE FUND; AND**

23 **(II) SHALL EXERCISE THE POWERS AND PERFORM THE DUTIES**
24 **CONFERRED ON THE FUND BY THIS TITLE EXCEPT FOR THOSE POWERS AND DUTIES**
25 **CONFERRED ON THE BOARD OF TRUSTEES.**

26 **(2) THE BOARD OF TRUSTEES SHALL ADVISE THE EXECUTIVE**
27 **DIRECTOR ON THE EXERCISE OF THE POWERS AND DUTIES CONFERRED ON THE**
28 **EXECUTIVE DIRECTOR BY THIS TITLE.**

1 **(C) THE BOARD OF TRUSTEES SHALL DETERMINE THE COMPENSATION OF**
2 **THE EXECUTIVE DIRECTOR.**

3 **32-204.**

4 **(A) (1) EMPLOYEES OF THE FUND ARE NOT IN THE STATE PERSONNEL**
5 **MANAGEMENT SYSTEM.**

6 **(2) THE EXECUTIVE DIRECTOR SHALL APPOINT AND REMOVE**
7 **EMPLOYEES OF THE FUND IN ACCORDANCE WITH THE POLICIES OF THE BOARD OF**
8 **TRUSTEES.**

9 **(B) THE EXECUTIVE DIRECTOR SHALL DETERMINE AND ADMINISTER THE**
10 **COMPENSATION OF THE EMPLOYEES OF THE FUND WITH THE APPROVAL OF THE**
11 **BOARD OF TRUSTEES.**

12 **(C) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBTITLE, AN EMPLOYEE OF**
13 **THE FUND IS NOT SUBJECT TO ANY LAW, REGULATION, OR EXECUTIVE ORDER**
14 **GOVERNING STATE EMPLOYEE COMPENSATION, INCLUDING FURLOUGHS, SALARY**
15 **REDUCTIONS, AND OTHER GENERAL FUND COST-SAVING MEASURES.**

16 **SUBTITLE 3. PURPOSES AND ADMINISTRATION OF FUND.**

17 **32-301.**

18 **(A) THE PURPOSE OF THE FUND IS TO PROVIDE COMPENSATION AND**
19 **BENEFITS TO ELIGIBLE CLAIMANTS UNDER TITLE 3, SUBTITLE 2D OF THE COURTS**
20 **ARTICLE.**

21 **(B) MONEY OF THE FUND CONSISTS OF REVENUES, PREMIUMS, AND OTHER**
22 **RECEIPTS PROVIDED BY LAW.**

23 **(C) (1) ALL OPERATING EXPENSES OF THE FUND SHALL BE PAID FROM**
24 **THE MONEY COLLECTED BY OR FOR THE FUND.**

25 **(2) MONEY AND PROPERTY AVAILABLE TO THE FUND MAY BE USED**
26 **FOR THE GENERAL PURPOSES OF THE FUND, INCLUDING FOR THE PAYMENT OF**
27 **AWARDS ARISING UNDER TITLE 3, SUBTITLE 2D OF THE COURTS ARTICLE AND FOR**
28 **THE ADMINISTRATIVE EXPENSES OF THE FUND.**

1 (D) (1) THE FUND SHALL PROVIDE TO EACH MARYLAND HOSPITAL AND
2 OBSTETRICIAN PRACTICING IN MARYLAND WRITTEN MATERIALS CONTAINING
3 INFORMATION ABOUT THE FUND FOR DISTRIBUTION TO OBSTETRICAL PATIENTS.

4 (2) THE INFORMATION SHALL INCLUDE A CLEAR AND CONCISE
5 EXPLANATION OF A PATIENT'S RIGHTS, REMEDIES, AND LIMITATIONS UNDER THE
6 FUND.

7 32-302.

8 (A) THE ASSETS OF THE FUND ARE NOT PART OF THE STATE TREASURY.

9 (B) THE DEBTS AND OBLIGATIONS OF THE FUND ARE NOT A DEBT OF THE
10 STATE OR A PLEDGE OF CREDIT OF THE STATE.

11 (C) WHEN THE AMOUNT OF MONEY IN THE FUND EXCEEDS THE AMOUNT
12 THAT THE EXECUTIVE DIRECTOR BELIEVES IS LIKELY TO BE REQUIRED
13 IMMEDIATELY, THE BOARD OF TRUSTEES MAY MANAGE THE EXCESS AS THE BOARD
14 OF TRUSTEES CONSIDERS APPROPRIATE AND INVEST THE EXCESS IN INVESTMENTS
15 LEGAL FOR CASUALTY INSURERS UNDER §§ 5-601 THROUGH 5-609 OF THIS
16 ARTICLE.

17 (D) (1) EACH FISCAL YEAR, THE FUND SHALL ENGAGE AN INDEPENDENT
18 CERTIFIED PUBLIC ACCOUNTANT TO AUDIT THE ACCOUNTS OF THE FUND.

19 (2) THE COST OF THE AUDIT SERVICES SHALL BE BORNE BY THE
20 FUND AND BE PAID FROM MONEY DESIGNATED FOR SUCH PURPOSES IN THE FUND.

21 (3) THE AUDIT SHALL BE PERFORMED EACH FISCAL YEAR IN
22 ACCORDANCE WITH GENERALLY ACCEPTED AUDITING STANDARDS AND SHALL
23 INCLUDE TESTS OF THE ACCOUNTING RECORDS AND AUDITING PROCEDURES AS
24 CONSIDERED NECESSARY UNDER THE CIRCUMSTANCES.

25 (4) THE ANNUAL AUDIT REPORT SHALL BE DISCLOSED TO THE
26 PUBLIC.

27 (E) (1) EACH FISCAL YEAR, THE FUND SHALL ENGAGE A QUALIFIED
28 ACTUARY WHO IS A MEMBER OF THE AMERICAN ACADEMY OF ACTUARIES TO
29 INVESTIGATE THE REQUIREMENTS OF THE FUND AND PROVIDE AN ACTUARIAL
30 OPINION OF THE VALUATION OF THE ASSETS AND LIABILITIES OF THE FUND.

31 (2) THE ACTUARY SHALL PRODUCE A STATEMENT OF ACTUARIAL
32 OPINION CONCERNING THE VALUATION OF THE FUND'S ASSETS AND LIABILITIES

1 AND THE ADEQUACY OF THE ASSETS, WHICH THE BOARD OF TRUSTEES SHALL
2 DISCLOSE TO THE PUBLIC.

3 **32-303.**

4 (A) FOR EACH FISCAL YEAR, BASED ON THE ANNUAL STATEMENT OF
5 ACTUARIAL OPINION, THE BOARD OF TRUSTEES OF THE FUND SHALL:

6 (1) DETERMINE THE AMOUNT REQUIRED TO FINANCE AND
7 ADMINISTER THE FUND; AND

8 (2) PROVIDE NOTICE OF THE AMOUNT TO THE COMMISSION ON OR
9 BEFORE MARCH 1 EACH YEAR.

10 (B) (1) ON OR BEFORE THE BEGINNING OF EACH FISCAL YEAR, THE
11 COMMISSION SHALL:

12 (I) ASSESS PREMIUMS FOR ALL MARYLAND HOSPITALS; AND

13 (II) INCREASE HOSPITAL RATES TOTALING THE AMOUNT
14 DETERMINED BY THE BOARD OF TRUSTEES OF THE FUND THAT IS REQUIRED TO
15 FINANCE AND ADMINISTER THE FUND.

16 (2) (I) THE COMMISSION SHALL ADOPT REGULATIONS THAT
17 SPECIFY THE METHODOLOGY FOR THE ASSESSMENT OF PREMIUMS.

18 (II) THE COMMISSION'S ASSESSMENT METHODOLOGY SHALL:

19 1. ACCOUNT FOR GEOGRAPHIC DIFFERENCES AMONG
20 HOSPITALS;

21 2. ACCOUNT FOR DIFFERENCES AMONG HOSPITALS'
22 HISTORICAL CLAIMS EXPERIENCE INVOLVING BIRTHS IN EACH HOSPITAL; AND

23 3. DISTINGUISH BETWEEN HOSPITALS THAT PROVIDE
24 OBSTETRICAL SERVICES AND THOSE THAT DO NOT.

25 (III) IN DETERMINING HOSPITAL RATES UNDER TITLE 19,
26 SUBTITLE 2 OF THE HEALTH - GENERAL ARTICLE, THE COMMISSION SHALL
27 INCREASE RATES TO ACCOUNT FOR THE AMOUNT OF THE PREMIUMS, AND THE
28 RESULTING INCREASE MAY NOT BE CONSIDERED IN DETERMINING THE
29 REASONABLENESS OF RATES OR HOSPITAL FINANCIAL PERFORMANCE UNDER
30 COMMISSION METHODOLOGIES.

1 **(C) (1) ON OR BEFORE SEPTEMBER 1 EACH YEAR, EACH HOSPITAL**
2 **ASSESSED WITH PREMIUMS UNDER THIS SECTION SHALL PAY THE PREMIUM**
3 **AMOUNTS TO THE COMMISSION.**

4 **(2) THE COMMISSION SHALL COLLECT THE PREMIUM AMOUNTS**
5 **FROM HOSPITALS AND PAY THE PREMIUM AMOUNTS TO THE FUND FOR THE**
6 **PURPOSES OF THIS TITLE.**

7 **32-304.**

8 **(A) (1) EACH INSURER ISSUING OR ISSUING FOR DELIVERY IN THE STATE**
9 **A PERSONAL INJURY LIABILITY POLICY THAT PROVIDES MEDICAL MALPRACTICE**
10 **LIABILITY COVERAGE FOR THE OBSTETRICAL OR MIDWIFERY PRACTICE OF A**
11 **HEALTH CARE PRACTITIONER PRACTICING IN THE STATE SHALL PROVIDE A CREDIT**
12 **ON THE HEALTH CARE PRACTITIONER'S ANNUAL MEDICAL MALPRACTICE LIABILITY**
13 **INSURANCE PREMIUM TO ACCOUNT FOR THE AVAILABILITY OF THE FUND TO**
14 **COMPENSATE ELIGIBLE CLAIMANTS.**

15 **(2) THE CREDIT SHALL BE IN AN AMOUNT THAT WILL PRODUCE**
16 **PREMIUMS THAT ARE NOT EXCESSIVE, INADEQUATE, OR UNFAIRLY**
17 **DISCRIMINATORY, AS DETERMINED BY THE COMMISSIONER.**

18 **(B) (1) EACH INSURER ISSUING OR ISSUING FOR DELIVERY IN THE STATE**
19 **A PERSONAL INJURY LIABILITY POLICY THAT PROVIDES MEDICAL MALPRACTICE**
20 **LIABILITY COVERAGE FOR THE OBSTETRICAL OR MIDWIFERY SERVICES OF A**
21 **HOSPITAL IN THE STATE SHALL PROVIDE A CREDIT ON THE HOSPITAL'S ANNUAL**
22 **MEDICAL MALPRACTICE LIABILITY INSURANCE PREMIUM TO ACCOUNT FOR THE**
23 **AVAILABILITY OF THE FUND TO COMPENSATE ELIGIBLE CLAIMANTS.**

24 **(2) THE CREDIT SHALL BE IN AN AMOUNT THAT WILL PRODUCE**
25 **PREMIUMS THAT ARE NOT EXCESSIVE, INADEQUATE, OR UNFAIRLY**
26 **DISCRIMINATORY, AS DETERMINED BY THE COMMISSIONER.**

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to
28 apply only prospectively and may not be applied or interpreted to have any effect on or
29 application to any cause of action arising before January 1, 2019.

30 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July
31 1, 2017.