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**By: Delegate Arnick**

Introduced and read first time: January 10, 1997

Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **Health Care Malpractice Claims - Mediation**

3 FOR the purpose of requiring that health care malpractice claims for which arbitration by  
4 the Health Claims Arbitration Office has been waived be remanded to the Office  
5 for the purpose of mediation; requiring certain mediation procedures; providing for  
6 the compensation of mediators; providing for the application of this Act; and  
7 generally relating to mediation of certain health care malpractice claims.

8 BY repealing and reenacting, with amendments,  
9 Article - Courts and Judicial Proceedings  
10 Section 3-2A-06A and 3-2A-06B  
11 Annotated Code of Maryland  
12 (1995 Replacement Volume and 1996 Supplement)

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

15 **Article - Courts and Judicial Proceedings**

16 3-2A-06A.

17 (a) At any time before the hearing of a claim with the Health Claims Arbitration  
18 Office, the parties may agree mutually to waive arbitration of the claim, and the  
19 provisions of this [subsection] SECTION then shall govern all further proceedings on the  
20 claim.

21 (b) (1) The claimant shall file with the Director a written election to waive  
22 arbitration which must be signed by all parties or their attorneys of record in the  
23 arbitration proceeding.

24 (2) After filing, the written election shall be mutually binding upon all  
25 parties.

26 (c) (1) Within 60 days after filing the election to waive arbitration, the plaintiff  
27 shall file a complaint and a copy of the election to waive arbitration with the circuit court  
28 or United States District Court.

1 (2) After filing the complaint, the plaintiff shall serve a summons and a copy  
2 of the complaint upon the attorney of record for all parties in the health claims  
3 arbitration proceeding.

4 (3) Failure to file a complaint within 60 days of filing the election to waive  
5 arbitration may constitute grounds for dismissal of the complaint upon motion by an  
6 adverse party and upon a finding of prejudice to that party due to the delay in the filing  
7 of the complaint.

8 (d) After filing the election to waive arbitration, the plaintiff may not join an  
9 additional health care provider as a defendant in any action brought under subsection (c)  
10 of this section unless a written election to waive arbitration has been filed by that health  
11 care provider under subsection (b) of this section.

12 (e) In any case subject to this section, the procedures of § 3-2A-06(f) of this  
13 subtitle shall apply.

14 (f) The provisions of this section apply only if no party waives arbitration of the  
15 claim under the provisions of § 3-2A-06B of this subtitle.

16 (G) (1) IN A CASE SUBJECT TO THIS SECTION, THE CIRCUIT COURT OR  
17 UNITED STATES DISTRICT COURT, TO WHICH THE CASE HAS BEEN TRANSFERRED  
18 AFTER THE WAIVER OF ARBITRATION, SHALL REMAND THE CASE TO THE HEALTH  
19 CLAIMS ARBITRATION OFFICE WITHIN 90 DAYS AFTER A COMPLAINT IS FILED  
20 UNDER SUBSECTION (C) OF THIS SECTION.

21 (2) (I) ON RECEIPT OF THE CASE AT THE HEALTH CLAIMS  
22 ARBITRATION OFFICE, THE DIRECTOR SHALL SEND TO THE PARTIES A LIST OF SIX  
23 ATTORNEYS WHO:

24 1. MEET THE QUALIFICATIONS CONTAINED IN § 3-2A-03  
25 (C)(3) OF THIS SUBTITLE; AND

26 2. ARE TRAINED IN MEDIATION.

27 (II) EACH SIDE, CLAIMANT AND DEFENDANTS, SHALL BE ENTITLED  
28 TO TWO STRIKES FROM THE LIST.

29 (III) THE STRIKES SHALL BE SUBMITTED TO THE DIRECTOR WITHIN  
30 10 DAYS AFTER THE LIST IS SENT.

31 (IV) THE DIRECTOR SHALL APPOINT A MEDIATOR FROM THE  
32 UNSTRICKEN NAMES ON THE LIST.

33 (3) ON APPOINTMENT, THE MEDIATOR SHALL SCHEDULE A MEDIATION  
34 SESSION BETWEEN THE PARTIES TO BE HELD WITHIN 45 DAYS OF THE MEDIATOR'S  
35 APPOINTMENT.

36 (4) THE MEDIATOR SHALL MEET WITH THE PARTIES TO PURSUE THE  
37 MEDIATION OF THE CLAIM OR, IN THE ALTERNATIVE, TO RESOLVE ANY ISSUES TO  
38 WHICH THE PARTIES AGREE TO STIPULATE BEFORE TRIAL.

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1 (5) (I) WITHIN 10 DAYS AFTER THE MEDIATION SESSION, THE  
2 MEDIATOR SHALL NOTIFY, IN WRITING, THE HEALTH CLAIMS ARBITRATION OFFICE  
3 OF THE RESULTS OF THE MEDIATION SESSION.

4 (II) THE MEDIATOR'S REPORT SHALL CONTAIN:

5 1. THE RESULTS OF THE MEDIATION; AND

6 2. THE MEDIATOR'S CONCLUSIONS AS TO THE PARTIES'  
7 POSITIONS.

8 (III) THE MEDIATOR'S REPORT:

9 1. SHALL REMAIN A PART OF THE DOCKET IN THE HEALTH  
10 CLAIMS ARBITRATION OFFICE;

11 2. SHALL BE CONFIDENTIAL UNTIL THE CONCLUSION OF  
12 THE CASE; AND

13 3. MAY NOT BE A PART OF THE PROCEEDINGS IN THE  
14 CIRCUIT COURT OR THE UNITED STATES DISTRICT COURT.

15 (6) DURING THE MEDIATION PERIOD, THE CIRCUIT COURT OR THE  
16 UNITED STATES DISTRICT COURT SHALL CONTINUE TO HAVE JURISDICTION TO  
17 RULE ON ANY MOTION AND TRIAL AND DISCOVERY ORDERS PASSED BY THOSE  
18 COURTS SHALL CONTINUE IN EFFECT.

19 (7) THE MEDIATOR SHALL BE PAID IN ACCORDANCE WITH § 3-2A-03(D)  
20 OF THIS SUBTITLE, AND, UNLESS OTHERWISE AGREED TO BY THE PARTIES, THE  
21 COST OF MEDIATION SHALL BE DIVIDED EQUALLY BETWEEN THE PARTIES.

22 3-2A-06B.

23 (a) Arbitration of a claim with the Health Claims Arbitration Office may be  
24 waived by the claimant or any defendant in accordance with this section, and the  
25 provisions of this section shall govern all further proceedings on any claim for which  
26 arbitration has been waived under this section.

27 (b) (1) Subject to the time limitation under subsection (d) of this section, any  
28 claimant may waive arbitration at any time after filing the certificate of qualified expert  
29 required by § 3-2A-04(b) of this subtitle by filing with the Director a written election to  
30 waive arbitration signed by the claimant or the claimant's attorney of record in the  
31 arbitration proceeding.

32 (2) The claimant shall serve the written election on all other parties to the  
33 claim in accordance with the Maryland Rules.

34 (3) If the claimant waives arbitration under this subsection, all defendants  
35 shall comply with the requirements of § 3-2A-04(b) of this subtitle by filing their  
36 certificates at the Health Claims Arbitration Office or, after the election, in the  
37 appropriate circuit court or United States District Court.

38 (c) (1) Subject to the time limitation under subsection (d) of this section, any  
39 defendant may waive arbitration at any time after the claimant has filed the certificate of

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1 qualified expert required by § 3-2A-04(b) of this subtitle by filing with the Director a  
2 written election to waive arbitration signed by the defendant or the defendant's attorney  
3 of record in the arbitration proceeding.

4 (2) The defendant shall serve the written election on all other parties to the  
5 claim in accordance with the Maryland Rules.

6 (3) If a defendant waives arbitration under this subsection, the defendant  
7 shall comply with the requirements of § 3-2A-04(b) of this subtitle by filing the certificate  
8 at the Health Claims Arbitration Office, or, after the election, in the appropriate circuit  
9 court or United States District Court.

10 (d) (1) A waiver of arbitration by any party under this section may be filed not  
11 later than 60 days after all defendants have filed a certificate of qualified expert under §  
12 3-2A-04(b) of this subtitle.

13 (2) Any waiver of arbitration after the date specified in paragraph (1) of this  
14 subsection shall be in accordance with the provisions of § 3-2A-06A of this subtitle.

15 (e) After filing, the written election shall be binding upon all parties.

16 (f) (1) Within 60 days after the filing of an election to waive arbitration by any  
17 party, the plaintiff shall file a complaint and a copy of the election to waive arbitration in  
18 the appropriate circuit court or the United States District Court.

19 (2) After filing the complaint, the plaintiff shall serve a summons and a copy  
20 of the complaint upon all defendants or the attorney of record for all parties in the health  
21 claims arbitration proceeding.

22 (3) Failure to file a complaint within 60 days of filing the election to waive  
23 arbitration may constitute grounds for dismissal of the complaint upon:

24 (i) A motion by an adverse party; and

25 (ii) A finding of prejudice to the adverse party due to the delay in the  
26 filing of the complaint.

27 (g) After the filing of an election to waive arbitration under this section, if a party  
28 joins an additional health care provider as a defendant in an action, the party shall file a  
29 certificate of qualified expert required by § 3-2A-04(b) of this subtitle with respect to the  
30 additional health care provider.

31 (h) In any case subject to this section, the procedures of § 3-2A-06(f) of this  
32 subtitle shall apply.

33 (I) (1) IN A CASE SUBJECT TO THIS SECTION, THE CIRCUIT COURT OR  
34 UNITED STATES DISTRICT COURT, TO WHICH THE CASE HAS BEEN TRANSFERRED  
35 AFTER THE WAIVER OF ARBITRATION, SHALL REMAND THE CASE TO THE HEALTH  
36 CLAIMS ARBITRATION OFFICE WITHIN 90 DAYS AFTER A COMPLAINT IS FILED  
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2 OF THIS SUBTITLE, AND, UNLESS OTHERWISE AGREED TO BY THE PARTIES, THE  
3 COST OF MEDIATION SHALL BE DIVIDED EQUALLY BETWEEN THE PARTIES.

4                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed  
5 only prospectively and may not be applied or interpreted to have any effect on or  
6 application to any claim filed before the effective date of this Act.

7                   SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
8 October 1, 1997.