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**By: Delegates Harkins, D. Murphy, Bonsack, Bissett, and Owings**

Introduced and read first time: January 31, 1997

Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **Health Care Malpractice Claims - Attorneys' Fees**

3 FOR the purpose of establishing that an attorney in a health care malpractice claim may  
4 accept payment on a contingency fee basis only as provided under this Act;  
5 establishing a certain time period in which a health care provider may deliver a  
6 statement accepting responsibility for a medical injury claim and specifying a certain  
7 amount that the health care provider is willing to pay; authorizing the Director of  
8 the Health Claims Arbitration Office to extend the time period in which a health  
9 care provider may deliver a statement under this Act; requiring the health care  
10 provider to file certain information with the Director; prohibiting a health care  
11 provider from contesting liability under certain circumstances; establishing that if a  
12 claimant accepts a statement filed under this Act, the claimant's attorney is entitled  
13 to payment at a certain hourly rate; establishing that if a claimant rejects a  
14 statement filed under this Act, the claimant's attorney is entitled to payment at a  
15 certain hourly rate and at a certain percentage on a contingency fee basis; specifying  
16 the method of payment for a claim against multiple health care providers; providing  
17 for the construction of certain provisions under this Act; defining a certain term;  
18 providing for the application of this Act; and generally relating to attorneys' fees in  
19 health care malpractice claims.

20 BY adding to

21 Article - Courts and Judicial Proceedings  
22 Section 3-2A-07A  
23 Annotated Code of Maryland  
24 (1995 Replacement Volume and 1996 Supplement)

25 Preamble

26 WHEREAS, The contingent-fee lawyer accepts many risks in pursuit of justice for  
27 clients who might otherwise go unrepresented; and

28 WHEREAS, Tort litigation, including preparation and negotiations in advance of  
29 litigation, typically involves uncertainties in the theory and proof of liability, defenses,  
30 damages, and potential recovery; and

31 WHEREAS, The percentage contingency fee agreement allows prospective  
32 plaintiffs who lack financing for worthy claims, or who are otherwise "risk averse", to

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1 effectively borrow a lawyer's time and transfer the risks inherent in litigation to lawyers  
2 who are willing to take such risks; and

3 WHEREAS, Public interest considerations favor maintaining some form of  
4 percentage fee system only where a "real contingency" exists and where the percentage  
5 fee is proportional to the risk; and

6 WHEREAS, Many state legislatures, including those in California, Delaware,  
7 Illinois, Indiana, Maine, Massachusetts, New York, Tennessee, Utah, and Wisconsin,  
8 have limited attorneys' fees in health care provider cases; and

9 WHEREAS, In many health care malpractice claim cases, the risk to the claimant is  
10 eliminated in the early stages of litigation when the defendant admits liability and offers  
11 to settle the case; and

12 WHEREAS, In many health care malpractice claim cases, a contingency fee is  
13 routinely charged even when there is no realistic risk of nonrecovery; and

14 WHEREAS, In health care malpractice claim cases where the defendant has  
15 admitted liability and offered to settle, the lawyer's contingent fee is frequently excessive  
16 in light of the risk, work effort, and results of the particular case; now, therefore,

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-07A.

21 (A) IN THIS SECTION, "OFFER OF SETTLEMENT" MEANS A WRITTEN  
22 STATEMENT BY A HEALTH CARE PROVIDER IN ANSWER TO A CLAIM FILED UNDER  
23 THIS SUBTITLE:

24 (1) ACCEPTING LIABILITY FOR THE INJURY CLAIMED; AND

25 (2) SPECIFYING THE DOLLAR AMOUNT THAT THE HEALTH CARE  
26 PROVIDER IS WILLING TO PAY TO SETTLE THE CLAIM.

27 (B) AN ATTORNEY WHO REPRESENTS A PERSON IN A MEDICAL INJURY CLAIM  
28 MAY ACCEPT PAYMENT ON A CONTINGENCY FEE BASIS ONLY IN ACCORDANCE WITH  
29 THIS SECTION.

30 (C) (1) WITHIN 120 DAYS AFTER A HEALTH CARE PROVIDER FILES A  
31 RESPONSE TO A STATEMENT OF CLAIM IN ACCORDANCE WITH § 3-2A-04(A) OF THIS  
32 SUBTITLE, THE HEALTH CARE PROVIDER MAY DELIVER TO THE CLAIMANT AN  
33 OFFER OF SETTLEMENT.

34 (2) UPON GOOD CAUSE SHOWN, THE DIRECTOR MAY EXTEND BY 90  
35 DAYS BUT NOT MORE THAN 120 DAYS, THE TIME FOR SUBMITTING AN OFFER OF  
36 SETTLEMENT UNDER PARAGRAPH (1) OF THIS SUBSECTION.

37 (3) WITHIN 10 DAYS AFTER SUBMITTING AN OFFER OF SETTLEMENT  
38 UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE HEALTH CARE PROVIDER SHALL:

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1 (I) FILE WITH THE DIRECTOR:

2 1. A COPY OF THE OFFER; AND

3 2. A CERTIFICATION INDICATING THE DATE THAT THE  
4 OFFER WAS DELIVERED TO THE CLAIMANT OR THE CLAIMANT'S ATTORNEY; AND

5 (II) SERVE A COPY OF THE CERTIFICATION ON THE CLAIMANT  
6 AND EACH OF THE PARTIES TO THE ACTION.

7 (4) WITHIN 90 DAYS AFTER THE OFFER OF SETTLEMENT IS DELIVERED  
8 TO THE CLAIMANT, THE CLAIMANT MUST DELIVER TO THE HEALTH CARE  
9 PROVIDER A WRITTEN ACCEPTANCE OF THE OFFER OF SETTLEMENT. FAILURE OF  
10 THE CLAIMANT TO ACCEPT THE OFFER IN WRITING WITHIN THE 90-DAY PERIOD  
11 CONSTITUTES A REJECTION OF THE OFFER OF SETTLEMENT.

12 (D) (1) IF A CLAIMANT ACCEPTS AN OFFER OF SETTLEMENT UNDER  
13 SUBSECTION (C) OF THIS SECTION, THE HEALTH CARE PROVIDER:

14 (I) MAY NOT CONTEST LIABILITY FOR THE CLAIM BEFORE THE  
15 ARBITRATION PANEL OR ON JUDICIAL REVIEW; AND

16 (II) MAY CONTEST THE AMOUNT OF DAMAGES IN EXCESS OF THE  
17 AMOUNT SPECIFIED IN THE OFFER OF SETTLEMENT.

18 (2) IF A CLAIMANT REJECTS AN OFFER OF SETTLEMENT UNDER  
19 SUBSECTION (C) OF THIS SECTION, THE HEALTH CARE PROVIDER:

20 (I) MAY NOT CONTEST LIABILITY FOR THE CLAIM BEFORE THE  
21 ARBITRATION PANEL OR ON JUDICIAL REVIEW; AND

22 (II) MAY CONTEST THE AMOUNT OF DAMAGES.

23 (E) A CLAIMANT WHO ACCEPTS AN OFFER OF SETTLEMENT UNDER  
24 SUBSECTION (C) OF THIS SECTION HAS THE RIGHT TO ACCEPT PAYMENT EITHER IN  
25 THE METHOD PROVIDED IN THE OFFER OF SETTLEMENT, OR IN CASH IN THE  
26 AMOUNT THAT IS EQUIVALENT TO THE SETTLEMENT'S PRESENT-DAY CASH VALUE.

27 (F) (1) IF A HEALTH CARE PROVIDER FILES AN OFFER OF SETTLEMENT  
28 UNDER SUBSECTION (C) OF THIS SECTION, THE CLAIMANT'S ATTORNEY IS ENTITLED  
29 TO PAYMENT:

30 (I) IF THE CLAIMANT ACCEPTS THE OFFER OF SETTLEMENT, AT A  
31 REASONABLE HOURLY RATE FROM THE INCEPTION OF REPRESENTATION TO THE  
32 DATE OF SETTLEMENT OR FINAL JUDGMENT; OR

33 (II) IF THE CLAIMANT REJECTS THE OFFER OF SETTLEMENT, AT A  
34 REASONABLE HOURLY RATE FROM THE INCEPTION OF REPRESENTATION TO THE  
35 DATE ON WHICH THE OFFER OF SETTLEMENT WAS FILED, PLUS A CONTINGENCY  
36 FEE NOT TO EXCEED 40% OF THE AMOUNT RECEIVED IN EXCESS OF THE AMOUNT  
37 SPECIFIED IN THE OFFER.

38 (2) IF A CLAIM DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION IS  
39 AGAINST MULTIPLE HEALTH CARE PROVIDERS, THE CONTINGENCY FEE MAY ONLY

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1 BE LIMITED BY THE PORTION OF THE AMOUNT RECOVERED THAT IS  
2 ATTRIBUTABLE TO THE HEALTH CARE PROVIDERS WHO FILED AN OFFER OF  
3 SETTLEMENT WITHIN THE TIME REQUIRED UNDER SUBSECTION (C) OF THIS  
4 SECTION.

5 (3) FOR PURPOSES OF CALCULATING THE AMOUNT OF A CONTINGENCY  
6 FEE UNDER THIS SUBSECTION, THE CONTINGENCY FEE SHALL BE DETERMINED IN  
7 ACCORDANCE WITH THE PRESENT-DAY VALUE OF THE SETTLEMENT OR AWARD.

8 (G) THIS SECTION MAY NOT BE CONSTRUED TO PREVENT AN ATTORNEY  
9 FROM CHARGING A CONTINGENCY FEE IF:

10 (1) (I) A MEDICAL INJURY CLAIM IS SATISFIED; AND

11 (II) THE HEALTH CARE PROVIDER FAILED TO FILE AN OFFER OF  
12 SETTLEMENT UNDER SUBSECTION (C) OF THIS SECTION; OR

13 (2) A MEDICAL INJURY CLAIM IS SETTLED PRIOR TO THE FILING OF A  
14 CLAIM UNDER THIS SUBTITLE.

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed  
16 only prospectively and may not be applied or interpreted to have any effect on or  
17 application to any health care malpractice claim filed with the Health Claims Arbitration  
18 Office before the effective date of this Act.

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