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By: **Delegates Montague, Genn, and Bonsack**  
Introduced and read first time: February 13, 1998  
Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **Civil Actions - Health Care Malpractice - Carriers**

3 FOR the purpose of allowing under certain circumstances an enrollee of a certain  
4 health benefits plan to bring a health care malpractice action against certain  
5 carriers; requiring that the medical director of a carrier be the named defendant  
6 in an action under this Act; prohibiting a carrier from being a named defendant  
7 in an action under this Act; requiring a carrier to indemnify the medical director  
8 for any judgment against the medical director in an action under this Act;  
9 providing that an action under this Act is subject to certain provisions relating  
10 to health care malpractice claims; applying a limitation on noneconomic  
11 damages to an action under this Act; defining certain terms; providing for the  
12 application of this Act; and generally relating to health care malpractice actions  
13 against certain carriers.

14 BY adding to  
15 Article - Courts and Judicial Proceedings  
16 Section 3-2C-01 to be under the new subtitle "Subtitle 2C. Health Care  
17 Malpractice Actions Against Carriers"  
18 Annotated Code of Maryland  
19 (1995 Replacement Volume and 1997 Supplement)

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

22 **Article - Courts and Judicial Proceedings**

23 **SUBTITLE 2C. HEALTH CARE MALPRACTICE ACTIONS AGAINST CARRIERS.**

24 3-2C-01.

25 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
26 INDICATED.

27 (2) (I) "CARRIER" MEANS:

- 1 1. AN INSURER;
- 2 2. A NONPROFIT HEALTH SERVICE PLAN;
- 3 3. A HEALTH MAINTENANCE ORGANIZATION;
- 4 4. A DENTAL PLAN ORGANIZATION; OR
- 5 5. ANY OTHER PERSON THAT PROVIDES HEALTH BENEFITS
- 6 PLANS SUBJECT TO STATE INSURANCE REGULATION.

7 (II) "CARRIER" DOES NOT INCLUDE AN INSURER THAT ISSUES ONLY  
8 STRICT INDEMNITY HEALTH INSURANCE POLICIES AND DOES NOT USE A MEDICAL  
9 DIRECTOR TO PREAUTHORIZE COVERED SERVICES.

10 (3) (I) "ENROLLEE" MEANS A PERSON WHO IS ENROLLED IN A HEALTH  
11 BENEFIT PLAN UNDER A POLICY, PLAN, CERTIFICATE, OR CONTRACT ISSUED OR  
12 DELIVERED IN THE STATE BY A CARRIER.

13 (II) "ENROLLEE" INCLUDES A MEMBER OF A GROUP.

14 (4) "MEDICAL DIRECTOR" MEANS A PHYSICIAN OR PERSON WHO IS  
15 RESPONSIBLE FOR ESTABLISHING OR SUPERVISING COMPLIANCE WITH PROTOCOLS  
16 OR PROCEDURES USED IN THE HEALTH CARE SERVICE DELIVERY SYSTEM OF A  
17 CARRIER.

18 (B) AN ENROLLEE MAY BRING A HEALTH CARE MALPRACTICE ACTION  
19 AGAINST THE MEDICAL DIRECTOR OF A CARRIER IF THE ENROLLEE'S INJURY OR  
20 DEATH WAS PROXIMATELY CAUSED WHOLLY OR PARTLY BY THE FAILURE OF THE  
21 CARRIER TO PROVIDE OR APPROVE A COVERED SERVICE.

22 (C) IN AN ACTION BROUGHT UNDER THIS SECTION:

23 (1) THE MEDICAL DIRECTOR OF A CARRIER SHALL BE NAMED AS A  
24 PARTY DEFENDANT; BUT

25 (2) A CARRIER MAY NOT BE NAMED AS A PARTY DEFENDANT.

26 (D) A CARRIER SHALL INDEMNIFY THE MEDICAL DIRECTOR FOR ANY  
27 JUDGMENT AGAINST THE MEDICAL DIRECTOR IN AN ACTION BROUGHT UNDER THIS  
28 SECTION, EXCEPT WHEN THE MEDICAL DIRECTOR HAS ACTED IN CONTRAVENTION  
29 TO THE CARRIER'S ESTABLISHED PROCEDURES AND PROTOCOL.

30 (E) AN ACTION UNDER THIS SECTION IS SUBJECT TO:

31 (1) THE PROVISIONS OF SUBTITLE 2A OF THIS TITLE; AND

32 (2) THE LIMITATION ON NONECONOMIC DAMAGES UNDER § 11-108 OF  
33 THIS ARTICLE.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be  
2 construed only prospectively and may not be applied or interpreted to have any effect  
3 on or application to any cause of action arising before October 1, 1998.

4 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
5 October 1, 1998.