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By: **Delegate Zirkin**  
Introduced and read first time: February 12, 1999  
Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **Health Care Malpractice Claims - Neutral Case Evaluation**

3 FOR the purpose of requiring certain courts to refer certain health care malpractice  
4 claims to the Health Claims Arbitration Office for the purpose of neutral case  
5 evaluation if the parties mutually agree under certain circumstances;  
6 establishing certain neutral case evaluation procedures; providing that, during  
7 the neutral case evaluation period, certain courts shall continue to have  
8 jurisdiction on certain matters; providing for the compensation of evaluators;  
9 providing for the application of this Act; and generally relating to the neutral  
10 case evaluation of certain health care malpractice claims.

11 BY repealing and reenacting, with amendments,  
12 Article - Courts and Judicial Proceedings  
13 Section 3-2A-06A and 3-2A-06B  
14 Annotated Code of Maryland  
15 (1998 Replacement Volume)

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

18 **Article - Courts and Judicial Proceedings**

19 3-2A-06A.

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

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

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

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

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

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

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

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

17 (F) (1) IF THE PARTIES MUTUALLY AGREE TO A NEUTRAL CASE  
18 EVALUATION, THE CIRCUIT COURT OR UNITED STATES DISTRICT COURT, TO WHICH  
19 THE CASE HAS BEEN TRANSFERRED AFTER THE WAIVER OF ARBITRATION, SHALL  
20 REFER THE CASE TO THE HEALTH CLAIMS ARBITRATION OFFICE NOT LATER THAN 6  
21 MONTHS AFTER A COMPLAINT IS FILED UNDER SUBSECTION (C) OF THIS SECTION.

22 (2) (I) ON RECEIPT OF THE CASE, THE DIRECTOR SHALL SEND TO THE  
23 PARTIES A LIST OF SIX ATTORNEYS WHO:

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

26 2. HAVE TRIED AT LEAST THREE HEALTH CARE  
27 MALPRACTICE CASES.

28 (II) EACH PARTY MAY STRIKE TWO NAMES FROM THE LIST.

29 (III) IF THE CLAIM IS AGAINST MORE THAN ONE HEALTH CARE  
30 PROVIDER, WHETHER DIRECTLY BY A CLAIMANT OR AS A RESULT OF A THIRD-PARTY  
31 CLAIM, THE HEALTH CARE PROVIDERS CLAIMED AGAINST SHALL BE TREATED AS A  
32 SINGLE PARTY AND SHALL EXERCISE THEIR STRIKES JOINTLY.

33 (IV) IF THERE IS MORE THAN ONE CLAIMANT, THE CLAIMANTS  
34 SHALL BE TREATED AS A SINGLE PARTY AND SHALL EXERCISE THEIR STRIKES  
35 JOINTLY.

36 (V) IF MULTIPLE CLAIMANTS OR MULTIPLE HEALTH CARE  
37 PROVIDERS FAIL TO AGREE ON THEIR STRIKES OR FAIL TO RETURN THEIR STRIKE

1 LIST TO THE DIRECTOR WITHIN THE TIME SPECIFIED IN PARAGRAPH (VI) OF THIS  
2 SUBSECTION, THE DIRECTOR SHALL MAKE THE STRIKES ON THEIR BEHALF.

3 (VI) THE STRIKES SHALL BE SUBMITTED TO THE DIRECTOR WITHIN  
4 10 DAYS AFTER DELIVERY OF THE LIST.

5 (VII) THE DIRECTOR SHALL APPOINT AN EVALUATOR FROM THE  
6 UNSTRICKEN NAMES ON THE LIST.

7 (3) UPON APPOINTMENT, THE EVALUATOR SHALL SCHEDULE A  
8 NEUTRAL CASE EVALUATION SESSION TO BE HELD WITHIN 45 DAYS AFTER THE  
9 APPOINTMENT TO PURSUE THE NEUTRAL CASE EVALUATION OF THE CLAIM OR TO  
10 RESOLVE ANY ISSUES TO WHICH THE PARTIES AGREE TO STIPULATE BEFORE TRIAL.

11 (4) WITHIN 10 DAYS AFTER THE NEUTRAL CASE EVALUATION SESSION,  
12 THE EVALUATOR SHALL NOTIFY, IN WRITING, THE DIRECTOR AND THE CIRCUIT  
13 COURT OR UNITED STATES DISTRICT COURT OF THE RESULTS OF THE NEUTRAL  
14 CASE EVALUATION.

15 (5) (I) DURING THE NEUTRAL CASE EVALUATION PERIOD, THE  
16 CIRCUIT COURT OR UNITED STATES DISTRICT COURT SHALL CONTINUE TO HAVE  
17 JURISDICTION TO RULE ON ANY MOTIONS OR DISCOVERY MATTERS.

18 (II) THE NEUTRAL CASE EVALUATION MAY NOT INTERFERE WITH  
19 THE SCHEDULED TRIAL.

20 (6) (I) THE EVALUATOR SHALL BE PAID IN ACCORDANCE WITH §  
21 3-2A-03(D) OF THIS SUBTITLE.

22 (II) UNLESS OTHERWISE AGREED BY THE PARTIES, THE COST OF  
23 NEUTRAL CASE EVALUATION, WHICH MAY NOT EXCEED \$300 PER CASE, SHALL BE  
24 DIVIDED EQUALLY BETWEEN THE PARTIES.

25 [(f)] (G) The provisions of this section apply only if no party waives  
26 arbitration of the claim under the provisions of § 3-2A-06B of this subtitle.

27 3-2A-06B.

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

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

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

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

7       (c)     (1)     Subject to the time limitation under subsection (d) of this section, any  
8 defendant may waive arbitration at any time after the claimant has filed the  
9 certificate of qualified expert required by § 3-2A-04(b) of this subtitle by filing with  
10 the Director a written election to waive arbitration signed by the defendant or the  
11 defendant's attorney of record in the arbitration proceeding.

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

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

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

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

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

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

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

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

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

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

36       (g)     After the filing of an election to waive arbitration under this section, if a  
37 party joins an additional health care provider as a defendant in an action, the party

1 shall file a certificate of qualified expert required by § 3-2A-04(b) of this subtitle  
2 with respect to the additional health care provider.

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

5 (I) (1) IF THE PARTIES MUTUALLY AGREE TO A NEUTRAL CASE  
6 EVALUATION, THE CIRCUIT COURT OR UNITED STATES DISTRICT COURT, TO WHICH  
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11 NEUTRAL CASE EVALUATION, WHICH MAY NOT EXCEED \$300 PER CASE, SHALL BE  
12 DIVIDED EQUALLY BETWEEN THE PARTIES.

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to  
14 any claim pending or filed on or after the effective date of this Act.

15 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
16 October 1, 1999.