

HOUSE BILL 801

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HB 1027/98 - JUD

1999 Regular Session
9r2123

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

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 16, 1999

CHAPTER _____

1 AN ACT concerning

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

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

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

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

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

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

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

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

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

22 (F) (1) IF THE PARTIES MUTUALLY AGREE TO A NEUTRAL CASE
23 EVALUATION, THE CIRCUIT COURT OR UNITED STATES DISTRICT COURT, TO WHICH
24 THE CASE HAS BEEN TRANSFERRED AFTER THE WAIVER OF ARBITRATION, ~~SHALL~~
25 MAY REFER THE CASE TO THE HEALTH CLAIMS ARBITRATION OFFICE NOT LATER
26 THAN 6 MONTHS AFTER A COMPLAINT IS FILED UNDER SUBSECTION (C) OF THIS
27 SECTION.

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

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

32 2. HAVE TRIED AT LEAST THREE HEALTH CARE
33 MALPRACTICE CASES.

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

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

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

4 (V) IF MULTIPLE CLAIMANTS OR MULTIPLE HEALTH CARE
5 PROVIDERS FAIL TO AGREE ON THEIR STRIKES OR FAIL TO RETURN THEIR STRIKE
6 LIST TO THE DIRECTOR WITHIN THE TIME SPECIFIED IN PARAGRAPH (VI) OF THIS
7 SUBSECTION, THE DIRECTOR SHALL MAKE THE STRIKES ON THEIR BEHALF.

8 (VI) THE STRIKES SHALL BE SUBMITTED TO THE DIRECTOR WITHIN
9 10 DAYS AFTER DELIVERY OF THE LIST.

10 (VII) THE DIRECTOR SHALL APPOINT AN EVALUATOR FROM THE
11 UNSTRICKEN NAMES ON THE LIST.

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

16 (4) WITHIN 10 DAYS AFTER THE NEUTRAL CASE EVALUATION SESSION,
17 THE EVALUATOR SHALL NOTIFY, IN WRITING, THE DIRECTOR AND THE CIRCUIT
18 COURT OR UNITED STATES DISTRICT COURT OF THE RESULTS OF THE NEUTRAL
19 CASE EVALUATION.

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

23 (II) THE NEUTRAL CASE EVALUATION MAY NOT INTERFERE WITH
24 THE SCHEDULED TRIAL.

25 (6) (I) THE EVALUATOR SHALL BE PAID IN ACCORDANCE WITH §
26 3-2A-03(D) OF THIS SUBTITLE.

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

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

32 3-2A-06B.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (I) (1) IF THE PARTIES MUTUALLY AGREE TO A NEUTRAL CASE
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17 NEUTRAL CASE EVALUATION, WHICH MAY NOT EXCEED \$300 PER CASE, SHALL BE
18 DIVIDED EQUALLY BETWEEN THE PARTIES.

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

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