

HOUSE BILL 856

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D3

1999 Regular Session  
9lr0789  
CF 9lr1734

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By: **Delegates Billings, Grosfeld, Bobo, Cane, Dypski, Frush, Hecht, Heller, Hixson, Howard, Hubbard, A. Jones, V. Jones, K. Kelly, McIntosh, Mandel, Nathan-Pulliam, Patterson, Pendergrass, Pitkin, Stern, and Turner**

Introduced and read first time: February 12, 1999  
Assigned to: Economic Matters

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A BILL ENTITLED

1 AN ACT concerning

2 **Carriers and Managed Care Entities - Health Care Liability**

3 FOR the purpose of establishing the liability of certain carriers and managed care  
4 entities for damages that an insured or enrollee suffers as a result of a health  
5 care treatment decision of the carrier or managed care entity under certain  
6 circumstances; establishing certain defenses; providing for the application of  
7 this Act; defining certain terms; providing for the effective date of this Act; and  
8 generally relating to establishing liability of carriers and managed care entities  
9 for certain health care treatment decisions.

10 BY adding to

11 Article - Courts and Judicial Proceedings  
12 Section 3-2D-01 through 3-2D-04, inclusive, to be under the new subtitle  
13 "Subtitle 2D. Health Care Liability"  
14 Annotated Code of Maryland  
15 (1998 Replacement Volume)

16 BY repealing and reenacting, with amendments,

17 Article - Courts and Judicial Proceedings  
18 Section 11-108(c)  
19 Annotated Code of Maryland  
20 (1998 Replacement Volume)

21 BY adding to

22 Article - Health - General  
23 Section 19-706(ff)  
24 Annotated Code of Maryland  
25 (1996 Replacement Volume and 1998 Supplement)

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

3 **Article - Courts and Judicial Proceedings**

4 **SUBTITLE 2D. HEALTH CARE LIABILITY.**

5 3-2D-01.

6 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
7 INDICATED.

8 (B) "CARRIER" MEANS:

9 (1) AN INSURER;

10 (2) A NONPROFIT HEALTH SERVICE PLAN;

11 (3) A HEALTH MAINTENANCE ORGANIZATION;

12 (4) A DENTAL PLAN ORGANIZATION; OR

13 (5) ANY OTHER PERSON THAT PROVIDES HEALTH BENEFIT PLANS  
14 SUBJECT TO STATE INSURANCE REGULATION.

15 (C) "COMMISSIONER" MEANS THE MARYLAND INSURANCE COMMISSIONER.

16 (D) (1) "ENROLLEE" MEANS A PERSON THAT IS ENROLLED IN A HEALTH  
17 BENEFIT PLAN UNDER A POLICY, PLAN, CERTIFICATE, OR CONTRACT ISSUED OR  
18 DELIVERED IN THE STATE BY A CARRIER.

19 (2) "ENROLLEE" INCLUDES A MEMBER OF A GROUP.

20 (E) (1) "HEALTH BENEFIT PLAN" MEANS A PLAN OF BENEFITS THAT  
21 DEFINES COVERAGE PROVISIONS FOR HEALTH CARE FOR INSURED OR ENROLLEES.

22 (2) "HEALTH BENEFIT PLAN" INCLUDES:

23 (I) A POLICY OR CERTIFICATE FOR HOSPITAL OR MEDICAL  
24 BENEFITS;

25 (II) A NONPROFIT HEALTH SERVICE PLAN; AND

26 (III) A HEALTH MAINTENANCE ORGANIZATION SUBSCRIBER OR  
27 GROUP MASTER CONTRACT.

28 (3) "HEALTH BENEFIT PLAN" DOES NOT INCLUDE:

29 (I) ACCIDENT-ONLY INSURANCE;

30 (II) FIXED INDEMNITY INSURANCE;

- 1 (III) CREDIT HEALTH INSURANCE;
- 2 (IV) MEDICARE SUPPLEMENT POLICIES;
- 3 (V) CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE  
4 UNIFORMED SERVICES (CHAMPUS) SUPPLEMENT POLICIES;
- 5 (VI) LONG-TERM CARE INSURANCE;
- 6 (VII) DISABILITY INCOME INSURANCE;
- 7 (VIII) COVERAGE ISSUED AS A SUPPLEMENT TO LIABILITY  
8 INSURANCE;
- 9 (IX) WORKERS' COMPENSATION OR SIMILAR INSURANCE;
- 10 (X) DISEASE-SPECIFIC INSURANCE; OR
- 11 (XI) MOTOR VEHICLE MEDICAL PAYMENT INSURANCE.

12 (F) (1) "HEALTH CARE PROVIDER" MEANS:

13 (I) AN INDIVIDUAL WHO IS LICENSED, CERTIFIED, OR OTHERWISE  
14 AUTHORIZED UNDER THE HEALTH OCCUPATIONS ARTICLE TO PROVIDE HEALTH  
15 CARE SERVICES IN THE ORDINARY COURSE OF BUSINESS OR PRACTICE OF A  
16 PROFESSION OR IN AN APPROVED EDUCATION OR TRAINING PROGRAM; OR

17 (II) A HEALTH CARE FACILITY, AS DEFINED IN § 19-101 OF THE  
18 HEALTH - GENERAL ARTICLE, WHERE HEALTH CARE SERVICES ARE PROVIDED TO  
19 PATIENTS, INCLUDING:

20 1. A HEALTH MAINTENANCE ORGANIZATION, AS DEFINED IN  
21 § 19-701(E) OF THE HEALTH - GENERAL ARTICLE;

22 2. AN OUTPATIENT CLINIC; AND

23 3. A MEDICAL LABORATORY.

24 (2) "HEALTH CARE PROVIDER" INCLUDES:

25 (I) AN AGENT OR EMPLOYEE OF A HEALTH CARE FACILITY THAT IS  
26 LICENSED, CERTIFIED, OR OTHERWISE AUTHORIZED TO PROVIDE HEALTH CARE  
27 SERVICES;

28 (II) THE OFFICERS AND DIRECTORS OF A HEALTH CARE FACILITY;  
29 AND

30 (III) AN AGENT OR EMPLOYEE OF A HEALTH CARE PROVIDER WHO  
31 IS LICENSED, CERTIFIED, OR OTHERWISE AUTHORIZED TO PROVIDE HEALTH CARE  
32 SERVICES.

1 (G) "HEALTH CARE SERVICE" MEANS A HEALTH OR MEDICAL CARE  
2 PROCEDURE OR SERVICE RENDERED BY A HEALTH CARE PROVIDER THAT:

3 (1) PROVIDES TESTING, DIAGNOSIS, OR TREATMENT OF A HUMAN  
4 DISEASE OR DYSFUNCTION; OR

5 (2) DISPENSES DRUGS, MEDICAL DEVICES, MEDICAL APPLIANCES, OR  
6 MEDICAL GOODS FOR THE TREATMENT OF A HUMAN DISEASE OR DYSFUNCTION.

7 (H) "HEALTH CARE TREATMENT DECISION" MEANS A DETERMINATION MADE  
8 WHEN HEALTH CARE SERVICES ARE ACTUALLY PROVIDED BY A CARRIER OR  
9 MANAGED CARE ENTITY UNDER A HEALTH BENEFIT PLAN THAT AFFECTS THE  
10 QUALITY OF THE DIAGNOSIS, CARE, OR TREATMENT PROVIDED TO AN ENROLLEE OR  
11 INSURED OF THE PLAN.

12 (I) (1) "MANAGED CARE ENTITY" MEANS AN ENTITY THAT:

13 (I) DELIVERS, ADMINISTERS, OR ASSUMES RISK FOR THE  
14 DELIVERY OF HEALTH CARE SERVICES; AND

15 (II) HAS A SYSTEM OR TECHNIQUE TO CONTROL OR INFLUENCE  
16 THE QUALITY, ACCESSIBILITY, UTILIZATION, OR COSTS AND PRICES OF HEALTH CARE  
17 SERVICES DELIVERED OR TO BE DELIVERED TO A DEFINED ENROLLEE POPULATION.

18 (2) "MANAGED CARE ENTITY" DOES NOT INCLUDE:

19 (I) AN EMPLOYER PURCHASING COVERAGE OR ACTING ON  
20 BEHALF OF ITS EMPLOYEES OR THE EMPLOYEES OF ONE OR MORE SUBSIDIARIES OR  
21 AFFILIATED CORPORATIONS OF THE EMPLOYER; OR

22 (II) A PHARMACY THAT IS ISSUED A PERMIT BY THE STATE BOARD  
23 OF PHARMACY UNDER TITLE 12 OF THE HEALTH OCCUPATIONS ARTICLE.

24 (J) "ORDINARY CARE" MEANS:

25 (1) FOR A CARRIER OR MANAGED CARE ENTITY, THAT DEGREE OF CARE  
26 THAT A CARRIER OR MANAGED CARE ENTITY OF ORDINARY PRUDENCE WOULD USE  
27 UNDER THE SAME OR SIMILAR CIRCUMSTANCES; OR

28 (2) FOR A PERSON THAT IS AN AGENT OR EMPLOYEE OF A CARRIER OR  
29 MANAGED CARE ENTITY, THAT DEGREE OF CARE THAT A PERSON OF ORDINARY  
30 PRUDENCE IN THE SAME PROFESSION, SPECIALTY, OR AREA OF PRACTICE AS THE  
31 PERSON WOULD USE IN THE SAME OR SIMILAR CIRCUMSTANCES.

32 (K) "PHYSICIAN" MEANS:

33 (1) AN INDIVIDUAL LICENSED TO PRACTICE MEDICINE IN THE STATE  
34 UNDER TITLE 14 OF THE HEALTH OCCUPATIONS ARTICLE;

35 (2) A PROFESSIONAL ASSOCIATION ORGANIZED UNDER TITLE 5 OF THE  
36 CORPORATIONS AND ASSOCIATIONS ARTICLE; OR

1 (3) A PERSON OR ENTITY WHOLLY OWNED BY PHYSICIANS.

2 3-2D-02.

3 AN ACTION BROUGHT UNDER THIS SUBTITLE AGAINST A CARRIER OR  
4 MANAGED CARE ENTITY:

5 (1) IS NOT SUBJECT TO THE PROVISIONS OF SUBTITLE 2A OF THIS TITLE  
6 ("HEALTH CLAIMS ARBITRATION ACT"); AND

7 (2) IS SUBJECT TO THE PROVISIONS OF § 11-108 OF THIS ARTICLE.

8 3-2D-03.

9 (A) EACH CARRIER OR MANAGED CARE ENTITY FOR A HEALTH BENEFIT PLAN  
10 HAS THE DUTY TO EXERCISE ORDINARY CARE WHEN MAKING HEALTH CARE  
11 TREATMENT DECISIONS AND IS LIABLE FOR DAMAGES FOR HARM TO AN INSURED OR  
12 ENROLLEE PROXIMATELY CAUSED BY ITS FAILURE TO EXERCISE ORDINARY CARE.

13 (B) IN ADDITION TO SUBSECTION (A) OF THIS SECTION, EACH CARRIER OR  
14 MANAGED CARE ENTITY FOR A HEALTH BENEFIT PLAN IS LIABLE FOR DAMAGES FOR  
15 HARM TO AN INSURED OR ENROLLEE PROXIMATELY CAUSED BY THE HEALTH CARE  
16 TREATMENT DECISIONS MADE BY:

17 (1) ITS AGENTS OR EMPLOYEES; OR

18 (2) REPRESENTATIVES THAT ARE ACTING ON ITS BEHALF AND OVER  
19 WHOM IT HAS THE RIGHT TO EXERCISE INFLUENCE OR CONTROL OR HAS ACTUALLY  
20 EXERCISED INFLUENCE OR CONTROL WHICH RESULT IN THE FAILURE TO EXERCISE  
21 ORDINARY CARE.

22 (C) IT SHALL BE A DEFENSE TO ANY ACTION BROUGHT UNDER THIS SECTION  
23 AGAINST A CARRIER OR MANAGED CARE ENTITY FOR A HEALTH BENEFIT PLAN  
24 THAT:

25 (1) NEITHER THE CARRIER OR MANAGED CARE ENTITY NOR AN AGENT  
26 OR EMPLOYEE FOR WHOM THE CARRIER OR MANAGED CARE ENTITY IS LIABLE  
27 UNDER SUBSECTION (B) OF THIS SECTION CONTROLLED, INFLUENCED, OR  
28 PARTICIPATED IN THE HEALTH CARE TREATMENT DECISION; AND

29 (2) THE CARRIER OR OTHER MANAGED CARE ENTITY DID NOT DENY OR  
30 DELAY PAYMENT FOR ANY HEALTH CARE SERVICE OR TREATMENT PRESCRIBED OR  
31 RECOMMENDED BY A PHYSICIAN OR HEALTH CARE PROVIDER TO THE INSURED OR  
32 ENROLLEE.

33 (D) IN AN ACTION BROUGHT UNDER THIS SECTION AGAINST A CARRIER OR  
34 MANAGED CARE ENTITY, A FINDING THAT A PHYSICIAN OR HEALTH CARE PROVIDER  
35 IS AN AGENT OR EMPLOYEE OF THE CARRIER OR MANAGED CARE ENTITY MAY NOT  
36 BE BASED SOLELY ON PROOF THAT THE PHYSICIAN OR HEALTH CARE PROVIDER  
37 APPEARS IN A LISTING OF APPROVED PHYSICIANS OR HEALTH CARE PROVIDERS

1 MADE AVAILABLE TO INSUREDS OR ENROLLEES UNDER THE CARRIER'S OR  
2 MANAGED CARE ENTITY'S HEALTH BENEFIT PLAN.

3 (E) IN ANY ACTION BROUGHT UNDER THIS SUBTITLE AGAINST A CARRIER OR  
4 MANAGED CARE ENTITY, ANY LAW THAT PROHIBITS THE CORPORATE PRACTICE OF  
5 MEDICINE MAY NOT BE USED AS DEFENSE BY THE CARRIER OR MANAGED CARE  
6 ENTITY.

7 (F) THE PROVISIONS OF SUBSECTIONS (A) AND (B) OF THIS SECTION CREATE  
8 NO OBLIGATION ON THE PART OF A CARRIER OR MANAGED CARE ENTITY TO  
9 PROVIDE TO AN INSURED OR ENROLLEE A HEALTH CARE SERVICE OR TREATMENT  
10 THAT IS NOT COVERED UNDER ITS HEALTH BENEFIT PLAN.

11 3-2D-04.

12 THIS SUBTITLE DOES NOT CREATE ANY LIABILITY ON THE PART OF AN  
13 EMPLOYER OR EMPLOYER GROUP PURCHASING ORGANIZATION THAT PURCHASES  
14 HEALTH CARE COVERAGE OR ASSUMES RISK ON BEHALF OF ITS EMPLOYEES OR A  
15 PHARMACY ISSUED A PERMIT BY THE STATE BOARD OF PHARMACY UNDER TITLE 12  
16 OF THE HEALTH OCCUPATIONS ARTICLE.

17 11-108.

18 (c) (1) An award by the Health Claims Arbitration Panel in accordance with  
19 § 3-2A-06 of this article shall be considered an award for purposes of this section.

20 (2) AN AWARD MADE IN ACCORDANCE WITH TITLE 3, SUBTITLE 2D OF  
21 THIS ARTICLE SHALL BE CONSIDERED AN AWARD FOR PURPOSES OF THIS SECTION.

22

#### **Article - Health - General**

23 19-706.

24 (FF) THE PROVISIONS OF TITLE 3, SUBTITLE 2D OF THE COURTS ARTICLE  
25 SHALL APPLY TO HEALTH MAINTENANCE ORGANIZATIONS.

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be  
27 construed only prospectively and may not be applied or interpreted to have any effect  
28 on or application to any cause of action arising before July 1, 1999.

29 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
30 July 1, 1999.