

SENATE BILL 261

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SB 84/98 - JPR

1999 Regular Session
9lr0260

By: **Senators Green and Hollinger**

Introduced and read first time: February 4, 1999

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Managed Care Entities - Health Care Treatment Decisions - 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; and generally relating to establishing liability
8 of managed care entities for certain health care treatment decisions.

9 BY adding to

10 Article - Courts and Judicial Proceedings

11 Section 3-2D-01 through 3-2D-05, inclusive, to be under the new subtitle

12 "Subtitle 2D. Health Care Treatment Decisions - Liability"

13 Annotated Code of Maryland

14 (1998 Replacement Volume)

15 BY repealing and reenacting, with amendments,

16 Article - Courts and Judicial Proceedings

17 Section 11-108(c)

18 Annotated Code of Maryland

19 (1998 Replacement Volume)

20 BY adding to

21 Article - Health - General

22 Section 19-706(ff)

23 Annotated Code of Maryland

24 (1996 Replacement Volume and 1998 Supplement)

25 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

26 MARYLAND, That the Laws of Maryland read as follows:

1 **Article - Courts and Judicial Proceedings**

2 SUBTITLE 2D. HEALTH CARE TREATMENT DECISIONS - LIABILITY.

3 3-2D-01.

4 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
5 INDICATED.

6 (B) "CARRIER" MEANS:

7 (1) AN INSURER;

8 (2) A NONPROFIT HEALTH SERVICE PLAN;

9 (3) A HEALTH MAINTENANCE ORGANIZATION;

10 (4) A DENTAL PLAN ORGANIZATION; OR

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

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

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

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

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

20 (2) "HEALTH BENEFIT PLAN" INCLUDES:

21 (I) A POLICY OR CERTIFICATE FOR HOSPITAL OR MEDICAL
22 BENEFITS;

23 (II) A NONPROFIT HEALTH SERVICE PLAN; AND

24 (III) A HEALTH MAINTENANCE ORGANIZATION SUBSCRIBER OR
25 GROUP MASTER CONTRACT.

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

27 (I) ACCIDENT-ONLY INSURANCE;

28 (II) FIXED INDEMNITY INSURANCE;

29 (III) CREDIT HEALTH INSURANCE;

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

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

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

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

- 19 1. A HEALTH MAINTENANCE ORGANIZATION, AS DEFINED IN
20 § 19-701(E) OF THE HEALTH - GENERAL ARTICLE;
- 21 2. AN OUTPATIENT CLINIC; AND
- 22 3. A MEDICAL LABORATORY.

23 (2) "HEALTH CARE PROVIDER" INCLUDES:

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

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

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

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

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

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

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

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

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

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

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

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

20 (II) A PHARMACY ISSUED A PERMIT BY THE STATE BOARD OF
21 PHARMACY UNDER TITLE 12 OF THE HEALTH OCCUPATIONS ARTICLE.

22 (J) "ORDINARY CARE" MEANS:

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

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

30 (K) "PHYSICIAN" MEANS:

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

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

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

1 3-2D-02.

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

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

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

7 3-2D-03.

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

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

16 (1) ITS AGENTS OR EMPLOYEES; OR

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

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

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

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

32 (D) IN AN ACTION BROUGHT UNDER THIS SECTION AGAINST A CARRIER OR
33 MANAGED CARE ENTITY, A FINDING THAT A PHYSICIAN OR HEALTH CARE PROVIDER
34 IS AN AGENT OR EMPLOYEE OF THE CARRIER OR MANAGED CARE ENTITY MAY NOT
35 BE BASED SOLELY ON PROOF THAT THE PHYSICIAN OR HEALTH CARE PROVIDER
36 APPEARS IN A LISTING OF APPROVED PHYSICIANS OR HEALTH CARE PROVIDERS
37 MADE AVAILABLE TO INSUREDS OR ENROLLEES UNDER THE CARRIER'S OR
38 MANAGED CARE ENTITY'S HEALTH BENEFIT PLAN.

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

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

9 3-2D-04.

10 (A) AN INSURED OR ENROLLEE OR AN INSURED'S OR ENROLLEE'S
11 REPRESENTATIVE MAY NOT MAINTAIN A CAUSE OF ACTION UNDER THIS SUBTITLE
12 AGAINST A CARRIER OR MANAGED CARE ENTITY THAT IS REQUIRED TO COMPLY
13 WITH THE REQUIREMENTS OF TITLE 15, SUBTITLE 10A OR SUBTITLE 10B OF THE
14 INSURANCE ARTICLE, UNLESS THE INSURED OR ENROLLEE OR THE INSURED'S OR
15 ENROLLEE'S REPRESENTATIVE:

16 (1) HAS EXHAUSTED:

17 (I) THE UTILIZATION REVIEW APPEAL PROCESS APPLICABLE
18 UNDER TITLE 15, SUBTITLE 10B OF THE INSURANCE ARTICLE; OR

19 (II) THE CARRIER'S OR MANAGED CARE ENTITY'S INTERNAL
20 GRIEVANCE PROCESS APPLICABLE UNDER TITLE 15, SUBTITLE 10A OF THE
21 INSURANCE ARTICLE; OR

22 (2) BEFORE INSTITUTING THE ACTION:

23 (I) GIVES WRITTEN NOTICE OF THE CLAIM AS PROVIDED BY
24 SUBSECTION (B) OF THIS SECTION; AND

25 (II) AGREES TO SUBMIT THE CLAIM TO A REVIEW BY THE
26 COMMISSIONER IN ACCORDANCE WITH THE PROCEDURES ESTABLISHED IN TITLE 15,
27 SUBTITLE 10A OF THE INSURANCE ARTICLE, AS REQUIRED BY SUBSECTION (C) OF
28 THIS SECTION.

29 (B) THE NOTICE REQUIRED UNDER SUBSECTION (A)(2) OF THIS SECTION
30 SHALL BE DELIVERED OR MAILED TO THE CARRIER OR MANAGED CARE ENTITY
31 AGAINST WHOM THE CLAIM IS FILED NO LATER THAN THE 30TH DAY BEFORE THE
32 DATE THE CLAIM IS TO BE FILED.

33 (C) (1) THE INSURED OR ENROLLEE OR THE INSURED'S OR ENROLLEE'S
34 REPRESENTATIVE SHALL SUBMIT THE CLAIM TO A REVIEW BY THE COMMISSIONER
35 IN ACCORDANCE WITH THE PROCEDURES ESTABLISHED IN TITLE 15, SUBTITLE 10A
36 OF THE INSURANCE ARTICLE IF THE CARRIER OR MANAGED CARE ENTITY AGAINST
37 WHOM THE CLAIM IS MADE REQUESTS THE REVIEW NO LATER THAN THE 14TH DAY
38 AFTER THE DATE THE CARRIER OR MANAGED CARE ENTITY RECEIVES THE NOTICE
39 REQUIRED UNDER SUBSECTION (A)(2) OF THIS SECTION.

1 (2) IF THE CARRIER OR MANAGED CARE ENTITY DOES NOT REQUEST A
2 REVIEW WITHIN THE SPECIFIED TIME PERIOD REQUIRED UNDER PARAGRAPH (1) OF
3 THIS SUBSECTION, THE INSURED OR ENROLLEE OR THE INSURED'S OR ENROLLEE'S
4 REPRESENTATIVE IS NOT REQUIRED TO SUBMIT THE CLAIM TO REVIEW BY THE
5 COMMISSIONER BEFORE MAINTAINING THE ACTION.

6 (D) (1) SUBJECT TO SUBSECTION (E) OF THIS SECTION, IF THE INSURED OR
7 ENROLLEE OR THE INSURED'S OR ENROLLEE'S REPRESENTATIVE HAS NOT
8 COMPLIED WITH SUBSECTION (A) OF THIS SECTION, A COURT MAY NOT DISMISS THE
9 CAUSE OF ACTION, BUT MAY:

10 (I) ORDER THE PARTIES TO THE ACTION TO SUBMIT TO AN
11 INDEPENDENT REVIEW OR MEDIATION OR OTHER NONBINDING ALTERNATIVE
12 DISPUTE RESOLUTION; AND

13 (II) STAY THE ACTION FOR A PERIOD NOT EXCEEDING 30 DAYS FOR
14 THE PURPOSE OF RESOLVING THE CLAIM.

15 (2) THE PROVISIONS OF PARAGRAPH (1) OF THIS SUBSECTION SHALL BE
16 THE SOLE REMEDY AVAILABLE TO A PARTY COMPLAINING OF AN INSURED'S OR
17 ENROLLEE'S OR THE INSURED'S OR ENROLLEE'S REPRESENTATIVE'S FAILURE TO
18 COMPLY WITH SUBSECTION (A) OF THIS SECTION.

19 (E) (1) AN INSURED OR ENROLLEE OR THE INSURED'S OR ENROLLEE'S
20 REPRESENTATIVE IS NOT REQUIRED TO COMPLY WITH SUBSECTION (C) OF THIS
21 SECTION AND A COURT MAY NOT ISSUE AN ORDER STAYING THE COMMENCEMENT
22 OF AN ACTION FOR FAILING TO COMPLY WITH SUBSECTION (A) OF THIS SECTION IF
23 THE INSURED OR ENROLLEE OR THE INSURED'S OR ENROLLEE'S REPRESENTATIVE
24 HAS FILED A PLEADING WITH THE COURT THAT ALLEGES:

25 (I) HARM TO THE INSURED OR ENROLLEE HAS ALREADY
26 OCCURRED BECAUSE OF:

27 1. THE CONDUCT OF THE CARRIER OR MANAGED CARE
28 ENTITY THAT IS THE SUBJECT OF THE CLAIM; OR

29 2. AN ACT OR OMISSION OF AN AGENT OR EMPLOYEE OF THE
30 CARRIER OR MANAGED CARE ENTITY FOR WHOSE CONDUCT THE CARRIER OR
31 MANAGED CARE ENTITY IS LIABLE UNDER § 3-2D-03 OF THIS SUBTITLE; AND

32 (II) THE REVIEW BY THE COMMISSIONER WOULD NOT BE
33 BENEFICIAL TO THE INSURED OR ENROLLEE.

34 (2) NOTWITHSTANDING PARAGRAPH (1) OF THIS SUBSECTION, A COURT
35 MAY ISSUE AN ORDER IN ACCORDANCE WITH SUBSECTION (D) OF THIS SECTION IF
36 AFTER A HEARING ON A MOTION BY THE CARRIER OR MANAGED CARE ENTITY THE
37 COURT FINDS THAT THE PLEADING WAS NOT FILED IN GOOD FAITH.

38 (F) IF THE INSURED OR ENROLLEE OR THE INSURED'S OR ENROLLEE'S
39 REPRESENTATIVE SEEKS TO EXHAUST THE UTILIZATION REVIEW APPEAL PROCESS

1 OR THE CARRIER'S OR MANAGED CARE ENTITY'S INTERNAL GRIEVANCE PROCESS OR
2 PROVIDES THE NOTICE, AS REQUIRED UNDER SUBSECTION (A) OF THIS SECTION,
3 BEFORE THE STATUTE OF LIMITATIONS APPLICABLE TO THE CLAIM BROUGHT
4 AGAINST THE CARRIER OR MANAGED CARE ENTITY HAS EXPIRED, THE STATUTE OF
5 LIMITATIONS PERIOD IS TOLLED UNTIL THE LATER OF:

6 (1) THE 30TH DAY AFTER THE INSURED OR ENROLLEE OR THE
7 INSURED'S OR ENROLLEE'S REPRESENTATIVE HAS EXHAUSTED THE UTILIZATION
8 REVIEW APPEAL PROCESS OR THE CARRIER'S OR MANAGED CARE ENTITY'S
9 INTERNAL GRIEVANCE PROCESS; OR

10 (2) THE 40TH DAY AFTER THE DATE THE INSURED OR ENROLLEE OR
11 THE INSURED'S OR ENROLLEE'S REPRESENTATIVE GIVES NOTICE UNDER
12 SUBSECTION (A) OF THIS SECTION.

13 (G) THIS SECTION DOES NOT PROHIBIT AN INSURED OR ENROLLEE FROM
14 PURSUING OTHER APPROPRIATE REMEDIES, INCLUDING INJUNCTIVE RELIEF, A
15 DECLARATORY JUDGMENT, OR RELIEF AVAILABLE UNDER LAW, IF THE
16 REQUIREMENT OF EXHAUSTING THE UTILIZATION REVIEW APPEAL PROCESS OR THE
17 CARRIER'S OR MANAGED CARE ENTITY'S INTERNAL GRIEVANCE PROCESS PLACES
18 THE INSURED'S OR ENROLLEE'S HEALTH IN SERIOUS JEOPARDY.

19 3-2D-05.

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

25 11-108.

26 (c) (1) An award by the Health Claims Arbitration Panel in accordance with
27 § 3-2A-06 of this article shall be considered an award for purposes of this section.

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

30 **Article - Health - General**

31 19-706.

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

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

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