

HOUSE BILL 943

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SB 261/99 - JPR

2000 Regular Session
0lr1968
CF SB 9

By: **Delegates Zirkin and Vallario**

Introduced and read first time: February 11, 2000

Assigned to: Economic Matters

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, or its employee,
6 agent, or representative, under certain circumstances; establishing certain
7 defenses; providing for the application of this Act; defining certain terms; and
8 generally relating to establishing liability of managed care entities for certain
9 health care treatment decisions.

10 BY adding to

11 Article - Courts and Judicial Proceedings

12 Section 3-2D-01 through 3-2D-03, inclusive, to be under the new subtitle

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

14 Annotated Code of Maryland

15 (1998 Replacement Volume and 1999 Supplement)

16 BY adding to

17 Article - Health - General

18 Section 19-706(nn)

19 Annotated Code of Maryland

20 (1996 Replacement Volume and 1999 Supplement)

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

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

23 **Article - Courts and Judicial Proceedings**

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

25 3-2D-01.

26 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS

27 INDICATED.

1 (B) "CARRIER" MEANS:

2 (1) AN INSURER;

3 (2) A NONPROFIT HEALTH SERVICE PLAN;

4 (3) A HEALTH MAINTENANCE ORGANIZATION;

5 (4) A DENTAL PLAN ORGANIZATION; OR

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

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

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

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

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

15 (2) "HEALTH BENEFIT PLAN" INCLUDES:

16 (I) A POLICY OR CERTIFICATE FOR HOSPITAL OR MEDICAL
17 BENEFITS;

18 (II) A NONPROFIT HEALTH SERVICE PLAN; AND

19 (III) A HEALTH MAINTENANCE ORGANIZATION SUBSCRIBER OR
20 GROUP MASTER CONTRACT.

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

22 (I) ACCIDENT-ONLY INSURANCE;

23 (II) FIXED INDEMNITY INSURANCE;

24 (III) CREDIT HEALTH INSURANCE;

25 (IV) MEDICARE SUPPLEMENT POLICIES;

26 (V) CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE
27 UNIFORMED SERVICES (CHAMPUS) SUPPLEMENT POLICIES;

28 (VI) LONG-TERM CARE INSURANCE;

29 (VII) DISABILITY INCOME INSURANCE;

1 (VIII) COVERAGE ISSUED AS A SUPPLEMENT TO LIABILITY
2 INSURANCE;

3 (IX) WORKERS' COMPENSATION OR SIMILAR INSURANCE;

4 (X) DISEASE-SPECIFIC INSURANCE; OR

5 (XI) MOTOR VEHICLE MEDICAL PAYMENT INSURANCE.

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

7 (I) AN INDIVIDUAL WHO IS LICENSED, CERTIFIED, OR OTHERWISE
8 AUTHORIZED UNDER THE HEALTH OCCUPATIONS ARTICLE OR IN ANY STATE TO
9 PROVIDE HEALTH CARE SERVICES IN THE ORDINARY COURSE OF BUSINESS OR
10 PRACTICE OF A PROFESSION OR IN AN APPROVED EDUCATION OR TRAINING
11 PROGRAM; OR

12 (II) A HEALTH CARE FACILITY, AS DEFINED IN § 19-101 OF THE
13 HEALTH - GENERAL ARTICLE OR IN ANY STATE, WHERE HEALTH CARE SERVICES ARE
14 PROVIDED TO PATIENTS, INCLUDING:

15 1. A HEALTH MAINTENANCE ORGANIZATION, AS DEFINED IN
16 § 19-701(E) OF THE HEALTH - GENERAL ARTICLE OR IN ANY STATE;

17 2. AN OUTPATIENT CLINIC IN ANY STATE; AND

18 3. A MEDICAL LABORATORY IN ANY STATE.

19 (2) "HEALTH CARE PROVIDER" INCLUDES:

20 (I) AN AGENT OR EMPLOYEE OF A HEALTH CARE FACILITY IN ANY
21 STATE THAT IS LICENSED, CERTIFIED, OR OTHERWISE AUTHORIZED IN ANY STATE
22 TO PROVIDE HEALTH CARE SERVICES;

23 (II) THE OFFICERS AND DIRECTORS OF A HEALTH CARE FACILITY
24 IN ANY STATE; AND

25 (III) AN AGENT OR EMPLOYEE OF A HEALTH CARE PROVIDER WHO
26 IS LICENSED, CERTIFIED, OR OTHERWISE AUTHORIZED TO PROVIDE HEALTH CARE
27 SERVICES IN ANY STATE.

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

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

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

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

6 (I) "MANAGED CARE ENTITY" MEANS AN ENTITY THAT:

7 (1) DELIVERS, ADMINISTERS, OR ASSUMES RISK FOR THE DELIVERY OF
8 HEALTH CARE SERVICES; AND

9 (2) HAS A SYSTEM OR TECHNIQUE TO CONTROL OR INFLUENCE THE
10 QUALITY, ACCESSIBILITY, UTILIZATION, OR COSTS AND PRICES OF HEALTH CARE
11 SERVICES DELIVERED OR TO BE DELIVERED TO A DEFINED ENROLLEE POPULATION.

12 (J) "ORDINARY CARE" MEANS:

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

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

20 (K) "PHYSICIAN" MEANS:

21 (1) AN INDIVIDUAL LICENSED TO PRACTICE MEDICINE IN THIS STATE
22 UNDER TITLE 14 OF THE HEALTH OCCUPATIONS ARTICLE OR ANY OTHER STATE;

23 (2) A PROFESSIONAL ASSOCIATION ORGANIZED UNDER TITLE 5 OF THE
24 CORPORATIONS AND ASSOCIATIONS ARTICLE OR A SUBSTANTIALLY SIMILAR
25 ASSOCIATION IN ANY OTHER STATE; OR

26 (3) A PERSON OR ENTITY, IN ANY STATE, WHOLLY OWNED BY
27 PHYSICIANS.

28 (L) "STATE" MEANS A STATE OF THE UNITED STATES OR THE DISTRICT OF
29 COLUMBIA.

30 3-2D-02.

31 AN ACTION BROUGHT UNDER THIS SUBTITLE AGAINST A CARRIER OR
32 MANAGED CARE ENTITY:

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

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

1 3-2D-03.

2 (A) EACH CARRIER THAT OPERATES AS A MANAGED CARE ENTITY AND EACH
3 MANAGED CARE ENTITY HAS THE DUTY TO EXERCISE ORDINARY CARE WHEN
4 MAKING HEALTH CARE TREATMENT DECISIONS AND IS LIABLE FOR DAMAGES FOR
5 HARM TO AN INSURED OR ENROLLEE PROXIMATELY CAUSED BY ITS FAILURE TO
6 EXERCISE ORDINARY CARE.

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

11 (1) ITS AGENTS OR EMPLOYEES; OR

12 (2) REPRESENTATIVES THAT ARE ACTING ON ITS BEHALF AND OVER
13 WHOM IT HAS THE RIGHT TO EXERCISE INFLUENCE OR CONTROL OR HAS ACTUALLY
14 EXERCISED INFLUENCE OR CONTROL WHICH RESULTS IN THE FAILURE TO
15 EXERCISE ORDINARY CARE.

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

19 (1) NEITHER THE CARRIER OR MANAGED CARE ENTITY NOR AN AGENT
20 OR EMPLOYEE FOR WHOM THE CARRIER OR MANAGED CARE ENTITY IS LIABLE
21 UNDER SUBSECTION (B) OF THIS SECTION CONTROLLED, INFLUENCED, OR
22 PARTICIPATED IN THE HEALTH CARE TREATMENT DECISION; OR

23 (2) THE CARRIER OR OTHER MANAGED CARE ENTITY DID NOT DENY OR
24 DELAY PAYMENT FOR ANY HEALTH CARE SERVICE OR TREATMENT PRESCRIBED OR
25 RECOMMENDED BY A PHYSICIAN OR HEALTH CARE PROVIDER TO THE INSURED OR
26 ENROLLEE.

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

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

38 (F) THE PROVISIONS OF SUBSECTIONS (A) AND (B) OF THIS SECTION CREATE
39 NO OBLIGATION ON THE PART OF A CARRIER OR MANAGED CARE ENTITY TO

1 PROVIDE TO AN INSURED OR ENROLLEE A HEALTH CARE SERVICE OR TREATMENT
2 THAT IS NOT COVERED UNDER ITS HEALTH BENEFIT PLAN.

3

Article - Health - General

4 19-706.

5 (NN) THE PROVISIONS OF TITLE 3, SUBTITLE 2D OF THE COURTS ARTICLE
6 SHALL APPLY TO HEALTH MAINTENANCE ORGANIZATIONS.

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
8 construed only prospectively and may not be applied or interpreted to have any effect
9 on or application to any cause of action arising before July 1, 2000.

10 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
11 July 1, 2000.