

HOUSE BILL 58

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D3
HB 943/00 - ECM

2001 Regular Session
1r0854

(PRE-FILED)

By: **Delegate Zirkin**
Requested: November 14, 2000
Introduced and read first time: January 10, 2001
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 2000 Supplement)

16 BY adding to

17 Article - Health - General
18 Section 19-706(rr)
19 Annotated Code of Maryland
20 (2000 Replacement Volume)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
22 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) MOTOR VEHICLE 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 OR IN ANY STATE TO
14 PROVIDE HEALTH CARE SERVICES IN THE ORDINARY COURSE OF BUSINESS OR
15 PRACTICE OF A PROFESSION OR IN AN APPROVED EDUCATION OR TRAINING
16 PROGRAM; OR

17 (II) A HEALTH CARE FACILITY, AS DEFINED IN § 19-114 OF THE
18 HEALTH - GENERAL ARTICLE, OR IN ANY STATE WHERE HEALTH CARE SERVICES ARE
19 PROVIDED TO PATIENTS, INCLUDING:

20 1. A HEALTH MAINTENANCE ORGANIZATION, AS DEFINED IN
21 § 19-701 OF THE HEALTH - GENERAL ARTICLE, OR IN ANY STATE;

22 2. AN OUTPATIENT CLINIC IN ANY STATE; AND

23 3. A MEDICAL LABORATORY IN ANY STATE.

24 (2) "HEALTH CARE PROVIDER" INCLUDES:

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

28 (II) THE OFFICERS AND DIRECTORS OF A HEALTH CARE FACILITY
29 IN ANY STATE; 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 IN ANY STATE.

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) "MANAGED CARE ENTITY" MEANS AN ENTITY THAT:

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

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

18 (J) "ORDINARY CARE" MEANS:

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

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

26 (K) "PHYSICIAN" MEANS:

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

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

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

34 (L) "STATE" MEANS A STATE OF THE UNITED STATES OR THE DISTRICT OF
35 COLUMBIA.

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 THAT OPERATES AS A MANAGED CARE ENTITY AND EACH
9 MANAGED CARE ENTITY HAS THE DUTY TO EXERCISE ORDINARY CARE WHEN
10 MAKING HEALTH CARE TREATMENT DECISIONS AND IS LIABLE FOR DAMAGES FOR
11 HARM TO AN INSURED OR ENROLLEE PROXIMATELY CAUSED BY ITS FAILURE TO
12 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 RESULTS IN THE FAILURE TO
21 EXERCISE 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; OR

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 **Article - Health - General**

12 19-706.

13 (RR) THE PROVISIONS OF TITLE 3, SUBTITLE 2D OF THE COURTS ARTICLE
14 SHALL APPLY TO HEALTH MAINTENANCE ORGANIZATIONS.

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
16 construed only prospectively and may not be applied or interpreted to have any effect
17 on or application to any cause of action arising before July 1, 2001.

18 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
19 July 1, 2001.