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Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Medical Assistance Provider Reimbursement - Directly Influencing**
3 **Employees Regarding Unionization**

4 FOR the purpose of prohibiting a health care facility provider receiving moneys under
5 the State Medical Assistance Program from using those moneys to directly
6 influence employees with respect to unionization; requiring a health care facility
7 provider to physically segregate certain deposits, separate certain accounts,
8 physically separate certain activities, and segregate personnel used for certain
9 purposes; creating a rebuttable presumption regarding violations of this Act
10 under certain circumstances; providing for a certain calculation to be used for
11 unintentional violations of this Act; authorizing taxpayers to bring complaints of
12 violations of this Act to the Department of Health and Mental Hygiene;
13 authorizing the Attorney General to bring a civil action for a violation of this Act
14 under certain circumstances; providing for the award of damages, civil
15 penalties, attorney's fees, and court costs; authorizing taxpayers to bring a civil
16 action or to intervene in an action by the Attorney General under certain
17 circumstances; defining a certain term; providing for the severability of
18 provisions of this Act; providing for the application of this Act; and generally
19 relating to a prohibition against the use of State Medical Assistance moneys by
20 health care facility providers to directly influence employees with respect to
21 unionization.

22 BY adding to
23 Article - Health - General
24 Section 15-119
25 Annotated Code of Maryland
26 (2000 Replacement Volume)

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

1 **Article - Health - General**

2 15-119.

3 (A) IT IS THE POLICY OF THE STATE TO TAKE REASONABLE STEPS, AS A LARGE
4 PURCHASER OF HEALTH CARE SERVICES, TO ENSURE THAT THE MONEYS PAID BY
5 THE STATE FOR THOSE SERVICES ARE USED TO DELIVER QUALITY CARE. IT ALSO IS
6 THE POLICY OF THE STATE TO NOT INTERFERE WITH AN EMPLOYEE'S CHOICE OF
7 WHETHER TO JOIN OR BE REPRESENTED BY A COLLECTIVE BARGAINING
8 ORGANIZATION. WITH THESE GOALS IN MIND, THE GENERAL ASSEMBLY OPPOSES
9 THE USE BY A HEALTH CARE FACILITY PROVIDER OF MONEYS PAID UNDER THE
10 PROGRAM TO DIRECTLY INFLUENCE EMPLOYEES WITH RESPECT TO UNIONIZATION.

11 (B) (1) EXCEPT AS ALLOWED UNDER STATE OR FEDERAL LAW OR
12 REGULATIONS OR INTERPRETIVE LETTERS, DIRECTIVES, OR PUBLICATIONS OF THE
13 FEDERAL HEALTH CARE FINANCING ADMINISTRATION, A HEALTH CARE FACILITY
14 PROVIDER MAY NOT USE MONEYS PAID BY THE STATE UNDER THE PROGRAM TO
15 DIRECTLY INFLUENCE EMPLOYEES WITH RESPECT TO UNIONIZATION.

16 (2) "DIRECTLY INFLUENCE EMPLOYEES WITH RESPECT TO
17 UNIONIZATION" DOES NOT INCLUDE THE USE BY A HEALTH CARE FACILITY
18 PROVIDER OF PROGRAM MONEYS FOR:

19 (I) NORMAL PERSONNEL MANAGEMENT COSTS, INCLUDING THE
20 TRAINING OF SUPERVISORY PERSONNEL ON UNION ACTIVITY MATTERS, AS LONG AS
21 THE TRAINING IS NOT DESIGNED OR TIMED TO DIRECTLY INFLUENCE EMPLOYEES
22 WITH RESPECT TO UNIONIZATION;

23 (II) REASONABLE COSTS INCURRED BY A PROVIDER IN SEEKING
24 LEGAL ADVICE OR COUNSEL SPECIFICALLY ON UNION ACTIVITY MATTERS,
25 INCLUDING THE RIGHTS AND RESPONSIBILITIES OF MANAGEMENT AND
26 SUPERVISORY PERSONNEL UNDER THE NATIONAL LABOR RELATIONS ACT WITH
27 REGARD TO UNION ORGANIZING BUT EXCLUDING ADVICE OR COUNSEL ON
28 APPROACHES TO DIRECTLY INFLUENCING EMPLOYEES WITH RESPECT TO
29 UNIONIZATION;

30 (III) THE DISTRIBUTION OF LITERATURE TO EMPLOYEE OR
31 MANAGEMENT PERSONNEL EXPLAINING THEIR RIGHTS AND RESPONSIBILITIES
32 UNDER THE NATIONAL LABOR RELATIONS ACT, EXCEPT LITERATURE DESIGNED TO:

33 1. DIRECTLY INFLUENCE EMPLOYEES WITH RESPECT TO
34 UNIONIZATION; OR

35 2. TEACH TECHNIQUES FOR DIRECTLY INFLUENCING
36 EMPLOYEES WITH RESPECT TO UNIONIZATION;

37 (IV) ADDRESSING A GRIEVANCE OR NEGOTIATION OR
38 ADMINISTERING A COLLECTIVE BARGAINING AGREEMENT; OR

1 (V) PERFORMING AN ACTIVITY REQUIRED UNDER STATE OR
2 FEDERAL LAW OR BY A COLLECTIVE BARGAINING AGREEMENT.

3 (C) IN ORDER TO ENSURE COMPLIANCE WITH THIS SECTION, EACH HEALTH
4 CARE FACILITY PROVIDER SHALL:

5 (1) PHYSICALLY SEGREGATE AND SEPARATELY ACCOUNT FOR MONEYS
6 RECEIVED FROM THE PROGRAM IN DEPOSITS AND ACCOUNTS OTHER THAN THOSE
7 IN WHICH MONEYS USED TO DIRECTLY INFLUENCE EMPLOYEES WITH RESPECT TO
8 UNIONIZATION ARE DEPOSITED OR ACCOUNTED; AND

9 (2) MAINTAIN AN OBJECTIVE INTEGRITY AND INDEPENDENCE FOR
10 ACTIVITIES DESIGNED TO DIRECTLY INFLUENCE EMPLOYEES WITH RESPECT TO
11 UNIONIZATION BY:

12 (I) CONDUCTING THOSE ACTIVITIES IN FACILITIES PHYSICALLY
13 SEPARATE FROM THOSE IN WHICH HEALTH CARE SERVICES FUNDED OR
14 REIMBURSED UNDER THE PROGRAM ARE PROVIDED;

15 (II) UTILIZING DIFFERENT PERSONNEL TO CONDUCT THOSE
16 ACTIVITIES THAN THE PERSONNEL USED TO DIRECTLY PROVIDE HEALTH CARE
17 SERVICES FUNDED OR REIMBURSED UNDER THE PROGRAM; AND

18 (III) PUBLICLY IDENTIFYING THOSE ACTIVITIES AND MAKING THE
19 PURPOSE OF THOSE ACTIVITIES KNOWN TO EMPLOYEES.

20 (D) (1) THERE SHALL BE A REBUTTABLE PRESUMPTION THAT A HEALTH
21 CARE FACILITY PROVIDER THAT DOES NOT COMPLY WITH SUBSECTION (C) OF THIS
22 SECTION IS USING PROGRAM MONEYS TO DIRECTLY INFLUENCE EMPLOYEES WITH
23 RESPECT TO UNIONIZATION.

24 (2) FOR PURPOSES OF SUBSECTIONS (F)(1)(III) AND (G)(2) OF THIS
25 SECTION, THE PERCENTAGE OF PROGRAM MONEYS RECEIVED THAT IS USED BY A
26 HEALTH CARE FACILITY PROVIDER TO DIRECTLY INFLUENCE EMPLOYEES WITH
27 RESPECT TO UNIONIZATION UNDER THIS SUBSECTION SHALL BE PRESUMED TO BE
28 EQUAL TO THE TOTAL DERIVED BY DIVIDING, FOR THE FISCAL YEAR IN WHICH THE
29 INFLUENCE IS EXERTED, THE TOTAL OF THE MONEYS SPENT TO DIRECTLY
30 INFLUENCE EMPLOYEES WITH RESPECT TO UNIONIZATION BY THE HEALTH CARE
31 FACILITY PROVIDER'S TOTAL REVENUES.

32 (E) (1) ANY TAXPAYER MAY FILE A COMPLAINT WITH THE DEPARTMENT
33 ALLEGING A VIOLATION OF THIS SECTION.

34 (2) (I) WITHIN 7 BUSINESS DAYS OF THE FILING OF THE COMPLAINT,
35 THE DEPARTMENT SHALL NOTIFY THE HEALTH CARE FACILITY PROVIDER THAT IT
36 MUST PROVIDE RECORDS TO THE DEPARTMENT WITHIN 10 BUSINESS DAYS OF
37 NOTIFICATION TO SHOW THAT PROGRAM FUNDS WERE NOT SPENT IN VIOLATION OF
38 THIS SECTION.

39 (II) THE RECORDS PROVIDED SHALL INCLUDE:

1 1. ANY MINUTES OF MEETINGS WITH EMPLOYEES IN WHICH
2 EMPLOYEES WERE ALLEGED TO HAVE BEEN DIRECTLY INFLUENCED WITH RESPECT
3 TO UNIONIZATION; AND

4 2. THE DATE AND TIME OF EACH MEETING AND THE
5 IDENTITY OF THE PARTICIPANTS IN EACH MEETING.

6 (III) THIS PARAGRAPH MAY NOT BE INTERPRETED TO REQUIRE A
7 HEALTH CARE FACILITY PROVIDER TO KEEP THE REQUIRED RECORDS IN ANY
8 PARTICULAR FORM.

9 (3) IF THE DEPARTMENT FINDS THAT THERE HAS BEEN A VIOLATION OF
10 THIS SECTION, THE DEPARTMENT SHALL NOTIFY THE ATTORNEY GENERAL OF THE
11 VIOLATION.

12 (F) (1) THE ATTORNEY GENERAL MAY BRING A CIVIL ACTION AGAINST A
13 HEALTH CARE FACILITY PROVIDER FOR A VIOLATION UNDER THIS SECTION
14 SEEKING:

15 (I) INJUNCTIVE OR OTHER APPROPRIATE EQUITABLE RELIEF; OR

16 (II) 1. DAMAGES IN THE AMOUNT OF THE MONEYS USED IN
17 VIOLATION OF THIS SECTION; AND

18 2. CIVIL PENALTIES EQUAL TO TWICE THE AMOUNT OF THE
19 MONEYS USED IN VIOLATION OF THIS SECTION.

20 (III) IF A COURT FINDS THAT A VIOLATION OF THIS SECTION WAS
21 NOT AN INTENTIONAL VIOLATION, THE COURT SHALL LIMIT DAMAGES AWARDED
22 UNDER THIS SECTION TO THE PERCENTAGE OF PROGRAM MONEYS RECEIVED
23 CALCULATED UNDER SUBSECTION (D)(2) OF THIS SECTION.

24 (2) THE TAXPAYER COMPLAINANT MAY INTERVENE AS A PLAINTIFF IN
25 ANY ACTION BROUGHT BY THE ATTORNEY GENERAL.

26 (3) IF THE ATTORNEY GENERAL FAILS WITHIN 60 BUSINESS DAYS OF
27 NOTIFICATION BY THE DEPARTMENT TO BRING A CIVIL ACTION, THE ATTORNEY
28 GENERAL SHALL NOTIFY THE TAXPAYER COMPLAINANT OF THE FAILURE TO BRING
29 A CIVIL ACTION.

30 (G) (1) A TAXPAYER COMPLAINANT NOTIFIED UNDER SUBSECTION (F)(3) OF
31 THIS SECTION MAY BRING A CIVIL ACTION FOR A VIOLATION UNDER THIS SECTION
32 SEEKING:

33 (I) INJUNCTIVE OR OTHER APPROPRIATE EQUITABLE RELIEF; OR

34 (II) ON BEHALF OF THE STATE:

35 1. DAMAGES IN THE AMOUNT OF THE MONEYS USED IN
36 VIOLATION OF THIS SECTION; AND

