

SENATE BILL 490

Unofficial Copy  
D3  
SB 9/00 - JPR

2001 Regular Session  
11r0214  
CF 11r0973

---

By: **Senators Green, Collins, DeGrange, Hafer, Kelley, Ruben, Stone, and Teitelbaum**

Introduced and read first time: February 2, 2001

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-04, inclusive, to be under the new subtitle  
12 "Subtitle 2D. Health Care Treatment Decisions - Liability"  
13 Annotated Code of Maryland  
14 (1998 Replacement Volume and 2000 Supplement)

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 and 2000 Supplement)

20 BY adding to

21 Article - Health - General  
22 Section 19-706(rr)  
23 Annotated Code of Maryland  
24 (2000 Replacement Volume)

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

15 11-108.

16 (c) (1) An award by the health claims arbitration panel in accordance with §  
17 3-2A-06 of this article shall be considered an award for purposes of this section.

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

20

**Article - Health - General**

21 19-706.

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

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

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