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By: **Delegates Vallario, Amedori, Anderson, Dumais, Gutierrez, Hennessy,  
Kelley, Kelly, Lee, Menes, Petzold, Quinter, Shank, and Simmons**

Introduced and read first time: February 13, 2004

Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **Health Care Malpractice - Mandatory Mediation or Other Alternative**  
3 **Dispute Resolution Process**

4 FOR the purpose of requiring that a claim for medical injury be subject to mediation  
5 or another alternative dispute resolution process under certain circumstances;  
6 requiring certain qualifications for a mediator or neutral provider in health care  
7 malpractice claims; providing that the Court of Appeals may adopt certain rules  
8 concerning alternative dispute processes for health care malpractice claims;  
9 prohibiting the filing of a claim for health care malpractice in a court until a  
10 mediator or neutral provider files a certain notice; requiring certain procedures  
11 for health care malpractice claims; providing certain sanctions for violations of  
12 the requirements of this Act; providing for allocation of the cost of alternative  
13 dispute resolution; providing certain immunity from civil liability for a mediator  
14 or neutral provider in a health care malpractice claim under certain  
15 circumstances; repealing certain inconsistent provisions relating to neutral case  
16 evaluation of certain health care malpractice claims; defining certain terms;  
17 providing for the application of this Act; and generally relating to requiring that  
18 certain persons participate in certain alternative dispute resolution of a health  
19 care malpractice claim under certain circumstances.

20 BY repealing

21 Article - Courts and Judicial Proceedings  
22 Section 3-2A-06A(f) and 3-2A-06B(i)  
23 Annotated Code of Maryland  
24 (2002 Replacement Volume and 2003 Supplement)

25 BY renumbering

26 Article - Courts and Judicial Proceedings  
27 Section 3-2A-06A(g)  
28 to be Section 3-2A-06A(f)  
29 Annotated Code of Maryland  
30 (2002 Replacement Volume and 2003 Supplement)

1 BY repealing and reenacting, with amendments,  
2 Article - Courts and Judicial Proceedings  
3 Section 3-2A-01  
4 Annotated Code of Maryland  
5 (2002 Replacement Volume and 2003 Supplement)

6 BY adding to  
7 Article - Courts and Judicial Proceedings  
8 Section 3-2A-06C and 3-2A-06D  
9 Annotated Code of Maryland  
10 (2002 Replacement Volume and 2003 Supplement)

11 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
12 MARYLAND, That Section(s) 3-2A-06A(f) and 3-2A-06B(i) of Article - Courts and  
13 Judicial Proceedings of the Annotated Code of Maryland be repealed.

14 SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 3-2A-06A(g)  
15 of Article - Courts and Judicial Proceedings of the Annotated Code of Maryland be  
16 renumbered to be Section(s) 3-2A-06A(f).

17 SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
18 read as follows:

19 **Article - Courts and Judicial Proceedings**

20 3-2A-01.

21 (a) In this subtitle the following terms have the meanings indicated unless the  
22 context of their use requires otherwise.

23 (B) "ALTERNATIVE DISPUTE RESOLUTION" HAS THE MEANING STATED IN  
24 MARYLAND RULE 17-102.

25 [(b)] (C) "Arbitration panel" means the arbitrators selected to determine a  
26 health care malpractice claim in accordance with this subtitle.

27 [(c)] (D) "Court" means a circuit court for a county.

28 [(d)] (E) "Director" means the Director of the Health Claims Arbitration  
29 Office.

30 [(e)] (F) "Health care provider" means a hospital, a related institution as  
31 defined in § 19-301 of the Health - General Article, a physician, an osteopath, an  
32 optometrist, a chiropractor, a registered or licensed practical nurse, a dentist, a  
33 podiatrist, a psychologist, a licensed certified social worker-clinical, and a physical  
34 therapist, licensed or authorized to provide one or more health care services in  
35 Maryland. "Health care provider" does not mean any nursing institution conducted by  
36 and for those who rely upon treatment by spiritual means through prayer alone in

1 accordance with the tenets and practices of a recognized church or religious  
2 denomination.

3 (G) "MEDIATION" HAS THE MEANING STATED IN MARYLAND RULE 17-102.

4 (H) "MEDIATOR" MEANS AN INDIVIDUAL WHO CONDUCTS MEDIATION.

5 [(f)] (I) "Medical injury" means injury arising or resulting from the rendering  
6 or failure to render health care.

7 (J) "NEUTRAL PROVIDER" MEANS A PERSON WHO ENGAGES IN ALTERNATIVE  
8 DISPUTE RESOLUTION INVOLVING A NEUTRAL CASE EVALUATION, NEUTRAL FACT  
9 FINDING, OR SETTLEMENT CONFERENCE AS THOSE TERMS ARE DEFINED IN  
10 MARYLAND RULE 17-102.

11 3-2A-06C.

12 (A) THIS SECTION APPLIES TO ANY CLAIM THAT IS FILED UNDER THIS  
13 SUBTITLE FOR WHICH ARBITRATION IS WAIVED UNDER § 3-2A-06A OR § 3-2A-06B OF  
14 THIS SUBTITLE.

15 (B) (1) THE PROVISIONS OF § 3-2A-04(A) AND (B) OF THIS SUBTITLE APPLY  
16 TO THIS SECTION.

17 (2) ON NOTICE TO THE DIRECTOR THAT A PARTY HAS FAILED TO  
18 COMPLY WITH THE PROVISIONS OF § 3-2A-04(B) OF THIS SUBTITLE, THE DIRECTOR  
19 MAY TAKE ANY ACTIONS THAT A PANEL CHAIRMAN MAY TAKE UNDER § 3-2A-04(B) OF  
20 THIS SUBTITLE.

21 (C) A CLAIM FOR A MEDICAL INJURY:

22 (1) SHALL BE SUBJECT TO MEDIATION OR ANOTHER ALTERNATIVE  
23 DISPUTE RESOLUTION PROCESS; AND

24 (2) IS NOT SUBJECT TO ARBITRATION UNDER THIS SUBTITLE.

25 (D) (1) THE COURT OF APPEALS MAY ADOPT AN APPLICATION PROCESS FOR  
26 QUALIFIED PERSONS TO BE ON A ROSTER OF MEDIATORS AND NEUTRAL PROVIDERS  
27 FOR A HEALTH CARE MALPRACTICE CLAIM.

28 (2) IN ORDER TO BE LISTED ON THE ROSTER OF MEDIATORS FOR  
29 HEALTH CARE MALPRACTICE CLAIMS, A MEDIATOR SHALL:

30 (I) BE QUALIFIED AS A MEDIATOR UNDER MARYLAND RULE  
31 17-104;

32 (II) HAVE EXPERIENCE AS A MEDIATOR OF HEALTH CARE  
33 MALPRACTICE CLAIMS ACCORDING TO THE REQUIREMENTS ADOPTED BY THE  
34 COURT OF APPEALS; AND

1 (III) AGREE TO ABIDE BY THE MARYLAND STANDARDS OF CONDUCT  
2 FOR MEDIATORS, ARBITRATORS, AND OTHER ALTERNATIVE DISPUTE RESOLUTION  
3 PRACTITIONERS, AS ADOPTED BY THE COURT OF APPEALS IN ACCORDANCE WITH  
4 MARYLAND RULE 17-104.

5 (3) IN ORDER TO BE LISTED AS A NEUTRAL PROVIDER FOR HEALTH  
6 CARE MALPRACTICE CLAIMS, A PERSON SHALL:

7 (I) BE QUALIFIED AS A NEUTRAL PROVIDER UNDER MARYLAND  
8 RULE 17-105;

9 (II) HAVE EXPERIENCE AS A NEUTRAL PROVIDER FOR HEALTH  
10 CARE MALPRACTICE CLAIMS ACCORDING TO THE REQUIREMENTS DETERMINED BY  
11 THE COURT OF APPEALS; AND

12 (III) AGREE TO ABIDE BY THE MARYLAND STANDARDS OF CONDUCT  
13 FOR MEDIATORS, ARBITRATORS, AND OTHER ALTERNATIVE DISPUTE RESOLUTION  
14 PRACTITIONERS, AS ADOPTED BY THE COURT OF APPEALS IN ACCORDANCE WITH  
15 MARYLAND RULE 17-105.

16 (4) A MEDIATOR AND A NEUTRAL PROVIDER SHALL ABIDE BY THE  
17 STANDARDS ADOPTED BY THE COURT OF APPEALS.

18 (E) (1) A CLAIM UNDER THIS SECTION MAY NOT BE FILED WITH A CIRCUIT  
19 COURT OR THE UNITED STATES DISTRICT COURT UNTIL THE MEDIATOR OR NEUTRAL  
20 PROVIDER FILES WITH THE NOTICE REQUIRED UNDER SUBSECTION (M) OF THIS  
21 SECTION THAT THE ALTERNATIVE DISPUTE RESOLUTION HAS NOT BEEN EFFECTIVE.

22 (2) FOR A CLAIM UNDER THIS SECTION, IF THE TIME LIMITATIONS  
23 UNDER ANY STATUTE OF LIMITATIONS OR REPOSE FOR FILING AN ACTION IN COURT  
24 EXPIRES BEFORE THE TIME PROVIDED UNDER § 3-2A-06D(A) OF THIS SUBTITLE, THE  
25 LIMITATIONS ARE TOLLED UNTIL THE TIME REQUIRED FOR FILING AN ACTION  
26 UNDER § 3-2A-06D(A) OF THIS SUBTITLE.

27 (F) (1) WITHIN 30 DAYS OF THE TIME FOR FILING OF THE CERTIFICATE OF A  
28 QUALIFIED EXPERT OF A DEFENDANT UNDER § 3-2A-04 OF THIS SUBTITLE, THE  
29 PARTIES MAY CHOOSE A MEDIATOR OR NEUTRAL PROVIDER.

30 (2) IF THE PARTIES CHOOSE A MEDIATOR OR NEUTRAL PROVIDER, THE  
31 PARTIES SHALL NOTIFY THE DIRECTOR OF THE NAME OF THE MEDIATOR OR  
32 NEUTRAL PROVIDER.

33 (G) (1) IF THE PARTIES DO NOT NOTIFY THE DIRECTOR THAT THEY HAVE  
34 CHOSEN A MEDIATOR OR NEUTRAL PROVIDER WITHIN THE TIME REQUIRED UNDER  
35 SUBSECTION (E) OF THIS SECTION, THE DIRECTOR SHALL ASSIGN A MEDIATOR OR  
36 NEUTRAL PROVIDER TO THE CLAIM WITHIN 30 DAYS.

37 (2) THE DIRECTOR MAY CONSULT WITH THE PARTIES BEFORE  
38 ASSIGNING A MEDIATOR OR NEUTRAL PROVIDER TO THE CLAIM.

1           (3)    (I)    BEFORE ASSIGNING A MEDIATOR OR NEUTRAL PROVIDER, THE  
2 DIRECTOR SHALL INQUIRE OF THE PERSON AND BE SATISFIED THAT THE PERSON  
3 DOES NOT HAVE A PERSONAL OR ECONOMIC RELATIONSHIP WITH ANY OF THE  
4 PARTIES OR THEIR ATTORNEYS, OR ANY CASES IN WHICH THE PERSON IS A PARTY  
5 BEFORE THE HEALTH CLAIMS ARBITRATION OFFICE, THAT CAN FORM THE BASIS OF  
6 ANY PARTIALITY ON THE PERSON'S PART.

7           (II)   AFTER A PERSON IS SELECTED AS A MEDIATOR OR NEUTRAL  
8 PROVIDER, IF THE DIRECTOR DETERMINES, IN THE DIRECTOR'S JUDGMENT, THAT  
9 THE PERSON HAS A RELATIONSHIP WITH A PARTY DESCRIBED IN SUBPARAGRAPH (I)  
10 OF THIS PARAGRAPH, OR ANY CASES IN WHICH THE PERSON IS A PARTY BEFORE THE  
11 HEALTH CLAIMS ARBITRATION OFFICE, THE DIRECTOR SHALL ASSIGN ANOTHER  
12 PERSON TO BE THE MEDIATOR OR NEUTRAL PROVIDER.

13    (H)    THE MEDIATOR OR NEUTRAL PROVIDER SHALL SCHEDULE AN INITIAL  
14 CONFERENCE WITH THE PARTIES AS SOON AS PRACTICABLE.

15    (I)    (1)    AT LEAST 15 DAYS BEFORE THE INITIAL CONFERENCE, THE PARTIES  
16 SHALL SEND THE MEDIATOR OR NEUTRAL PROVIDER A BRIEF WRITTEN OUTLINE OF  
17 THE STRENGTHS AND WEAKNESSES OF THEIR RESPECTIVE CASES.

18           (2)    A PARTY DOES NOT HAVE TO PROVIDE TO ANOTHER PARTY THE  
19 WRITTEN OUTLINE DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION.

20    (J)    IN ACCORDANCE WITH MARYLAND RULE 17-109, THE OUTLINE  
21 DESCRIBED IN SUBSECTION (I) OF THIS SECTION AND ANY WRITTEN OR ORAL  
22 COMMUNICATION MADE IN CONNECTION WITH A CONFERENCE UNDER THIS  
23 SECTION:

24           (1)    IS CONFIDENTIAL;

25           (2)    DOES NOT CONSTITUTE AN ADMISSION; AND

26           (3)    IS NOT DISCOVERABLE.

27    (K)    UNLESS EXCUSED BY THE MEDIATOR OR NEUTRAL PROVIDER, THE  
28 PARTIES AND THE CLAIMS REPRESENTATIVE FOR EACH DEFENDANT SHALL APPEAR  
29 AT ALL CONFERENCES HELD UNDER THIS SECTION.

30    (L)    A PARTY WHO FAILS TO COMPLY WITH THE PROVISIONS OF SUBSECTIONS  
31 (I) AND (K) OF THIS SECTION IS SUBJECT TO THE PROVISIONS OF MARYLAND RULE  
32 1-341 AFTER THE CLAIM IS FILED IN A COURT UNDER § 3-2A-06D OF THIS SUBTITLE.

33    (M)    (1)    IF A CLAIM IS SETTLED, THE PARTIES SHALL NOTIFY THE DIRECTOR  
34 THAT THE CLAIM HAS BEEN SETTLED.

35           (2)    IF THE PARTIES HAVE NOT AGREED TO A SETTLEMENT AND THE  
36 MEDIATOR OR NEUTRAL PROVIDER FINDS THAT THE ALTERNATIVE DISPUTE  
37 RESOLUTION HAS NOT BEEN EFFECTIVE IN ACHIEVING A SETTLEMENT, THE  
38 MEDIATOR OR NEUTRAL PROVIDER SHALL:

1 (I) FILE A WRITTEN NOTICE WITH THE DIRECTOR THAT THE  
2 ALTERNATIVE DISPUTE RESOLUTION HAS NOT BEEN EFFECTIVE; AND

3 (II) SEND COPIES OF THE NOTICE TO THE PARTIES.

4 (N) UNLESS OTHERWISE AGREED BY THE PARTIES, THE COST OF  
5 ALTERNATIVE DISPUTE RESOLUTION SHALL BE DIVIDED EQUALLY BETWEEN THE  
6 PARTIES.

7 (O) A MEDIATOR OR NEUTRAL PROVIDER SHALL HAVE THE IMMUNITY FROM  
8 SUIT DESCRIBED UNDER § 5-615 OF THIS ARTICLE.

9 3-2A-06D.

10 (A) (1) WITHIN 60 DAYS AFTER THE FILING OF A NOTICE THAT THE  
11 ALTERNATIVE DISPUTE RESOLUTION HAS NOT BEEN EFFECTIVE UNDER § 3-2A-06C  
12 OF THIS SUBTITLE, THE CLAIMANT SHALL FILE A COMPLAINT AND THE CERTIFICATE  
13 OF QUALIFIED EXPERT UNDER § 3-2A-04(B) OF THIS SUBTITLE IN THE APPROPRIATE  
14 CIRCUIT COURT OR THE UNITED STATES DISTRICT COURT.

15 (2) AFTER FILING THE COMPLAINT, THE PLAINTIFF SHALL SERVE A  
16 SUMMONS AND COPY OF THE COMPLAINT ON EACH DEFENDANT OR THE ATTORNEY  
17 OF RECORD FOR EACH DEFENDANT.

18 (3) DELAY WITHOUT GOOD CAUSE IN FILING A COMPLAINT AS  
19 REQUIRED UNDER THIS SECTION MAY CONSTITUTE GROUNDS FOR DISMISSAL OF  
20 THE COMPLAINT:

21 (I) ON A MOTION BY AN ADVERSE PARTY; AND

22 (II) ON A FINDING OF PREJUDICE TO THE ADVERSE PARTY DUE TO  
23 THE DELAY IN THE FILING OF THE COMPLAINT.

24 (B) (1) A DEFENDANT, INCLUDING A THIRD PARTY DEFENDANT, SHALL FILE  
25 A CERTIFICATE OF QUALIFIED EXPERT UNDER § 3-2A-04(B) OF THIS SUBTITLE WITH  
26 THE DEFENDANT'S ANSWER.

27 (2) AFTER FILING A COMPLAINT UNDER THIS SECTION, IF A PARTY  
28 JOINS AN ADDITIONAL HEALTH CARE PROVIDER AS A DEFENDANT IN AN ACTION,  
29 THE PARTY SHALL FILE A CERTIFICATE OF QUALIFIED EXPERT REQUIRED BY §  
30 3-2A-04(B) OF THIS SUBTITLE WITH RESPECT TO THE ADDITIONAL HEALTH CARE  
31 PROVIDER.

32 (3) THE COURT MAY TAKE ANY ACTIONS THAT A PANEL CHAIRMAN MAY  
33 TAKE FOR A VIOLATION OF THE PROVISIONS OF § 3-2A-04(B) OF THIS SECTION.

34 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall be  
35 construed to apply only prospectively and may not be applied or interpreted to have  
36 any effect on or application to any case filed in a court before the effective date of this  
37 Act.

1 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect  
2 June 1, 2004.