

BY: Senator Brinkley

AMENDMENTS TO SENATE BILL NO. 836

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 4, after the first “of” insert “limiting the contingency fee amount an attorney may contract for or collect in certain claims against a health care provider; providing that certain limitations apply regardless of certain circumstances; providing that an attorney who violates provisions regarding contingency fees and the division of fees is subject to certain disciplinary actions;”.

On page 3, after line 8, insert:

“BY adding to

Article - Courts and Judicial Proceedings

Section 3-2A-07A

Annotated Code of Maryland

(2002 Replacement Volume and 2004 Supplement)”.

AMENDMENT NO. 2

On page 4, after line 35, insert:

“Article - Courts and Judicial Proceedings

3-2A-07A.

(A) (1) IN THIS SECTION, “RECOVERED” MEANS THE NET SUM RECOVERED BY THE CLAIMANT AFTER DEDUCTING ANY DISBURSEMENTS OR COSTS INCURRED IN CONNECTION WITH PROSECUTION OR SETTLEMENT OF THE CLAIM.

(Over)

(2) FOR PURPOSES OF THIS SUBSECTION, THE ATTORNEY'S OFFICE OVERHEAD COSTS OR CHARGES ARE NOT DEDUCTIBLE DISBURSEMENTS OR COSTS.

(B) AN ATTORNEY MAY NOT CONTRACT FOR OR COLLECT A CONTINGENCY FEE FOR REPRESENTING A PERSON HAVING A CLAIM AGAINST A HEALTH CARE PROVIDER FOR DAMAGES DUE TO A MEDICAL INJURY OCCURRING ON OR AFTER JANUARY 1, 2005, IN EXCESS OF THE FOLLOWING LIMITS:

- (1) 40% OF THE FIRST \$100,000 RECOVERED;
- (2) 33 1/3% OF THE NEXT \$100,000 RECOVERED;
- (3) 25% OF THE NEXT \$100,000 RECOVERED; AND
- (4) 15% OF ANY AMOUNT RECOVERED IN EXCESS OF \$300,000.

(C) THE LIMITATIONS ESTABLISHED UNDER SUBSECTION (B) OF THIS SECTION APPLY REGARDLESS OF WHETHER:

(1) THE AMOUNT IS RECOVERED BY SETTLEMENT, AWARD, OR VERDICT; OR

(2) THE PERSON FOR WHOM THE AMOUNT IS RECOVERED IS A RESPONSIBLE ADULT, A MINOR, OR A PERSON WHO IS MENTALLY INCOMPETENT.

(D) A DIVISION OF FEES BETWEEN AN ATTORNEY WHO CONTRACTS FOR OR COLLECTS A CONTINGENCY FEE SUBJECT TO THIS SECTION AND A REFERRING ATTORNEY MAY BE MADE ONLY IF:

(1) THE ATTORNEYS ARE IN THE SAME FIRM; OR

(2) (I) THE DIVISION IS IN PROPORTION TO THE SERVICES PERFORMED BY EACH ATTORNEY;

(II) THE CLAIMANT IS ADVISED IN WRITING OF AND DOES NOT OBJECT TO THE PARTICIPATION OF THE REFERRING ATTORNEY;

(III) THE TOTAL UNDIVIDED FEE IS WITHIN THE LIMITS ESTABLISHED BY THIS SECTION; AND

(IV) THE CLAIMANT'S ATTORNEY FILES WITH THE DIRECTOR AS A PUBLIC RECORD:

1. WITHIN 90 DAYS FROM THE DATE OF THE COMPLAINT, ALL WRITTEN COMMUNICATIONS OR AGREEMENTS RELATING TO THE DIVISION OF FEES UNDER THIS PARAGRAPH, INCLUDING ALL WRITTEN COMMUNICATIONS OR AGREEMENTS BETWEEN THE ATTORNEYS OR WITH THE CLAIMANT; AND

2. BEFORE THE FEE IS DIVIDED, WRITTEN CERTIFICATION DESCRIBING IN DETAIL THE SERVICES PERFORMED BY EACH ATTORNEY, THE AMOUNT OF TIME EXPENDED ON THE CLAIM BY EACH ATTORNEY, AND THE FEE TO BE PAID TO EACH ATTORNEY.

(E) AN ATTORNEY WHO VIOLATES THIS SECTION IS SUBJECT TO DISBARMENT, SUSPENSION, OR OTHER DISCIPLINARY ACTION IN ACCORDANCE WITH TITLE 16, CHAPTER 700 OF THE MARYLAND RULES.”.