

HOUSE BILL 992

D3

6lr1285

By: **Delegate Dumais**

Introduced and read first time: February 10, 2016

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Health Care Malpractice Claims – Health Care Alternative Dispute Resolution**
3 **Office – Repeal**

4 FOR the purpose of repealing provisions of law relating to the Health Care Alternative
5 Dispute Resolution Office; terminating the Health Claims Arbitration Fund;
6 requiring the clerk of a court to forward to the Department of Health and Mental
7 Hygiene copies of certain pleadings and certificates of a qualified expert; requiring
8 the Department to forward to the State Board of Physicians copies of certain
9 pleadings and certificates of a qualified expert; requiring the clerk of a court to
10 forward a copy of a final disposition of a certain case to the Department of Health
11 and Mental Hygiene rather than the Director of the Health Care Alternative Dispute
12 Resolution Office; requiring the Department to forward to the State Board of
13 Physicians a copy of a final disposition of a certain case; repealing certain obsolete
14 provisions; making certain conforming changes; providing for the application of this
15 Act; and generally relating to terminating the Health Care Alternative Dispute
16 Resolution Office.

17 BY repealing and reenacting, with amendments,
18 Article – Courts and Judicial Proceedings
19 Section 3–2A–01, 3–2A–02, 3–2A–04, 3–2A–06, 3–2A–06C, 3–2A–06D, 3–2A–08,
20 3–2A–08A, 3–2A–09(a), 3–2A–10, and 10–920
21 Annotated Code of Maryland
22 (2013 Replacement Volume and 2015 Supplement)

23 BY repealing
24 Article – Courts and Judicial Proceedings
25 Section 3–2A–03, 3–2A–03A, 3–2A–05, 3–2A–06A, 3–2A–06B, and 3–2A–07
26 Annotated Code of Maryland
27 (2013 Replacement Volume and 2015 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Courts and Judicial Proceedings**

4 3–2A–01.

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

7 (b) [“Arbitration panel” means the arbitrators selected to determine a health care
8 malpractice claim in accordance with this subtitle.

9 (c)] “Court” means a circuit court for a county.

10 [(d) “Director” means the Director of the Health Care Alternative Dispute
11 Resolution Office.

12 (e)] (C) “Economic damages” retains its judicially determined meaning.

13 [(f)] (D) (1) “Health care provider” means a hospital, a related institution as
14 defined in § 19–301 of the Health – General Article, a medical day care center, a hospice
15 care program, an assisted living program, a freestanding ambulatory care facility as
16 defined in § 19–3B–01 of the Health – General Article, a physician, an osteopath, an
17 optometrist, a chiropractor, a registered or licensed practical nurse, a dentist, a podiatrist,
18 a psychologist, a licensed certified social worker–clinical, and a physical therapist, licensed
19 or authorized to provide one or more health care services in Maryland.

20 (2) “Health care provider” does not include any nursing institution
21 conducted by and for those who rely upon treatment by spiritual means through prayer
22 alone in accordance with the tenets and practices of a recognized church or religious
23 denomination.

24 [(g)] (E) “Medical injury” means injury arising or resulting from the rendering
25 or failure to render health care.

26 [(h)] (F) “Noneconomic damages” means:

27 (1) In a claim for personal injury, pain, suffering, inconvenience, physical
28 impairment, disfigurement, loss of consortium, or other nonpecuniary injury; or

29 (2) In a claim for wrongful death, mental anguish, emotional pain and
30 suffering, loss of society, companionship, comfort, protection, care, marital care, parental
31 care, filial care, attention, advice, counsel, training, guidance, or education, or other
32 noneconomic damages authorized under Subtitle 9 of this title.

1 3-2A-02.

2 (a) (1) All claims, suits, and actions, including cross claims, third-party
3 claims, and actions under Subtitle 9 of this title, by a person against a health care provider
4 for medical injury allegedly suffered by the person in which damages of more than the limit
5 of the concurrent jurisdiction of the District Court are sought are subject to and shall be
6 governed by the provisions of this subtitle.

7 (2) An action or suit of that type may not be brought or pursued in any
8 court of this State except in accordance with this subtitle.

9 (3) Except for the procedures stated in [§ 3-2A-06(f)] **§ 3-2A-04(A)** of this
10 subtitle, an action within the concurrent jurisdiction of the District Court is not subject to
11 the provisions of this subtitle.

12 (b) [A claim filed under this subtitle and an] **AN** initial pleading [filed in any
13 subsequent] **IN AN** action **FILED UNDER THIS SUBTITLE** may not contain a statement of
14 the amount of damages sought other than that [they are] **THE AMOUNT IS** more than a
15 required jurisdictional amount.

16 (c) (1) In any action for damages filed under this subtitle, the health care
17 provider is not liable for the payment of damages unless it is established that the care given
18 by the health care provider is not in accordance with the standards of practice among
19 members of the same health care profession with similar training and experience situated
20 in the same or similar communities at the time of the alleged act giving rise to the cause of
21 action.

22 (2) (i) This paragraph applies to [a claim or] **AN** action filed on or after
23 January 1, 2005.

24 (ii) 1. In addition to any other qualifications, a health care
25 provider who attests in a certificate of a qualified expert or testifies in relation to a
26 proceeding before a [panel or] court concerning a defendant's compliance with or departure
27 from standards of care:

28 A. Shall have had clinical experience, provided consultation
29 relating to clinical practice, or taught medicine in the defendant's specialty or a related
30 field of health care, or in the field of health care in which the defendant provided care or
31 treatment to the plaintiff, within 5 years of the date of the alleged act or omission giving
32 rise to the cause of action; and

33 B. Except as provided in subsubparagraph 2 of this
34 subparagraph, if the defendant is board certified in a specialty, shall be board certified in
35 the same or a related specialty as the defendant.

1 (i) 20% of the filing fees received from the Director to the General
2 Fund of the State; and

3 (ii) The balance of the filing fees to the Health Care Alternative
4 Dispute Resolution Office.

5 (d) (1) The Fund shall be used exclusively to pay the fees of arbitrators and
6 other operating expenses of the Health Care Alternative Dispute Resolution Office.

7 (2) In accordance with the assessment of costs under § 3-2A-05(f) of this
8 subtitle, the parties to an arbitration shall reimburse the Fund for all fees paid to the
9 arbitrators from the Fund.

10 (e) (1) The Fund is a continuing, nonlapsing fund and is not subject to § 7-302
11 of the State Finance and Procurement Article.

12 (2) (i) Subject to subparagraph (ii) of this paragraph, any unspent
13 portions of the Fund may not be transferred or revert to the General Fund of the State, but
14 shall remain in the Fund to be used for the purposes specified under this subtitle.

15 (ii) Unspent portions of the Fund that exceed \$100,000 at the end of
16 any fiscal year shall revert to the General Fund.

17 (f) (1) The Director shall administer the Fund.

18 (2) Moneys in the Fund may be expended only for any lawful purpose
19 authorized by this subtitle.

20 (g) The Legislative Auditor shall audit the accounts and transactions of the Fund
21 as provided in § 2-1220 of the State Government Article.]

22 **[3-2A-04.] 3-2A-03.**

23 [(a) (1) (i) A person having a claim against a health care provider for
24 damage due to a medical injury shall file the claim with the Director and, if the claim is
25 against a physician, the Director shall forward copies of the claim to the State Board of
26 Physicians.

27 (ii) The Director shall cause a copy of the claim to be served upon the
28 health care provider by the appropriate sheriff in accordance with the Maryland Rules.

29 (iii) The health care provider shall file a response with the Director
30 and serve a copy on the claimant and all other health care providers named therein within
31 the time provided in the Maryland Rules for filing a responsive pleading to a complaint.

1 (iv) The claim and the response may include a statement that the
2 matter in controversy falls within one or more particular recognized specialties.

3 (2) A third-party claim shall be filed within 30 days of the response of the
4 third-party claimant to the original claim unless the parties consent to a later filing or a
5 later filing is allowed by the panel chairman or the court, as the case may be, for good cause
6 shown.

7 (3) A claimant may not add a new defendant after the arbitration panel
8 has been selected, or 10 days after the prehearing conference has been held, whichever is
9 later.

10 (4) Until all costs attributable to the first filing have been satisfied, a
11 claimant may not file a second claim on the same or substantially the same grounds against
12 any of the same parties.

13 (b) Unless the sole issue in the claim is lack of informed consent:]

14 (A) (1) (i) [1.] Except as provided in [item (ii) of this paragraph, a claim
15 or] **PARAGRAPH (2) OF THIS SUBSECTION, UNLESS THE SOLE ISSUE IS A LACK OF**
16 **INFORMED CONSENT, AN** action [filed after July 1, 1986,] shall be dismissed, without
17 prejudice, if the [claimant or] plaintiff fails to file a certificate of a qualified expert with the
18 [Director] **COURT** attesting to departure from standards of care, and that the departure
19 from standards of care is the proximate cause of the alleged injury, within 90 days from the
20 date of the complaint[; and].

21 [2.] **(II)** The [claimant or] plaintiff shall serve a copy of the
22 certificate on all other parties to the [claim or] action or their attorneys of record in
23 accordance with the Maryland Rules[; and].

24 [(ii)] **(2)** In lieu of dismissing the [claim or] action, [the panel
25 chairman or] the court shall grant an extension of no more than 90 days for filing the
26 certificate required by this paragraph, if:

27 [1.] **(I)** The limitations period applicable to the [claim or]
28 action has expired; and

29 [2.] **(II)** The failure to file the certificate was neither willful
30 nor the result of gross negligence.

31 [(2)] **(B) (1) (i)** [A claim or] **AN** action [filed after July 1, 1986,] may be
32 adjudicated in favor of the [claimant or] plaintiff on the issue of liability, if the defendant
33 disputes liability and fails to file a certificate of a qualified expert attesting to compliance
34 with standards of care, or that the departure from standards of care is not the proximate
35 cause of the alleged injury, within 120 days from the date the [claimant or] plaintiff served

1 the certificate of a qualified expert set forth in [paragraph (1) of this] subsection **(A) OF**
 2 **THIS SECTION** on the defendant.

3 **[(ii)] (2)** If the defendant does not dispute liability, a certificate of
 4 a qualified expert is not required under this subsection.

5 **[(iii)] (3)** The defendant shall serve a copy of the certificate on all
 6 other parties to the [claim or] action or their attorneys of record in accordance with the
 7 Maryland Rules.

8 **[(3) (i)] (C) (1)** The attorney representing each party, or the party
 9 proceeding pro se, shall file the appropriate certificate with a report of the attesting expert
 10 attached.

11 **[(ii)] (2)** Discovery is available as to the basis of the certificate.

12 **[(4)] (D)** A health care provider who attests in a certificate of a qualified
 13 expert or who testifies in relation to a proceeding before [an arbitration panel or] a court
 14 concerning compliance with or departure from standards of care may not devote annually
 15 more than 20 percent of the expert's professional activities to activities that directly involve
 16 testimony in personal injury claims.

17 **[(5)] (E)** An extension of the time allowed for filing a certificate of a
 18 qualified expert under this [subsection] **SECTION** shall be granted for good cause shown.

19 **[(6)] (F) (1)** [In the case of a claim or action against a physician, the
 20 Director] **THE CLERK OF THE COURT** shall forward **TO THE DEPARTMENT OF HEALTH**
 21 **AND MENTAL HYGIENE A COPY OF THE COMPLAINT IN THE ACTION AND** copies of the
 22 certificates **OF QUALIFIED EXPERTS** filed under [paragraphs (1) and (2) of this subsection
 23 to the State Board of Physicians] **THIS SECTION**.

24 **(2) IF THE ACTION IS AGAINST A PHYSICIAN, THE DEPARTMENT OF**
 25 **HEALTH AND MENTAL HYGIENE SHALL FORWARD TO THE STATE BOARD OF**
 26 **PHYSICIANS COPIES OF THE CERTIFICATES OF QUALIFIED EXPERTS FILED UNDER**
 27 **THIS SECTION.**

28 **[(7)] (G)** For purposes of the certification requirements of this [subsection
 29 for any claim or action filed on or after July 1, 1989] **SECTION**:

30 **[(i)] (1)** A party may not serve as a party's expert; and

31 **[(ii)] (2)** The certificate may not be signed by:

32 **[1.] (1)** A party;

1 [2.] (II) An employee or partner of a party; or

2 [3.] (III) An employee or stockholder of any professional
3 corporation of which the party is a stockholder.

4 [(c) (1) Within 20 days after the filing of the claimant's certificate of a qualified
5 expert, or, in a case in which lack of informed consent is the sole issue, within 20 days after
6 the filing of the defendant's response, the Director shall deliver to each party the names of
7 6 persons chosen at random from the attorney categorical list prepared by him pursuant to
8 § 3-2A-03(c) of this subtitle, together with a brief biographical statement as to each of these
9 persons.

10 (2) No later than 20 days after receiving notice of the scheduled hearing,
11 the Director shall deliver to each party the names of 6 persons chosen at random from each
12 of the remaining categorical lists prepared by him pursuant to § 3-2A-03(c) of this subtitle,
13 together with a brief biographical statement as to each of these persons. If the claim or the
14 response states that the matter falls within one or more recognized specialties, the Director,
15 if practicable, shall include persons in the specialty on the list from the health care provider
16 category. Before delivering each list, the Director shall inquire of the persons selected and
17 assure himself that they do not have a personal or economic relationship with any of the
18 parties or their counsel, or any cases in which they are a party before the arbitration office,
19 that can form the basis of any partiality on their part. If, in the judgment of the Director, a
20 person selected has such a relationship with a party, his name shall be replaced by another
21 chosen at random.

22 (3) The biographical statements sent to the parties under this subsection
23 shall have been updated within 2 years.

24 (d) (1) Within 15 days after delivery of the list, a party may object in writing
25 stating the reasons therefor to the inclusion of any arbitrator on the list. If the Director
26 finds a reasonable basis for the objection, he shall replace the name of the arbitrator with
27 the name of another arbitrator. Within 30 days after delivery of the initial list or, if an
28 arbitrator is replaced, within 30 days after delivery of the replacement list, each party shall
29 strike from the list in each category any name or names that are unacceptable and return
30 a copy of the list with his strikes to the Director. Upon motion of either party, the panel
31 chairman, for good cause shown and in conjunction with the Director, shall require that
32 subsequent strikes be made in a lesser period of time. A party may not strike more than
33 two names in any category.

34 (2) If:

35 (i) The claim is against more than one health care provider, whether
36 directly by a claimant or as a result of a third-party claim, the health care providers
37 claimed against shall be treated as a single party and shall exercise their strikes jointly;

38 (ii) There is more than one claimant, the claimants shall be treated
39 as a single party and shall exercise their strikes jointly;

1 (iii) Within the time period specified in paragraph (1) of this
2 subsection, multiple claimants or multiple health care providers fail to agree on their
3 strikes in any category, they shall notify the Director of their disagreement, and the
4 Director may make the strikes on their behalf with respect to that category; and

5 (iv) Any party fails to return a copy of the list with his strikes within
6 the time period specified in paragraph (1) of this subsection, the Director may make the
7 strikes for that party.

8 (e) (1) The Director shall compare the lists returned to him and the lists from
9 which he has stricken names pursuant to subsection (d) of this section, and shall select the
10 first mutually agreeable person in each category as the arbitrators.

11 (2) The Director shall establish by regulation procedures for selection of
12 alternates to serve in place of arbitrators unable to serve after appointment. Procedures for
13 the selection of alternate arbitrators shall provide that alternate arbitrators are chosen at
14 random from the categorical lists prepared by the Director under § 3-2A-03(c) of this
15 subtitle, and may not be confined to time limitations in subsection (d)(1) of this section. The
16 Director may require the attendance of an appropriate alternate at any proceeding under
17 this subtitle.

18 (f) (1) The parties may, within the time for returning their lists to the
19 Director, agree in writing upon a single arbitrator. In that event, they shall advise the
20 Director in writing of their choice, and the one arbitrator shall constitute the arbitration
21 panel.

22 (2) The Director shall prepare a separate list of qualified attorneys willing
23 to serve as single arbitrators.

24 (g) An arbitrator shall have the immunity from suit described under § 5-615 of
25 this article.]

26 [3-2A-05.

27 (a) (1) Except as provided under paragraph (2) of this subsection, all issues of
28 law shall be referred by the Director to the panel chairman. All issues of fact shall be
29 referred by the Director to the arbitration panel.

30 (2) Where a panel chairman has not been appointed or is temporarily
31 unable to serve, and the Director is admitted to the Maryland Bar, the Director may rule
32 on all issues of law arising prior to hearing that are not dispositive of the case and shall
33 include the assessment of costs.

34 (b) (1) The provisions of §§ 3-212 through 3-217 of this title are applicable to
35 proceedings under this subtitle.

1 (2) Except for the provisions of the Maryland Rules relating to time for the
2 completion of discovery, the provisions of the Maryland Rules relating to discovery are
3 applicable to proceedings under this subtitle. All discovery in any action under this subtitle
4 shall be completed within 270 days from the date on which all defendants have been served,
5 unless extended by the panel chairman for good cause shown.

6 (3) Properly authenticated hospital records and the records of treating
7 health care providers are admissible without the necessity of calling the physician, subject
8 to reasonable notice and the right of the opposing party to depose.

9 (c) The attorney member of the panel shall be chairman and he shall decide all
10 prehearing procedures including issues relating to discovery and motions in limine. The
11 chairman shall rule in camera on any motion in limine.

12 (d) A party may not present testimony from more than 2 experts in a designated
13 specialty before an arbitration panel unless the panel chairman, for good cause shown,
14 permits additional experts.

15 (e) (1) The arbitration panel shall first determine the issue of liability with
16 respect to a claim referred to it.

17 (2) If the arbitration panel determines that the health care provider is not
18 liable to the claimant or claimants the award shall be in favor of the health care provider.

19 (3) If the arbitration panel determines that a health care provider is liable
20 to the claimant or claimants, it shall then consider, itemize, assess, and apportion
21 appropriate damages against one or more of the health care providers that it has found to
22 be liable.

23 (4) The award shall itemize by category and amount any damages assessed
24 for incurred medical expenses, rehabilitation costs, and loss of earnings. Damages assessed
25 for any future expenses, costs, and losses shall be itemized separately.

26 (f) (1) The award shall include an assessment of costs, including the
27 arbitrators' fees.

28 (2) If there is no panel determination, the panel chairman shall assess
29 costs.

30 (3) The party who pays the costs shall receive a credit for the filing fee the
31 party pays under § 3-2A-03A(b) of this subtitle.

32 (g) (1) The arbitration panel shall make its award and deliver it to the Director
33 in writing within 1 year from the date on which all defendants have been served and within
34 10 days after the close of the hearing.

1 (2) The Director shall cause a copy of it to be served on each party within
2 15 days of having received it from the arbitration panel.

3 (h) (1) A party may apply to the arbitration panel to modify or correct an
4 award as to liability, damages, or costs in accordance with § 3-222 of this title.

5 (2) (i) The application may include a request that damages be reduced
6 to the extent that the claimant has been or will be paid, reimbursed, or indemnified under
7 statute, insurance, or contract for all or part of the damages assessed.

8 (ii) The panel chairman shall receive such evidence in support and
9 opposition to a request for reduction, including evidence of the cost to obtain such payment,
10 reimbursement, or indemnity.

11 (iii) After hearing the evidence in support and opposition to the
12 request, the panel chairman may modify the award if satisfied that modification is
13 supported by the evidence.

14 (iv) The award may not be modified as to any sums paid or payable
15 to a claimant under any workers' compensation act, criminal injuries compensation act,
16 employee benefit plan established under a collective bargaining agreement between an
17 employer and an employee or a group of employers and a group of employees that is subject
18 to the provisions of the federal Employee Retirement Income Security Act of 1974, program
19 of the Department of Health and Mental Hygiene for which a right of subrogation exists
20 under §§ 15-120 and 15-121.1 of the Health – General Article, or as a benefit under any
21 contract or policy of life insurance or Social Security Act of the United States.

22 (v) An award may not be modified as to any damages assessed for
23 any future expenses, costs, and losses unless:

24 1. The panel chairman orders the defendant or the
25 defendant's insurer to provide adequate security; or

26 2. The insurer is authorized to do business in this State and
27 maintains reserves in compliance with rules of the Insurance Commissioner to assure the
28 payment of all such future damages up to the amount by which the award has been modified
29 as to such future damages in the event of termination.

30 (vi) Except as expressly provided by federal law, no person may
31 recover from the claimant or assert a claim of subrogation against a defendant for any sum
32 included in the modification of an award.

33 (i) Subject to § 3-2A-06 of this subtitle, the award of the panel shall be final and
34 binding on the parties. After the time for either rejecting or modifying the award has
35 expired the Director may, or, when requested by any party, shall file a copy of the award
36 with the circuit court having proper venue, as provided in Title 6, Subtitle 2 of this article

1 and the court shall confirm the award. Upon confirmation the award shall constitute a final
2 judgment.

3 (j) Except for time limitations pertaining to the filing of a claim or response, the
4 Director or the panel chairman, for good cause shown, may lengthen or shorten the time
5 limitations prescribed in subsections (b) and (g) of this section and § 3-2A-04 of this
6 subtitle.]

7 ~~[3-2A-06.] 3-2A-04.~~

8 [(a) A party may reject an award or the assessment of costs under an award for
9 any reason. A notice of rejection must be filed with the Director and the arbitration panel
10 and served on the other parties or their counsel within 30 days after the award is served
11 upon the rejecting party, or, if a timely application for modification or correction has been
12 filed within 10 days after a disposition of the application by the panel, whichever is greater.

13 (b) (1) At or before the time specified in subsection (a) of this section for filing
14 and serving a notice of rejection, the party rejecting the award shall file an action in court
15 to nullify the award or the assessment of costs under the award and shall file a copy of the
16 action with the Director. Failure to file this action timely in court shall constitute a
17 withdrawal of the notice of rejection. Subject to the provisions of subsection (c) of this
18 section, the procedures applicable to the action including the form and necessary
19 allegations in the initial pleading shall be governed by the Maryland Rules. The Director
20 need not be named a party to any action under this section.

21 (2) If any party to the proceeding elects to have the case tried by a jury in
22 accordance with the Maryland Rules, it shall be tried by a jury. Otherwise, the case shall
23 be tried by a judge.

24 (3) The trial date for each rejection of a panel determination shall have
25 precedence over all cases except criminal matters and workers' compensation appeals.

26 (4) The clerk of the court in which an action is filed under this subtitle shall
27 forward a copy of the action to the State Board of Physicians.

28 (c) An allegation by any party that an award or the assessment of costs under an
29 award is improper because of any ground stated in § 3-223(b) or § 3-224(b)(1), (2), (3), or
30 (4) of this title or § 3-2A-05(h) of this subtitle shall be made by preliminary motion, and
31 shall be determined by the court without a jury prior to trial. Failure to raise such a defense
32 by pretrial preliminary motion shall constitute a waiver of it. If the court finds that a
33 condition stated in § 3-223(b) of this title exists, or that the award or the assessment of
34 costs under an award was not appropriately modified in accordance with § 3-2A-05(h) of
35 this subtitle, it shall modify or correct the award or the assessment of costs under an award.
36 If the rejecting party still desires to proceed with judicial review, the modified or corrected
37 award shall be substituted for the original award. If the court finds that a condition stated
38 in § 3-224(b)(1), (2), (3), or (4) of this title exists, it shall vacate the award, and trial of the
39 case shall proceed as if there had been no award.

1 (d) Unless vacated by the court pursuant to subsection (c) of this section, the
2 unmodified arbitration award is admissible as evidence in the judicial proceeding. The
3 award shall be presumed to be correct, and the burden is on the party rejecting it to prove
4 that it is not correct.

5 (e) (1) Depositions taken in the arbitration proceedings shall be as fully
6 admissible as if noticed in court proceedings. Interrogatories and requests for admissions
7 and production of documents in the arbitration proceedings remain binding in the court
8 proceedings, subject to a duty of supplementation.

9 (2) The provisions of paragraph (1) of this subsection do not affect any
10 rights to discovery on appeal.]

11 **[(f)] (A) (1) (I)** Upon timely request, the trier of fact shall by special
12 verdict or specific findings itemize by category and amount any damages assessed for
13 incurred medical expenses, rehabilitation costs, and loss of earnings.

14 **(II)** Damages assessed for any future expenses, costs, and losses shall
15 be itemized separately.

16 **(III)** If the verdict or findings include any amount for such expenses,
17 costs, and losses, a party filing a motion for a new trial may object to the damages as
18 excessive on the ground that the plaintiff has been or will be paid, reimbursed, or
19 indemnified to the extent and subject to the limits stated in [§ 3-2A-05(h) of this subtitle]
20 **THIS SUBSECTION.**

21 (2) **(I)** The court shall hold a hearing and receive evidence on the
22 objection, **INCLUDING EVIDENCE OF THE COST TO OBTAIN THE PAYMENT,**
23 **REIMBURSEMENT, OR INDEMNITY.**

24 **(II) THE VERDICT OR FINDINGS MAY NOT BE FOUND TO BE**
25 **EXCESSIVE AS TO SUMS PAID OR PAYABLE TO THE PLAINTIFF UNDER:**

26 1. **A WORKERS' COMPENSATION ACT;**

27 2. **A CRIMINAL INJURIES COMPENSATION ACT;**

28 3. **AN EMPLOYEE BENEFIT PLAN ESTABLISHED UNDER A**
29 **COLLECTIVE BARGAINING AGREEMENT BETWEEN AN EMPLOYER AND AN EMPLOYEE**
30 **OR A GROUP OF EMPLOYERS AND A GROUP OF EMPLOYEES THAT IS SUBJECT TO THE**
31 **PROVISIONS OF THE FEDERAL EMPLOYEE RETIREMENT INCOME SECURITY ACT OF**
32 **1974;**

1 4. **A PROGRAM OF THE DEPARTMENT OF HEALTH AND**
2 **MENTAL HYGIENE FOR WHICH A RIGHT OF SUBROGATION EXISTS UNDER §§ 15–120**
3 **AND 15–121.1 OF THE HEALTH – GENERAL ARTICLE; OR**

4 5. **A CONTRACT OR POLICY OF LIFE INSURANCE OR THE**
5 **SOCIAL SECURITY ACT OF THE UNITED STATES.**

6 **(III) A VERDICT OR FINDINGS MAY NOT BE FOUND TO BE**
7 **EXCESSIVE AS TO DAMAGES ASSESSED FOR FUTURE EXPENSES, COSTS, AND LOSSES**
8 **UNLESS:**

9 1. **THE COURT ORDERS THE DEFENDANT OR THE**
10 **DEFENDANT’S INSURER TO PROVIDE ADEQUATE SECURITY; OR**

11 2. **THE INSURER IS AUTHORIZED TO DO BUSINESS IN**
12 **THE STATE AND MAINTAINS RESERVES, IN THE EVENT OF TERMINATION, IN**
13 **COMPLIANCE WITH RULES OF THE INSURANCE COMMISSIONER TO ASSURE THE**
14 **PAYMENT OF THE FUTURE DAMAGES.**

15 (3) (i) If the court finds from the evidence that the damages are
16 excessive on the grounds stated in [§ 3–2A–05(h) of this subtitle] **THIS SUBSECTION**,
17 subject to the limits and conditions stated in [§ 3–2A–05(h) of this subtitle] **THIS**
18 **SUBSECTION**, it may grant a new trial as to such damages or may deny a new trial if the
19 plaintiff agrees to a remittitur of the excess and the order required adequate security when
20 warranted by the conditions stated in [§ 3–2A–05(h) of this subtitle] **THIS SUBSECTION**.

21 (ii) In the event of a new trial granted under this subsection,
22 evidence considered by the court in granting the remittitur shall be admissible if offered at
23 the new trial and the jury shall be instructed to consider such evidence in reaching its
24 verdict as to damages.

25 (iii) Upon a determination of those damages at the new trial, no
26 further objection to damages may be made exclusive of any party’s right of appeal.

27 (4) Except as expressly provided by federal law, no person may recover
28 from the plaintiff or assert a claim of subrogation against a defendant for any sum included
29 in a remittitur or awarded in a new trial on damages granted under this subsection.

30 (5) Nothing in this subsection shall be construed to otherwise limit the
31 common law grounds for remittitur.

32 [(g) If the verdict of the trier of fact is not more favorable to the party that rejected
33 the arbitration panel’s award, than was the award, the costs of the judicial proceedings
34 shall be assessed against the rejecting party. Otherwise, the court may determine the

1 assessment of such costs. If the court vacates an assessment of arbitration costs, it shall
2 reassess those costs as justice requires.

3 (h) (B) Venue shall be determined in accordance with the provisions of § 6–201
4 of this article.

5 (i) (C) (1) The clerk of the court shall [file] **FORWARD** a copy of the verdict
6 or any other final disposition [with] **TO** the [Director] **DEPARTMENT OF HEALTH AND**
7 **MENTAL HYGIENE.**

8 (2) **IF THE ACTION IS AGAINST A PHYSICIAN, THE DEPARTMENT OF**
9 **HEALTH AND MENTAL HYGIENE SHALL FORWARD TO THE STATE BOARD OF**
10 **PHYSICIANS A COPY OF THE VERDICT OR ANY OTHER FINAL DISPOSITION.**

11 [3–2A–06A.

12 (a) At any time before the hearing of a claim with the Health Care Alternative
13 Dispute Resolution Office, the parties may agree mutually to waive arbitration of the claim,
14 and the provisions of this section then shall govern all further proceedings on the claim.

15 (b) (1) The claimant shall file with the Director a written election to waive
16 arbitration which must be signed by all parties or their attorneys of record in the
17 arbitration proceeding.

18 (2) After filing, the written election shall be mutually binding upon all
19 parties.

20 (c) (1) Within 60 days after filing the election to waive arbitration, the plaintiff
21 shall file a complaint and a copy of the election to waive arbitration with the circuit court
22 or United States District Court.

23 (2) After filing the complaint, the plaintiff shall serve a summons and a
24 copy of the complaint upon the attorney of record for all parties in the health claims
25 arbitration proceeding.

26 (3) Failure to file a complaint within 60 days of filing the election to waive
27 arbitration may constitute grounds for dismissal of the complaint upon motion by an
28 adverse party and upon a finding of prejudice to that party due to the delay in the filing of
29 the complaint.

30 (d) After filing the election to waive arbitration, the plaintiff may not join an
31 additional health care provider as a defendant in any action brought under subsection (c)
32 of this section unless a written election to waive arbitration has been filed by that health
33 care provider under subsection (b) of this section.

1 (e) In any case subject to this section, the procedures of § 3-2A-06(f) of this
2 subtitle shall apply.

3 (f) (1) If the parties mutually agree to a neutral case evaluation, the circuit
4 court or United States District Court, to which the case has been transferred after the
5 waiver of arbitration, may refer the case to the Health Care Alternative Dispute Resolution
6 Office not later than 6 months after a complaint is filed under subsection (c) of this section.

7 (2) (i) On receipt of the case, the Director shall send to the parties a list
8 of six attorneys who:

9 1. Meet the qualifications listed in § 3-2A-03(c)(3) of this
10 subtitle; and

11 2. Have tried at least three health care malpractice cases.

12 (ii) Each party may strike two names from the list.

13 (iii) If the claim is against more than one health care provider,
14 whether directly by a claimant or as a result of a third-party claim, the health care
15 providers claimed against shall be treated as a single party and shall exercise their strikes
16 jointly.

17 (iv) If there is more than one claimant, the claimants shall be treated
18 as a single party and shall exercise their strikes jointly.

19 (v) If multiple claimants or multiple health care providers fail to
20 agree on their strikes or fail to return their strike list to the Director within the time
21 specified in paragraph (vi) of this subsection, the Director shall make the strikes on their
22 behalf.

23 (vi) The strikes shall be submitted to the Director within 10 days
24 after delivery of the list.

25 (vii) The Director shall appoint an evaluator from the unstricken
26 names on the list.

27 (3) Upon appointment, the evaluator shall schedule a neutral case
28 evaluation session to be held within 45 days after the appointment to pursue the neutral
29 case evaluation of the claim or to resolve any issues to which the parties agree to stipulate
30 before trial.

31 (4) Within 10 days after the neutral case evaluation session, the evaluator
32 shall notify, in writing, the Director and the circuit court or United States District Court of
33 the results of the neutral case evaluation.

1 (5) (i) During the neutral case evaluation period, the circuit court or
2 United States District Court shall continue to have jurisdiction to rule on any motions or
3 discovery matters.

4 (ii) The neutral case evaluation may not interfere with the scheduled
5 trial.

6 (6) (i) The evaluator shall be paid in accordance with § 3-2A-03(d) of
7 this subtitle.

8 (ii) Unless otherwise agreed by the parties, the cost of neutral case
9 evaluation, which may not exceed \$300 per case, shall be divided equally between the
10 parties.

11 (g) The provisions of this section apply only if no party waives arbitration of the
12 claim under the provisions of § 3-2A-06B of this subtitle.]

13 [3-2A-06B.

14 (a) Arbitration of a claim with the Health Care Alternative Dispute Resolution
15 Office may be waived by the claimant or any defendant in accordance with this section, and
16 the provisions of this section shall govern all further proceedings on any claim for which
17 arbitration has been waived under this section.

18 (b) (1) Subject to the time limitation under subsection (d) of this section, any
19 claimant may waive arbitration at any time after filing the certificate of qualified expert
20 required by § 3-2A-04(b) of this subtitle by filing with the Director a written election to
21 waive arbitration signed by the claimant or the claimant's attorney of record in the
22 arbitration proceeding.

23 (2) The claimant shall serve the written election on all other parties to the
24 claim in accordance with the Maryland Rules.

25 (3) If the claimant waives arbitration under this subsection, all defendants
26 shall comply with the requirements of § 3-2A-04(b) of this subtitle by filing their
27 certificates at the Health Care Alternative Dispute Resolution Office or, after the election,
28 in the appropriate circuit court or United States District Court.

29 (c) (1) Subject to the time limitation under subsection (d) of this section, any
30 defendant may waive arbitration at any time after the claimant has filed the certificate of
31 qualified expert required by § 3-2A-04(b) of this subtitle by filing with the Director a
32 written election to waive arbitration signed by the defendant or the defendant's attorney of
33 record in the arbitration proceeding.

34 (2) The defendant shall serve the written election on all other parties to
35 the claim in accordance with the Maryland Rules.

1 (3) If a defendant waives arbitration under this subsection, the defendant
2 shall comply with the requirements of § 3-2A-04(b) of this subtitle by filing the certificate
3 at the Health Care Alternative Dispute Resolution Office, or, after the election, in the
4 appropriate circuit court or United States District Court.

5 (d) (1) A waiver of arbitration by any party under this section may be filed not
6 later than 60 days after all defendants have filed a certificate of qualified expert under §
7 3-2A-04(b) of this subtitle.

8 (2) Any waiver of arbitration after the date specified in paragraph (1) of
9 this subsection shall be in accordance with the provisions of § 3-2A-06A of this subtitle.

10 (e) After filing, the written election shall be binding upon all parties.

11 (f) (1) Within 60 days after the filing of an election to waive arbitration by any
12 party, the plaintiff shall file a complaint and a copy of the election to waive arbitration in
13 the appropriate circuit court or the United States District Court.

14 (2) After filing the complaint, the plaintiff shall serve a summons and a
15 copy of the complaint upon all defendants or the attorney of record for all parties in the
16 health claims arbitration proceeding.

17 (3) Failure to file a complaint within 60 days of filing the election to waive
18 arbitration may constitute grounds for dismissal of the complaint upon:

19 (i) A motion by an adverse party; and

20 (ii) A finding of prejudice to the adverse party due to the delay in the
21 filing of the complaint.

22 (g) After the filing of an election to waive arbitration under this section, if a party
23 joins an additional health care provider as a defendant in an action, the party shall file a
24 certificate of qualified expert required by § 3-2A-04(b) of this subtitle with respect to the
25 additional health care provider.

26 (h) In any case subject to this section, the procedures of § 3-2A-06(f) of this
27 subtitle shall apply.

28 (i) (1) If the parties mutually agree to a neutral case evaluation, the circuit
29 court or United States District Court, to which the case has been transferred after the
30 waiver of arbitration, may refer the case to the Health Care Alternative Dispute Resolution
31 Office not later than 6 months after a complaint is filed under subsection (c) of this section.

32 (2) (i) On receipt of the case, the Director shall send to the parties a list
33 of six attorneys who:

1 (ii) Unless otherwise agreed by the parties, the cost of neutral case
2 evaluation, which may not exceed \$300 per case, shall be divided equally between the
3 parties.]

4 ~~[3-2A-06C.] 3-2A-05.~~

5 (a) (1) In this section the following words have the meanings indicated.

6 (2) “Alternative dispute resolution” means mediation, neutral case
7 evaluation, neutral fact-finding, or a settlement conference.

8 (3) “Mediation” has the meaning stated in Title 17 of the Maryland Rules.

9 (4) “Mediator” means an individual who conducts mediation.

10 (5) “Neutral case evaluation” has the meaning stated in Title 17 of the
11 Maryland Rules.

12 (6) “Neutral fact-finding” has the meaning stated in Title 17 of the
13 Maryland Rules.

14 (7) “Neutral provider” means an individual who conducts neutral case
15 evaluation or neutral fact-finding.

16 (8) “Settlement conference” has the meaning stated in Title 17 of the
17 Maryland Rules.

18 (b) (1) This section does not apply if:

19 (i) All parties file with the court an agreement not to engage in
20 alternative dispute resolution; and

21 (ii) The court finds that alternative dispute resolution under this
22 section would not be productive.

23 (2) In determining whether alternative dispute resolution would not be
24 productive under paragraph (1)(ii) of this subsection, the court may consider whether the
25 parties have already engaged in alternative dispute resolution.

26 (c) In addition to the qualifications and requirements of Title 17 of the Maryland
27 Rules, the Court of Appeals may adopt rules requiring a mediator, neutral provider, or
28 individual conducting a settlement conference to have experience with health care
29 malpractice claims.

30 (d) Within 30 days of the later of the filing of the defendant’s answer to the
31 complaint or the defendant’s certificate of a qualified expert under ~~[§ 3-2A-04]~~ **§ 3-2A-03**

1 of this subtitle, the court shall order the parties to engage in alternative dispute resolution
2 at the earliest possible date.

3 (e) (1) Within 30 days of the later of the filing of the defendant's answer to the
4 complaint or the defendant's certificate of a qualified expert under [§ 3-2A-04] § 3-2A-03
5 of this subtitle, the parties may choose a mediator, neutral provider, or individual to
6 conduct a settlement conference.

7 (2) If the parties choose a mediator, neutral provider, or individual to
8 conduct a settlement conference, the parties shall notify the court of the name of the
9 individual.

10 (f) (1) If the parties do not notify the court that they have chosen a mediator,
11 neutral provider, or individual to conduct a settlement conference within the time required
12 under subsection (e) of this section, the court shall assign a mediator, neutral provider, or
13 individual to conduct a settlement conference to the claim within 30 days.

14 (2) (i) Within 15 days after the parties are notified of the identity of the
15 mediator, neutral provider, or individual conducting a settlement conference, a party may
16 object in writing to the selection, stating the reasons for the objection.

17 (ii) If the court sustains the objection, the court shall appoint a
18 different mediator, neutral provider, or individual to conduct a settlement conference.

19 (3) A mediator, neutral provider, or individual conducting a settlement
20 conference shall follow the "Maryland Standards of Practice for Mediators, Arbitrators, and
21 Other ADR Practitioners" adopted by the Court of Appeals.

22 (g) The mediator, neutral provider, or individual conducting a settlement
23 conference shall schedule an initial conference with the parties as soon as practicable.

24 (h) (1) At least 15 days before the initial conference, the parties shall send to
25 the mediator, neutral provider, or individual conducting a settlement conference a brief
26 written outline of the strengths and weaknesses of the party's case.

27 (2) A party may not be required to provide to another party the written
28 outline described in paragraph (1) of this subsection.

29 (i) (1) Alternative dispute resolution under this section may not operate to
30 delay discovery in the action.

31 (2) If the mediator, neutral provider, or individual conducting a settlement
32 conference finds that the parties need to engage in discovery for a limited period of time in
33 order to facilitate the alternative dispute resolution, the mediator, neutral provider, or
34 individual conducting a settlement conference may mediate the scope and schedule of
35 discovery needed to proceed with the alternative dispute resolution, adjourn the initial
36 conference, and reschedule an additional conference for a later date.

1 (j) A neutral expert may be employed in alternative dispute resolution under this
2 section as provided in Title 17 of the Maryland Rules.

3 (k) In accordance with Maryland Rule 17–109, the outline described in subsection
4 (h) of this section and any written or oral communication made in the course of a conference
5 under this section:

6 (1) Are confidential;

7 (2) Do not constitute an admission; and

8 (3) Are not discoverable.

9 (l) Unless excused by the mediator, neutral provider, or individual conducting a
10 settlement conference, the parties and the claims representative for each defendant shall
11 appear at all conferences held under this section.

12 (m) A party who fails to comply with the provisions of subsection (h), (k), or (l) of
13 this section is subject to the sanctions provided in Maryland Rule 2–433.

14 (n) (1) If a case is settled, the parties shall notify the court that the case has
15 been settled.

16 (2) If the parties agree to settle some but not all of the issues in dispute,
17 the mediator, neutral provider, or individual conducting a settlement conference shall file
18 a written notice of partial settlement with the court.

19 (3) If the parties have not agreed to a settlement the mediator, neutral
20 provider, or individual conducting a settlement conference shall file a written notice with
21 the court that the case was not settled.

22 (o) Unless otherwise agreed by the parties, the costs of alternative dispute
23 resolution shall be divided equally between the parties.

24 (p) An individual who conducts alternative dispute resolution shall have the
25 immunity from suit described under § 5–615 of this article.

26 **[3–2A–06D.] 3–2A–06.**

27 (a) [(1) This section applies only to an initial complaint filed on or after January
28 1, 2005, for which a certificate of a qualified expert is required to be filed in accordance with
29 § 3–2A–04 of this subtitle.

30 (2)] This section does not apply if the defendant admits liability.

1 (b) (1) Within 15 days after the date that discovery is required to be completed,
2 a party shall file with the court a supplemental certificate of a qualified expert, for each
3 defendant, that attests to:

4 (i) The certifying expert's basis for alleging what is the specific
5 standard of care;

6 (ii) The certifying expert's qualifications to testify to the specific
7 standard of care;

8 (iii) The specific standard of care;

9 (iv) For the plaintiff:

10 1. The specific injury complained of;

11 2. How the specific standard of care was breached;

12 3. What specifically the defendant should have done to meet
13 the specific standard of care; and

14 4. The inference that the breach of the standard of care
15 proximately caused the plaintiff's injury; and

16 (v) For the defendant:

17 1. How the defendant complied with the specific standard of
18 care;

19 2. What the defendant did to meet the specific standard of
20 care; and

21 3. If applicable, that the breach of the standard of care did
22 not proximately cause the plaintiff's injury.

23 (2) An extension of the time allowed for filing a supplemental certificate
24 under this section shall be granted for good cause shown.

25 (3) The facts required to be included in the supplemental certificate of a
26 qualified expert shall be considered necessary to show entitlement to relief sought by a
27 plaintiff or to raise a defense by a defendant.

28 (c) Subject to the provisions of this section:

29 (1) If a plaintiff fails to file a supplemental certificate of a qualified expert
30 for a defendant, on motion of the defendant the court may dismiss, without prejudice, the
31 action as to that defendant; or

1 (2) If the defendant fails to file a supplemental certificate of a qualified
2 expert, on motion of the plaintiff the court may adjudicate in favor of the plaintiff on the
3 issue of liability as to that defendant.

4 (d) (1) The Maryland Rules apply to filing and serving a copy of a certificate
5 required under this section and in motions relating to a violation of this section.

6 (2) Nothing contained in this section prohibits or limits a party from
7 moving for summary judgment in accordance with the Maryland Rules.

8 (e) For purposes of the certification requirements of this section:

9 (1) A party may not serve as a party's expert; and

10 (2) The certificate may not be signed by:

11 (i) A party;

12 (ii) An employee or partner of a party; or

13 (iii) An employee or stockholder of any professional corporation of
14 which the party is a stockholder.

15 (f) (1) The clerk of the court shall forward to the Department of Health and
16 Mental Hygiene copies of the certificates filed under this section.

17 (2) In the case of a complaint against a physician, the Department of
18 Health and Mental Hygiene shall forward to the State Board of Physicians copies of the
19 supplemental certificate of a qualified expert filed under this section.

20 [3-2A-07.

21 (a) If the arbitration panel finds that the conduct of any party in maintaining or
22 defending any action is in bad faith or without substantial justification, the panel may
23 require the offending party, the attorney advising the conduct, or both, to pay to the adverse
24 party the costs of the proceeding and reasonable expenses, including reasonable attorney's
25 fees, incurred by the adverse party in opposing it. A determination made under this
26 subsection shall become part of the panel award and subject to judicial review.

27 (b) If a legal fee is in dispute, an attorney may not charge or collect compensation
28 for services rendered in connection with an arbitration claim unless it is approved by the
29 arbitration panel, or by the court in the event an action to nullify a panel determination
30 has been filed therein.]

31 [3-2A-08.] **3-2A-07.**

1 (a) (1) Evidence of advanced payments made pursuant to § 19–104(b) of the
2 Insurance Article is not admissible in any [arbitration or] judicial proceeding for damages
3 due to medical injury until there is [an award, in the case of arbitration proceedings, or] a
4 verdict[, in the case of judicial proceedings,] in favor of the claimant and against the person
5 who made the advanced payments.

6 (2) Upon the finding of such [an award or] A verdict, the [arbitration panel,
7 or the] trier of fact[,], shall make a finding of total damages, and shall then deduct whatever
8 amounts it finds were paid by or on behalf of the defendants pursuant to § 19–104(b) of the
9 Insurance Article.

10 (3) The net amount, after this deduction, shall be entered as its [award or]
11 verdict.

12 (b) (1) If the [award or] verdict exceeds the amount of advanced payments and
13 [the arbitration panel or] the court finds that the advanced payments were reasonable, [the
14 panel or] the court may:

15 [(1)] (I) [order] **ORDER** that the amount by which the [award or] verdict
16 exceeds the amount of advanced payments be paid over a period of time consistent with the
17 needs of the [claimant] **PLAINTIFF**, rather than in a lump sum[,]; and

18 [(2)] (II) [authorize] **AUTHORIZE**, as part of its order, the creation of a
19 trust or other mechanism to assure the periodic payments.

20 (2) The [panel or] court shall provide to the [claimant] **PLAINTIFF** the
21 option to choose either a lump sum or payments paid over a period of time.

22 (c) (1) If the advanced payment exceeds the liability of the person making it,
23 the [arbitration panel or the] court on appeal may order such adjustments as justice may
24 require under the [award or] verdict, including, where appropriate, contribution by other
25 parties found to be liable.

26 (2) In no event shall an advance payment in excess of the liability of the
27 person making it be repayable by the person receiving it.

28 [3–2A–08A.] **3–2A–08.**

29 (a) In this section, “costs” means the costs described under Maryland Rule 2–603.

30 (b) This section does not apply to cases dismissed following a settlement.

31 (c) (1) At any time not less than 45 days before the trial begins, a party to an
32 action for a medical injury may serve on the adverse party an offer of judgment to be taken
33 for the amount of money specified in the offer, with costs then accrued.

1 (2) When the liability of one party to another has been determined by
2 verdict or order or judgment, but the amount or extent of the liability remains to be
3 determined by further proceedings, a party adjudged liable or a party in whose favor
4 liability was determined may make an offer of judgment not less than 45 days before the
5 commencement of hearings to determine the amount or extent of liability.

6 (d) (1) If within 15 days after the service of the offer of judgment, the adverse
7 party serves written notice that the offer is accepted, either party may then file with the
8 court the offer and notice of acceptance together with an affidavit of service notifying the
9 other parties of the filing of the offer and acceptance.

10 (2) If the court receives the filings specified in paragraph (1) of this
11 subsection, the court shall enter judgment.

12 (e) (1) If an adverse party does not accept an offer of judgment within the time
13 specified in subsection (d)(1) of this section, the offer shall be deemed withdrawn and
14 evidence of the offer is not admissible except in a proceeding to determine costs.

15 (2) An offer of judgment that is not accepted does not preclude a party from
16 making a subsequent offer of judgment in the time specified in this section.

17 (f) If the judgment finally obtained is not more favorable to the adverse party
18 than the offer, the adverse party who received the offer shall pay the costs of the party
19 making the offer incurred after the making of the offer.

20 3-2A-09.

21 (a) This section applies to [an award under § 3-2A-05 of this subtitle or] a verdict
22 under [§ 3-2A-06] § ~~3-2A-04~~ of this subtitle for a cause of action arising on or after
23 January 1, 2005.

24 3-2A-10.

25 Except as otherwise provided in §§ [~~3-2A-08A~~] ~~3-2A-08~~ and 3-2A-09 of this
26 subtitle, the provisions of this subtitle shall be deemed procedural in nature and may not
27 be construed to create, enlarge, or diminish any cause of action not heretofore existing,
28 except the defense of failure to comply with the procedures required under this subtitle.

29 10-920.

30 (a) In this section, “health care provider” has the meaning stated in § 3-2A-01 of
31 this article.

32 (b) (1) Except as provided in paragraph (2) of this subsection, in [a proceeding
33 subject to Title 3, Subtitle 2A of this article or] a civil action against a health care provider,
34 an expression of regret or apology made by or on behalf of the health care provider,

1 including an expression of regret or apology made in writing, orally, or by conduct, is
2 inadmissible as evidence of an admission of liability or as evidence of an admission against
3 interest.

4 (2) An admission of liability or fault that is part of or in addition to a
5 communication made under paragraph (1) of this subsection is admissible as evidence of an
6 admission of liability or as evidence of an admission against interest in an action described
7 under paragraph (1) of this subsection.

8 SECTION 2. AND BE IT FURTHER ENACTED, That at the end of fiscal year 2016
9 any unspent portions of the Health Claims Arbitration Fund shall revert to the General
10 Fund.

11 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall be construed to
12 apply only prospectively and may not be applied or interpreted to have any effect on or
13 application to any case filed before the effective date of this Act.

14 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect July
15 1, 2016.