2025 WRITTEN TESTIMONY
SB681/HB926

Health Care Malpractice Claims - Health Care Provider - Definition

SB681/HB926 – UNFAVORABLE

The Maryland Association for Justice respectfully requests an unfavorable report on SB681/HB926. Maryland citizens have the right to pursue civil claims before a jury pursuant to Article 23 of the Maryland Declaration of Rights. "Generally, a party cannot be required to submit any dispute to arbitration that it has not agreed to submit."[1] The Healthcare Malpractice Claims Act ("the Act"), codified at Section 3-2A-01 *et seq.* of the Courts and Judicial Proceedings Article, creates a limited exception to that general rule. Under the Act, victims of medical negligence are required to submit claims exceeding the jurisdictional limit of the District Court to the Healthcare Alternative Dispute Resolution Office of Maryland as a prerequisite to exercising their right to a jury trial.

Moreover, the Act imposes a "Special Cap" on the recovery of victims of medical malpractice. Cts. & Jud. Proc. § 3-2A-09. The Special Cap is significantly lower than the cap on non-economic damages that currently applies in all other personal injury claims. *See* Cts. & Jud. Proc. § 11-108. In wrongful death cases, the cap on the recovery of victims of medical negligence can be less than halfof victims of other types of negligence.

The Act is limited to claims "against a health care provider for medical injury." Cts. & Jud. Proc. § 3-2A-02(a)(1). "'Medical injury' means injury arising or resulting from the rendering or failure to render health care." *Id.* at 3-2A-01(g).

Currently, "health care provider" is specifically defined as "a hospital, a related institution as defined in § 19-301 of the Health--General Article, a medical day care center, a hospice care program, an assisted living program, a freestanding ambulatory care facility as defined in § 19-3B-01 of the Health--General Article, a physician, a physician assistant, an osteopath, an optometrist, a chiropractor, a registered or licensed practical nurse, a dentist, a podiatrist, a psychologist, a licensed certified social worker-clinical, and a physical therapist, licensed or authorized to provide one or more health care services in Maryland."

SB681 and HB926 seek to expand the definition of "health care provider" even further to include "an employee, agent, or contractor of a hospital who is licensed, certified, registered, or otherwise authorized to render healthcare services in Maryland."

The proposed language is overly broad and ambiguous. "Healthcare services" is not a defined term in the Act or elsewhere in the Maryland Code. Moreover, there is no description of ***how*** a potential "employee, agent, or contractor" must be "otherwise authorized to render healthcare services in Maryland." The proposed language will inevitably lead to hospitals use of the vague language of the bill to avoid full liability under traditional theories of negligence (such as premises liability) for the acts and omissions of <u>all</u> of their employees, agents and even independent contractors in an effort to minimize their exposure.

For example, a hospital might claim that it has the power to "authorize" a janitor that it employs to provide

[1] *Weidig v. Crites*, 323 Md. 408, 411 (1991) (quoting *Gold Coast Mall v. Larmar Corp.*, 298 Md. 96, 103 (1983)) (and citing as *accord United Steelwkrs. of Am. v. Warrior & Gulf N. Co.*, 363 U.S. 574, 582 (1960); *C.W. Jackson & Associates v. Brooks*, 289 Md. 658, 666 (1981)).

"healthcare services" by cleaning a patient's room. If that janitor negligently leaves a puddle of water, causing the patient to fall and sustain injuries, hospitals could argue that the patient is required to submit their claims to arbitration under the Act (and thus be subject to the lower cap on damages).

The Supreme Court of Maryland has explained: "[I]t is clear to us that the legislative intent [of the Act] was to submit to Medical Liability Mediation only claims arising out of those acts or conduct which are peculiarly malpractice . . . ***It does not include janitorial negligence."***[2] The language in SB681 and HB926 will dramatically expand the impact of the Act. It will allow hospital corporations to unilaterally "authorize" any or all of its "employees, agents, and contractors" to render "healthcare services" in an effort to avoid appropriately compensating victims of negligence. It is not good legislative policy to indiscriminately shield hospital corporations from responsibility for preventable harms caused by the negligence of their employees, agents, and contractors.

The Maryland Association for Justice urges a UNFAVORABLE Report on SB681/HB926

About Maryland Association for Justice

The Maryland Association for Justice (MAJ) represents over 1,250 trial attorneys throughout the state of Maryland. MAJ advocates for the preservation of the civil justice system, the protection of the rights of consumers and the education and professional development of its members.

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[2] *Weidig*, 323 Md. at 416 (quoting *Zobac v. Southeastern Hospital Dist., Etc.*, 382 So.2d 829 (Fla.Ct.App.1980)) (emphasis added).