

## **MARYLAND EMPLOYERS FOR CIVIL JUSTICE REFORM COALITION**

### **OPPOSES SB 269**

Maryland Employers for Civil Justice Reform Coalition, comprised of many of the largest employers, businesses, and health care providers in Maryland, opposes SB 269. The result of enacting SB 269 will be to enlarge verdicts, undermine our current tort compensation system, and eventually increase insurance premiums for liability insurance coverage in Maryland.

### **Current Law**

Maryland's current system for handling medical records in the context of general tort claims works efficiently and effectively, requiring no change. Maryland recognizes that the correct and reasonable value of medical treatment is the amount actually paid and approved by a health care provider, not an inflated price that could appear on a medical bill for that treatment that is almost never actually paid.

Obtaining health care in Maryland is no different than acquiring a house or a car -- there is a "list price" or "sticker price," and then there is the price that a consumer ultimately pays. In health care the "sticker price" is maintained in what is called the "charge master". Healthcare organizations are required by regulation to maintain a charge master, and the prices in the charge master serve as the starting point for negotiations with insurance providers. These negotiated rates determine what is actually reimbursed to the healthcare provider, and therefore represent what is actually "paid" by the patient

### **SB 269 – Provisions and Consequences**

To maximize damage awards, the plaintiff-lawyer proponents of SB 269 seek to use the amounts billed – the sticker prices -- to support their claims for damages. At the same time, SB 269 seeks to protect these inflated damage claims by switching the burden of proof from the plaintiff to the defendant, requiring defendants to prove, by a preponderance of the evidence, that a medical bill/record is *not* reasonable. Traditionally and in almost all legal proceedings and settings, plaintiffs have the burden of proof to make their case. Moreover, proving a negative is inherently problematic and illogical. When that customary and logical standard is turned on its head, such a measure is suspect and should be very carefully scrutinized. Here, it is clearly and wrongly intended to help protect inflated damage awards driven by sticker-price medical bills that almost always overstate the value of medical services delivered.

Unintended consequences will abound from SB 269:

- if inflated, billed amounts contained in medical bills create an artificial, higher floor for verdicts and settlement negotiations;

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- defendants and their counsel will have to engage in more expensive and aggressive discovery and hiring of experts to rebut the pricing contained in medical bills;
- trial time will likely be extended by defendants engaging in a trial-within-a-trial, hiring and dispatching experts to rebut the new presumption;
- negotiated settlements will be more difficult to achieve;
- more claims will be eligible for circuit court because the often inflated bill amounts are more likely to exceed \$30,000, triggering larger pressure on Maryland's Judiciary from jury trials, more extensive discovery, and higher claim values;
- any requirement or standard that medical charges reflect fair market value or actual economic loss will be removed, inviting legal system abuse; and
- plaintiffs will be allowed to recover full billed amounts even when substantially lower payments were actually made, creating "phantom damages" for losses that never actually occurred.

All of the costs associated with these consequences will bring about higher verdicts, increased litigation, greater challenges to settlements, and ultimately **higher insurance premiums**. In addition to the higher costs for consumers of insurance, SB 269 creates a system where the amount charged, rather than the actual economic harm suffered, becomes the measure of damages, a departure from established and common sense principles of tort compensation.

For all these economic and systemic reasons, the Maryland Employers for Civil Justice Reform Coalition urges an unfavorable report on SB 269.

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