

# MEDICAL MUTUAL

*Liability Insurance Society of Maryland*

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**Bill:** House Bill 858 – Health Care Alternative Dispute Resolution Office – Authority of Director – Dispositive Issues of Law

**Date:** February 23, 2023

**Position:** *Oppose*

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## ***Bill Summary***

House Bill 858 would authorize the Director of the Health Care Alternative Dispute Resolution Office (“Director”) to make dispositive legal rulings before a hearing without the need to convene an arbitration panel.

## ***Medical Mutual’s Position***

In current medical malpractice cases and unless otherwise agreed to by the parties or a party waiving the case out of arbitration after a certificate of qualified expert (“CQE”),<sup>1</sup> a three-person arbitration panel made up of an attorney, a health care provider, and a member of the public is convened by the Director twenty days after a claimant files a CQE or after a defense response in a case with the sole issue being lack of informed consent.<sup>2</sup> Once convened, the panel chair is authorized to rule on legal issues while the panel as a whole is authorized to make findings of fact.<sup>3</sup> An attorney Director, on the other hand, is only permitted to rule on non-dispositive legal issues if the panel chair has not been appointed or is temporarily unavailable.<sup>4</sup> For example, in cases where the sole issue is not informed consent, an attorney Director is able to rule on non-dispositive issues before a CQE is filed by the claimant while dispositive issues of law are ruled on by the panel chair *after* a claimant has filed their CQE and has thereby demonstrated the potential merit of their claim.

Because this current system exists for ruling on dispositive legal issues after a claimant has filed a CQE or a defense response in informed consent cases, it is our view that House Bill 858 is unnecessary. Indeed, “the purpose of the health claims arbitration process in general and the

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<sup>1</sup> A CQE is a certificate and report by a qualified expert “attesting to departure from standards of care, and that the departure from standards of care is the proximate cause of the alleged injury.” Md. Code, Cts. & Jud. Proc. § 3-2A-04(b).

<sup>2</sup> See Md. Code, Cts. & Jud. Proc. § 3-2A-04, -06A, -.06B.

<sup>3</sup> See Md. Code, Cts. & Jud. Proc. § 3-2A-05(a)(1).

<sup>4</sup> See Md. Code, Cts. & Jud. Proc. § 3-2A-05(a)(2).

certificate requirement in particular is ‘to weed out non-meritorious claims and reduce the costs of litigation.’”<sup>5</sup> Accordingly, ruling on dispositive issues before a claim is even demonstrated to be viable would be superfluous, would result in otherwise nonexistent litigation costs for all parties, and run counter to the very purpose of the arbitration process.

Additionally, we have concern that the proposed expansion of the Director’s authority may be unconstitutional.<sup>6</sup>

For these reasons, Medical Mutual respectfully requests an ***UNFAVORABLE*** report on ***House Bill 858***.

**For more information contact:**

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<sup>5</sup> *Retina Group of Washington, P.C. v. Crosetto*, 237 Md. App. 150, 167 (2018) (quoting *Wilcox v. Orellano*, 443 Md. 177, 184, (2015)).

<sup>6</sup> *See Attorney Gen. v. Johnson*, 282 Md. 274 (1978).