



Maryland
Hospital Association

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

Position: *Oppose*

March 1, 2023

House Judiciary Committee

MHA Position

On behalf of the Maryland Hospital Association's (MHA) 60 member hospitals and health systems, we appreciate the opportunity to comment in opposition of House Bill 858.

The Health Care Alternative Dispute Resolution Office (HCADRO) was established in 1976 to streamline medical malpractice claims and foster more cooperative solutions between providers and plaintiffs. However, it has since become an arena for some plaintiff's attorneys to circumvent judicial processes. As part of the three-member arbitration panel, the attorney member of the panel also serves as its chairman. Candidates for the panel, including the chairman, are vetted by both parties, and only mutually agreeable individuals are selected. HB 858 allows the director to step directly into the panel chairman's shoes and decide dispositive rulings, which means both parties no longer choose their arbitration panel, thus defeating a core tenet of arbitration. It also places additional authority in the hands of the director—an appointed official who the parties have no say in selecting—without an avenue to appeal or review these rulings.

MHA representatives met with the HCADRO director to identify the problem HB 858 would solve. However, despite multiple conversations, MHA remains concerned the authority granted by this proposed bill has wider implications beyond any issue the director seeks to address. There remains uncertainty regarding the myriad motions that could come before the director if this bill passes. Therefore MHA is concerned this bill could have negative unintended consequences. Additionally, MHA identified that—if granted this authority—those issues determined dispositively by the director could lead to a number of appeals being filed in Circuit Court to which defendants would be a party, and which could be costly and time-consuming.

Although the director is appropriately trying to improve the efficiency of the office, the efficiency of having matters disposed of in HCADRO could easily be negated by any appeal to its rulings in Circuit Court. Such appeals could also adversely affect the operations, workload, and resources of the Circuit Court. Moreover, these appeals would be unprecedented, since only appeals regarding an award or assessment of costs by an arbitration panel are currently available. There has not been an arbitration panel convened for years, and the director indicated there are no plans to appoint a panel in the future. Therefore, there is no recognized process in Circuit Court for multiple appeals arising from the exercise of this authority, nor an established standard of review that would be applied to such appeals.

Additionally, expanding the authority of the director to make dispositive rulings could be constitutionally challenged. The one decision by the (now) Supreme Court of Maryland that considered the constitutionality of the statute that established HCADRO (*Atty. Gen. v. Johnson, 1978*) focused on the authority of the arbitration panel to make awards and assess costs found that for that purpose the law was constitutional. This bill would expand not the authority of the panel, but that of the director and, therefore, could raise a different set of questions that would require a different analysis.

For these reasons, we urge an *unfavorable* report on HB 858.

For more information, please contact:
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