

SENATE BILL 322

D3
SB 566/16 – JPR

9lr2410

By: **Senator Cassilly**
Introduced and read first time: January 30, 2019
Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Medical Malpractice – Notice of Intent to File Claim**

3 FOR the purpose of prohibiting a claim against a health care provider for damage due to a
4 medical injury from being filed with the Director of the Health Care Alternative
5 Dispute Resolution Office unless, at least a certain time before filing the claim, the
6 claimant has given a notice to the health care provider of intent to file a claim;
7 authorizing the Director to excuse the failure to give notice within the required time
8 period under certain circumstances; requiring the notice to include certain
9 information; providing for the construction of a certain provision of this Act;
10 requiring the notice to be served on the health care provider at a certain address;
11 providing for the application of this Act; and generally relating to notice of intent to
12 file a claim with the Health Care Alternative Dispute Resolution Office.

13 BY repealing and reenacting, with amendments,
14 Article – Courts and Judicial Proceedings
15 Section 3–2A–04(a)
16 Annotated Code of Maryland
17 (2013 Replacement Volume and 2018 Supplement)

18 BY adding to
19 Article – Courts and Judicial Proceedings
20 Section 3–2A–04(a–1)
21 Annotated Code of Maryland
22 (2013 Replacement Volume and 2018 Supplement)

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

25 **Article – Courts and Judicial Proceedings**

26 3–2A–04.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



1 (a) (1) (i) **[A] SUBJECT TO SUBSECTION (A-1) OF THIS SECTION, A**
2 person having a claim against a health care provider for damage due to a medical injury
3 shall file the claim with the Director and, if the claim is against a physician, the Director
4 shall forward copies of the claim to the State Board of Physicians.

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

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

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

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

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

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

22 **(A-1) (1) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS**
23 **PARAGRAPH, A PERSON HAVING A CLAIM AGAINST A HEALTH CARE PROVIDER FOR**
24 **DAMAGE DUE TO A MEDICAL INJURY MAY NOT FILE A CLAIM WITH THE DIRECTOR**
25 **UNLESS, AT LEAST 90 DAYS BEFORE FILING THE CLAIM, THE PERSON HAS GIVEN A**
26 **NOTICE TO THE HEALTH CARE PROVIDER OF INTENT TO FILE A CLAIM.**

27 **(II) ON A SHOWING OF A GOOD FAITH EFFORT TO GIVE THE**
28 **REQUIRED NOTICE, THE DIRECTOR MAY EXCUSE THE FAILURE TO GIVE NOTICE**
29 **WITHIN THE TIME REQUIRED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH.**

30 **(2) (I) THE NOTICE REQUIRED UNDER PARAGRAPH (1) OF THIS**
31 **SUBSECTION SHALL INCLUDE SUFFICIENT INFORMATION TO PUT THE HEALTH CARE**
32 **PROVIDER ON NOTICE OF THE LEGAL BASIS FOR THE CLAIM AND THE TYPE AND**
33 **EXTENT OF THE ALLEGED DAMAGES, INCLUDING INFORMATION REGARDING THE**
34 **TYPE OF MEDICAL INJURY.**

1 **(II) THIS PARAGRAPH DOES NOT PRECLUDE A PERSON GIVING**
2 **NOTICE FROM ADDING ADDITIONAL THEORIES OF LIABILITY BASED ON**
3 **INFORMATION OBTAINED DURING DISCOVERY OR ADDING INJURIES OR DAMAGES**
4 **THAT BECOME KNOWN AT A LATER TIME.**

5 **(3) NOTICE SHALL BE GIVEN BY SERVICE ON THE HEALTH CARE**
6 **PROVIDER AT THE HEALTH CARE PROVIDER'S LAST KNOWN ADDRESS REGISTERED**
7 **WITH THE APPROPRIATE LICENSING AUTHORITY.**

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to
9 apply only prospectively and may not be applied or interpreted to have any effect on or
10 application to any cause of action arising before the effective date of this Act.

11 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 October 1, 2019.