Department of Legislative Services

Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 322 (Senator Cassilly)
Judicial Proceedings

Medical Malpractice - Notice of Intent to File Claim

This bill requires a claimant to send a health care provider written notice of the claimant's intent to file a medical injury claim against the health care provider at least 90 days before filing the claim. The bill applies prospectively, and may not be applied to any cause of action arising before the bill's October 1, 2019 effective date.

Fiscal Summary

State Effect: None. The changes are procedural in nature and are not expected to materially affect governmental finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The notice must include (1) sufficient information to put the health care provider on notice of the legal basis for the claim and (2) the type and extent of the alleged damages, including information on the type of medical injury. The notice requirement does not preclude the addition of other theories of liability based on information obtained during discovery or the addition of injuries or damages that become known at a later time. Notice must be served at the health care provider's last known address as registered with the appropriate licensing authority. The Director of the Health Care Alternative Dispute Resolution Office (HCADRO) may excuse a failure to give notice within the specified timeframe upon a showing of good faith effort.

Current Law: Except for a claim seeking damages within the limit of the District Court's concurrent civil jurisdiction ($30,000 or less), a claim for medical injury against a health care provider is required to be filed with the Director of HCADRO (although the parties may elect mutually or unilaterally to waive arbitration of the claim). The director must serve a copy of the claim on the health care provider by the appropriate sheriff in accordance with the Maryland Rules. If the claim is against a physician, the director must also forward a copy of the claim to the State Board of Physicians. The health care provider must file a timely response with the director and serve a copy of the response on the claimant and any other named health care providers. Claims may be decided through the arbitration process or may proceed to trial.

Medical malpractice claims are subject to a strict statute of limitations. A claimant must file a claim within five years of the time the injury was committed, or three years of the date the injury was discovered, whichever is earlier. If the claimant was younger than age 11 at the time the injury was committed, the statute of limitations begins when the claimant reaches the age of 11, except for specified types of injuries. For an injury to the reproductive system or caused by a foreign body negligently left in the claimant's body when the claimant was younger than age 16 at the time the injury was committed, the statute of limitations begins when the claimant reaches the age of 16. The filing of the claim with HCADRO is considered the time the action was filed.

Background: According to a 2011 article published in the *American Journal of Mediation*, numerous states require a claimant to provide advance notification to a health care provider before filing a medical malpractice claim. These "pre-suit notification" periods are intended to promote settlement amongst parties so as to avoid litigation, thereby reducing the costs of medical malpractice litigation while still allowing claimants to receive appropriate relief. The required notification periods vary among states. For example, Michigan and Massachusetts require a claimant to provide 182 days advance notice to a health care provider before filing a claim. California's Medical Injury Compensation Reform Act (commonly referred to as MICRA) requires that a claimant provide a health care provider 90-day notice of the claimant's intention to file a claim. Utah, Florida, and the District of Columbia also require 90-day notice. Tennessee, Texas, and Mississippi require 60-day notice, while West Virginia requires only 30-day notice.

The constitutionality of some of these pre-suit notification statutes has been challenged in state courts, with mixed results. While courts have upheld the Michigan, Mississippi, and Florida statutes, the Washington statute (which required 90-day notice) was ruled unconstitutional as a violation of separation of powers. Specifically, in *Waples v. Yi*, 234 P.3d 187 (Wash. 2010), the Washington Supreme Court held that the statutory notice requirement conflicted with a court procedural rule, thereby conflicting with the power of the judiciary to establish court procedures; since the statute and the court rule could not be

harmonized, the judiciary's procedural rule prevailed. The Washington legislature repealed the notice requirement in 2013.

Additional Information

Prior Introductions: SB 566 of 2016 received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland Department of Health; Maryland Health Care Alternative Dispute Resolution Office; *American Journal of Mediation;* Department of Legislative Services

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