

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

House Bill 495

(Delegate Anderson)

Judiciary

Action or Claim for Medical Injury - Attesting Experts - Reports

This bill repeals a requirement that, when filing a certificate of a meritorious claim or a certificate of a meritorious defense in a medical injury case, a party file a report of the party's attesting expert with the certificate.

Fiscal Summary

State Effect: The procedural changes made by this bill are not expected to materially affect State finances.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Current Law: Except for claims seeking damages under the limit of the jurisdiction of the District Court, all claims for medical injury against a health care provider are subject to arbitration by the Health Care Alternative Dispute Resolution provisions of Title 3, Subtitle 2A of the Courts Article.

A claim for medical injury against a health care provider must be dismissed unless the claimant or plaintiff files a certificate of a qualified expert attesting to departure from standards of care and that such departure was the proximate cause of injury, unless the sole issue in the claim is lack of informed consent. This certificate must be filed with the

Director of the Health Care Alternative Dispute Resolution Office within 90 days of the filing of the complaint.

If the defendant disputes liability, the claim may be adjudicated in favor of the claimant or plaintiff unless the defendant files a certificate of a qualified expert attesting to compliance with standards of care, or that departure from standards of care was not the proximate cause of injury, within 120 days of being served the claimant's or plaintiff's certificate.

A report of the attesting expert must be attached to each party's certificate. Discovery is available as to the basis of this certificate. In the 2006 case *Walzer v. Osborne* (395 Md. 563), the Maryland Court of Appeals held that such a report must be attached to the certificate in a medical malpractice claim, and that the appropriate remedy for failure to attach this report in a timely manner is dismissal of the claim without prejudice.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Health and Mental Hygiene, Department of Legislative Services

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ncs/jr

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