

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 309

(Senator Stone)

Judicial Proceedings

Judiciary

Civil Actions or Claims - Reports - Dismissal - Limitations

This bill authorizes a party to commence a new health care malpractice action or claim for the same cause against the same party or parties as the original action or claim if the original action or claim was dismissed for failure to file an attesting expert's report.

The new action or claim must be filed within the later of • 60 days from the date of dismissal; • the expiration of the applicable statute of limitations; or • August 1, 2007, if the action or claim was dismissed after November 17, 2006 but before June 1, 2007. The bill does not apply to a voluntary dismissal of a civil action by the party who commenced the action.

The bill takes effect June 1, 2007.

Fiscal Summary

State Effect: It is expected that the number of additional case filings resulting from this bill will be minimal, and that any additional workload could be handled with existing resources of the Judiciary.

Local Effect: It is expected that any increase in workload of the circuit courts due to additional filings could be handled with existing resources.

Small Business Effect: Minimal.

Analysis

Current Law: The statute of limitations for most civil actions in Maryland is 3 years from the date of accrual (*e.g.*, the date of the injury in tort claims), with exceptions for certain types of actions such as actions on promissory notes or contracts under seal (12 years), or actions for assault, libel, or slander (1 year).

While dismissal of an action without prejudice does not bar the filing of another action based on the same cause of action, the statute of limitations may be raised as a defense to the second action if it was filed after the statutory period has run.

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: HB 388 (Delegate Smigiel, *et al.*) – Judiciary.

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

Fiscal Note History: First Reader - February 15, 2007
mll/jr Revised - Senate Third Reader - March 28, 2007
Revised - Enrolled Bill - April 27, 2007

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