

Department of Legislative Services  
Maryland General Assembly  
2015 Session

FISCAL AND POLICY NOTE

Senate Bill 143

(Senator Pugh, *et al.*)

Judicial Proceedings

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Health Care Malpractice Claims - Notice of Intent

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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 180 days before filing the claim. The notice of intent must state the time, place, and cause of the injury, and must be sent by first-class, certified mail with a return receipt requested and bearing a U.S. Postal Service postmark. The Director of the Health Care Alternative Dispute Resolution Office (HCADRO) may waive the notice requirement upon motion and for good cause shown.

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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.

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Analysis

**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 the Health Care Alternative Dispute Resolution Office (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:** None.

**Cross File:** None.

**Information Source(s):** *American Journal of Mediation*, Maryland Health Claims Alternative Dispute Resolution Office, Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), National Conference of State Legislatures, Department of Legislative Services

**Fiscal Note History:** First Reader - February 8, 2015  
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Analysis by: Sasika Subramaniam

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510