

HOUSE BILL REPORT

EHB 1927

As Reported by House Committee On:
Judiciary

Title: An act relating to the mandatory mediation and mandatory arbitration of health care claims.

Brief Description: Concerning mandatory mediation and arbitration of health care claims.

Sponsors: Representatives Lantz, Schual-Berke, Clibborn, Campbell, Moeller, Cody, Morrell, Rockefeller, Kirby, Lovick, Kenney, Linville, Voloria, Conway, Simpson, Sommers and Haigh.

Brief History:

Committee Activity:

Judiciary: 2/6/04 [DP].

Brief Summary of Bill

- Requires 90 days notice to a defendant before a medical malpractice action may be commenced.
- Provides that all medical malpractice claims are subject to either mediation or arbitration requirements
- Expands mandatory arbitration to include medical malpractice actions seeking monetary judgments of up to \$250,000.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 6 members: Representatives Lantz, Chair; Moeller, Vice Chair; Campbell, Flannigan, Kirby and Lovick.

Minority Report: Do not pass. Signed by 3 members: Representatives Carrell, Ranking Minority Member; McMahan, Assistant Ranking Minority Member; and Newhouse.

Staff: Edie Adams (786-7180).

Background:

Medical Malpractice

Medical malpractice actions are civil tort actions for the recovery of damages for injury or death resulting from the provision of health care. There are three grounds on which a health care provider may be found liable in a medical malpractice action:

- The health care provider failed to follow the standard of care;
- The health care provider promised that the injury suffered would not occur; or
- The injury resulted from health care to which the patient did not consent.

The statute of limitations for medical malpractice actions has varying time periods depending on the circumstances, but the general rule is that an action must be brought within three years of the alleged act or omission or within one year of discovery that the injury was caused by the alleged act or omission. There is no requirement that a plaintiff provide a defendant with prior notice of his or her intent to institute a suit.

Alternative Dispute Resolution

Alternative dispute resolution allows parties to a lawsuit to resolve the dispute in an informal and less adversarial atmosphere than the courtroom. Alternative dispute resolution involves use of a neutral third-party to facilitate agreement between the parties to a dispute and is generally less costly, less time consuming, and less adversarial than litigation. Mediation and arbitration are two forms of alternative dispute resolution. In mediation, the mediator facilitates negotiations between the participants to achieve a voluntary settlement. In arbitration, the arbitrator has authority to decide the case.

Mandatory Mediation for Medical Malpractice

Medical malpractice claims are subject to mandatory mediation in accordance with court rules adopted by the supreme court. The court rule provides deadlines for commencing mediation proceedings, the process for appointing a mediator, and the procedure for conducting mediation proceedings. The rule allows mandatory mediation to be waived upon petition of any party that mediation is not appropriate.

Arbitration

Parties to a dispute may voluntarily agree in writing to enter into arbitration to resolve the dispute. A procedural framework for conducting the arbitration proceeding is provided in statute, including provisions relating to appointment of an arbitrator, attorney representation, witnesses, depositions, and awards. Courts have authority to confirm arbitration awards, or modify or vacate arbitration awards under certain circumstances.

Mandatory Arbitration

Parties to a lawsuit may be required to participate in mandatory arbitration in some instances. Mandatory arbitration of certain civil actions is required in counties with a population over 150,000. In counties with a population of 150,000 or less, a majority of the superior court judges or the county legislative authority may adopt mandatory arbitration. Mandatory arbitration applies to all civil actions where the sole relief requested does not exceed \$15,000, or if approved by a two-thirds vote of the superior court judges, up to \$35,000. In addition, a majority of the superior court judges may vote to use mandatory arbitration in child support cases.

Anyone agreed to by the parties may be an arbitrator. If agreement is not reached, the court will appoint an arbitrator who must be a retired judge or a lawyer with at least five years membership in the bar. An award by an arbitrator may be appealed to the superior court. The superior court will hear the appeal "de novo," which means that the court will conduct a trial on all issues of fact and law as if the arbitration had not occurred. Amounts awarded on appeal are not subject to any dollar limits.

Summary of Bill:

Medical malpractice actions are subject to a requirement of 90 days prior notice to the defendant of the intent to file suit and a requirement that the parties participate in either mediation or arbitration.

A medical malpractice action may not be commenced unless the plaintiff has provided the defendant with 90 days prior notice of the intention to file a suit. The 90-day notice requirement does not apply if the defendant's name is unknown at the time of filing the complaint. If the notice is served within 90 days of the expiration of the statute of limitations, the time for commencing the action must be extended for 90 days from the date of service of the notice.

Medical malpractice claims are subject to mandatory mediation unless the action is subject to mandatory arbitration or the parties agree to arbitration. The supreme court rules implementing the mandatory mediation requirement may not provide any other exceptions to the mandatory mediation requirement.

Mandatory arbitration is expanded to include medical malpractice actions where the sole relief sought is a monetary judgment of up to \$250,000. In counties where mandatory arbitration is required or authorized, a medical malpractice claim seeking only damages of up to \$250,000 is subject to mandatory arbitration.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: None.

Testimony Against: None.

Persons Testifying: None.

Persons Signed In To Testify But Not Testifying: None.