

SENATE BILL REPORT

2EHB 1927

As Reported By Senate Committee On:
Judiciary, February 26, 2004

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

Brief Description: Concerning mandatory mediation of health care claims.

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

Brief History:

Committee Activity: Health & Long-Term Care: 4/2/03, 4/3/03 [DP].
Judiciary: 2/25/04, 2/26/04 [DP].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

Signed by Senators McCaslin, Chair; Esser, Vice Chair; Hargrove, Haugen, Kline, Roach and Thibaudeau.

Staff: Aldo Melchiori (786-7439)

Background: Medical malpractice actions are civil tort actions for the recovery of damages for injury or death resulting from the provision of health care. 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 prior notice of his or her intent to initiate a suit.

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.

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. Courts have authority to confirm arbitration awards, or modify or vacate arbitration awards under certain circumstances.

Summary of Bill: A medical malpractice action may not be commenced unless the plaintiff has provided the defendant with 90 days 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, after the claim arises, to submit the claim to arbitration. The Supreme Court rules implementing the mandatory mediation requirement may not provide any other exceptions to the mandatory mediation requirement.

Appropriation: None.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Alternative dispute resolution can help resolve many issues before the parties resort to court. The 90 day notice provision helps give the parties the time to agree to and arrange for alternative dispute resolution.

Testimony Against: CONCERNS: The parties should be given the ability to agree to binding arbitration by contract prior to the provision of medical services.

Testified: PRO: Larry Shannon, WSTLA; Cliff Webster, Washington State Medical Association.