

SENATE BILL REPORT

SB 6635

As Reported By Senate Committee On:
Judiciary, February 6, 2004

Title: An act relating to actions against health care providers under chapter 7.70 RCW.

Brief Description: Revising mandatory mediation requirements for actions involving health care providers.

Sponsors: Senators Rasmussen, Doumit, Franklin, Kastama, Hargrove, Haugen, Winsley and McAuliffe.

Brief History:

Committee Activity: Judiciary: 2/6/04 [DP].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

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

Staff: Jinnah Rose-McFadden (786-7421)

Background: Medical malpractice actions are civil tort actions brought to recover damages for injury or death resulting from the provision of health care. Generally, the statute of limitations on medical malpractice claims is three years from the act or omission, or one year from the discovery that the injury was caused by the care provider's alleged act or omission. Currently, there is no requirement that a plaintiff provide notice of an intent to file a medical malpractice suit.

The Legislature has provided for mandatory mediation of all claims arising from health care injuries, in accordance with court rules adopted by the Washington State Supreme Court. The court rules provide deadlines for commencing mediation proceedings, the process for appointing a mediator, and the procedure for conducting mediation proceedings. Mandatory mediation may be waived by court order, upon petition. The filing of a written, good faith request for mediation of a medical malpractice claim tolls the statute of limitations. After unsuccessful mediation, the parties retain the right to trial by jury.

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

In some instances, parties may be required to participate in mandatory arbitration. In these instances, anyone agreed to by the parties may be an arbitrator. If agreement is not reached,

the court will appoint an arbitrator. Arbitration awards may be appealed to the superior court, where the appeal will be heard de novo. Amounts awarded on appeal are not subject to any limitations.

Summary of Bill: A medical malpractice claim may not be commenced unless the plaintiff has provided the defendant with 90 days prior notice of the intention to file suit. The 90-day notice requirement does not apply if the defendant's name is unknown at the time of filing. 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.

After filing the presuit notice, medical malpractice claims are subject to mandatory mediation unless the action is subject to mandatory arbitration or the parties agree to voluntary 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: Washington is on the cutting edge of alternative dispute resolution (ADR). While there is already a statutory requirement that parties to medical malpractice claims take part in mandatory mediation before trial, this law has not been routinely enforced by the courts. This bill takes a positive step forward in the area of ADR, by clarifying that mediation is mandatory in all situations where medical malpractice claims have been filed.

Testimony Against: None.

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