
HOUSE BILL 1946

State of Washington 59th Legislature 2005 Regular Session

By Representatives Schual-Berke and Morrell

Read first time 02/11/2005. Referred to Committee on Judiciary.

1 AN ACT Relating to prerequisites for filing an action for injury
2 occurring as a result of health care; and adding a new section to
3 chapter 7.70 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 7.70 RCW
6 to read as follows:

7 (1) No action for damages for injury occurring as a result of
8 health care may be commenced against any health care provider unless
9 the claimant (a) has given the health care provider at least ninety
10 days' written notice of intent to file a claim, which includes a
11 request to meet and discuss the claim, and (b) after the health care
12 provider responds to the request to meet, has made an appointment to
13 meet, and has met or has had a designated nonlawyer representative
14 meet, with the health care provider or the health care provider's
15 designated nonlawyer representative to discuss the nature and basis of
16 the claim and the health care provider's response.

17 (2) The claimant shall serve the written notice required under
18 subsection (1) of this section on the health care provider by

1 registered mail, return receipt requested, to the health care
2 provider's professional business address or residential address.

3 (3) The written notice required under subsection (1) of this
4 section must be signed by the claimant and contain at least the
5 following:

6 (a) A description of the claimed injury or damage;

7 (b) A description of the conduct and circumstances alleged to have
8 brought about the claimed injury or damage;

9 (c) The names of all persons involved, if known;

10 (d) The names of all health care providers the claimant is
11 notifying under this section in relation to the claim;

12 (e) A request to meet with the health care provider or the health
13 care provider's designated nonlawyer representative to discuss the
14 claim; and

15 (f) The address and telephone number where the claimant may be
16 reached.

17 With respect to the content of the notice of intent, this section
18 shall be liberally construed so that substantial compliance shall be
19 deemed satisfactory.

20 (4) If the notice of intent required under subsection (1) of this
21 section is served within ninety days before the expiration of the
22 applicable statute of limitations, the time for commencement of the
23 action shall be extended ninety days from the service of notice.

24 (5) Any health care provider who receives a notice of intent to
25 file a claim pursuant to this section shall, within twenty days of
26 receipt of the notice of intent, respond to the request to meet by
27 contacting, or having someone from the health care provider's office
28 contact, the claimant to schedule the date, time, and place for the
29 claimant, the claimant's designated nonlawyer representative, or both
30 to meet with the health care provider, the health care provider's
31 designated nonlawyer representative, or both. The contact may be made
32 either by telephone or by certified mail, return receipt requested.
33 Unless otherwise mutually agreed between the health care provider and
34 the claimant, the meeting shall be scheduled to take place during
35 normal business hours at the health care provider's professional
36 business address on a date no later than seventy-five days after
37 receipt of the notice of intent.

1 (6) If contact with the claimant to schedule the meeting is made by
2 telephone, the health care provider shall provide the claimant, by
3 certified mail, return receipt requested, written confirmation of the
4 date, time, and place of the scheduled meeting and, if the meeting will
5 be with, or will include, the health care provider's designated
6 nonlawyer representative, the name of that representative. If the
7 claimant intends to have a designated nonlawyer representative attend
8 the meeting with, or on behalf of, the claimant, the claimant shall,
9 within ten days of receipt of the written confirmation, notify the
10 health care provider by certified mail, return receipt requested, of
11 the name of that representative.

12 (7) If contact with the claimant to schedule the meeting is not
13 made by telephone, the health care provider shall, within twenty days
14 of receipt of the notice of intent, send the claimant by certified
15 mail, return receipt requested, a response to the request to meet that
16 contains at least five different dates and times that the health care
17 provider, the health care provider's designated nonlawyer
18 representative, if any, or both, can meet with the claimant. The
19 written response shall also state the professional business address of
20 the health care provider where the meeting will take place and, if the
21 meeting will be with, or will include, the health care provider's
22 designated nonlawyer representative, the name of that representative.
23 The dates proposed in the written response shall be dates that fall
24 between the fiftieth day and the seventy-fifth day after the notice of
25 intent was received. No later than ten days following receipt of such
26 written response, the claimant shall notify the health care provider in
27 writing, by certified mail, return receipt requested, which of the
28 dates proposed by the health care provider the claimant selects for the
29 meeting to take place, and if a designated nonlawyer representative
30 will be attending the meeting with, or on behalf of, the claimant, the
31 name of that representative.

32 (8) Lawyers, or agents, employees, or consultants of lawyers, for
33 the claimant or the health care provider shall not attend the meeting
34 required by this section. However, the claimant may designate a family
35 member or other nonlawyer representative to attend the meeting with, or
36 on behalf of, the claimant, and the health care provider may designate
37 a nonlawyer representative to attend the meeting with, or on behalf of,
38 the health care provider. A claimant or a health care provider who

1 chooses to have a designated nonlawyer representative attend the
2 meeting, shall provide advance notification of that intent in
3 accordance with the provisions of subsections (6) and (7) of this
4 section.

5 (9) Any statements made by, and any discussions had between, the
6 claimant and the health care provider or the health care provider's
7 designated representative pursuant to this section, and any records
8 made of any such statements or discussions, shall not be subject to
9 discovery or introduction into evidence in any judicial or
10 administrative proceeding, and no person who was in attendance at any
11 meeting held pursuant to this section shall be permitted or required to
12 testify as to the content of any statements made or discussions had, or
13 any records of any such statements or discussions, at any such meeting.
14 A notice of intent to file a claim and any response thereto also shall
15 not be subject to discovery or introduction into evidence in any
16 judicial or administrative proceeding except as needed to demonstrate
17 compliance or noncompliance with the provisions of this section.

18 (10) The provisions of this section do not apply with respect to
19 any defendant whose name is unknown to the plaintiff at the time of
20 filing the complaint and who is identified in the complaint by a
21 fictitious name.

22 (11) Any action for damages for injury occurring as a result of
23 health care against a health care provider that is filed by a claimant
24 who has failed to serve the health care provider with the notice of
25 intent to file a claim, or who has failed to make an appointment to
26 meet, as required by subsection (1) of this section, or who has failed
27 to attend the meeting scheduled pursuant to subsection (6) or (7) of
28 this section, shall be barred.

29 (12) If a health care provider who receives a notice of claim
30 pursuant to this section fails to respond to the request to meet as
31 required by subsection (5) of this section, or fails to attend, or have
32 a designated nonlawyer representative attend, the meeting scheduled
33 pursuant to subsection (6) or (7) of this section, then the failure of
34 the claimant to meet with the health care provider to discuss the claim
35 shall not constitute a bar to the commencement of an action for injury
36 occurring as a result of health care against that health care provider.

37 (13) For purposes of this section, "claimant" means either (a) the
38 patient receiving the health care upon which the claim is based; or (b)

1 if the patient is incompetent, the person or persons authorized to
2 consent to health care on behalf of the patient pursuant to RCW
3 7.70.065; or (c) if the patient is deceased, the person or persons
4 entitled to bring a wrongful death or survival action.

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