

HOUSE BILL REPORT

HB 2741

As Passed House:
February 9, 2012

Title: An act relating to health care claims against state and governmental health care providers arising out of tortious conduct.

Brief Description: Concerning health care claims against state and governmental health care providers arising out of tortious conduct.

Sponsors: Representatives Rodne, Eddy, Dammeier and Haler; by request of Attorney General.

Brief History:

Committee Activity:

Judiciary: 1/30/12 [DP].

Floor Activity:

Passed House: 2/9/12, 97-0.

Brief Summary of Bill

- Provides that claims against a state or local governmental entity based on injuries from health care must be presented to the state or local government entity prior to the commencement of a court action.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 13 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Chandler, Eddy, Hansen, Kirby, Klippert, Nealey, Orwall, Rivers and Roberts.

Staff: Edie Adams (786-7180).

Background:

A tort claim against either the state or a local government may not be filed in court until the claimant complies with certain notice requirements established in statute, called the "claim filing statute." One of the purposes of the claim filing statute is to allow governmental entities time to investigate, evaluate, and settle claims prior to the instigation of a civil

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proceeding. A tort claim against the state must be presented to and filed with the Office of Risk Management Division. A tort claim against a local governmental entity must be presented to an agent designated by the local governmental entity to receive the claims.

A claim must be presented on a standard claim form, maintained by the Office of Risk Management Division, that contains specified information, including a description of the injury or damages, the conduct or circumstances that brought about the injury or damage, the names of all persons involved, and the amount of damages claimed. A claimant may not commence a civil tort action against the state or a local governmental entity until 60 days after the claim is presented. The statute of limitations for the claim is tolled during this 60-day period.

In 2009 legislation was enacted that exempted claims based on injuries resulting from health care from the requirements of the state and local government claim filing statutes. The legislation specified that these health care-related claims are governed solely by the procedures set forth in the law governing civil actions for injuries resulting from health care (health care actions).

The law governing health care actions provides that any action based upon a health care provider's professional negligence may not be commenced unless the defendant has been given at least 90 days' notice of the intention to commence the action. This 90-day notice requirement for health care actions was established in 2006 as part of comprehensive legislation addressing medical malpractice issues, including civil liability for injuries resulting from health care.

In 2010 the Washington Supreme Court (Court) invalidated the 90-day notice requirement for health care actions in the case *Waples v. Yi*. The Court found that the statute violated separation of powers principles because it irreconcilably conflicts with court rules governing the commencement of actions and it is a procedural rule that falls within the powers of the judicial branch to establish rules governing how lawsuits are initiated and maintained.

Waples v. Yi involved a suit against a private health care provider. A case currently on direct review at the Court, *McDevitt v. Harborview*, raises the issue of whether the 90-day notice requirement for health care actions remains valid with respect to health care actions against governmental entities, based on the fact that Article II, § 26 of the Washington Constitution gives the Legislature the authority to direct by law the manner in which suits may be brought against the state.

Summary of Bill:

Provisions of the state and local government claim filing statutes that exempt claims involving injuries from health care are eliminated. A civil action against a state or local government entity involving injuries from health care may not be commenced until after the claim is presented to the governmental entity in accordance with the requirements of the claim filing statutes.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) Pre-suit notice requirements are important because they allow a governmental entity to investigate and negotiate settlements prior to proceeding to costly litigation. This bill clears up ambiguities surrounding the pre-suit notice requirements for medical malpractice suits against governmental entities. This ambiguity is the result of a series of legislative changes and court decisions. From 1963 until 2006, claimants had to file a pre-suit notice under the claims filing statutes. In 2006 the Legislature created a pre-suit notice requirement for health care claims, so claims against the government for medical malpractice had to comply with both statutes. In 2009 the Legislature exempted medical malpractice suits from the claims filing statutes so that claimants only have to comply with one set of requirements. However, since this statute was recently overturned by the Washington Supreme Court, it is now unclear what is required. It makes sense to go back to the way things were for over 40 years and provide that all claims against governmental entities will be subject to the same notice requirements. This will provide certainty and clarity for plaintiffs who are bringing claims.

(Opposed) None.

Persons Testifying: Representative Rodne, prime sponsor; John Nicholson, Office of the Attorney General; and Larry Shannon, Washington State Association of Justice.

Persons Signed In To Testify But Not Testifying: None.