

HOUSE BILL REPORT

HB 1533

As Reported by House Committee On:
Judiciary

Title: An act relating to clarifying notice of claims in health care actions.

Brief Description: Clarifying notice of claims in health care actions.

Sponsors: Representatives Rodne and Jinkins.

Brief History:

Committee Activity:

Judiciary: 2/12/13, 2/19/13 [DP].

Brief Summary of Bill

- Eliminates the requirement that a claimant provide 90-day notice of intent to file an action based on a health care provider's professional negligence before the action may be commenced.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 13 members: Representatives Pedersen, Chair; Hansen, Vice Chair; Rodne, Ranking Minority Member; O'Ban, Assistant Ranking Minority Member; Goodman, Hope, Jinkins, Kirby, Klippert, Nealey, Orwall, Roberts and Shea.

Staff: Edie Adams (786-7180).

Background:

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 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.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Legislation in 2009 exempted claims based on injuries resulting from health care from the requirements of the state and local government claim filing statutes, which generally provide that a tort claim against a state or local governmental entity must be presented to the state or local government entity 60 days prior to the commencement of a court action. The 2009 legislation specified that health care-related claims against governmental entities are governed solely by the procedures set forth in the law governing civil actions 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 involved a suit against a private health care provider. A subsequent case, *McDevitt v. Harborview*, addressed the issue of whether the 90-day notice requirement for health care actions remains valid with respect to health care actions against governmental entities. Before the Court ruled on the *McDevitt* case, the Legislature passed a bill providing that health care actions are subject to the general state and local government claims filing statutes, which require 60-day prior notice.

Subsequently, in December 2012, the Court held in the *McDevitt* case that the 90-day pre-suit notice requirement for health care actions is valid as applied to health care actions against governmental entities. This holding is based on Article II, § 26 of the Washington Constitution, which gives the Legislature the authority to direct by law the manner in which suits may be brought against the state.

As a result of the *McDevitt* decision and the legislative change in 2012, there are now two statutes, with different procedural requirements, governing pre-suit notice for health care actions against governmental entities.

Summary of Bill:

The requirement that a claimant provide 90-day prior notice of his or her intent to file an action based on the professional negligence of a health care provider is eliminated.

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) This is a common sense cleanup measure that will provide a clear set of rules for all parties to follow. The current law requires two separate notices, with different procedural requirements, in health care actions involving public entities. This creates confusion and unnecessary litigation. The bill restores us to the pre-2006 law, which requires one 60-day pre-suit notice under rules that apply to actions against public entities.

(Opposed) None.

Persons Testifying: Representative Rodne, prime sponsor; and Larry Shannon, Washington State Association for Justice.

Persons Signed In To Testify But Not Testifying: None.