

HOUSE BILL REPORT

HB 1260

As Reported By House Committee On:

Health Care

Title: An act relating to health care liability reform.

Brief Description: Modifying health care liability provisions.

Sponsors: Representatives Dyer, Backlund, Hymes, Casada, Kremen, Thompson and Schoesler.

Brief History:

Committee Activity:

Health Care: 1/24/95, 1/26/95, 1/27/95, 1/31/95, 2/17/95, 2/24/95 [DPS].

HOUSE COMMITTEE ON HEALTH CARE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Dyer, Chairman; Backlund, Vice Chairman; Hymes, Vice Chairman; Campbell; Casada; Crouse; Sherstad and Skinner.

Minority Report: Do not pass. Signed by 5 members: Representatives Dellwo, Ranking Minority Member; Cody, Assistant Ranking Minority Member; Conway; Kessler and Morris.

Staff: Charlie Gavigan (786-7340).

Background: Washington has several provisions in law dealing with medical malpractice. No award can be made for damages for an injury occurring from health care unless: (1) the injury resulted from the failure of a health care provider to follow the accepted standard of care; (2) the provider promised that the injury would not occur; or (3) the injury resulted from care to which the patient did not consent. Health care actions are subject to mandatory mediation.

Washington's laws regarding evidence that is allowed to be considered at trial provide that a patient is deemed to waive the physician-patient privilege 90 days after a civil action is filed with the court. The privilege precludes the physician from giving any information about the medical treatment of the patient. Washington court-made law precludes the defendant from having ex parte contact with a plaintiff's health care providers; this means the defendant or his or her attorney cannot interview the

plaintiff's health care providers without the plaintiff or his or her attorney being present.

Present law requires certain health care providers to have malpractice insurance after July 1, 1995. The Department of Health establishes which practitioners must have this liability insurance by rule, and establishes the minimum levels of coverage.

Summary of Substitute Bill: In order to make a claim for damages resulting from negligence by a health care provider, the claimant must file a certificate of merit within 90 days of initiating the claim. The certificate of merit must include the opinion of at least one expert that the claim is reasonable.

Court-made law precluding defendant contact with a plaintiff's health care providers is overturned by statute; once the physician-patient privilege is waived, defendant can contact and interview plaintiff's health care providers without plaintiff or his or her attorney present. The physician-patient privilege is deemed waived earlier; rather than 90 days from the filing of a claim with the court, the privilege is waived 90 days after a claim is made in writing.

The present law requiring certain health care providers to have malpractice insurance after July 1, 1995 is repealed.

A health care payer who covers the health care services of a patient cannot disclaim liability by contract for a decision not to pay for health care services recommended by a health care provider.

Substitute Bill Compared to Original Bill: The certificate of merit must be filed within 90 days of initiating a claim, rather than 30 days. The original bill prohibited ex parte contact by either party after an action was filed when the physician-patient privilege is waived; the substitute allows both parties ex part contact with practitioners anytime after the privilege is waived. The privilege is deemed waived 90 days after a written claim is made, rather than 90 days after the claim is filed with the court as under current law. The requirement that malpractice insurance be required of some practitioners is repealed. The substitute limits the tolling of the statute of limitations to 6 months when mediation is requested for a health care claim.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: Reforms are necessary regarding the liability of health care providers and facilities. Now the plaintiff, or claimant, has a significant advantage in making malpractice claims, driving up the cost of health care. The playing field needs to be leveled so that these claims can be resolved in a fairer and less costly way. Health care providers should not be mandated to have malpractice insurance, especially midwives.

Testimony Against: The significant changes to present law made by this bill are not necessary and are not good public policy. Patients' rights to be compensated for injuries caused by negligent health care will be impaired, and patient confidentiality will be compromised.

Testified: Arthur and Linn Dappen (con); Bruce Brandler, Puget Sound Hospital (pro); Larry Shannon, Washington State Trial Lawyers Association (con); Gene Moan, Washington State Trial Lawyers Association (con); Cliff Webster, Washington State Medical Association (pro); Gary Morris, Physicians Insurance Exchange (pro); Steve Harrington, Washington Self Insurers Association (pro with concerns); Dave Broderick, Washington State Hospital Association (pro); and Susan Moorehead (con).