

EHB 1927 - H AMD

By Representative Lantz

1 Beginning on page 1, line 4, strike all of section 1 and insert
2 the following:

3 "**Sec. 1.** RCW 7.70.100 and 1993 c 492 s 419 are each amended to
4 read as follows:

5 (1) No action based upon a health care provider's professional
6 negligence may be commenced unless the defendant has been given at
7 least ninety days' notice of the intention to commence the action.
8 If the notice is served within ninety days of the expiration of the
9 applicable statute of limitations, the time for the commencement of
10 the action must be extended ninety days from the service of the
11 notice.

12 (2) The provisions of subsection (1) of this section are not
13 applicable with respect to any defendant whose name is unknown to
14 the plaintiff at the time of filing the complaint and who is
15 identified therein by a fictitious name.

16 (3) After the filing of the ninety-day presuit notice, and
17 before a superior court trial, all causes of action, whether based
18 in tort, contract, or otherwise, for damages arising from injury
19 occurring as a result of health care provided after July 1, 1993,
20 shall be subject to mandatory mediation prior to trial except as
21 provided in subsection (6) of this section.

22 ((+2)) (4) The supreme court shall by rule adopt procedures to
23 implement mandatory mediation of actions under this chapter. The
24 rules shall require mandatory mediation without exception unless
25 subsection (6) of this section applies. The rules on mandatory
26 mediation shall address, at a minimum:

27 (a) Procedures for the appointment of, and qualifications of,
28 mediators. A mediator shall have experience or expertise related
29 to actions arising from injury occurring as a result of health
30 care, and be a member of the state bar association who has been
31 admitted to the bar for a minimum of five years or who is a retired

1 judge. The parties may stipulate to a nonlawyer mediator. The
2 court may prescribe additional qualifications of mediators;

3 (b) Appropriate limits on the amount or manner of compensation
4 of mediators;

5 (c) The number of days following the filing of a claim under
6 this chapter within which a mediator must be selected;

7 (d) The method by which a mediator is selected. The rule shall
8 provide for designation of a mediator by the superior court if the
9 parties are unable to agree upon a mediator;

10 (e) The number of days following the selection of a mediator
11 within which a mediation conference must be held; and

12 ~~((A means by which mediation of an action under this
13 chapter may be waived by a mediator who has determined that the
14 claim is not appropriate for mediation; and~~

15 ~~(g))~~ Any other matters deemed necessary by the court.

16 ~~((+3))~~ (5) Mediators shall not impose discovery schedules upon
17 the parties.

18 (6) The mandatory mediation requirement of subsection (4) of
19 this section does not apply to an action subject to mandatory
20 arbitration under chapter 7.06 RCW or to an action in which the
21 parties have agreed, subsequent to the arisal of the claim, to
22 submit the claim to arbitration under chapter 7.04 RCW.

23 (7) The legislature respectfully requests that the supreme
24 court by rule also adopt procedures for the parties to certify to
25 the court the manner of mediation used by the parties to comply
26 with this section."

EFFECT: Provides that the mediation requirement does not apply
if the action is subject to mandatory arbitration, or the
parties agreed, after the claim arose, to submit the claim to
arbitration.

Removes a provision of the mediation statute directing the
Supreme Court to adopt rules on the method for a mediator to
waive the mediation requirement.