
HOUSE BILL 1533

State of Washington 63rd Legislature 2013 Regular Session

By Representatives Rodne and Jinkins

Read first time 01/30/13. Referred to Committee on Judiciary.

1 AN ACT Relating to clarifying notice of claims in health care
2 actions; and amending RCW 7.70.100.

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

4 **Sec. 1.** RCW 7.70.100 and 2007 c 119 s 1 are each amended to read
5 as follows:

6 ~~(1) ((No action based upon a health care provider's professional
7 negligence may be commenced unless the defendant has been given at
8 least ninety days' notice of the intention to commence the action. The
9 notice required by this section shall be given by regular mail,
10 registered mail, or certified mail with return receipt requested, by
11 depositing the notice, with postage prepaid, in the post office
12 addressed to the defendant. If the defendant is a health care provider
13 entity defined in RCW 7.70.020(3) or, at the time of the alleged
14 professional negligence, was acting as an actual agent or employee of
15 such a health care provider entity, the notice may be addressed to the
16 chief executive officer, administrator, office of risk management, if
17 any, or registered agent for service of process, if any, of such health
18 care provider entity. Notice for a claim against a local government
19 entity shall be filed with the agent as identified in RCW 4.96.020(2).~~

1 ~~Proof of notice by mail may be made in the same manner as that~~
2 ~~prescribed by court rule or statute for proof of service by mail. If~~
3 ~~the notice is served within ninety days of the expiration of the~~
4 ~~applicable statute of limitations, the time for the commencement of the~~
5 ~~action must be extended ninety days from the date the notice was~~
6 ~~mailed, and after the ninety-day extension expires, the claimant shall~~
7 ~~have an additional five court days to commence the action.~~

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

12 ~~(3) After the filing of the ninety-day presuit notice, and))~~ Before
13 a superior court trial, all causes of action, whether based in tort,
14 contract, or otherwise, for damages arising from injury occurring as a
15 result of health care provided after July 1, 1993, shall be subject to
16 mandatory mediation prior to trial except as provided in subsection
17 ((+6+)) (4) of this section.

18 ~~((+4+))~~ (2) The supreme court shall by rule adopt procedures to
19 implement mandatory mediation of actions under this chapter. The
20 implementation contemplates the adoption of rules by the supreme court
21 which will require mandatory mediation without exception unless
22 subsection ~~((+6+))~~ (4) of this section applies. The rules on mandatory
23 mediation shall address, at a minimum:

24 (a) Procedures for the appointment of, and qualifications of,
25 mediators. A mediator shall have experience or expertise related to
26 actions arising from injury occurring as a result of health care, and
27 be a member of the state bar association who has been admitted to the
28 bar for a minimum of five years or who is a retired judge. The parties
29 may stipulate to a nonlawyer mediator. The court may prescribe
30 additional qualifications of mediators;

31 (b) Appropriate limits on the amount or manner of compensation of
32 mediators;

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

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

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

3 (f) A means by which mediation of an action under this chapter may
4 be waived by a mediator who has determined that the claim is not
5 appropriate for mediation; and

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

7 ~~((+5))~~ (3) Mediators shall not impose discovery schedules upon the
8 parties.

9 ~~((+6))~~ (4) The mandatory mediation requirement of subsection
10 ~~((+4))~~ (2) of this section does not apply to an action subject to
11 mandatory arbitration under chapter 7.06 RCW or to an action in which
12 the parties have agreed, subsequent to the arisal of the claim, to
13 submit the claim to arbitration under chapter 7.04A or 7.70A RCW.

14 ~~((+7))~~ (5) The implementation also contemplates the adoption of a
15 rule by the supreme court for procedures for the parties to certify to
16 the court the manner of mediation used by the parties to comply with
17 this section.

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