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From the August 13, 2007 North Carolina Lawyers Weekly.

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News Story

N.C. legislation would create voluntary arbitration option

From Staff reports

A bill that would expedite and cap damages awards in medical malpractice cases for parties who voluntarily go through binding arbitration has passed the state General Assembly and is awaiting Gov. Mike Easley's signature.

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A spokesman for the governor said the deadline for Easley to sign House Bill 1671 is Sept. 1.

If ratified, the measure would create a process in which parties in a medical malpractice dispute could agree, before any lawsuit is filed, to go through arbitration. All damages awarded in arbitration would be limited to \$1 million, regardless of the number of plaintiffs and defendants.

The legislation also would ensure that potential litigants become aware that arbitration is available as an alternative to lawsuits. It requires lawyers representing parties in a med-mal dispute to inform their clients of the arbitration option.

If the parties agree, they would file for arbitration with the clerk of the superior court in the county where the alleged malpractice occurred.

If they don't agree, their lawyers would be required to file a declaration assuring the court that the attorneys discussed the arbitration option with their clients and with each other and that the parties rejected it.

"We have a new structure and we have a forced conversation about arbitration," Burton Craige, a lawyer with Patterson Harkavy in Raleigh, told Lawyers Weekly. "So I'm hoping people will use this."

Craige chairs the medical malpractice section of the N.C. Academy of Trial Lawyers, which supports the bill.

"If parties take advantage of this procedure, litigation costs will drop and cases will be resolved much more promptly," Craig said.

He said the legislation will make it easier for plaintiffs to bring "meritorious cases" that otherwise might not be brought because of litigation costs.

In such cases, "the cost of litigation would consume too high a percentage of the recovery," said Don Beskind, of the Raleigh personal injury firm of Twiggs, Beskind, Strickland & Rabenau. "This is designed to be more efficient."

According to an NCATL study, 5,401 med-mal cases were filed in North Carolina from 1998 through 2006. The median jury award during those years was \$301,300, with the biggest single award amounting to \$8.1 million.

In addition to limiting damages, the legislation sets time limits for accomplishing various phases of arbitration. Highlights include:

- Requiring parties to choose an arbitrator within 45 days after filing for arbitration. If they don't, a court would select one from a panel of special or retired superior court judges.
- Limiting each side to two experts on the issue of liability, two experts on the issue of damages, and one rebuttal expert. However, if there are multiple parties on one side, then the arbitrator determines the number of experts.
- Requiring completion of discovery within 240 days after claimants file for arbitration. Hearings would start within 270 days after the filing date unless the parties consent to a continuance or exceptional circumstances arise that would create undue hardship on a party.
- Requiring each party to pay its own attorney fees and costs.
- Precluding any right to a de novo trial on appeal of the arbitrator's decision.

The bill's primary sponsors were Reps. Bob England, D-Rutherford, who is a doctor; attorney Rick Glazier, D-Cumberland; Ray Rapp, D-Haywood, Madison and Yancey; and Lucy T. Allen, D-Franklin, Halifax and Nash.

The bill would take effect Jan. 1, 2008.

— *Questions or comments may be directed to fred.horibeck@nc.lawyersweekly.com.*

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