

1 **MEDICAL MALPRACTICE AMENDMENTS**

2 2003 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Leonard M. Blackham**

5 **This act amends the Utah Health Care Malpractice Act and the Health Care Providers**
6 **Immunity From Liability Act. The act amends provisions related to arbitration**
7 **agreements between a health care provider and a patient. The act allows a provider and**
8 **patient to negotiate an arbitration agreement in nonemergency situations. The act**
9 **amends provisions related to immunity from liability for certain charity care.**

10 This act affects sections of Utah Code Annotated 1953 as follows:

11 AMENDS:

12 **58-13-3**, as last amended by Chapter 160, Laws of Utah 2000

13 **78-14-17**, as enacted by Chapter 278, Laws of Utah 1999

14 *Be it enacted by the Legislature of the state of Utah:*

15 Section 1. Section **58-13-3** is amended to read:

16 **58-13-3. Qualified immunity -- Health professionals -- Charity care.**

17 (1) (a) The Legislature finds many residents of this state do not receive medical care
18 and preventive health care because they lack health insurance or because of financial
19 difficulties or cost. The Legislature also finds that many physicians, charity health care
20 facilities, and other health care professionals in this state would be willing to volunteer
21 medical and allied services without compensation if they were not subject to the high exposure
22 of liability connected with providing these services.

23 (b) The Legislature therefore declares that its intention in enacting this section is to
24 encourage the provision of uncompensated volunteer charity health care [~~in charity care~~
25 ~~settings~~] in exchange for a limitation on liability for the health care facilities and health care
26 professionals who provide those volunteer services.

27 (2) As used in this section:



28 (a) "Health care facility" means any clinic or hospital, church, or organization whose
29 primary purpose is to sponsor, promote, or organize uncompensated health care services for
30 people unable to pay for health care services.

31 (b) "Health care professional" means individuals licensed under Title 58, Occupations
32 and Professions, as physicians and surgeons, osteopaths, podiatrists, optometrists,
33 chiropractors, dentists, dental hygienists, registered nurses, certified nurse midwives, and other
34 nurses licensed under Section 58-31b-301.

35 (c) "Remuneration or compensation":

36 (i) (A) means direct or indirect receipt of any payment by the physician and surgeon,
37 health care facility, other health care professional, or organization, on behalf of the patient,
38 including payment or reimbursement under medicare or medicaid, or under the state program
39 for the medically indigent on behalf of the patient; and

40 (B) compensation, salary, or reimbursement to the health care professional from any
41 source for the health care professional's services or time in volunteering to provide
42 uncompensated health care; and

43 (ii) does not mean any grant or donation to the health care facility used to offset direct
44 costs associated with providing the uncompensated health care such as medical supplies or
45 drugs.

46 (3) A health care professional who provides health care treatment at or on behalf of a
47 health care facility is not liable in a medical malpractice action if:

48 (a) the treatment was within the scope of the health care professional's license under
49 this title;

50 (b) neither the health care professional nor the health care facility received
51 compensation or remuneration for the treatment;

52 (c) the acts or omissions of the health care professional were not grossly negligent or
53 willful and wanton; and

54 (d) prior to rendering services, the health care professional disclosed in writing to the
55 patient, or if a minor, to the patient's parent or legal guardian, that the health care professional
56 is providing the services without receiving remuneration or compensation and that in exchange
57 for receiving uncompensated health care, the patient consents to waive any right to sue for
58 professional negligence except for acts or omissions which are grossly negligent or are willful

59 and wanton.

60 (4) A health care facility which sponsors, promotes, or organizes the uncompensated
61 care is not liable in a medical malpractice action for acts and omissions if:

62 (a) the health care facility meets the requirements in Subsection (3)(b);

63 (b) the acts and omissions of the health care facility were not grossly negligent or
64 willful and wanton; and

65 (c) the health care facility has posted, in a conspicuous place, a notice that in
66 accordance with this section the health care facility is not liable for any civil damages for acts
67 or omissions except for those acts or omissions that are grossly negligent or are willful and
68 wanton.

69 (5) Immunity from liability under this section does not extend to the use of general
70 anesthesia or care that requires an overnight stay in a general acute or specialty hospital
71 licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

72 Section 2. Section **78-14-17** is amended to read:

73 **78-14-17. Arbitration agreements.**

74 (1) After May 2, 1999, for a binding arbitration agreement between a patient and a
75 health care provider to be validly executed or, if the requirements of this Subsection (1) have
76 not been previously met on at least one occasion, renewed:

77 (a) the patient shall be given, in writing and by verbal explanation, the following
78 information on:

79 (i) the requirement that the patient must arbitrate a claim instead of having the claim
80 heard by a judge or jury;

81 (ii) the role of an arbitrator and the manner in which arbitrators are selected under the
82 agreement;

83 (iii) the patient's responsibility, if any, for arbitration-related costs under the agreement;

84 (iv) the right of the patient to decline to enter into the agreement and still receive health
85 care if Subsection (2) applies;

86 (v) the automatic renewal of the agreement each year unless the agreement is canceled
87 in writing before the renewal date; [~~and~~]

88 (vi) the right of the patient to have questions about the arbitration agreement answered;

89 and

90 (vii) the right of the patient to rescind the agreement within 30 days of signing the
91 agreement; and

92 (b) the agreement shall require that:

93 (i) one arbitrator be collectively selected by all persons claiming damages;

94 (ii) one arbitrator be selected by the health care provider;

95 (iii) a third arbitrator be jointly selected by all persons claiming damages and the health
96 care provider from a list of individuals approved as arbitrators by the state or federal courts of
97 Utah;

98 (iv) all parties waive the requirement of Section 78-14-12 to appear before a hearing
99 panel in a malpractice action against a health care provider;

100 (v) the patient be given the right to rescind the agreement within 30 days of signing the
101 agreement; and

102 (vi) the term of the agreement be for one year and that the agreement be automatically
103 renewed each year unless the agreement is canceled in writing by the patient or health care
104 provider before the renewal date.

105 (2) Notwithstanding Subsection (1), a patient may not be denied health care of any kind
106 from the emergency department of a general acute hospital, as defined in Section 26-21-2, on
107 the sole basis that the patient or a person described in Subsection (5) refused to enter into a
108 binding arbitration agreement with a health care provider.

109 (3) A written acknowledgment of having received a written and verbal explanation of a
110 binding arbitration agreement signed by or on behalf of the patient shall be a defense to a claim
111 that the patient did not receive a written and verbal explanation of the agreement as required by
112 Subsection (1) unless the patient:

113 (a) proves that the person who signed the agreement lacked the capacity to do so; or

114 (b) shows by clear and convincing evidence that the execution of the agreement was
115 induced by the health care provider's affirmative acts of fraudulent misrepresentation or
116 fraudulent omission to state material facts.

117 (4) The requirements of Subsection (1) do not apply to a claim governed by a binding
118 arbitration agreement that was executed or renewed before May 3, 1999.

119 (5) A legal guardian or a person described in Subsection 78-14-5(4), except a person
120 temporarily standing in loco parentis, may execute or rescind a binding arbitration agreement

121 on behalf of a patient.
122 (6) This section does not apply to any arbitration agreement that is subject to the
123 Federal Arbitration Act, 9 U.S.C. Sec. 1 et seq.

Legislative Review Note
as of 1-27-03 1:59 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0138

Medical Malpractice Amendments

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11:10 AM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst