

1                                   **MEDICAL ARBITRATION AGREEMENT**

2   **AMENDMENTS**

3   2004 GENERAL SESSION

4   STATE OF UTAH

5   **Sponsor: Parley G. Hellewell**

---

---

7   **LONG TITLE**

8   **General Description:**

9                   This bill prohibits a health care professional from refusing to provide health care to a  
10 person solely on the basis that the person refused to sign a medical malpractice  
11 arbitration agreement.

12 **Highlighted Provisions:**

13                   This bill:

14                   ▶ prohibits a health care professional from refusing to provide health care to a person  
15 solely on the basis that the person refused to sign a medical malpractice arbitration  
16 agreement.

17 **Monies Appropriated in this Bill:**

18                   None

19 **Other Special Clauses:**

20                   None

21 **Utah Code Sections Affected:**

22 **AMENDS:**

23                   **78-14-17**, as last amended by Chapter 207, Laws of Utah 2003

---

---

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

26                   Section 1. Section **78-14-17** is amended to read:

27                   **78-14-17. Arbitration agreements.**



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

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

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

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

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

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

40 (v) the automatic renewal of the agreement each year unless the agreement is canceled  
41 in writing before the renewal date;

42 (vi) the right of the patient to have questions about the arbitration agreement answered;  
43 and

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

46 (b) the agreement shall require that:

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

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

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

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

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

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

59           (2) Notwithstanding Subsection (1), a patient may not be denied health care [of any  
60 kind from the emergency department of a general acute hospital, as defined in Section  
61 26-21-2,] on the sole basis that the patient or a person described in Subsection (5) refused to  
62 enter into a binding arbitration agreement with a health care provider.

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

- 67           (a) proves that the person who signed the agreement lacked the capacity to do so; or
- 68           (b) shows by clear and convincing evidence that the execution of the agreement was  
69 induced by the health care provider's affirmative acts of fraudulent misrepresentation or  
70 fraudulent omission to state material facts.

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

73           (5) A legal guardian or a person described in Subsection 78-14-5(4), except a person  
74 temporarily standing in loco parentis, may execute or rescind a binding arbitration agreement  
75 on behalf of a patient.

76           (6) This section does not apply to any arbitration agreement that is subject to the  
77 Federal Arbitration Act, 9 U.S.C. Sec. 1 et seq.

**Legislative Review Note**

as of 1-20-04 9:34 AM

This bill requires a health care professional to enter into a treatment relationship with a patient when the health care professional wants the patient to sign an arbitration agreement and the patient does not want to sign an arbitration agreement. This mandated relationship between the health care professional and the patient, as now required by state statute, may violate Section 2 of the Federal Arbitration Act and the U.S. Supreme Court holding in Doctor's Associates, Inc. v. Cassaratto, 517 U.S. 681 (1996) which precludes a state from singling out arbitration provisions for suspect status, requiring instead that such provisions be placed upon the same footing as other contracts. If this bill was found to violate the Federal Arbitration Act, current language in Utah Code Subsection 78-14-17(6) would eliminate the intended effect of this bill. That subsection provides that Section 78-14-17 "does not apply to any arbitration agreement that is subject to the Federal Arbitration Act".

**Office of Legislative Research and General Counsel**

**State Impact**

Provisions of this bill can be handled within existing budgets. This bill has a Legislative Review Note. There may be additional costs to the state if there is a challenge in the courts.

---

**Individual and Business Impact**

Fiscal impact is not quantifiable at this time, and would be determined on a case by case basis.

---

**Office of the Legislative Fiscal Analyst**