

HB0135S01 compared with HB0135

~~text~~ shows text that was in HB0135 but was deleted in HB0135S01.

text shows text that was not in HB0135 but was inserted into HB0135S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Dean Sanpei proposes the following substitute bill:

MEDICAL MALPRACTICE AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Dean Sanpei

Senate Sponsor: _____

Cosponsors:

Mike K. McKell

Michael S. Kennedy

LONG TITLE

General Description:

This bill amends medical malpractice action or arbitration proceedings.

Highlighted Provisions:

This bill:

- ▶ provides that a certificate of compliance must be issued for a health care provider or health care entity to allocate fault in a pre-litigation medical malpractice or arbitration hearing; and
- ▶ requires that evidence from a medical review panel remain unreportable to a health care facility or health insurance plan.

HB0135S01 compared with HB0135

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-3-418, as last amended by Laws of Utah 2010, Chapter 97

78B-3-419, as renumbered and amended by Laws of Utah 2008, Chapter 3

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

Section 1. Section **78B-3-418** is amended to read:

78B-3-418. Decision and recommendations of panel -- No judicial or other review.

(1) (a) The panel shall issue an opinion and the division shall issue a certificate of compliance with the pre-litigation hearing requirements of this part in accordance with this section.

(b) A certificate of compliance issued in accordance with this section is proof that the claimant has complied with all conditions precedent under this part prior to the commencement of litigation as required in Subsection 78B-3-412(1).

(c) (i) Notwithstanding any other provision of this part, any party in a medical malpractice action or arbitration hearing may request a prelitigation panel review as to a health care provider and obtain a certificate of compliance for that specific, individual health care provider for the purpose of allocating fault to that health care provider. A party in a medical malpractice action or arbitration hearing may not attempt to allocate fault to any health care provider ~~or health care entity~~ unless a certificate of compliance has been issued in accordance with this section for that specific, individual health care provider. A ~~health care provider, or~~ health care provider exempted from the requirement of a pre-litigation hearing by statute or an arbitration agreement, may nevertheless be joined in a pre-litigation hearing to satisfy the requirements of this section. Participation in a pre-litigation hearing may not waive any right to enforce an arbitration agreement.

(ii) The party making the claim against, or seeking to allocate fault to, a health care provider ~~or health care entity~~ is required to seek and obtain the certificate of compliance

HB0135S01 compared with HB0135

required by this ~~section~~ Subsection (1)(c).

(2) (a) The panel shall render its opinion in writing not later than 30 days after the end of the proceedings, and determine on the basis of the evidence whether:

(i) each claim against each health care provider has merit or has no merit; and

(ii) if a claim is meritorious, whether the conduct complained of resulted in harm to the claimant.

(b) There is no judicial or other review or appeal of the panel's decision or recommendations.

(3) The division shall issue a certificate of compliance to the claimant, for each respondent named in the intent to file a claim under this part, if:

(a) for a named respondent, the panel issues an opinion of merit under Subsections (2)(a)(i) and (ii);

(b) for a named respondent, the claimant files an affidavit of merit in accordance with Section 78B-3-423 if the opinion under Subsection (1)(a) is non-meritorious under either Subsection (2)(a)(i) or (ii);

(c) the claimant has complied with the provisions of Subsections 78B-3-416(3)(c) and (d); or

(d) the parties submitted a stipulation under Subsection 78B-3-416(3)(d).

Section 2. Section **78B-3-419** is amended to read:

78B-3-419. Evidence of proceedings not admissible in subsequent action -- Panelist may not be compelled to testify -- Immunity of panelist from civil liability -- Information regarding professional conduct.

(1) Evidence of the proceedings conducted by the medical review panel and its results, opinions, findings, and determinations are not admissible as evidence in ~~[an action]~~ any civil action or arbitration proceeding subsequently brought by the claimant ~~[in a court of competent jurisdiction]~~ against any respondent and are not reportable to any health care facility or health care insurance ~~plan~~ carrier as a part of any credentialing process.

(2) No panelist may be compelled to testify in a civil action subsequently filed with regard to the subject matter of the panel's review. A panelist has immunity from civil liability arising from participation as a panelist and for all communications, findings, opinions, and conclusions made in the course and scope of duties prescribed by this section.

HB0135S01 compared with HB0135

(3) Nothing in this chapter may be interpreted to prohibit the division from considering any information contained in a statutory notice of intent to commence action, request for prelitigation panel review, or written findings of a panel with respect to the division's determining whether a licensee engaged in unprofessional or unlawful conduct.

†

Legislative Review Note

~~as of 2-11-13 4:43 PM~~

~~Office of Legislative Research and General Counsel}~~