

1 **CHARITY CARE AMENDMENTS**

2 2014 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Allen M. Christensen**

5 House Sponsor: Paul Ray

7 **LONG TITLE**

8 **General Description:**

9 This bill amends the Health Care Providers Immunity from Liability Act.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ requires a written waiver from a patient; and
 - 13 ▶ provides immunity from liability to a health care provider who volunteers services
- 14 at a federally qualified health center or an Indian health clinic.

15 **Money Appropriated in this Bill:**

16 None

17 **Other Special Clauses:**

18 None

19 **Utah Code Sections Affected:**

20 AMENDS:

21 **58-13-3**, as last amended by Laws of Utah 2009, Chapter 192

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

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

25 **58-13-3. Qualified immunity -- Health professionals -- Charity care.**

26 (1) (a) (i) The Legislature finds many residents of this state do not receive medical care
27 and preventive health care because they lack health insurance or because of financial
28 difficulties or cost.

29 (ii) The Legislature also finds that many physicians, charity health care facilities, and

30 other health care professionals in this state would be willing to volunteer medical and allied
31 services without compensation if they were not subject to the high exposure of liability
32 connected with providing these services.

33 (b) The Legislature therefore declares that its intention in enacting this section is to
34 encourage the provision of uncompensated volunteer charity health care in exchange for a
35 limitation on liability for the health care facilities and health care professionals who provide
36 those volunteer services.

37 (2) As used in this section:

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

41 (b) "Health care professional" means a person licensed under:

- 42 (i) Chapter 5a, Podiatric Physician Licensing Act;
- 43 (ii) Chapter 16a, Utah Optometry Practice Act;
- 44 (iii) Chapter 17b, Pharmacy Practice Act;
- 45 (iv) Chapter 24b, Physical [~~Therapist~~] Therapy Practice Act;
- 46 (v) Chapter 31b, Nurse Practice Act;
- 47 (vi) Chapter 40, Recreational [~~Therapist~~] Therapy Practice Act;
- 48 (vii) Chapter 41, Speech-Language Pathology and Audiology Licensing Act;
- 49 (viii) Chapter 42a, Occupational Therapy Practice Act;
- 50 (ix) Chapter 44a, Nurse Midwife Practice Act;
- 51 (x) Chapter 49, Dietitian Certification Act;
- 52 (xi) Chapter 60, Mental Health Professional Practice Act;
- 53 (xii) Chapter 67, Utah Medical Practice Act;
- 54 (xiii) Chapter 68, Utah Osteopathic Medical Practice Act;
- 55 (xiv) Chapter 69, Dentist and Dental Hygienist Practice Act;
- 56 (xv) Chapter 70a, Physician Assistant Act; and
- 57 (xvi) Chapter 73, Chiropractic Physician Practice Act.

58 (c) "Remuneration or compensation":
59 (i) (A) means direct or indirect receipt of any payment by a health care professional or
60 health care facility on behalf of the patient, including payment or reimbursement under
61 Medicare or Medicaid, or under the state program for the medically indigent on behalf of the
62 patient; and
63 (B) compensation, salary, or reimbursement to the health care professional from any
64 source for the health care professional's services or time in volunteering to provide
65 uncompensated health care; and
66 (ii) does not mean:
67 (A) any grant or donation to the health care facility used to offset direct costs
68 associated with providing the uncompensated health care such as:
69 (I) medical supplies;
70 (II) drugs; or
71 (III) a charitable donation that is restricted for charitable services at the health care
72 facility; or
73 (B) incidental reimbursements to the volunteer such as:
74 (I) food supplied to the volunteer;
75 (II) clothing supplied to the volunteer to help identify the volunteer during the time of
76 volunteer services;
77 (III) mileage reimbursement to the volunteer; or
78 (IV) other similar support to the volunteer.
79 (3) A health care professional who provides health care treatment at or on behalf of a
80 health care facility is not liable in a medical malpractice action if:
81 (a) the treatment was within the scope of the health care professional's license under
82 this title;
83 (b) neither the health care professional nor the health care facility received
84 compensation or remuneration for the treatment;
85 (c) the acts or omissions of the health care professional were not grossly negligent or

86 willful and wanton; and

87 (d) prior to rendering services[;];

88 (i) the health care professional disclosed in writing to the patient, or if a minor, to the
89 patient's parent or legal guardian, that the health care professional is providing the services
90 without receiving remuneration or compensation; and [~~that in exchange for receiving~~
91 ~~uncompensated health care, the patient consents~~]

92 (ii) the patient consented in writing to waive any right to sue for professional
93 negligence except for acts or omissions which are grossly negligent or are willful and wanton.

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

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

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

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

103 (5) A health care professional who provides health care treatment at a federally
104 qualified health center, as defined in Subsection 1905(1)(2)(b) of the Social Security Act, or an
105 Indian health clinic or Urban Indian Health Center, as defined in Title V of the Indian Health
106 Care Improvement Act, is not liable in a medical malpractice action if:

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

109 (b) the health care professional:

110 (i) does not receive compensation or remuneration for treatment provided to any
111 patient that the provider treats at the federally qualified health center, the Indian health clinic,
112 or the Urban Indian Health Center; and

113 (ii) is not eligible to be included in coverage under the Federal Tort Claims Act for the

114 treatment provided at the federally qualified health center, the Indian health clinic, or the Urban
115 Indian Health Center;

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

118 (d) prior to rendering services:

119 (i) the health care professional disclosed in writing to the patient, or if a minor, to the
120 patient's parent or legal guardian, that the health care professional is providing the services
121 without receiving remuneration or compensation; and

122 (ii) the patient consented in writing to waive any right to sue for professional
123 negligence except for acts or omissions that are grossly negligent or are willful and wanton.

124 [(5)] (6) Immunity from liability under this section does not extend to the use of
125 general anesthesia or care that requires an overnight stay in a general acute or specialty hospital
126 licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

127 (7) The provisions of Subsection (5) apply to treatment provided by a healthcare
128 professional on or after May 13, 2014.