

Katy Hall proposes the following substitute bill:

Medical Malpractice Modifications

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Katy Hall

Senate Sponsor: Scott D. Sandall

LONG TITLE

General Description:

This bill addresses malpractice actions against health care providers.

Highlighted Provisions:

This bill:

- defines terms;
- with respect to a medical malpractice action:
 - repeals requirements related to affidavits of merit;
 - prohibits prejudicing a defendant in an adjudication of a claimant's claims;
 - prohibits pursuing or collecting on a judgment against a health care provider's personal income or assets, with exceptions;
 - grants access to the court's Xchange database to the Division of Professional Licensing (division);
 - establishes data collection and reporting requirements for the division;
 - establishes an evidentiary standard for claims of future expenses related to life care plans;
 - amends procedure pertaining to prelitigation review panels and panel reviews;
 - makes a prelitigation review panel's recommendations or findings advisory; and
- makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-3-405, as last amended by Laws of Utah 2023, Chapter 330

78B-3-410, as last amended by Laws of Utah 2010, Chapter 97

- 30 **78B-3-416**, as last amended by Laws of Utah 2024, Chapter 366
- 31 **78B-3-418**, as last amended by Laws of Utah 2022, Chapter 212
- 32 **78B-3-423**, as last amended by Laws of Utah 2022, Chapter 212
- 33 **78B-3-424**, as enacted by Laws of Utah 2010, Chapter 97

ENACTS:

- 35 **78B-3-418.5**, Utah Code Annotated 1953
- 36 **78B-3-423.1**, Utah Code Annotated 1953

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

Section 1. Section **78B-3-405** is amended to read:

78B-3-405 . Amount of award reduced by amounts of collateral sources available to plaintiff -- No reduction where subrogation right exists -- Collateral sources defined -- Procedure to preserve subrogation rights -- Evidence admissible -- Exceptions.

(1) This section applies to malpractice actions against health care providers, as defined in Section 78B-3-403.

(2) In a trial, the factfinder or court may not prejudice a defendant by knowing or considering evidence of the claimant's alleged losses for past medical expenses or the cost of medical equipment before:

- (a) liability for the alleged losses has been established; and
- (b) any claim for or award of general or noneconomic damages, if any, for the alleged losses has been fully adjudicated or entered.

(3)(a) Subject to Subsection (3)(b), the court may add specific or economic damages to an award, if any, under Subsection (2)(b) based on amounts that the plaintiff paid, or that a third party insurer, whether public or private, paid to a medical provider.

(b) The court may not calculate an award of specific or economic damages based solely on amounts a medical provider indicates on a bill or invoice.

(4) If a plaintiff did not have insurance to pay medical expenses related to the injury at issue, the court shall award the amounts the plaintiff actually paid or owes for medical care resulting from the loss.

(5)(a) A plaintiff may not pursue, collect, or execute on a judgment against an individual health care provider's personal income or assets, unless the court finds that ~~the~~ :

- ~~(i) the~~ **(i)** provider's conduct was willful and malicious or intentionally fraudulent ~~the~~ ; or
- (ii)** the defendant provider failed to maintain an insurance policy with a policy

61b **limit of at least \$1,000,000.** ←H

62 (b) Prior to any award of damages to a plaintiff, a plaintiff may not make allegations that
 63 that court finds:

64 (i) are irrelevant to the adjudication of the claims at issue;

65 (ii) are made primarily to coerce or induce settlement in an individual defendant
 66 provider; and

67 (iii) pertain to a provider's personal income or assets.

68 [(1)] (6) [~~In all malpractice actions against health care providers as defined in Section~~
 69 ~~78B-3-403-~~] In actions in which damages are awarded to compensate the plaintiff for
 70 losses sustained, the court shall reduce the amount of the award by the total of all
 71 amounts paid to the plaintiff from all collateral sources which are available to him. No
 72 reduction may be made for collateral sources for which a subrogation right exists as
 73 provided in this section nor shall there be a reduction for any collateral payment not
 74 included in the award of damages.

75 [(2)] (7) Upon a finding of liability and an awarding of damages by the trier of fact, the
 76 court shall receive evidence concerning the total amounts of collateral sources which
 77 have been paid to or for the benefit of the plaintiff or are otherwise available to him.
 78 The court shall also take testimony of any amount which has been paid, contributed, or
 79 forfeited by, or on behalf of the plaintiff or members of his immediate family to secure
 80 his right to any collateral source benefit which he is receiving as a result of his injury,
 81 and shall offset any reduction in the award by those amounts. Evidence may not be
 82 received and a reduction may not be made with respect to future collateral source
 83 benefits except as specified in Subsection [(5)] (10).

84 [(3)] (8) For purposes of this section "collateral source" means payments made to or for the
 85 benefit of the plaintiff for:

86 (a) medical expenses and disability payments payable under the United States Social
 87 Security Act, any federal, state, or local income disability act, or any other public
 88 program, except the federal programs which are required by law to seek subrogation;

89 (b) any health, sickness, or income replacement insurance, automobile accident
 90 insurance that provides health benefits or income replacement coverage, and any
 91 other similar insurance benefits, except life insurance benefits available to the
 92 plaintiff, whether purchased by the plaintiff or provided by others;

93 (c) any contract or agreement of any person, group, organization, partnership, or
 94 corporation to provide, pay for, or reimburse the costs of hospital, medical, dental, or

95 other health care services, except benefits received as gifts, contributions, or
96 assistance made gratuitously; and

97 (d) any contractual or voluntary wage continuation plan provided by employers or any
98 other system intended to provide wages during a period of disability.

99 [(4)] (9) To preserve subrogation rights for amounts paid or received prior to settlement or
100 judgment, a provider of collateral sources shall, at least 30 days before settlement or trial
101 of the action, serve a written notice upon each health care provider against whom the
102 malpractice action has been asserted. The written notice shall state:

103 (a) the name and address of the provider of collateral sources;

104 (b) the amount of collateral sources paid;

105 (c) the names and addresses of all persons who received payment; and

106 (d) the items and purposes for which payment has been made.

107 [(5)] (10) Evidence is admissible of government programs that provide payments or benefits
108 available in the future to or for the benefit of the plaintiff to the extent available
109 irrespective of the recipient's ability to pay. Evidence of the likelihood or unlikelihood
110 that the programs, payments, or benefits will be available in the future is also
111 admissible. The trier of fact may consider the evidence in determining the amount of
112 damages awarded to a plaintiff for future expenses.

113 [(6)] (11) A provider of collateral sources is not entitled to recover any amount of benefits
114 from a health care provider, the plaintiff, or any other person or entity as reimbursement
115 for collateral source payments made prior to settlement or judgment, including any
116 payments made under Title 26B, Chapter 3, Part 10, Medical Benefits Recovery, except
117 to the extent that subrogation rights to amounts paid prior to settlement or judgment are
118 preserved as provided in this section.

119 [(7)] (12) All policies of insurance providing benefits affected by this section are construed
120 in accordance with this section.

121 Section 2. Section **78B-3-410** is amended to read:

122 **78B-3-410 . Limitation of award of noneconomic damages and economic damages**
123 **in malpractice actions.**

124 (1) [~~In a malpractice action against a health care provider, an injured plaintiff may recover~~
125 ~~noneconomic losses.] Subject to Subsection (3), an injured plaintiff in a malpractice
126 action against a health care provider may only recover noneconomic losses to
127 compensate for pain, suffering, and inconvenience. The amount of damages awarded
128 for noneconomic loss may not exceed:~~

- 129 (a) for a cause of action arising before July 1, 2001, \$250,000;
- 130 (b) for a cause of action arising on or after July 1, 2001 and before July 1, 2002, the
- 131 limitation is adjusted for inflation to \$400,000;
- 132 (c) for a cause of action arising on or after July 1, 2002, and before May 15, 2010 the
- 133 \$400,000 limitation described in Subsection (1)(b) shall be adjusted for inflation as
- 134 provided in Subsection (2); and
- 135 (d) for a cause of action arising on or after May 15, 2010, \$450,000.
- 136 (2)(a) Beginning July 1, 2002 and each July 1 thereafter until July 1, 2009, the limit for
- 137 damages under Subsection (1)(c) shall be adjusted for inflation by the [state treasurer]
- 138 Administrative Office of the Courts.
- 139 ~~[(b) By July 15 of each year until July 1, 2009, the state treasurer shall:]~~
- 140 ~~[(i) certify the inflation-adjusted limit calculated under this Subsection (2); and]~~
- 141 ~~[(ii) inform the Administrative Office of the Courts of the certified limit.]~~
- 142 ~~[(e)]~~ (b) The amount resulting from Subsection (2)(a) shall:
- 143 (i) be rounded to the nearest \$10,000; and
- 144 (ii) apply to a cause of action arising on or after the date the annual adjustment is
- 145 made.

146 ~~[(3) For any award of damages related to a life care plan, the court~~

146a ~~may award damages for~~

147 ~~future estimated costs only if the court finds the costs are supported by clear and~~

148 ~~convincing evidence.] ←~~

149 ~~[(3) → (4)]~~ (3) ← As used in this section, "inflation" means the seasonally adjusted

149a consumer price

150 index for all urban consumers as published by the Bureau of Labor Statistics of the

151 United States Department of Labor.

152 ~~[(4) → (5)]~~ (4) ← The limit under Subsection (1) does not apply to awards of

152a punitive damages.

153 Section 3. Section **78B-3-416** is amended to read:

154 **78B-3-416 . Division to provide review panel -- Exemption -- Procedures --**

155 **Statute of limitations tolled -- Composition of panel -- Expenses -- Division authorized to**

156 **set license fees.**

157 (1)(a) The division shall provide a [hearing panel in alleged medical liability cases

158 against health care providers as defined in Section 78B-3-403,] prelitigation review

159 panel to conduct a panel review in accordance with this part, in all malpractice

- 160 actions against a health care provider, except dentists or dental care providers.
- 161 (b)(i) The division shall establish procedures for ~~[prelitigation consideration of~~
 162 ~~medical liability claims for damages arising out of the provision of or alleged~~
 163 ~~failure to provide health care]~~ panel reviews.
- 164 (ii) The division may establish rules necessary to administer the process and
 165 procedures related to ~~[prelitigation hearings]~~ a panel review and the conduct of [
 166 ~~prelitigation hearings]~~ a member of a prelitigation review panel or participant in a
 167 panel review in accordance with Sections 78B-3-416 through 78B-3-420.
- 168 (c) ~~[The proceedings are]~~ A panel review is informal, nonbinding, and ~~[are-]~~not subject
 169 to Title 63G, Chapter 4, Administrative Procedures Act, but ~~[are]~~ is compulsory as a
 170 condition precedent to commencing litigation.
- 171 (d) ~~[Proceedings-]~~ A panel review that is conducted under authority of this section ~~[are]~~ is
 172 confidential, privileged, and immune from civil process.
- 173 (e) The division may not provide more than one ~~[hearing panel]~~ review panel for each
 174 alleged ~~[medical liability case against a health care provider]~~ malpractice action
 175 against a health care provider.
- 176 (2)(a) The party initiating a ~~[medical liability action]~~ malpractice action against a health
 177 care provider shall file a request for a prelitigation panel review with the division
 178 within 60 days after the service of a statutory notice of intent to commence action
 179 under Section 78B-3-412.
- 180 (b) The request shall include a copy of the notice of intent to commence action~~[-The~~
 181 ~~request shall be mailed to]~~ and the claimant shall mail the request and notice of intent
 182 to all health care providers named in the notice and request.
- 183 (3)(a) As used in this Subsection (3):
- 184 (i) "Court-appointed therapist" means a mental health therapist ordered by a court to
 185 provide psychotherapeutic treatment to an individual, a couple, or a family in a
 186 domestic case.
- 187 (ii) "Domestic case" means a proceeding under:
- 188 (A) ~~[Title 78B,]~~Chapter 7, Protective Orders and Stalking Injunctions;
- 189 (B) ~~[Title 78B,]~~Chapter 13, Utah Uniform Child Custody Jurisdiction and
 190 Enforcement Act;
- 191 (C) ~~[Title 78B,]~~Chapter 15, Utah Uniform Parentage Act;
- 192 (D) Title 81, Chapter 4, Dissolution of Marriage; or
- 193 (E) Title 81, Chapter 9, Custody, Parent-time, and Visitation.

- 194 (iii) "Mental health therapist" means the same as that term is defined in Section
 195 58-60-102.
- 196 (b) If a court appoints a court-appointed therapist in a domestic case, a party to the
 197 domestic case may not file a request for a prelitigation panel review for a malpractice
 198 action against the court-appointed therapist during the pendency of the domestic case,
 199 unless:
- 200 (i) the party has requested that the court release the court-appointed therapist from the
 201 appointment; and
- 202 (ii) the court finds good cause to release the court-appointed therapist from the
 203 appointment.
- 204 (c) If a party is prohibited from filing a request for a [~~prelitigation~~] panel review under
 205 Subsection (3)(b), the applicable statute of limitations tolls until the earlier of:
- 206 (i) the court releasing the court-appointed therapist from the appointment as
 207 described in Subsection (3)(b); or
- 208 (ii) the court entering a final order in the domestic case.
- 209 (4)(a) The filing of a request for a prelitigation panel review under this section tolls the
 210 applicable statute of limitations until the later of:
- 211 (i) 60 days following the division's issuance of:
- 212 (A) an opinion by the [~~prelitigation~~] review panel; or
- 213 (B) a certificate of compliance under Section 78B-3-418; or
- 214 (ii) the expiration of the time for holding a [~~hearing~~] panel review under Subsection
 215 (4)(b)(ii).
- 216 (b) The division shall:
- 217 (i) send any opinion issued by the panel to all parties by regular mail; and
- 218 (ii) complete a [~~prelitigation-hearing~~] panel review under this section within:
- 219 (A) 180 days after the filing of the request for prelitigation panel review; or
- 220 (B) any longer period as agreed upon in writing by all parties to the review.
- 221 [~~(e) If the prelitigation hearing has not been completed within the time limits established~~
 222 ~~in Subsection (4)(b)(ii), the claimant shall:]~~
- 223 [~~(i) file an affidavit of merit under the provisions of Section 78B-3-423; or]~~
- 224 [~~(ii) file an affidavit with the division within 180 days of the request for pre-litigation~~
 225 ~~review, in accordance with Subsection (4)(d), alleging that the respondent has~~
 226 ~~failed to reasonably cooperate in scheduling the hearing.]~~
- 227 (c) If a panel review does not occur within the time limits under Subsection (4)(b)(ii),

- 228 the claimant or respondent may, no later than 180 days after the day on which the
 229 request for a panel review was filed under Subsection (2), file with the division an
 230 affidavit alleging with supporting attachments, if any:
- 231 (i) that the claimant or respondent failed to reasonably cooperate in scheduling the
 232 panel review; or
- 233 (ii) any other reason that the panel review did not occur within the time limits under
 234 Subsection (4)(b)(ii).
- 235 (d) If the [~~claimant~~] claimant or [-] respondent files an affidavit under Subsection [~~(4)(e)(ii)~~] (4)(c):
- 236 (i) within 15 days of the filing of the affidavit~~[under Subsection (4)(e)(ii)]~~, the
 237 division shall [~~determine whether either the respondent or the claimant failed to~~
 238 ~~reasonably cooperate in the scheduling of a pre-litigation hearing; and~~] conclude,
 239 based solely on the affidavit and any supporting attachments, whether the claimant
 240 or respondent failed to reasonably cooperate in the scheduling of the panel review;
 241 and
- 242 (ii)(A) if the [~~determination is~~] division finds that the [~~respondent failed to~~
 243 ~~reasonably cooperate in the scheduling of a hearing, and the]~~claimant or
 244 respondent did not fail to reasonably cooperate, the division shall[-] issue a
 245 certificate of compliance for the claimant in accordance with [~~Section~~
 246 ~~78B-3-418~~] Subsection 78B-3-418(3)(b), stating the division's determination
 247 and the facts upon which the determination is based; or
- 248 (B) if the division makes a determination other than the determination in
 249 Subsection (4)(d)(ii)(A), [~~the claimant shall file an affidavit of merit in~~
 250 ~~accordance with Section 78B-3-423, within 30 days of the determination of the~~
 251 ~~division under this Subsection (4)]~~ the division shall, subject to Subsection (4)(f),
 252 issue a certificate of compliance for the claimant, in accordance with
 253 Subsection 78B-3-418(3)(b), stating the division's determination and the facts
 254 upon which the determination is based.
- 255 (e)(i) The claimant and any respondent may agree by written stipulation [~~that no~~
 256 ~~useful purpose would be served by convening a prelitigation panel]~~ to waive the
 257 requirement to convene a panel review under this section.
- 258 (ii) When the stipulation is filed with the division, the division shall within 10 days
 259 after receipt issue a certificate of compliance under [~~Section 78B-3-418~~]
 260 Subsection 78B-3-418(3)(c), as it concerns the stipulating respondent, and stating
 261

262 that the claimant has [~~complied with all conditions precedent to the~~
263 ~~commencement of litigation regarding the claim~~] satisfied, by stipulation, the
264 condition precedent under Subsection (1)(c) to commencing litigation.

265 (f) The division may not issue a certificate of compliance if the division finds under
266 Subsection (4)(d)(ii)(B) that the claimant failed to reasonably cooperate in the
267 scheduling of the panel review.

268 (5) The division shall provide for and appoint an appropriate panel [~~or panels to hear~~] to
269 consider complaints of medical liability and damages, made by or on behalf of any
270 patient who is an alleged victim of [~~medical liability.~~] malpractice. The panels are
271 composed of:

272 (a) one member who is a resident lawyer currently licensed and in good standing to
273 practice law in this state and who shall serve as chairman of the panel, who is
274 appointed by the division from among qualified individuals who have registered with
275 the division indicating a willingness to serve as panel members, and a willingness to
276 comply with the rules of professional conduct governing lawyers in the state, and
277 who has completed division training regarding conduct of [~~panel hearings~~] panel
278 reviews;

279 (b)(i) one or more members who are licensed health care providers listed under
280 Section 78B-3-403, who are practicing and knowledgeable in the same specialty
281 as the proposed [~~defendant~~] respondent, and who are appointed by the division in
282 accordance with Subsection (6); or

283 (ii) in claims against only a health care facility or the facility's employees, one
284 member who is an individual currently serving in a health care facility
285 administration position directly related to health care facility operations or
286 conduct that includes responsibility for the area of practice that is the subject of
287 the liability claim, and who is appointed by the division; and

288 (c) a lay panelist who is not a lawyer, doctor, hospital employee, or other health care
289 provider, and who is a responsible citizen of the state, selected and appointed by the
290 division from among individuals who have completed division training with respect
291 to panel [~~hearings~~] reviews.

292 (6)(a) Each person listed as a health care provider in Section 78B-3-403 and practicing
293 under a license issued by the state, is obligated as a condition of holding that license
294 to participate as a member of a [~~medical liability prelitigation panel~~] prelitigation
295 review panel at reasonable times, places, and intervals, upon issuance, with advance

- 296 notice given in a reasonable time frame, by the division of an Order to Participate as
297 a Medical Liability Prelitigation Panel Member.
- 298 (b) A licensee may be excused from appearance and participation as a panel member
299 upon the division finding participation by the licensee will create an unreasonable
300 burden or hardship upon the licensee.
- 301 (c) A licensee [~~whom~~] who the division finds failed to appear and participate as a panel
302 member when so ordered, without adequate explanation or justification and without
303 being excused for cause by the division, may be assessed an administrative fine not to
304 exceed \$5,000.
- 305 (d) A licensee [~~whom~~] who the division finds intentionally or repeatedly failed to appear
306 and participate as a panel member when so ordered, without adequate explanation or
307 justification and without being excused for cause by the division, may be assessed an
308 administrative fine not to exceed \$5,000, and is guilty of unprofessional conduct.
- 309 (e) All fines collected under Subsections (6)(c) and (d) shall be deposited into the
310 Physicians Education Fund created in Section 58-67a-1.
- 311 (f) The director of the division may collect a fine that is not paid by:
312 (i) referring the matter to a collection agency; or
313 (ii) bringing an action in the district court of the county where the person against
314 whom the penalty is imposed resides or in the county where the office of the
315 director is located.
- 316 (g) A county attorney or the attorney general of the state shall provide legal assistance
317 and advice to the director in an action to collect a fine.
- 318 (h) A court shall award reasonable attorney fees and costs to the prevailing party in an
319 action brought by the division to collect a fine.
- 320 (7) Each person selected as a panel member shall certify, under oath, that [~~he~~] the member
321 has no bias or conflict of interest with respect to any matter under consideration.
- 322 (8) A member of [~~the prelitigation hearing~~] a prelitigation review panel may not receive
323 compensation or benefits for the member's service, but may receive per diem and travel
324 expenses in accordance with:
325 (a) Section 63A-3-106;
326 (b) Section 63A-3-107; and
327 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
328 63A-3-107.
- 329 (9)(a) In addition to the actual cost of administering the licensure of health care

330 providers, the division may set license fees of health care providers within the limits
 331 established by law equal to their proportionate costs of administering prelitigation
 332 panels.

333 (b) The claimant bears none of the costs of administering the prelitigation panel except
 334 under Section 78B-3-420.

335 Section 4. Section **78B-3-418** is amended to read:

336 **78B-3-418 . Opinion and recommendations of panel.**

337 (1)(a) The prelitigation review panel shall issue an opinion and the division shall issue a
 338 certificate of compliance with the [~~pre-litigation hearing~~] prelitigation requirements of
 339 this part in accordance with this section.

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

344 (2)(a) The panel shall render [~~its~~] an opinion in writing not later than 30 days after the [~~end of the proceedings~~]
 345 day on which the panel review concludes, and determine on
 346 the basis of the evidence whether:

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

348 (ii) if a claim is [~~meritorious, whether~~] deemed meritorious under Subsection
 349 (2)(a)(i), the conduct complained of resulted in harm to the claimant.

350 (b) There is no judicial or other review or appeal of the panel's [~~decision or~~
 351 ~~recommendations~~] opinion under Subsection (2)(a).

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

354 (a) for a named respondent, the panel issues an opinion [~~of merit~~] under [~~Subsections~~
 355 ~~(2)(a)(i) and (ii)~~] Subsection (2)(a);

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

359 [(~~e~~)] (b) the claimant has complied with the provisions of Subsections 78B-3-416(4)(c)
 360 and (d); or

361 [(~~d~~)] (c) the parties submitted a stipulation under Subsection 78B-3-416(4)(e).

362 Section 5. Section **78B-3-418.5** is enacted to read:

363 **78B-3-418.5 . Attorney fees.**

- 364 (1) The court may award attorney fees and costs to a respondent provider if:
 365 (a)(i) a prelitigation review panel renders an opinion under Subsection
 366 78B-3-418(2)(a) that a claimant's claim or cause of action has no merit; or
 367 (ii) the court finds that the claimant did not receive a certificate of compliance
 368 because the plaintiff failed to reasonably cooperate in the scheduling of the
 369 prelitigation panel review under 78B-3-416(4)(f);
 370 (b) the claimant proceeds to litigate the malpractice action against a health care provider
 371 without obtaining an affidavit of merit under Section 78B-3-423; and
 372 (c) the court finds that the claimant did not substantially prevail on the merits of all
 373 claims.
- 374 (2) A claimant in a malpractice action against a health care provider, or the claimant's
 375 attorney, is liable to any respondent for the reasonable attorney fees and costs incurred
 376 by the respondent, or by the respondent's insurer, in connection with any filing,
 377 submission, panel review, arbitration, or judicial proceeding under this part for which a
 378 claimant files or submits an affidavit containing an allegation that the court or arbitrator
 379 finds that the claimant knew, or should have known, to be baseless or false at the time
 380 the affidavit was signed, filed, or submitted.
- 381 (3) A court, or an arbitrator under Section 78B-3-421, may award reasonable attorney fees
 382 or costs under Subsection (1) only if the respondent files a motion for the attorney fees
 383 or costs no later than 60 days after the day on which the court's or arbitrator's final
 384 decision, judgment, or dismissal of all claims in the action is entered.

385 Section 6. Section **78B-3-423** is amended to read:

386 **78B-3-423 . Affidavit of merit.**

- 387 [~~(1)(a) For a cause of action that arises on or after July 1, 2010, before a claimant may~~
 388 ~~receive a certificate of compliance under Sections 78B-3-416 and 78B-3-418, a~~
 389 ~~claimant shall file an affidavit of merit under this section.]~~
- 390 [~~(b)~~] (1)(a) [The claimant shall file an affidavit of merit] A claimant who elects to file an
 391 affidavit of merit shall file the affidavit of merit:
- 392 (i) within 60 days after the day on which the pre-litigation panel issues an opinion, if
 393 the claimant receives a finding from the pre-litigation panel in accordance with
 394 Section 78B-3-418 of non-meritorious for either:
- 395 (A) the claim of breach of applicable standard of care; or
 396 (B) that the breach of care was the proximate cause of injury;
- 397 (ii) within 60 days after the day on which the time limit in Subsection

398 78B-3-416(4)(b)(ii) expires, if a pre-litigation hearing is not held within the time
399 limits under Subsection 78B-3-416(4)(b)(ii); or

400 (iii) within 30 days after the day on which the division makes a determination under
401 Subsection 78B-3-416(4)(d)(ii)(B), if the division makes a determination under
402 Subsection 78B-3-416(4)(d)(ii)(B).

403 ~~[(e)]~~ (b) A claimant who is ~~[required]~~ elects to file an affidavit of merit under Subsection
404 (1)(a) shall:

405 (i) file the affidavit of merit with the division; and

406 (ii) serve each defendant with the affidavit of merit in accordance with Subsection
407 78B-3-412(3).

408 (2)(a) A claimant may proceed to litigate and pursue a judicial remedy regardless of
409 whether:

410 (i) the claimant has obtained or filed an affidavit of merit under this section;

411 (ii) a review panel deemed the claimant's claims to have merit; or

412 (iii) the claimant participated in a review panel.

413 ~~[(2)]~~ (3) The affidavit of merit shall:

414 (a) be executed by the claimant's attorney or the claimant if the claimant is proceeding
415 pro se, stating that the affiant has consulted with and reviewed the facts of the case
416 with a health care provider who has determined after a review of the medical record
417 and other relevant material involved in the particular action that there is a reasonable
418 and meritorious cause for the filing of a medical liability action; and

419 (b) include an affidavit signed by a health care provider who meets the requirements of
420 Subsection ~~[(4)]~~ (5):

421 (i) stating that in the health care provider's opinion, there are reasonable grounds to
422 believe that the applicable standard of care was breached;

423 (ii) stating that in the health care provider's opinion, the breach was a proximate
424 cause of the injury claimed in the notice of intent to commence action; and

425 (iii) stating the reasons for the health care provider's opinion.

426 ~~[(3)]~~ (4) The statement required in Subsection ~~[(2)(b)(i)]~~ (3)(b)(i) shall be waived if the
427 claimant received an opinion that there was a breach of the applicable standard of care
428 under Subsection 78B-3-418(2)(a)(i).

429 ~~[(4)]~~ (5) A health care provider who signs an affidavit under Subsection ~~[(2)(b)]~~ (3)(b) shall:

430 (a) if none of the respondents is a physician or an osteopathic physician, hold a current
431 unrestricted license issued by the appropriate licensing authority of Utah or another

- 432 state in the same specialty or of the same class of license as the respondents; or
- 433 (b) if at least one of the respondents is a physician or an osteopathic physician, hold a
- 434 current unrestricted license issued by the appropriate licensing authority of Utah or
- 435 another state to practice medicine in all its branches.
- 436 ~~[(5)]~~ (6) A claimant's attorney or claimant may obtain up to a 60-day extension to file the
- 437 affidavit of merit if:
- 438 (a) the claimant or the claimant's attorney submits a signed affidavit for extension with
- 439 notice to the division attesting to the fact that the claimant is unable to submit an
- 440 affidavit of merit as required by this section because:
- 441 (i) a statute of limitations would impair the action; and
- 442 (ii) the affidavit of merit could not be obtained before the expiration of the statute of
- 443 limitations; and
- 444 (b) the claimant or claimant's attorney submits the affidavit for extension to each named
- 445 respondent in accordance with Subsection 78B-3-412(3) no later than 60 days after
- 446 the date specified in Subsection ~~[(1)(b)(i)]~~ (1)(a)(i).
- 447 ~~[(6)]~~ (7)(a) A claimant or claimant's attorney who submits allegations in an affidavit of
- 448 merit that are found to be without reasonable cause and untrue, based on information
- 449 available to the plaintiff at the time the affidavit was submitted to the division, is
- 450 liable to the defendant for the payment of reasonable expenses and reasonable
- 451 attorney fees actually incurred by the defendant or the defendant's insurer.
- 452 (b) An affidavit of merit is not admissible, and cannot be used for any purpose, in a
- 453 subsequent lawsuit based on the claim that is the subject of the affidavit, except for
- 454 the purpose of establishing the right to recovery under Subsection ~~[(6)(e)]~~ (7)(c).
- 455 (c) A court, or arbitrator under Section 78B-3-421, may award costs and attorney fees
- 456 under Subsection ~~[(6)(a)]~~ (7)(a) if the defendant files a motion for costs and attorney
- 457 fees within 60 days of the judgment or dismissal of the action in favor of the
- 458 defendant. The person making a motion for attorney fees and costs may depose and
- 459 examine the health care provider who prepared the affidavit of merit under
- 460 Subsection ~~[(2)(b)]~~ (3)(b).
- 461 ~~[(7)]~~ (8) If a claimant or the claimant's attorney does not file an affidavit of merit as required
- 462 by this section, the division may not issue a certificate of compliance for the claimant
- 463 and the malpractice action shall be dismissed by the court.
- 464 ~~[(8)]~~ (9) For each request for prelitigation panel review under Subsection ~~[78B-3-416(2)(b)]~~
- 465 78B-3-416(2), the division shall compile the following information:

- 466 (a) whether the cause of action arose on or after July 1, 2010;
- 467 (b) the number of respondents named in the request; and
- 468 (c) for each respondent named in the request:
- 469 (i) the respondent's license class;
- 470 (ii) if the respondent has a professional specialty, the respondent's professional
- 471 specialty;
- 472 (iii) if the division does not issue a certificate of compliance at the conclusion of the
- 473 prelitigation process, the reason a certificate was not issued;
- 474 (iv) if the division issues a certificate of compliance, the reason the certificate of
- 475 compliance was issued;
- 476 (v) if an affidavit of merit was filed by the claimant, for each health care provider
- 477 who submitted an affidavit under Subsection [~~(2)(b)~~] (3)(b):
- 478 (A) the health care provider's license class and professional specialty; and
- 479 (B) whether the health care provider meets the requirements of Subsection
- 480 78B-3-416(5)(b); and
- 481 (vi) whether the claimant filed an action in court against the respondent.

482 [~~(9)~~] (10) The division may require the following persons to submit the information to the

483 division necessary for the division to comply with Subsection [~~(8)~~] (9):

- 484 (a) a claimant;
- 485 (b) a respondent;
- 486 (c) a health care provider who submits an affidavit under Subsection [~~(2)(b)~~] (3)(b); and
- 487 (d) a medical liability pre-litigation panel.

488 Section 7. Section **78B-3-423.1** is enacted to read:

489 **78B-3-423.1 . Division collection of panel review data.**

490 (1) The division shall:

- 491 (a) compile a written report summarizing the division's administration of panel reviews,
- 492 including at least the information described in Subsection (2);
- 493 (b) in compiling the written report under Subsection (1)(a), review information obtained
- 494 from the court's Xchange database, made available to the division without cost by the
- 495 Administrative Office of the Courts; and
- 496 (c) provide the written report under Subsection (1)(a) to the Judiciary Interim Committee
- 497 no later than November 1 of each year.

498 (2) The report under Subsection (1) shall detail, for the period beginning on the day after

499 the day through which the last report covered, and ending on the day through which data

- 500 is available:
- 501 (a) the number of panel reviews the division convened, by respective license class;
- 502 (b) the number of cases for which a claimant filed a complaint in court;
- 503 (c) the number of cases in which a provider and claimant agreed to forgo a panel review;
- 504 (d) the number of cases in which a provider and claimant agreed to use a panel review as
- 505 binding arbitration;
- 506 (e) for each panel review the division convened, the prelitigation review panel's
- 507 determinations regarding merit under Subsection 78B-3-418(2)(a);
- 508 (f) the number of cases that were settled after a panel review and:
- 509 (i) before a complaint alleging a malpractice action against a health care provider in
- 510 court is filed; and
- 511 (ii) after a complaint alleging a malpractice action against a health care provider in
- 512 court is filed; and
- 513 (g) for cases alleging a malpractice action against a health care provider that were
- 514 resolved, including by adjudication or stipulated settlement:
- 515 (i) the amount of damages sought as compared to the amount of damages awarded or
- 516 otherwise obtained, if known, including by category of:
- 517 (A) general or non-economic damages;
- 518 (B) specific, special, or economic damages; and
- 519 (C) punitive damages; and
- 520 (ii) the number of cases that were dismissed with prejudice and without an award of
- 521 damages or any other economic relief to the claimant.

522 Section 8. Section **78B-3-424** is amended to read:

523 **78B-3-424 . Limitation of liability for ostensible agent.**

- 524 (1) For purposes of this section:
- 525 (a) "Agent" means a person who is an "employee," "worker," or "operative," as defined
- 526 in Section 34A-2-104, of a health care provider.
- 527 (b) "Ostensible agent" means a person:
- 528 (i) who is not an agent of the health care provider; and
- 529 (ii) who the plaintiff reasonably believes is an agent of the health care provider
- 530 because the health care provider intentionally, or as a result of a lack of ordinary
- 531 care, caused the plaintiff to believe that the person was an agent of the health care
- 532 provider.
- 533 (2) A health care provider named as a defendant in a medical malpractice action is not

- 534 liable for the acts or omissions of an ostensible agent if:
- 535 (a) the ostensible agent has privileges with the health care provider, but is not an agent
- 536 of the health care provider;
- 537 (b) the health care provider has, by policy or practice, ensured that a person providing
- 538 professional services has insurance of a type and amount required, if any is required,
- 539 by the rules or regulations as established in:
- 540 (i) medical staff by-laws for a health care facility; or
- 541 (ii) other health care facility contracts, indemnification agreements, rules or
- 542 regulations;
- 543 (c) the insurance required in Subsection (2)(b) is in effect at the time of the alleged act or
- 544 omission of the ostensible agent; and
- 545 (d) there is a claim of agency or ostensible agency in a plaintiff's notice of intent to
- 546 commence an action, and the health care provider, within 60 days of the service of
- 547 the notice of intent to commence an action, lists each person identified by the
- 548 plaintiff who the provider claims is not an agent or ostensible agent of the provider.
- 549 (3)(a) An insurance policy, if any, covering claims of malpractice against an individual
- 550 provider shall have the first obligation to cover any covered claims in the malpractice
- 551 action.
- 552 (b) Only after the covered claims have been paid or satisfied under the individual
- 553 provider's insurance policy pursuant to Subsection (3)(a) may a claimant or other
- 554 entitled party to seek coverage and payment for damages under an insurance policy,
- 555 if any, of the individual provider's employer.
- 556 [~~3~~] (4) This section applies to a cause of action that arises on or after July 1, 2010.

557 Section 9. **Effective Date.**

558 This bill takes effect on May 7, 2025.