HB0503S02 compared with HB0503S01

~~{Omitted text}~~ shows text that was in HB0503S01 but was omitted in HB0503S02
inserted text shows text that was not in HB0503S01 but was inserted into HB0503S02

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.

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 {~~claimaint's~~} 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;**~~}

HB0503S01

- 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

AMENDS:

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

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

78B-3-416 , as last amended by Laws of Utah 2024, Chapter 366 , as last amended by Laws of Utah 2024, Chapter 366

78B-3-418 , as last amended by Laws of Utah 2022, Chapter 212 , as last amended by Laws of Utah 2022, Chapter 212

78B-3-423 , as last amended by Laws of Utah 2022, Chapter 212 , as last amended by Laws of Utah 2022, Chapter 212

~~{78B-3-424 , as enacted by Laws of Utah 2010, Chapter 97 , as enacted by Laws of Utah 2010, Chapter 97}~~

ENACTS:

78B-3-405.5 , Utah Code Annotated 1953 , Utah Code Annotated 1953

78B-3-418.5 , Utah Code Annotated 1953 , Utah Code Annotated 1953

78B-3-423.1 , Utah Code Annotated 1953 , 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 Ĥ→ : ←Ĥ

Ĥ→ **(i)** ←Ĥ the provider's conduct was willful and malicious or intentionally fraudulent Ĥ→ ; or[.]

(ii) the defendant provider failed to maintain an insurnce policy with a policy limit of at least $1,000,000. ←Ĥ

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

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

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

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

[~~(1)~~] (6) [~~In all malpractice actions against health care providers as defined in Section 78B-3-403~~] In actions in which damages are awarded to compensate the plaintiff for losses sustained, the court shall reduce the amount of the award by the total of all amounts paid to the plaintiff from all collateral sources which are available to him. No reduction may be made for collateral sources for

which a subrogation right exists as provided in this section nor shall there be a reduction for any collateral payment not included in the award of damages.

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

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

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

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

(c) any contract or agreement of any person, group, organization, partnership, or corporation to provide, pay for, or reimburse the costs of hospital, medical, dental, or other health care services, except benefits received as gifts, contributions, or assistance made gratuitously; and

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

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

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

(b) the amount of collateral sources paid;

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

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

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

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

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

Section 1. Section **1** is enacted to read:

78B-3-405.5. Economic damages -- Judgments against personal assets.

(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 noneconomic damages, if any, for the alleged losses has been fully adjudicated or entered.

(3)

(a) Subject to Subsection (3)(b):

(i) the court may add economic damages to an award, if any, under Subsection (2)(b) based on amounts that the plaintiff or a third party insurer, whether public or private, actually paid for medical expenses related to the injury at issue; and

(ii) if a plaintiff did not have insurance to pay medical expenses related to the injury at issue, the court may award economic damages for amounts the plaintiff actually paid or owes for medical care resulting from the loss.

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

(4) 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:

(a) the provider's conduct was willful and malicious or intentionally fraudulent; or

(b) the defendant provider failed to maintain an insurance policy with a policy limit of at least $1,000,000.

(5) Prior to any award of damages to a plaintiff, a plaintiff may not make allegations that the court finds:

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

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

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

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

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

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

(a) for a cause of action arising before July 1, 2001, $250,000;

(b) for a cause of action arising on or after July 1, 2001 and before July 1, 2002, the limitation is adjusted for inflation to $400,000;

(c) for a cause of action arising on or after July 1, 2002, and before May 15, 2010 the $400,000 limitation described in Subsection (1)(b) shall be adjusted for inflation as provided in Subsection (2); and

(d) for a cause of action arising on or after May 15, 2010, $450,000.

(2)

(a) Beginning July 1, 2002 and each July 1 thereafter until July 1, 2009, the limit for damages under Subsection (1)(c) shall be adjusted for inflation by the [~~state treasurer~~] Administrative Office of the Courts.

[~~(b) By July 15 of each year until July 1, 2009, the state treasurer shall:~~]

[~~(i) certify the inflation-adjusted limit calculated under this Subsection (2); and~~]

[~~(ii) inform the Administrative Office of the Courts of the certified limit.~~]

[~~(c)~~] (b) The amount resulting from Subsection (2)(a) shall:

(i) be rounded to the nearest $10,000; and

(ii) apply to a cause of action arising on or after the date the annual adjustment is made.

{ Ĥ→ {} {[} ~~(3) For any award of damages related to a life care plan, the court may award damages for future estimated costs only if the court finds the costs are supported by clear and convincing evidence.~~{]} {} { ←Ĥ }

{[~~(3)~~ Ĥ→ ~~(4)~~] ~~(3)~~ ←Ĥ } As used in this section, "inflation" means the seasonally adjusted consumer price index for all urban consumers as published by the Bureau of Labor Statistics of the United States Department of Labor.

{[(4){ Ĥ→ } {} ~~(5)~~ {]} ~~{(4)}~~{} ←Ĥ } The limit under Subsection (1) does not apply to awards of punitive damages.

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

78B-3-416. Division to provide review panel -- Exemption -- Procedures -- Statute of limitations tolled -- Composition of panel -- Expenses -- Division authorized to set license fees.

(1)

(a) The division shall provide a [~~hearing panel in alleged medical liability cases against health care providers as defined in Section 78B-3-403, ~~] prelitigation review panel to conduct a panel review in accordance with this part, in all malpractice actions against a health care provider, except dentists or dental care providers.

(b)

(i) The division shall establish procedures for [~~prelitigation consideration of medical liability claims for damages arising out of the provision of or alleged failure to provide health care~~] panel reviews.

(ii) The division may establish rules necessary to administer the process and procedures related to [~~prelitigation hearings~~] a panel review and the conduct of [~~prelitigation hearings~~] a member of a prelitigation review panel or participant in a panel review in accordance with Sections 78B-3-416 through 78B-3-420.

(c) [~~The proceedings are~~] A panel review is informal, nonbinding, and [~~are~~]not subject to Title 63G, Chapter 4, Administrative Procedures Act, but [~~are~~] is compulsory as a condition precedent to commencing litigation.

(d) [~~Proceedings~~] A panel review that is conducted under authority of this section [~~are~~] is confidential, privileged, and immune from civil process.

(e) The division may not provide more than one [~~hearing panel~~] review panel for each alleged [~~medical liability case against a health care provider~~] malpractice action against a health care provider.

(2)

(a) The party initiating a [~~medical liability action~~] malpractice action against a health care provider shall file a request for a prelitigation panel review with the division within 60 days after the service of a statutory notice of intent to commence action under Section 78B-3-412.

(b) The request shall include a copy of the notice of intent to commence action[~~. The request shall be mailed to~~] and the claimant shall mail the request and notice of intent to all health care providers named in the notice and request.

(3)

(a) As used in this Subsection (3):

(i) "Court-appointed therapist" means a mental health therapist ordered by a court to provide psychotherapeutic treatment to an individual, a couple, or a family in a domestic case.

(ii) "Domestic case" means a proceeding under:

(A) [~~Title 78B, ~~]Chapter 7, Protective Orders and Stalking Injunctions;

(B) [~~Title 78B, ~~]Chapter 13, Utah Uniform Child Custody Jurisdiction and Enforcement Act;

(C) [~~Title 78B, ~~]Chapter 15, Utah Uniform Parentage Act;

(D) Title 81, Chapter 4, Dissolution of Marriage; or

(E) Title 81, Chapter 9, Custody, Parent-time, and Visitation.

(iii) "Mental health therapist" means the same as that term is defined in Section 58-60-102.

(b) If a court appoints a court-appointed therapist in a domestic case, a party to the domestic case may not file a request for a prelitigation panel review for a malpractice action against the court-appointed therapist during the pendency of the domestic case, unless:

(i) the party has requested that the court release the court-appointed therapist from the appointment; and

(ii) the court finds good cause to release the court-appointed therapist from the appointment.

(c) If a party is prohibited from filing a request for a [~~prelitigation ~~]panel review under Subsection (3)(b), the applicable statute of limitations tolls until the earlier of:

(i) the court releasing the court-appointed therapist from the appointment as described in Subsection (3)(b); or

(ii) the court entering a final order in the domestic case.

(4)

(a) The filing of a request for a prelitigation panel review under this section tolls the applicable statute of limitations until the later of:

(i) 60 days following the division's issuance of:

(A) an opinion by the [~~prelitigation~~] review panel; or

(B) a certificate of compliance under Section 78B-3-418; or

(ii) the expiration of the time for holding a [~~hearing~~] panel review under Subsection (4)(b)(ii).

(b) The division shall:

(i) send any opinion issued by the panel to all parties by regular mail; and

(ii) complete a [~~prelitigation hearing~~] panel review under this section within:

(A) 180 days after the filing of the request for prelitigation panel review; or

(B) any longer period as agreed upon in writing by all parties to the review.

[~~(c) If the prelitigation hearing has not been completed within the time limits established in Subsection (4)(b)(ii), the claimant shall:~~]

[~~(i) file an affidavit of merit under the provisions of Section 78B-3-423; or~~]

[~~(ii) file an affidavit with the division within 180 days of the request for pre-litigation review, in accordance with Subsection (4)(d), alleging that the respondent has failed to reasonably cooperate in scheduling the hearing.~~]

(c) If a panel review does not occur within the time limits under Subsection (4)(b)(ii), the claimant or respondent may, no later than 180 days after the day on which the request for a panel review was filed under Subsection (2), file with the division an affidavit alleging with supporting attachments, if any:

(i) that the claimant or respondent failed to reasonably cooperate in scheduling the panel review; or

(ii) any other reason that the panel review did not occur within the time limits under Subsection (4)(b)(ii).

(d) If the [~~claimant~~] claimant or [~~-~~] respondent files an affidavit under Subsection [~~(4)(c)(ii)~~] (4)(c):

(i) within 15 days of the filing of the affidavit[~~- under Subsection (4)(c)(ii)~~], the division shall [~~determine whether either the respondent or the claimant failed to reasonably cooperate in the scheduling of a pre-litigation hearing; and~~] conclude, based solely on the affidavit and any supporting attachments,

whether the claimant or respondent failed to reasonably cooperate in the scheduling of the panel review; and

(ii)

(A) if the [~~determination is~~] division finds that the [~~respondent failed to reasonably cooperate in the scheduling of a hearing, and the~~]claimant or respondent did not fail to reasonably cooperate, the division shall[~~,~~] issue a certificate of compliance for the claimant in accordance with [~~Section 78B-3-418~~] Subsection 78B-3-418(3)(b), stating the division's determination and the facts upon which the determination is based; or

(B) if the division makes a determination other than the determination in Subsection (4)(d)(ii)(A), [~~the claimant shall file an affidavit of merit in accordance with Section 78B-3-423, within 30 days of the determination of the division under this Subsection (4)~~] the division shall, subject to Subsection (4)(f), issue a certificate of compliance for the claimant, in accordance with Subsection 78B-3-418(3)(b), stating the division's determination and the facts upon which the determination is based.

(e)

(i) The claimant and any respondent may agree by written stipulation [~~that no useful purpose would be served by convening a prelitigation panel~~] to waive the requirement to convene a panel review under this section.

(ii) When the stipulation is filed with the division, the division shall within 10 days after receipt issue a certificate of compliance under [~~Section 78B-3-418~~] Subsection 78B-3-418(3)(c), as it concerns the stipulating respondent, and stating that the claimant has [~~complied with all conditions precedent to the commencement of litigation regarding the claim~~] satisfied, by stipulation, the condition precedent under Subsection (1)(c) to commencing litigation.

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

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

(a) one member who is a resident lawyer currently licensed and in good standing to practice law in this state and who shall serve as chairman of the panel, who is appointed by the division from among qualified individuals who have registered with the division indicating a willingness to serve as panel members, and a willingness to comply with the rules of professional conduct governing lawyers

in the state, and who has completed division training regarding conduct of [~~panel hearings~~] panel reviews;

(b)

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

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

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

(6)

(a) Each person listed as a health care provider in Section 78B-3-403 and practicing under a license issued by the state, is obligated as a condition of holding that license to participate as a member of a [~~medical liability prelitigation panel~~] prelitigation review panel at reasonable times, places, and intervals, upon issuance, with advance notice given in a reasonable time frame, by the division of an Order to Participate as a Medical Liability Prelitigation Panel Member.

(b) A licensee may be excused from appearance and participation as a panel member upon the division finding participation by the licensee will create an unreasonable burden or hardship upon the licensee.

(c) A licensee [~~whom~~] who the division finds failed to appear and participate as a panel member when so ordered, without adequate explanation or justification and without being excused for cause by the division, may be assessed an administrative fine not to exceed $5,000.

(d) A licensee [~~whom~~] who the division finds intentionally or repeatedly failed to appear and participate as a panel member when so ordered, without adequate explanation or justification and without being excused for cause by the division, may be assessed an administrative fine not to exceed $5,000, and is guilty of unprofessional conduct.

(e) All fines collected under Subsections (6)(c) and (d) shall be deposited into the Physicians Education Fund created in Section 58-67a-1.

(f) The director of the division may collect a fine that is not paid by:

(i) referring the matter to a collection agency; or

(ii) bringing an action in the district court of the county where the person against whom the penalty is imposed resides or in the county where the office of the director is located.

(g) A county attorney or the attorney general of the state shall provide legal assistance and advice to the director in an action to collect a fine.

(h) A court shall award reasonable attorney fees and costs to the prevailing party in an action brought by the division to collect a fine.

(7) Each person selected as a panel member shall certify, under oath, that [~~he~~] the member has no bias or conflict of interest with respect to any matter under consideration.

(8) A member of [~~the prelitigation hearing~~] a prelitigation review panel may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(9)

(a) In addition to the actual cost of administering the licensure of health care providers, the division may set license fees of health care providers within the limits established by law equal to their proportionate costs of administering prelitigation panels.

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

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

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

(1)

(a) The prelitigation review panel shall issue an opinion and the division shall issue a certificate of compliance with the [~~pre-litigation hearing~~] prelitigation 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)~~] the claimant has met all conditions precedent under this section to commencing litigation.

(2)

(a) The panel shall render [~~its~~] an opinion in writing not later than 30 days after the [~~end of the proceedings~~] day on which the panel review concludes, 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~~] deemed meritorious under Subsection (2)(a)(i), 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~~] opinion under Subsection (2)(a).

(3) The division shall issue a certificate of compliance to the claimant, for each respondent named in the notice of 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)~~] Subsection (2)(a);

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

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

Section 5. Section **5** is enacted to read:

78B-3-418.5. Attorney fees.

(1) The court may award attorney fees and costs to a respondent provider if:

(a)

(i) a prelitigation review panel renders an opinion under Subsection 78B-3-418(2)(a) that a claimant's claim or cause of action has no merit; or

(ii) the court finds that the claimant did not receive a certificate of compliance because the plaintiff failed to reasonably cooperate in the scheduling of the prelitigation panel review under 78B-3-416(4)(f);

(b) the claimant proceeds to litigate the malpractice action against a health care provider without obtaining an affidavit of merit under Section 78B-3-423; and

(c) the court finds that the claimant did not substantially prevail {~~on the merits of all claims~~} .

(2) A claimant in a malpractice action against a health care provider, or the claimant's attorney, is liable to any respondent for the reasonable attorney fees and costs incurred by the respondent, or by the respondent's insurer, in connection with any filing, submission, panel review, arbitration, or judicial proceeding under this part for which a claimant files or submits an affidavit containing an allegation that the court or arbitrator finds that the claimant knew, or should have known, to be baseless or false at the time the affidavit was signed, filed, or submitted.

(3) A court, or an arbitrator under Section 78B-3-421, may award reasonable attorney fees or costs under Subsection (1) only if the respondent files a motion for the attorney fees or costs no later than 60 days after the day on which the court's or arbitrator's final decision, judgment, or dismissal of all claims in the action is entered.

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

78B-3-423. Affidavit of merit.

[~~(1)~~

~~(a) For a cause of action that arises on or after July 1, 2010, before a claimant may receive a certificate of compliance under Sections 78B-3-416 and 78B-3-418, a claimant shall file an affidavit of merit under this section.~~]

[~~(b)~~] (1)

(a) [~~The claimant shall file an affidavit of merit~~] A claimant who elects to file an affidavit of merit shall file the affidavit of merit:

(i) within 60 days after the day on which the pre-litigation panel issues an opinion, if the claimant receives a finding from the pre-litigation panel in accordance with Section 78B-3-418 of non-meritorious for either:

(A) the claim of breach of applicable standard of care; or

(B) that the breach of care was the proximate cause of injury;

(ii) within 60 days after the day on which the time limit in Subsection 78B-3-416(4)(b)(ii) expires, if a pre-litigation hearing is not held within the time limits under Subsection 78B-3-416(4)(b)(ii); or

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

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

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

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

(2)

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

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

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

(iii) the claimant participated in a review panel.

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

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

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

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

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

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

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

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

(a) if none of the respondents is a physician or an osteopathic physician, hold a current unrestricted license issued by the appropriate licensing authority of Utah or another state in the same specialty or of the same class of license as the respondents; or

(b) if at least one of the respondents is a physician or an osteopathic physician, hold a current unrestricted license issued by the appropriate licensing authority of Utah or another state to practice medicine in all its branches.

[~~(5)~~] (6) A claimant's attorney or claimant may obtain up to a 60-day extension to file the affidavit of merit if:

(a) the claimant or the claimant's attorney submits a signed affidavit for extension with notice to the division attesting to the fact that the claimant is unable to submit an affidavit of merit as required by this section because:

(i) a statute of limitations would impair the action; and

(ii) the affidavit of merit could not be obtained before the expiration of the statute of limitations; and

(b) the claimant or claimant's attorney submits the affidavit for extension to each named respondent in accordance with Subsection 78B-3-412(3) no later than 60 days after the date specified in Subsection [~~(1)(b)(i)~~] (1)(a)(i).

[~~(6)~~] (7)

(a) A claimant or claimant's attorney who submits allegations in an affidavit of merit that are found to be without reasonable cause and untrue, based on information available to the plaintiff at the time the affidavit was submitted to the division, is liable to the defendant for the payment of reasonable expenses and reasonable attorney fees actually incurred by the defendant or the defendant's insurer.

(b) An affidavit of merit is not admissible, and cannot be used for any purpose, in a subsequent lawsuit based on the claim that is the subject of the affidavit, except for the purpose of establishing the right to recovery under Subsection [~~(6)(c)~~] (7)(c).

(c) A court, or arbitrator under Section 78B-3-421, may award costs and attorney fees under Subsection [~~(6)(a)~~] (7)(a) if the defendant files a motion for costs and attorney fees within 60 days of the judgment or dismissal of the action in favor of the defendant. The person making a motion for attorney fees and costs may depose and examine the health care provider who prepared the affidavit of merit under Subsection [~~(2)(b)~~] (3)(b).

[~~(7)~~] (8) If a claimant or the claimant's attorney does not file an affidavit of merit as required by this section, the division may not issue a certificate of compliance for the claimant and the malpractice action shall be dismissed by the court.

[~~(8)~~] (9) For each request for prelitigation panel review under Subsection [~~78B-3-416(2)(b)~~] 78B-3-416(2), the division shall compile the following information:

(a) whether the cause of action arose on or after July 1, 2010;

(b) the number of respondents named in the request; and

(c) for each respondent named in the request:

(i) the respondent's license class;

(ii) if the respondent has a professional specialty, the respondent's professional specialty;

(iii) if the division does not issue a certificate of compliance at the conclusion of the prelitigation process, the reason a certificate was not issued;

(iv) if the division issues a certificate of compliance, the reason the certificate of compliance was issued;

(v) if an affidavit of merit was filed by the claimant, for each health care provider who submitted an affidavit under Subsection [~~(2)(b)~~] (3)(b):

(A) the health care provider's license class and professional specialty; and

(B) whether the health care provider meets the requirements of Subsection 78B-3-416(5)(b); and

(vi) whether the claimant filed an action in court against the respondent.

[~~(9)~~] (10) The division may require the following persons to submit the information to the division necessary for the division to comply with Subsection [~~(8)~~] (9):

(a) a claimant;

(b) a respondent;

(c) a health care provider who submits an affidavit under Subsection [~~(2)(b)~~] (3)(b); and

(d) a medical liability pre-litigation panel.

Section 7. Section **7** is enacted to read:

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

(1) The division shall:

(a) compile a written report summarizing the division's administration of panel reviews, including at least the information described in Subsection (2);

(b) in compiling the written report under Subsection (1)(a), review information obtained from the court's Xchange database, made available to the division without cost by the Administrative Office of the Courts; and

(c) provide the written report under Subsection (1)(a) to the Judiciary Interim Committee no later than November 1 of each year.

(2) The report under Subsection (1) shall detail, for the period beginning on the day after the day through which the last report covered, and ending on the day through which data is available:

(a) the number of panel reviews the division convened, by respective license class;

(b) the number of cases for which a claimant filed a complaint in court;

(c) the number of cases in which a provider and claimant agreed to forgo a panel review;

(d) the number of cases in which a provider and claimant agreed to use a panel review as binding arbitration;

(e) for each panel review the division convened, the prelitigation review panel's determinations regarding merit under Subsection 78B-3-418(2)(a);

(f) the number of cases that were settled after a panel review and:

(i) before a complaint alleging a malpractice action against a health care provider in court is filed; and

(ii) after a complaint alleging a malpractice action against a health care provider in court is filed; and

(g) for cases alleging a malpractice action against a health care provider that were resolved, including by adjudication or stipulated settlement:

(i) the amount of damages sought as compared to the amount of damages awarded or otherwise obtained, if known, including by {~~category of~~} the following categories:

{~~(A) {general or non-economic damages;)~~ }

(A) noneconomic;

(B) {~~specific, special, or economic damages~~} economic; and

(C) punitive {~~damages~~} ; and

(ii) the number of cases that were dismissed with prejudice and without an award of damages or any other economic relief to the claimant.

~~{Section 8. Section **78B-3-424** is amended to read: }~~

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

(1) For purposes of this section:

(a) "Agent" means a person who is an "employee," "worker," or "operative," as defined in Section 34A-2-104, of a health care provider.

(b) "Ostensible agent" means a person:

(i) who is not an agent of the health care provider; and

(ii) who the plaintiff reasonably believes is an agent of the health care provider because the health care provider intentionally, or as a result of a lack of ordinary care, caused the plaintiff to believe that the person was an agent of the health care provider.

(2) A health care provider named as a defendant in a medical malpractice action is not liable for the acts or omissions of an ostensible agent if:

(a) the ostensible agent has privileges with the health care provider, but is not an agent of the health care provider;

(b) the health care provider has, by policy or practice, ensured that a person providing professional services has insurance of a type and amount required, if any is required, by the rules or regulations as established in:

(i) medical staff by-laws for a health care facility; or

(ii) other health care facility contracts, indemnification agreements, rules or regulations;

(c) the insurance required in Subsection (2)(b) is in effect at the time of the alleged act or omission of the ostensible agent; and

(d) there is a claim of agency or ostensible agency in a plaintiff's notice of intent to commence an action, and the health care provider, within 60 days of the service of the notice of intent to commence an action, lists each person identified by the plaintiff who the provider claims is not an agent or ostensible agent of the provider.

(3)

(a) An insurance policy, if any, covering claims of malpractice against an individual provider shall have the first obligation to cover any covered claims in the malpractice action.

(b) Only after the covered claims have been paid or satisfied under the individual provider's insurance policy pursuant to Subsection (3)(a) may a claimant or other entitled party to seek coverage and payment for damages under an insurance policy, if any, of the individual provider's employer.

[~~(3)~~] (4) This section applies to a cause of action that arises on or after July 1, 2010.

Section 8. **Effective date.**

Effective Date.

This bill takes effect on May 7, 2025.

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