

**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

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**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

34 ENACTS:

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

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

37

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

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

40 **78B-3-405 . Amount of award reduced by amounts of collateral sources available**  
 41 **to plaintiff -- No reduction where subrogation right exists -- Collateral sources defined --**  
 42 **Procedure to preserve subrogation rights -- Evidence admissible -- Exceptions.**

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

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

48 (a) liability for the alleged losses has been established; and

49 (b) any claim for or award of general or noneconomic damages, if any, for the alleged  
 50 losses has been fully adjudicated or entered.

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

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

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

59 (5)(a) A plaintiff may not pursue, collect, or execute on a judgment against an individual  
 60 health care provider's personal income or assets, unless the court finds that the  
 61 provider's conduct was willful and malicious or intentionally fraudulent.

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 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) As used in this section, "inflation" means the seasonally adjusted 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) The limit under Subsection (1) does not apply to awards of 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                    (4)(c):
- 237                    (i) within 15 days of the filing of the affidavit [ ~~under Subsection (4)(e)(ii) ], the~~
- 238                    ~~division shall [determine whether either the respondent or the claimant failed to~~
- 239                    ~~reasonably cooperate in the scheduling of a pre-litigation hearing; and] conclude,~~
- 240                    based solely on the affidavit and any supporting attachments, whether the claimant
- 241                    or respondent failed to reasonably cooperate in the scheduling of the panel review;
- 242                    and
- 243                    (ii)(A) if the [~~determination is] division finds that the [~~respondent failed to~~~~
- 244                    ~~reasonably cooperate in the scheduling of a hearing, and the -] claimant or~~
- 245                    respondent did not fail to reasonably cooperate, the division shall [~~;~~] issue a
- 246                    certificate of compliance for the claimant in accordance with [~~Section~~
- 247                    ~~78B-3-418] Subsection 78B-3-418(3)(b), stating the division's determination~~
- 248                    and the facts upon which the determination is based; or
- 249                    (B) if the division makes a determination other than the determination in
- 250                    Subsection (4)(d)(ii)(A), [~~the claimant shall file an affidavit of merit in~~
- 251                    ~~accordance with Section 78B-3-423, within 30 days of the determination of the~~
- 252                    ~~division under this Subsection (4)] the division shall, subject to Subsection (4)(f),~~
- 253                    issue a certificate of compliance for the claimant, in accordance with
- 254                    Subsection 78B-3-418(3)(b), stating the division's determination and the facts
- 255                    upon which the determination is based.
- 256            (e)(i) The claimant and any respondent may agree by written stipulation [~~that no~~
- 257                    ~~useful purpose would be served by convening a prelitigation panel] to waive the~~
- 258                    requirement to convene a panel review under this section.
- 259                    (ii) When the stipulation is filed with the division, the division shall within 10 days
- 260                    after receipt issue a certificate of compliance under [~~Section 78B-3-418]~~
- 261                    Subsection 78B-3-418(3)(c), as it concerns the stipulating respondent, and stating
- 262                    that the claimant has [eomplied 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 [  
 345 ~~end of the proceedings~~] 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.