

Medical Malpractice Revisions

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Scott D. Sandall

House Sponsor:

LONG TITLE**General Description:**

This bill addresses malpractice actions against health care providers.

Highlighted Provisions:

This bill:

▸ with respect to a medical malpractice action:

- removes the requirement that a claimant submit an affidavit of merit;
- establishes data collection and reporting requirements for the Division of Professional Licensing and the Administrative Office of the Courts;
- addresses the calculation of noneconomic losses;
- limits, subject to state constitutional protection, the combined amount to which a claimant is potentially entitled for economic and noneconomic losses;
- obligates a plaintiff, in certain circumstances, to pay the reasonable attorney fees and costs incurred by a defendant;
- precludes liability from attaching, in certain circumstances, to a medical facility, clinic, or organization;
- amends the authority of prelitigation review panels and the process for conducting panel reviews; 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

78B-3-412, as last amended by Laws of Utah 2022, Chapter 356

- 31 **78B-3-416**, as last amended by Laws of Utah 2024, Chapter 366
- 32 **78B-3-418**, as last amended by Laws of Utah 2022, Chapter 212
- 33 **78B-3-424**, as enacted by Laws of Utah 2010, Chapter 97
- 34 **78B-8-201**, as last amended by Laws of Utah 2011, Chapter 79

35 ENACTS:

- 36 **78A-2-109.6**, Utah Code Annotated 1953
- 37 **78B-3-416.1**, Utah Code Annotated 1953
- 38 **78B-3-418.5**, Utah Code Annotated 1953

39 REPEALS:

- 40 **78B-3-423**, as last amended by Laws of Utah 2022, Chapter 212



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

43 Section 1. Section **78A-2-109.6** is enacted to read:

44 **78A-2-109.6 . Professional licensing reporting -- Survey and report of**
45 **malpractice actions against health care providers.**

46 The Administrative Office of the Courts shall provide to the Division of Professional
47 Licensing for each case filed alleging, as defined in Section 78B-3-403, a malpractice action
48 against a health care provider:

- 49 (1) a copy of the initial complaint, including any attachments; and
- 50 (2) a copy of any dispositive decisions issued.

51 Section 2. Section **78B-3-405** is amended to read:

52 **78B-3-405 . Amount of award reduced by amounts of collateral sources available**
53 **to plaintiff -- No reduction where subrogation right exists -- Collateral sources defined --**
54 **Procedure to preserve subrogation rights -- Evidence admissible -- Exceptions.**

55 (1) In all malpractice actions against health care providers as defined in Section 78B-3-403
56 in which damages are awarded to compensate the plaintiff for losses sustained, the court
57 shall reduce the amount of the award by the total of all amounts paid to the plaintiff
58 from all collateral sources which are available to him. No reduction may be made for
59 collateral sources for which a subrogation right exists as provided in this section nor
60 shall there be a reduction for any collateral payment not included in the award of
61 damages.

62 (2) Upon a finding of liability and an awarding of damages by the trier of fact, the court
63 shall receive evidence concerning the total amounts of collateral sources which have
64 been paid to or for the benefit of the plaintiff or are otherwise available to him. The

65 court shall also take testimony of any amount which has been paid, contributed, or
66 forfeited by, or on behalf of the plaintiff or members of his immediate family to secure
67 his right to any collateral source benefit which he is receiving as a result of his injury,
68 and shall offset any reduction in the award by those amounts. Evidence may not be
69 received and a reduction may not be made with respect to future collateral source
70 benefits except as specified in Subsection (5).

71 (3) For purposes of this section "collateral source" means payments made to or for the
72 benefit of the plaintiff for:

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

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

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

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

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

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

91 (b) the amount of collateral sources paid;

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

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

94 (5) Evidence is admissible of government programs that provide payments or benefits
95 available in the future to or for the benefit of the plaintiff to the extent available
96 irrespective of the recipient's ability to pay. Evidence of the likelihood or unlikelihood
97 that the programs, payments, or benefits will be available in the future is also
98 admissible. The trier of fact may consider the evidence in determining the amount of

99 damages awarded to a plaintiff for future expenses.

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

106 (7) All policies of insurance providing benefits affected by this section are construed in
 107 accordance with this section.

108 (8)(a) A court shall calculate any award of economic damages under this part based on
 109 amounts the plaintiff actually paid, or that were paid on the plaintiff's behalf, to a
 110 medical provider.

111 (b) A court may not calculate an award of economic damages based on amounts a
 112 medical provider indicates on a bill or invoice.

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

114 **78B-3-410 . Limitation of award of noneconomic damages and economic damages**
 115 **in malpractice actions.**

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

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

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

124 (c) for a cause of action arising on or after July 1, 2002, and before May 15, 2010, the
 125 \$400,000 limitation described in Subsection (1)(b) shall be adjusted for inflation as
 126 provided in Subsection (2); and

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

128 (2)(a) Beginning July 1, 2002, and each July 1 thereafter until July 1, 2009, the limit for
 129 damages under Subsection (1)(c) shall be adjusted for inflation by the state treasurer.

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

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

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

- 133 ~~(e)~~ (b) The amount resulting from Subsection (2)(a) shall:
- 134 (i) be rounded to the nearest \$10,000; and
- 135 (ii) apply to a cause of action arising on or after the date the annual adjustment is
- 136 made.
- 137 (3) The maximum combined amount of economic and noneconomic damages awarded to
- 138 an injured plaintiff may not exceed \$1,000,000, except to the extent required under Utah
- 139 Constitution, Article XVI, Section 5, for damages for injuries resulting in death.
- 140 ~~(3)~~ (4) As used in this section, "inflation" means the seasonally adjusted consumer price
- 141 index for all urban consumers as published by the Bureau of Labor Statistics of the
- 142 United States Department of Labor.
- 143 ~~(4)~~ (5) The limit under Subsection (1) does not apply to awards of punitive damages.
- 144 Section 4. Section **78B-3-412** is amended to read:
- 145 **78B-3-412 . Notice of intent to commence action.**
- 146 (1) A malpractice action against a health care provider may not be initiated unless and until
- 147 the plaintiff:
- 148 (a) gives the prospective ~~[defendant]~~ respondent, or ~~[his]~~ the respondent's executor or
- 149 successor, at least 90 days' prior notice of intent to commence an action in
- 150 accordance with this section; and
- 151 (b) except for an action against a dentist or a dental care provider, the plaintiff receives a
- 152 certificate of compliance from the division in accordance with Section 78B-3-418.
- 153 (2) The notice shall include:
- 154 (a) a general statement of the nature of the claim;
- 155 (b) the persons involved;
- 156 (c) the date, time, and place of the occurrence;
- 157 (d) the circumstances surrounding the claim;
- 158 (e) specific allegations of misconduct on the part of the prospective ~~[defendant]~~
- 159 respondent; and
- 160 (f) the nature of the alleged injuries and other damages sustained.
- 161 (3) Notice may be in letter or affidavit form executed by the plaintiff or his attorney.
- 162 Service shall be accomplished by persons authorized and in the manner prescribed by
- 163 the Utah Rules of Civil Procedure for the service of the summons and complaint in a
- 164 civil action or by certified mail, return receipt requested, in which case notice shall be
- 165 considered served on the date of mailing.
- 166 (4) Notice shall be served within the time allowed for commencing a malpractice action

167 against a health care provider. If the notice is served less than 90 days prior to the
 168 expiration of the applicable time period, the time for commencing the malpractice action
 169 against the health care provider shall be extended to 120 days from the date of service of
 170 notice.

171 (5) This section shall, for purposes of determining its retroactivity, not be construed as
 172 relating to the limitation on the time for commencing any action, and shall apply only to
 173 causes of action arising on or after April 1, 1976. This section shall not apply to third
 174 party actions, counterclaims or crossclaims against a health care provider.

175 Section 5. Section **78B-3-416** is amended to read:

176 **78B-3-416 . Division to provide prelitigation review panel -- Exemption --**
 177 **Procedures -- Statute of limitations tolled -- Composition of panel -- Expenses -- Division**
 178 **authorized to set license fees.**

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

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

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

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

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

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

198 (2)(a) The party initiating a ~~[medical liability action]~~ malpractice action against a health
 199 care provider shall file a request for ~~[prelitigation panel review]~~ a panel review with
 200 the division within 60 days after the service of a statutory notice of intent to

- 201 commence action under Section 78B-3-412.
- 202 (b) The request shall include a copy of the notice of intent to commence action[~~—The~~
203 ~~request]~~ and the claimant shall [be mailed to] mail the request and notice of intent to
204 all health care providers named in the notice and request.
- 205 (3)(a) As used in this Subsection (3):
- 206 (i) "Court-appointed therapist" means a mental health therapist ordered by a court to
207 provide psychotherapeutic treatment to an individual, a couple, or a family in a
208 domestic case.
- 209 (ii) "Domestic case" means a proceeding under:
- 210 (A) [~~Title 78B,~~]Chapter 7, Protective Orders and Stalking Injunctions;
211 (B) [~~Title 78B,~~]Chapter 13, Utah Uniform Child Custody Jurisdiction and
212 Enforcement Act;
213 (C) [~~Title 78B,~~]Chapter 15, Utah Uniform Parentage Act;
214 (D) Title 81, Chapter 4, Dissolution of Marriage; or
215 (E) Title 81, Chapter 9, Custody, Parent-time, and Visitation.
- 216 (iii) "Mental health therapist" means the same as that term is defined in Section
217 58-60-102.
- 218 (b) If a court appoints a court-appointed therapist in a domestic case, a party to the
219 domestic case may not file a request for [~~a prelitigation panel review] a panel review~~
220 for a malpractice action against the court-appointed therapist during the pendency of
221 the domestic case, unless:
- 222 (i) the party has requested that the court release the court-appointed therapist from the
223 appointment; and
- 224 (ii) the court finds good cause to release the court-appointed therapist from the
225 appointment.
- 226 (c) If a party is prohibited from filing a request for [~~a prelitigation panel review] a panel~~
227 review under Subsection (3)(b), the applicable statute of limitations tolls until the
228 earlier of:
- 229 (i) the court releasing the court-appointed therapist from the appointment as
230 described in Subsection (3)(b); or
231 (ii) the court entering a final order in the domestic case.
- 232 (4)(a) The filing of a request for [~~prelitigation panel review] a panel review~~ under this
233 section tolls the applicable statute of limitations until the later of:
- 234 (i) 60 days following the division's issuance of:

- 235 (A) an opinion by the prelitigation panel; or
 236 (B) a certificate of compliance under Section 78B-3-418; or
 237 (ii) the expiration of the time for holding a ~~[hearing-]~~ panel review under Subsection
 238 (4)(b)(ii).
- 239 (b) The division shall:
- 240 (i) send any opinion issued by the panel to all parties by regular mail; and
 241 (ii) complete a ~~[prelitigation hearing-]~~ panel review under this section within:
- 242 (A) 180 days after the filing of the request for ~~[prelitigation panel review]~~ a panel
 243 review; or
 244 (B) any longer period as agreed upon in writing by all parties to the review.
- 245 ~~[(e) If the prelitigation hearing has not been completed within the time limits established~~
 246 ~~in Subsection (4)(b)(ii), the claimant shall:]~~
- 247 ~~[(i) file an affidavit of merit under the provisions of Section 78B-3-423; or]~~
 248 ~~[(ii) file an affidavit with the division within 180 days of the request for pre-litigation~~
 249 ~~review, in accordance with Subsection (4)(d), alleging that the respondent has~~
 250 ~~failed to reasonably cooperate in scheduling the hearing.]~~
- 251 (c) If a panel review does not occur within the time limits under Subsection (4)(b)(ii),
 252 the claimant may, no later than 180 days after the day on which the request for a
 253 panel review was filed under Subsection (2), file with the division an affidavit
 254 alleging, with supporting attachments, if any:
- 255 (i) that the respondent failed to reasonably cooperate in scheduling the panel review;
 256 or
 257 (ii) any other reason that the panel review did not occur within the time limits under
 258 Subsection (4)(b)(ii).
- 259 (d) If the claimant files an affidavit under Subsection ~~[(4)(e)(ii)]~~ (4)(c):
- 260 (i) within 15 days of the filing of the affidavit~~[under Subsection (4)(e)(ii)]~~, the
 261 division shall ~~[determine]~~ conclude, based solely on the affidavit and any
 262 supporting attachments, whether~~[either the respondent or the claimant failed to~~
 263 ~~reasonably cooperate in the scheduling of a pre-litigation hearing; and]~~ :
- 264 (A) the respondent failed to reasonably cooperate in the scheduling of the panel
 265 review; and
 266 (B) the claimant failed to reasonably cooperate in the scheduling of the panel
 267 review; and
- 268 (ii)(A) if the ~~[determination is]~~ division finds that the ~~[respondent failed to~~

269 reasonably cooperate in the scheduling of a hearing, and the claimant did not
 270 fail to reasonably cooperate, the division shall issue a certificate of
 271 compliance for the claimant in accordance with ~~[Section 78B-3-418]~~
 272 Subsection 78B-3-418(3)(b), stating the division's determination and the facts
 273 upon which the determination is based; or
 274 (B) if the division makes a determination other than the determination in
 275 Subsection (4)(d)(ii)(A), ~~[the claimant shall file an affidavit of merit in~~
 276 ~~accordance with Section 78B-3-423, within 30 days of the determination of the~~
 277 ~~division under this Subsection (4)]~~ the division shall issue a certificate of
 278 compliance for the claimant, in accordance with Subsection 78B-3-418(3)(b),
 279 stating the division's determination and the facts upon which the determination
 280 is based.

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

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

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

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

302 (b)(i) one or more members who are licensed health care providers listed under

- 303 Section 78B-3-403, who are practicing and knowledgeable in the same specialty
304 as the proposed [~~defendant~~] respondent, and who are appointed by the division in
305 accordance with Subsection (6); or
- 306 (ii) in claims against only a health care facility or the facility's employees, one
307 member who is an individual currently serving in a health care facility
308 administration position directly related to health care facility operations or
309 conduct that includes responsibility for the area of practice that is the subject of
310 the liability claim, and who is appointed by the division; and
- 311 (c) a lay panelist who is not a lawyer, doctor, hospital employee, or other health care
312 provider, and who is a responsible citizen of the state, selected and appointed by the
313 division from among individuals who have completed division training with respect
314 to panel [~~hearings~~] reviews.
- 315 (6)(a) Each person listed as a health care provider in Section 78B-3-403 and practicing
316 under a license issued by the state, is obligated as a condition of holding that license
317 to participate as a member of a medical liability prelitigation panel at reasonable
318 times, places, and intervals, upon issuance, with advance notice given in a reasonable
319 time frame, by the division of an Order to Participate as a Medical Liability
320 Prelitigation Panel Member.
- 321 (b) A licensee may be excused from appearance and participation as a panel member
322 upon the division finding participation by the licensee will create an unreasonable
323 burden or hardship upon the licensee.
- 324 (c) A licensee [~~whom~~] who the division finds failed to appear and participate as a panel
325 member when so ordered, without adequate explanation or justification and without
326 being excused for cause by the division, may be assessed an administrative fine not to
327 exceed \$5,000.
- 328 (d) A licensee [~~whom~~] who the division finds intentionally or repeatedly failed to appear
329 and participate as a panel member when so ordered, without adequate explanation or
330 justification and without being excused for cause by the division, may be assessed an
331 administrative fine not to exceed \$5,000, and is guilty of unprofessional conduct.
- 332 (e) All fines collected under Subsections (6)(c) and (d) shall be deposited into the
333 Physicians Education Fund created in Section 58-67a-1.
- 334 (f) The director of the division may collect a fine that is not paid by:
- 335 (i) referring the matter to a collection agency; or
- 336 (ii) bringing an action in the district court of the county where the person against

- 337 whom the penalty is imposed resides or in the county where the office of the
338 director is located.
- 339 (g) A county attorney or the attorney general of the state shall provide legal assistance
340 and advice to the director in an action to collect a fine.
- 341 (h) A court shall award reasonable attorney fees and costs to the prevailing party in an
342 action brought by the division to collect a fine.
- 343 (7) Each person selected as a panel member shall certify, under oath, that [he] the member
344 has no bias or conflict of interest with respect to any matter under consideration.
- 345 (8) A member of [the] a prelitigation [hearing] review panel may not receive compensation
346 or benefits for the member's service, but may receive per diem and travel expenses in
347 accordance with:
- 348 (a) Section 63A-3-106;
349 (b) Section 63A-3-107; and
350 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
351 63A-3-107.
- 352 (9)(a) In addition to the actual cost of administering the licensure of health care
353 providers, the division may set license fees of health care providers within the limits
354 established by law equal to their proportionate costs of administering prelitigation
355 panels.
- 356 (b) The claimant bears none of the costs of administering the prelitigation panel except
357 under Section 78B-3-420.
- 358 Section 6. Section **78B-3-416.1** is enacted to read:
- 359 **78B-3-416.1 . Division collection of panel review data.**
- 360 (1) The division shall:
- 361 (a) compile a written report summarizing the division's administration, including at least
362 the information described in Subsection (2);
- 363 (b) in compiling the written report under Subsection (1)(a), review information received
364 from the Administrative Office of the Courts under Section 78A-2-109.6; and
- 365 (c) provide the written report under Subsection (1)(a) to the Judiciary Interim Committee
366 no later than November 1 of each year.
- 367 (2) The report under Subsection (1) shall detail, for the period beginning on the day after
368 the day through which the last report covered, and ending on the day through which data
369 is available:
- 370 (a) the number of panel reviews the division convened, by license class of the

- 371 respondents;
- 372 **(b)** the number of cases for which a claimant filed a complaint in court;
- 373 **(c)** the number of cases in which a provider and claimant agreed to forgo a panel review;
- 374 **(d)** the number of cases in which a provider and claimant agreed to use a panel review as
- 375 binding arbitration;
- 376 **(e)** for each panel review the division convened, the prelitigation review panel's
- 377 determinations regarding merit under Subsection 78B-3-418(2)(a);
- 378 **(f)** the number of cases that were settled after a panel review and:
- 379 **(i)** before a complaint alleging a malpractice action against a health care provider in
- 380 court is filed in court; and
- 381 **(ii)** after a complaint described in Subsection (2)(f)(i) is filed; and
- 382 **(g)** for cases alleging a malpractice action against a health care provider that were
- 383 resolved, including by adjudication or stipulated settlement:
- 384 **(i)** the amount of damages sought as compared to the amount of damages awarded or
- 385 otherwise obtained, if known, including by category of:
- 386 **(A)** general or non-economic damages;
- 387 **(B)** specific, special, or economic damages; and
- 388 **(C)** punitive damages; and
- 389 **(ii)** the number of cases that were dismissed with prejudice and without an award of
- 390 damages or any other economic relief to the claimant.
- 391 **(3)** The division may require the following persons to submit to the division the information
- 392 necessary for the division to comply with Subsection (1):
- 393 **(a)** a claimant;
- 394 **(b)** a respondent;
- 395 **(c)** a member of the prelitigation review panel; or
- 396 **(d)** a participant in the panel review.

397 Section 7. Section **78B-3-418** is amended to read:

398 **78B-3-418 . Opinion and recommendations of panel.**

- 399 **(1)(a)** The prelitigation review panel shall issue an opinion and the division shall issue a
- 400 certificate of compliance with the [~~pre-litigation hearing~~] prelitigation requirements of
- 401 this part in accordance with this section.
- 402 **(b)** A certificate of compliance issued in accordance with this section is proof that [~~the~~
- 403 ~~claimant has complied with all conditions precedent under this part prior to the~~
- 404 ~~commencement of litigation as required in Subsection 78B-3-412(1)] the claimant has~~

- 405 met all conditions precedent to commencing litigation under this part.
- 406 (2)(a) The panel shall render [its] an opinion in writing not later than 30 days after the[
 407 ~~end of the proceedings]~~ day on which the panel review concludes, and determine on
 408 the basis of the evidence whether:
- 409 (i) each claim against each health care provider has merit or has no merit; and
 410 (ii) if a claim is deemed meritorious under Subsection (2)(a)(i), [~~whether-~~]the conduct
 411 complained of resulted in harm to the claimant.
- 412 (b) There is no judicial or other review or appeal of the panel's [~~decision or~~
 413 ~~recommendations]~~ opinion under Subsection (2)(a).
- 414 (3) The division shall issue a certificate of compliance to the claimant, for each respondent
 415 named in the intent to file a claim under this part, if:
- 416 (a) for a named respondent, the panel issues an opinion [~~of merit]~~ under [~~Subsections~~
 417 ~~(2)(a)(i) and (ii)]~~ Subsection (2)(a);
- 418 [~~(b) for a named respondent, the claimant files an affidavit of merit in accordance with~~
 419 ~~Section 78B-3-423 if the opinion under Subsection (1)(a) is non-meritorious under~~
 420 ~~either Subsection (2)(a)(i) or (ii);]~~
- 421 [~~(c)~~] (b) the claimant has complied with the provisions of Subsections 78B-3-416(4)(c)
 422 and (d); or
- 423 [~~(d)~~] (c) the parties submitted a stipulation under Subsection 78B-3-416(4)(e).

424 Section 8. Section **78B-3-418.5** is enacted to read:

425 **78B-3-418.5 . Attorney fees.**

- 426 (1) A claimant in a malpractice action against a health care provider shall pay the
 427 reasonable attorney fees and costs that any respondent incurs defending against a
 428 pleaded claim or cause of action, if:
- 429 (a) the prelitigation review panel renders an opinion under Subsection 78B-3-418(2)(a)
 430 that the claim or cause of action has no merit; and
- 431 (b) the claimant does not substantially prevail on the merits of the claim or cause of
 432 action, as determined by a court, or by an arbitrator under Section 78B-3-421.
- 433 (2) A claimant in a malpractice action against a health care provider, or the claimant's
 434 attorney, is liable to any respondent for the reasonable attorney fees and costs incurred
 435 by the respondent, or by the respondent's insurer, in connection with any filing,
 436 submission, panel review, arbitration, or judicial proceeding under this part for which a
 437 claimant files or submits an affidavit containing an allegation that the court or arbitrator
 438 finds that the claimant knew, or should have known, to be baseless or false at the time

439 the affidavit was signed, filed, or submitted.

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

444 Section 9. Section **78B-3-424** is amended to read:

445 **78B-3-424 . Limitation of liability for ostensible agent.**

446 (1) For purposes of this section:

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

449 (b) "Ostensible agent" means a person:

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

451 (ii) who the plaintiff reasonably believes is an agent of the health care provider

452 because the health care provider intentionally, or as a result of a lack of ordinary

453 care, caused the plaintiff to believe that the person was an agent of the health care

454 provider.

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

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

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

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

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

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

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

471 (3)(a) Subject to Subsection (3)(b), a health care facility or organization is not liable in a
472 malpractice action brought against the patient's health care provider if:

- 473 (i) the patient's health care provider:
 474 (A) is an employee of the health care facility, clinic, or organization; and
 475 (B) was not acting or performing within the course of the health care facility's,
 476 clinic's, or organization's employment at the time that the alleged malpractice
 477 or injury occurred; and
 478 (ii) the alleged malpractice or injury occurred at a location other than at the health
 479 care facility, clinic, or organization described in Subsection (3)(a)(i).
 480 (b) A claimant that names a health care facility, clinic, or organization described in
 481 Subsection (3)(a) as a defendant shall:
 482 (i) dismiss all claims against the health care facility, clinic, or organization no later
 483 than seven days after the date on which the court, or the arbitrator under Section
 484 78B-3-421, finds that the conditions under Subsection (3)(a) are satisfied; and
 485 (ii) pay the reasonable attorney fees and costs incurred by the health care facility,
 486 clinic, or organization that employs the patient's health care provider in defending
 487 against the malpractice action after the seven day period under Subsection (3)(b).

488 [~~3~~] (4) This section applies to a cause of action that arises on or after July 1, 2010.

489 Section 10. Section **78B-8-201** is amended to read:

490 **78B-8-201 . Basis for punitive damages awards -- Section inapplicable to DUI**
 491 **cases or providing illegal controlled substances -- Division of award with state.**

- 492 (1)(a) Except as otherwise provided by statute, punitive damages may be awarded only
 493 if compensatory or general damages are awarded and it is established by clear and
 494 convincing evidence that the acts or omissions of the tortfeasor are the result of
 495 willful and malicious or intentionally fraudulent conduct~~[-, or conduct that manifests~~
 496 ~~a knowing and reckless indifference toward, and a disregard of, the rights of others].~~
 497 (b) The limitations, standards of evidence, and standards of conduct of Subsection (1)(a)
 498 do not apply to any claim for punitive damages arising out of the tortfeasor's:
 499 (i) operation of a motor vehicle or motorboat while voluntarily intoxicated or under
 500 the influence of any drug or combination of alcohol and drugs as prohibited by
 501 Section 41-6a-502;
 502 (ii) causing death of another person by providing or administering an illegal
 503 controlled substance to the person under Section 78B-3-801; or
 504 (iii) providing an illegal controlled substance to any person in the chain of transfer
 505 that connects directly to a person who subsequently provided or administered the
 506 substance to a person whose death was caused in whole or in part by the substance.

- 507 (c) The award of a penalty under Section 78B-3-108 regarding shoplifting is not subject
508 to the prior award of compensatory or general damages under Subsection (1)(a)
509 whether or not restitution has been paid to the merchant prior to or as a part of a civil
510 action under Section 78B-3-108.
- 511 (2) Evidence of a party's wealth or financial condition shall be admissible only after a
512 finding of liability for punitive damages has been made.
- 513 (a) Discovery concerning a party's wealth or financial condition may only be allowed
514 after the party seeking punitive damages has established a prima facie case on the
515 record that an award of punitive damages is reasonably likely against the party about
516 whom discovery is sought and, if disputed, the court is satisfied that the discovery is
517 not sought for the purpose of harassment.
- 518 (b) Subsection (2)(a) does not apply to any claim for punitive damages arising out of the
519 tortfeasor's:
- 520 (i) operation of a motor vehicle or motorboat while voluntarily intoxicated or under
521 the influence of any drug or combination of alcohol and drugs as prohibited by
522 Section 41-6a-502;
- 523 (ii) causing death of another person or causing a person to be addicted by providing
524 or administering an illegal controlled substance to the person under Section
525 78B-3-801; or
- 526 (iii) providing an illegal controlled substance to any person in the chain of transfer
527 that connects directly to a person who subsequently provided or administered the
528 substance to a person whose death was caused in whole or in part by the substance.
- 529 (3)(a) In any case where punitive damages are awarded, the court shall enter judgment as
530 follows:
- 531 (i) for the first \$50,000, judgment shall be in favor of the injured party; and
532 (ii) any amount in excess of \$50,000 shall be divided equally between the state and
533 the injured party, and judgment to each entered accordingly.
- 534 (b)(i) The actual and bona fide attorney fees and costs incurred in obtaining and
535 collecting the judgment for punitive damages shall be considered to have been
536 incurred by the state and the injured party in proportion to the judgment entered in
537 each party's behalf.
- 538 (A) The state and injured party shall be responsible for each one's proportionate
539 share only.
- 540 (B) The state is liable to pay its proportionate share only to the extent it receives

- 541 payment toward its judgment.
- 542 (ii) If the court awards attorney fees and costs to the injured party as a direct result of
543 the punitive damage award, the state shall have a corresponding credit in a
544 proportionate amount based on the amounts of the party's respective punitive
545 damage judgments. This credit may be applied as an offset against the amount of
546 attorney fees and costs charged to the state for obtaining the punitive damage
547 judgment.
- 548 (c) The state shall have all rights due a judgment creditor to collect the full amounts of
549 both punitive damage judgments until the judgments are fully satisfied.
- 550 (i) Neither party is required to pursue collection.
- 551 (ii) In pursuing collection, the state may exercise any of its collection rights under
552 Section 63A-3-301 et seq., Section 63A-3-502 et seq., and any other statutory
553 provisions. Any amounts collected on these judgments by either party shall be
554 held in trust and distributed as set forth in Subsection (3)(e).
- 555 (d) Unless all affected parties, including the state, expressly agree otherwise, collection
556 on the punitive damages judgment shall be deferred until all other judgments have
557 been fully paid. Any payment by or on behalf of any judgment debtor, whether
558 voluntary, by execution, or otherwise, shall be distributed and applied in the
559 following order:
- 560 (i) to the judgment for compensatory damage and any applicable judgment for
561 attorney fees and costs;
- 562 (ii) to the initial \$50,000 of the punitive damage judgment;
- 563 (iii) to any judgment for attorney fees and costs awarded as a direct result of the
564 punitive damages; and
- 565 (iv) to the remaining judgments for punitive damages.
- 566 (e) Any partial payments shall be distributed equally between the state and injured party.
- 567 (f) After the payment of attorney fees and costs, all amounts paid on the state's judgment
568 shall be remitted to the state treasurer to be deposited into the General Fund.

569 **Section 11. Repealer.**

570 This bill repeals:

571 **Section 78B-3-423, Affidavit of merit.**

572 **Section 12. Effective Date.**

573 This bill takes effect on May 7, 2025.