

ARBITRATION FOR MEDICAL PROVIDERS

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Michael G. Waddoups

AN ACT RELATING TO THE JUDICIAL CODE; ESTABLISHING REQUIREMENTS FOR ARBITRATION AGREEMENTS BETWEEN PATIENTS AND HEALTH CARE PROVIDERS.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:

78-14-17, Utah Code Annotated 1953

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

Section 1. Section **78-14-17** is enacted to read:

78-14-17. Arbitration agreements.

(1) After May 2, 1999, for a binding arbitration agreement between a patient and a health care provider to be validly executed or, if the requirements of this Subsection (1) have not been previously met on at least one occasion, renewed:

(a) the patient shall be given, in writing and by verbal explanation, the following information on:

(i) the requirement that the patient must arbitrate a claim instead of having the claim heard by a judge or jury;

(ii) the role of an arbitrator and the manner in which arbitrators are selected under the agreement;

(iii) the patient's responsibility, if any, for arbitration-related costs under the agreement;

(iv) the right of the patient to decline to enter into the agreement and still receive health care;

(v) the automatic renewal of the agreement each year unless the agreement is canceled in writing before the renewal date; and

(vi) the right of the patient to have questions about the arbitration agreement answered;
and

(b) the agreement shall require that:

- (i) one arbitrator be collectively selected by all persons claiming damages;
- (ii) one arbitrator be selected by the health care provider;
- (iii) a third arbitrator be jointly selected by all persons claiming damages and the health care provider from a list of individuals approved as arbitrators by the state or federal courts of Utah;
- (iv) all parties waive the requirement of Section 78-14-12 to appear before a hearing panel in a malpractice action against a health care provider;
- (v) the patient be given the right to rescind the agreement within 30 days of signing the agreement; and
- (vi) the term of the agreement be for one year and that the agreement be automatically renewed each year unless the agreement is canceled in writing by the patient or health care provider before the renewal date.
- (2) Notwithstanding Subsection (1), a patient may not be denied health care of any kind on the sole basis that the patient or a person described in Subsection (5) refused to enter into a binding arbitration agreement with a health care provider.
- (3) A written acknowledgment of having received a written and verbal explanation of a binding arbitration agreement signed by or on behalf of the patient shall be a defense to a claim that the patient did not receive a written and verbal explanation of the agreement as required by Subsection (1) unless the patient:

 - (a) proves that the person who signed the agreement lacked the capacity to do so; or
 - (b) shows by clear and convincing evidence that the execution of the agreement was induced by the health care provider's affirmative acts of fraudulent misrepresentation or fraudulent omission to state material facts.
- (4) The requirements of Subsection (1) do not apply to a claim governed by a binding arbitration agreement that was executed or renewed before May 3, 1999.
- (5) A legal guardian or a person described in Subsection 78-14-5(4), except a person temporarily standing in loco parentis, may execute or rescind a binding arbitration agreement on behalf of a patient.
- (6) This section does not apply to any arbitration agreement that is subject to the Federal

Arbitration Act, 9 U.S.C. Sec. 1 et seq.