MEDICAL MALPRACTICE AMENDMENTS

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Leonard M. Blackham

This act amends the Utah Health Care Malpractice Act and the Health Care Providers Immunity From Liability Act. The act amends provisions related to arbitration agreements between a health care provider and a patient. The act allows a provider and patient to negotiate an arbitration agreement in nonemergency situations. The act amends provisions related to immunity from liability for certain charity care. The act sunsets the medical malpractice arbitration agreements section.

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

AMENDS:

58-13-3, as last amended by Chapter 160, Laws of Utah 2000

63-55-278, as last amended by Chapter 116, Laws of Utah 2002

78-14-17, as enacted by Chapter 278, Laws of Utah 1999

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

Section 1. Section **58-13-3** is amended to read:

58-13-3. Qualified immunity -- Health professionals -- Charity care.

(1) (a) The Legislature finds many residents of this state do not receive medical care and preventive health care because they lack health insurance or because of financial difficulties or cost. The Legislature also finds that many physicians, charity health care facilities, and other health care professionals in this state would be willing to volunteer medical and allied services without compensation if they were not subject to the high exposure of liability connected with providing these services.

(b) The Legislature therefore declares that its intention in enacting this section is to encourage the provision of uncompensated volunteer charity health care [~~in charity care settings~~] in exchange for a limitation on liability for the health care facilities and health care professionals who provide those volunteer services.

(2) As used in this section:

(a) "Health care facility" means any clinic or hospital, church, or organization whose primary purpose is to sponsor, promote, or organize uncompensated health care services for people unable to pay for health care services.

(b) "Health care professional" means individuals licensed under Title 58, Occupations and Professions, as physicians and surgeons, osteopaths, podiatrists, optometrists, chiropractors, dentists, dental hygienists, registered nurses, certified nurse midwives, and other nurses licensed under Section 58-31b-301.

(c) "Remuneration or compensation":

(i) (A) means direct or indirect receipt of any payment by the physician and surgeon, health care facility, other health care professional, or organization, on behalf of the patient, including payment or reimbursement under medicare or medicaid, or under the state program for the medically indigent on behalf of the patient; and

(B) compensation, salary, or reimbursement to the health care professional from any source for the health care professional's services or time in volunteering to provide uncompensated health care; and

(ii) does not mean any grant or donation to the health care facility used to offset direct costs associated with providing the uncompensated health care such as medical supplies or drugs.

(3) A health care professional who provides health care treatment at <u>or on behalf of</u> a health care facility is not liable in a medical malpractice action if:

(a) the treatment was within the scope of the health care professional's license under this title;

(b) neither the health care professional nor the health care facility received compensation or remuneration for the treatment;

(c) the acts or omissions of the health care professional were not grossly negligent or willful and wanton; and

(d) prior to rendering services, the health care professional disclosed in writing to the patient, or if a minor, to the patient's parent or legal guardian, that the health care professional is providing the services without receiving remuneration or compensation and that in exchange for

receiving uncompensated health care, the patient consents to waive any right to sue for professional negligence except for acts or omissions which are grossly negligent or are willful and wanton.

(4) A health care facility which sponsors, promotes, or organizes the uncompensated care is not liable in a medical malpractice action for acts and omissions if:

(a) the health care facility meets the requirements in Subsection (3)(b);

(b) the acts and omissions of the health care facility were not grossly negligent or willful and wanton; and

(c) the health care facility has posted, in a conspicuous place, a notice that in accordance with this section the health care facility is not liable for any civil damages for acts or omissions except for those acts or omissions that are grossly negligent or are willful and wanton.

(5) Immunity from liability under this section does not extend to the use of general anesthesia or care that requires an overnight stay in a general acute or specialty hospital licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

Section 2. Section **63-55-278** is amended to read:

63-55-278. Repeal dates, Title 78.

(1) The Office of the Court Administrator, created in Section 78-3-23, is repealed July 1, 2003.

(2) Foster care citizen review boards and steering committee, created in Title 78, Chapter 3g, is repealed July 1, 2007.

(3) Alternative Dispute Resolution Act, created in Title 78, Chapter 31b, is repealed July 1, 2003.

(4) Section 78-14-17, regarding medical malpractice arbitration agreements, is repealed July 1, 2009.

Section 3. Section **78-14-17** is amended 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 if Subsection (2) applies;

(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

(vii) the right of the patient to rescind the agreement within 30 days of signing the agreement; 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 from the emergency department of a general acute hospital, as defined in Section 26-21-2, 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.