

1 **MEDICAL DISPUTE RESOLUTION**

2 **AMENDMENTS**

3 2004 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Leonard M. Blackham**

6 L. Alma Mansell  
7 Peter C. Knudson

Thomas V. Hatch  
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**LONG TITLE**

9 **General Description:**

10 This bill amends provisions related to the resolution of medical malpractice disputes.

11 **Highlighted Provisions:**

12 This bill:

13a **§ ▶ PROVIDES A BINDING ARBITRATION AGREEMENT SHALL PROVIDE FOR ONE ARBITRATOR**  
13b **UNLESS ALL PARTIES AGREE TO A PANEL OF THREE ARBITRATORS; §**

14 ▶ requires notice to a patient regarding:

15 • the patient's right to legal counsel in any arbitration proceeding; and  
16 • an arbitration agreement may not apply to errors and omissions that occurred  
17 prior to the date of the arbitration agreement without a specific agreement from  
18 the patient;

19 ▶ changes the time for rescinding an arbitration agreement from 30 days to ten days;

20 ▶ clarifies that medical arbitration agreements are subject to the Uniform Arbitration  
21 Act;

22 ▶ provides that a patient may require:

23 • mandatory mediation before arbitration;  
24 • retention of jointly selected arbitrators for both the liability and damages part of  
25 arbitration when they are bifurcated; and

26 • the filing of an arbitration award in district court; and

27 ▶ prohibits a health care provider from denying health care to a patient on the sole



28 basis that the patient refused to sign an arbitration agreement.

29 **Monies Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **78-14-17**, as last amended by Chapter 207, Laws of Utah 2003



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

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

39 **78-14-17. Arbitration agreements.**

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

43 (a) the patient shall be given, in writing [~~and by verbal explanation~~], the following  
44 information on:

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

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

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

50 (iv) the right of the patient to decline to enter into the agreement and still receive health  
51 care if Subsection [~~(2)~~] (3) applies;

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

54 (vi) the right of the patient to have questions about the arbitration agreement answered;  
55 [~~and~~]

56 (vii) the right of the patient to rescind the agreement within [30] ten days of signing the  
57 agreement; and

58 (viii) the right of the patient to require mediation of the dispute prior to the arbitration

59 of the dispute;

60 (b) the agreement shall require that:

61 (i) except as provided in Subsection (1)(b)(ii), § [a panel of three arbitrators] ONE

61a ARBITRATOR § shall be § JOINTLY §

62 selected § [as follows:] BY ALL PERSONS CLAIMING DAMAGES AND BY THE HEALTH CARE

62a PROVIDER FROM A LIST OF INDIVIDUALS APPROVED AS ARBITRATORS BY THE STATE OR

62b FEDERAL COURTS OF UTAH; OR

62c (ii) IF ALL PARTIES AGREE, A PANEL OF THREE ARBITRATORS SHALL BE SELECTED AS

62d FOLLOWS: §

63 (A) one arbitrator [~~be~~] collectively selected by all persons claiming damages;

64 [~~(ii)~~] (B) one arbitrator [~~be~~] selected by the health care provider; and

65 [~~(iii)~~] (C) a third arbitrator [~~be~~] jointly selected § [by all persons claiming damages and

66 the health care provider from a list of individuals approved as arbitrators by the state or federal

67 courts of Utah; or] AS EXPLAINED IN SUBSECTION (1)(b)(i);

68 [~~(ii) if both parties agree, a single arbitrator may be selected;] §~~

69 [~~(iv)~~] (iii) all parties waive the requirement of Section 78-14-12 to appear before a  
70 hearing panel in a malpractice action against a health care provider;

71 [~~(v)~~] (iv) the patient be given the right to rescind the agreement within [~~30~~] ten days of  
72 signing the agreement; [~~and~~]

73 [~~(vi)~~] (v) the term of the agreement be for one year and that the agreement be  
74 automatically renewed each year unless the agreement is canceled in writing by the patient or  
75 health care provider before the renewal date[-];

76 (vi) the patient have the right to retain legal counsel;

77 (vii) the agreement only apply to:

78 (A) an error or omission that occurred after the agreement was signed, provided that  
79 the agreement may allow a person who would be a proper party in court to participate in an  
80 arbitration proceeding;

81 (B) the claim of:

82 (I) a person who signed the agreement;

83 (II) a person on whose behalf the agreement was signed under Subsection (6); and

84 (III) the unborn child of the person described in this Subsection (1)(b)(vii)(B), for 12  
85 months from the date the agreement is signed; and

86 (C) the claim of a person who is not a party to the contract if the sole basis for the  
87 claim is an injury sustained by a person described in Subsection (1)(b)(vii)(B); and

88 (c) the patient shall be verbally encouraged to:

(i) read the written information required by Subsection (1)(a) and the arbitration

90 agreement; and

91 (ii) ask any questions.

92 (2) When a medical malpractice action is arbitrated, the action shall:

93 (a) be subject to Chapter 31a, Utah Uniform Arbitration Act; and

94 (b) include any one or more of the following when requested by the patient before an  
 95 arbitration hearing is commenced:

96 (i) mandatory mediation;

97 (ii) retention of the jointly selected arbitrator for both the liability and damages stages  
 98 of an arbitration proceeding if the arbitration is bifurcated; and

99 (iii) the filing of the panel's award of damages as a judgement against the provider in  
 100 the appropriate district court.

101 [~~2~~] (3) Notwithstanding Subsection (1), a patient may not be denied health care [of  
 102 any kind from the emergency department of a general acute hospital, as defined in Section  
 103 26-21-2,] on the sole basis that the patient or a person described in Subsection [~~5~~] (6) refused  
 104 to enter into a binding arbitration agreement with a health care provider.

105 [~~3~~] (4) A written acknowledgment of having received a written [~~and verbal~~]  
 106 explanation of a binding arbitration agreement signed by or on behalf of the patient shall be a  
 107 defense to a claim that the patient did not receive a written [~~and verbal~~] explanation of the  
 108 agreement as required by Subsection (1) unless the patient:

109 (a) proves that the person who signed the agreement lacked the capacity to do so; or

110 (b) shows by clear and convincing evidence that the execution of the agreement was  
 111 induced by the health care provider's affirmative acts of fraudulent misrepresentation or  
 112 fraudulent omission to state material facts.

113 [~~4~~] (5) The requirements of Subsection (1) do not apply to a claim governed by a  
 114 binding arbitration agreement that was executed or renewed before May 3, 1999.

115 [~~5~~] (6) A legal guardian or a person described in Subsection 78-14-5(4), except a  
 116 person temporarily standing in loco parentis, may execute or rescind a binding arbitration  
 117 agreement on behalf of a patient.

118 [~~6~~] (7) This section does not apply to any arbitration agreement that is subject to the  
 119 Federal Arbitration Act, 9 U.S.C. Sec. 1 et seq.

**Legislative Review Note**

**as of 2-5-04 10:41 AM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**

**State Impact**

It is estimated that provisions of this bill can be handled within existing budgets.

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**Individual and Business Impact**

Impact of this legislation will vary with individual situations and is not possible to determine.

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**Office of the Legislative Fiscal Analyst**