

Senator Leonard M. Blackham proposes the following substitute bill:

MEDICAL DISPUTE RESOLUTION

AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Leonard M. Blackham

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LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ requires notice to a patient regarding:
 - the patient's right to legal counsel in any arbitration proceeding; and
 - an arbitration agreement may not apply to errors and omissions that occurred prior to the date of the arbitration agreement without a specific agreement from the patient;
- ▶ changes the time for rescinding an arbitration agreement from 30 days to ten days;
- ▶ clarifies that medical arbitration agreements are subject to the Uniform Arbitration Act;
- ▶ provides that a patient may require:
 - mandatory mediation before arbitration;
 - retention of jointly selected arbitrators for both the liability and damages part of 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 shall be
62 selected as follows:

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

64 [(it)] (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

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 has 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:

89 (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.