

EMERGENCY MEDICINE TORT REFORM

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Sheldon L. Killpack

House Sponsor: _____

LONG TITLE**General Description:**

This bill establishes a clear and convincing standard of proof for emergency care rendered in an emergency room.

Highlighted Provisions:

This bill:

- defines terms;
- establishes a standard of proof of clear and convincing evidence for malpractice actions based on emergency care received in an emergency room; and
- applies the standard of clear and convincing evidence after May 15, 2007.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**ENACTS:**

58-13-2.5, Utah Code Annotated 1953

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

Section 1. Section **58-13-2.5** is enacted to read:

58-13-2.5. Standard of proof for emergency care when immunity does not apply.



(1) For purposes of this section:

(a) "Comes to the emergency department" is defined by 42 CFR 489.24, Emergency Medical Treatment and Labor Act.

(b) "Emergency care" means:

(i) the treatment of an emergency medical condition from the time a person comes to the emergency department, including any subsequent transfer to another hospital, until the emergency medical condition has been stabilized and the patient is either:

(A) discharged from the emergency department; or

(B) admitted to another department of the hospital; and

(ii) medical services that are provided to a pregnant women as required by 42 CFR 489.24, Emergency Medical Treatment and Labor Act.

(c) "Emergency medical condition" is defined in Section 31A-22-627.

(d) "Fault" is defined in Section 78-27-37.

(e) "Health care provider" is defined in Section 78-14-3.

(2) A health care provider who, in good faith, provides or is consulted to provide emergency care, may be liable for civil damages only if:

(a) fault is established by clear and convincing evidence; and

(b) the health care provider is not immune from liability for civil damages under Title 58, Chapter 13, Health Care Providers Immunity from Liability Act.

(3) This section:

(a) does not apply to emergency care provided by a health care provider if:

(i) the health care provider has a previously established provider/patient relationship with the patient outside of the emergency room;

(ii) the patient has been seen in the last three months by the health care provider for the same condition for which emergency care is sought; and

(iii) the health care provider can access and consult the patient's relevant health care records while the health care provider is making decisions about and providing the emergency care; and

(b) applies to emergency care given after May 15, 2007.

Legislative Review Note
as of 12-4-06 12:45 PM

Office of Legislative Research and General Counsel

S.B. 115 - Emergency Medicine Tort Reform

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

1/22/2007, 9:26:32 AM, Lead Analyst: Eckersley, S.

Office of the Legislative Fiscal Analyst