

CHARITABLE CARE AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Bradley G. Last

Senate Sponsor: Ralph Okerlund

LONG TITLE

General Description:

This bill amends the Health Care Providers Immunity from Liability Act.

Highlighted Provisions:

This bill:

- ▶ makes technical amendments;
- ▶ amends the definition of health care provider; and
- ▶ amends the definition of remuneration to clarify that a charitable contribution is not

considered payment to the facility.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-13-3, as last amended by Laws of Utah 2006, Chapter 239

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) (i) 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.

30 (ii) The Legislature also finds that many physicians, charity health care facilities, and
31 other health care professionals in this state would be willing to volunteer medical and allied
32 services without compensation if they were not subject to the high exposure of liability
33 connected with providing these services.

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

38 (2) As used in this section:

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

42 (b) "Health care professional" means ~~[individuals licensed under Title 58, Occupations~~
43 ~~and Professions, as physicians and surgeons, osteopaths, physician assistants, podiatrists,~~
44 ~~optometrists, chiropractors, dentists, dental hygienists, registered nurses, certified nurse~~
45 ~~midwives, other nurses licensed under Section 58-31b-301, and licensed Direct-entry~~
46 ~~midwives.]~~ a person licensed under:

47 (i) Chapter 5a, Podiatric Physician Licensing Act;

48 (ii) Chapter 16a, Utah Optometry Practice Act;

49 (iii) Chapter 17b, Pharmacy Practice Act;

50 (iv) Chapter 24a, Physical Therapist Practice Act;

51 (v) Chapter 31b, Nurse Practice Act;

52 (vi) Chapter 40, Recreational Therapist Practice Act;

53 (vii) Chapter 41, Speech-language Pathology and Audiology Licensing Act;

54 (viii) Chapter 42a, Occupational Therapy Practice Act;

55 (ix) Chapter 44a, Nurse Midwife Practice Act;

56 (x) Chapter 49, Dietician Certification Act;

57 (xi) Chapter 60, Mental Health Professional Practice Act;

58 (xii) Chapter 67, Utah Medical Practice Act;
59 (xiii) Chapter 68, Utah Osteopathic Medical Practice Act;
60 (xiv) Chapter 69, Dentist and Dental Hygienist Practice Act;
61 (xv) Chapter 70a, Physician Assistant Act; and
62 (xvi) Chapter 73, Chiropractic Physician Practice Act.
63 (c) "Remuneration or compensation":
64 (i) (A) means direct or indirect receipt of any payment by [~~the physician and surgeon,~~
65 ~~health care facility, other~~] a health care professional[;] or [~~organization,~~] health care facility on
66 behalf of the patient, including payment or reimbursement under medicare or medicaid, or
67 under the state program for the medically indigent on behalf of the patient; and
68 (B) compensation, salary, or reimbursement to the health care professional from any
69 source for the health care professional's services or time in volunteering to provide
70 uncompensated health care; and
71 (ii) does not mean:
72 (A) any grant or donation to the health care facility used to offset direct costs
73 associated with providing the uncompensated health care such as:
74 (I) medical supplies [or];
75 (II) drugs[-]; or
76 (III) a charitable donation that is restricted for charitable services at the health care
77 facility; or
78 (B) incidental reimbursements to the volunteer such as:
79 (I) food supplied to the volunteer;
80 (II) clothing supplied to the volunteer to help identify the volunteer during the time of
81 volunteer services;
82 (III) mileage reimbursement to the volunteer; or
83 (IV) other similar support to the volunteer.
84 (3) A health care professional who provides health care treatment at or on behalf of a
85 health care facility is not liable in a medical malpractice action if:

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

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

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

92 (d) prior to rendering services, the health care professional disclosed in writing to the
93 patient, or if a minor, to the patient's parent or legal guardian, that the health care professional
94 is providing the services without receiving remuneration or compensation and that in
95 exchange for receiving uncompensated health care, the patient consents to waive any right to
96 sue for professional negligence except for acts or omissions which are grossly negligent or are
97 willful and wanton.

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

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

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

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

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