

HB0079S01 compared with HB0079

~~deleted text~~ shows text that was in HB0079 but was deleted in HB0079S01.

inserted text shows text that was not in HB0079 but was inserted into HB0079S01.

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Representative Kay L. McIff proposes the following substitute bill:

NONPATIENT CAUSE OF ACTION

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kay L. McIff

Senate Sponsor: _____

LONG TITLE

General Description:

This bill repeals and enacts provisions of the Utah Health Care Malpractice Act.

Highlighted Provisions:

This bill:

- ▶ repeals provisions concerning prelitigation panels; and
- ▶ provides requirements for a nonpatient plaintiff to establish a malpractice action against a health care provider.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

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AMENDS:

78B-3-418, as last amended by Laws of Utah 2013, Chapter 275

ENACTS:

78B-3-426, Utah Code Annotated 1953

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

Section 1. Section 78B-3-418 is amended to read:

78B-3-418. Decision and recommendations of panel -- No judicial or other review.

(1) (a) The panel shall issue an opinion and the division shall issue a certificate of compliance with the pre-litigation hearing requirements of this part in accordance with this section.

(b) A certificate of compliance issued in accordance with this section is proof that the claimant has complied with all conditions precedent under this part prior to the commencement of litigation as required in Subsection 78B-3-412(1).

~~[(c) (i) Notwithstanding any other provision of this part, any party in a medical malpractice action or arbitration hearing may request a prelitigation panel review as to a health care provider and obtain a certificate of compliance for that specific, individual health care provider for the purpose of allocating fault to that health care provider. A party in a medical malpractice action or arbitration hearing may not attempt to allocate fault to any health care provider unless a certificate of compliance has been issued in accordance with this section for that specific, individual health care provider. A health care provider exempted from the requirement of a prelitigation hearing by statute or an arbitration agreement, may nevertheless be joined in a prelitigation hearing to satisfy the requirements of this section. Participation in a prelitigation hearing may not waive any right to enforce an arbitration agreement.]~~

~~[(ii) The party making the claim against, or seeking to allocate fault to, a health care provider is required to seek and obtain the certificate of compliance required by this Subsection (1)(c).]~~

(2) (a) The panel shall render its opinion in writing not later than 30 days after the end of the proceedings, and determine on the basis of the evidence whether:

- (i) each claim against each health care provider has merit or has no merit; and
- (ii) if a claim is meritorious, whether the conduct complained of resulted in harm to the

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claimant.

(b) There is no judicial or other review or appeal of the panel's decision or recommendations.

(3) The division shall issue a certificate of compliance to the claimant, for each respondent named in the intent to file a claim under this part, if:

(a) for a named respondent, the panel issues an opinion of merit under Subsections (2)(a)(i) and (ii);

(b) for a named respondent, the claimant files an affidavit of merit in accordance with Section 78B-3-423 if the opinion under Subsection (1)(a) is non-meritorious under either Subsection (2)(a)(i) or (ii);

(c) the claimant has complied with the provisions of Subsections 78B-3-416(3)(c) and (d); or

(d) the parties submitted a stipulation under Subsection 78B-3-416(3)(e).

Section ~~{1}~~2. Section **78B-3-426** is enacted to read:

78B-3-426. Nonpatient cause of action.

(1) For purposes of this section, a nonpatient plaintiff does not include a patient, as defined in Subsection 78B-3-403(23).

(2) This section does not apply to a healthcare malpractice action brought or seeking recovery under Section 30-2-11, 78B-3-106, 78B-3-107, or 78B-3-502.

(3) To establish a malpractice action against a health care provider, a nonpatient plaintiff shall be required to show that:

(~~{1}~~a) the nonpatient plaintiff suffered an injury;

(~~{2}~~b) the nonpatient plaintiff's injury was proximately caused by an act or omission of the health care provider; and

(~~{3}~~c) the health care provider's act or omission was conduct ~~{manifesting:~~

~~{that manifests a}~~ knowing disregard for the safety of the nonpatient; or

~~{b}~~ gross negligence that constitutes careless or reckless disregard to a degree that shows indifference to the consequences that may result.

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Legislative Review Note

Office of Legislative Research and General Counsel; knowing and reckless indifference toward, and a disregard of, the injury suffered by the nonpatient plaintiff.