

1 **Medical Malpractice Modifications**

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Katy Hall

Senate Sponsor:

3 **LONG TITLE**

4 **General Description:**

5 This bill addresses malpractice actions against health care providers.

6 **Highlighted Provisions:**

7 This bill:

8 ▶ with respect to a medical malpractice action:

- 9 • removes the requirement that a claimant submit an affidavit of merit;
- 10 • establishes data collection and reporting requirements for the Department of

11 Occupational Licensing and the Administrative Office of the Courts;

- 12 • addresses the calculation of noneconomic losses;
- 13 • limits, subject to state constitutional protection, the combined amount to which a
- 14 claimant is potentially entitled for economic and noneconomic losses;

15 • obligates a plaintiff, in certain circumstances, to pay the reasonable attorney fees and
16 costs incurred by a defendant;

17 • precludes liability from attaching, in certain circumstances, to a medical facility,
18 clinic, or organization;

19 • amends the required mental state a health care provider must have, in order to subject
20 the health care provider to punitive damages; and

- 21 • amends the process for prelitigation review panels and prelitigation panel reviews; and

22 ▶ makes technical changes.

23 **Money Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **78B-3-405**, as last amended by Laws of Utah 2023, Chapter 330

30 **78B-3-410**, as last amended by Laws of Utah 2010, Chapter 97

- 31 **78B-3-412**, as last amended by Laws of Utah 2022, Chapter 356
- 32 **78B-3-416**, as last amended by Laws of Utah 2024, Chapter 366
- 33 **78B-3-418**, as last amended by Laws of Utah 2022, Chapter 212
- 34 **78B-3-424**, as enacted by Laws of Utah 2010, Chapter 97
- 35 **78B-8-201**, as last amended by Laws of Utah 2011, Chapter 79

36 ENACTS:

- 37 **78A-2-109.6**, Utah Code Annotated 1953
- 38 **78B-3-416.1**, Utah Code Annotated 1953
- 39 **78B-3-418.5**, Utah Code Annotated 1953

40 REPEALS:

- 41 **78B-3-423**, as last amended by Laws of Utah 2022, Chapter 212



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

44 Section 1. Section **78A-2-109.6** is enacted to read:

45 **78A-2-109.6 . Professional licensing reporting -- Survey and report of**
46 **malpractice actions against health care providers.**

47 The Administrative Office of the Courts shall provide to the Division of Professional
48 Licensing for each case filed alleging, as defined in Section 78B-3-403, a malpractice action
49 against a health care provider:

- 50 (1) a copy of the initial complaint, including any attachments; and
- 51 (2) a copy of any dispositive decisions issued.

52 Section 2. Section **78B-3-405** is amended to read:

53 **78B-3-405 . Amount of award reduced by amounts of collateral sources available**
54 **to plaintiff -- No reduction where subrogation right exists -- Collateral sources defined --**
55 **Procedure to preserve subrogation rights -- Evidence admissible -- Exceptions.**

- 56 (1) In all malpractice actions against health care providers as defined in Section 78B-3-403
- 57 in which damages are awarded to compensate the plaintiff for losses sustained, the court
- 58 shall reduce the amount of the award by the total of all amounts paid to the plaintiff
- 59 from all collateral sources which are available to him. No reduction may be made for
- 60 collateral sources for which a subrogation right exists as provided in this section nor
- 61 shall there be a reduction for any collateral payment not included in the award of
- 62 damages.
- 63 (2) Upon a finding of liability and an awarding of damages by the trier of fact, the court
- 64 shall receive evidence concerning the total amounts of collateral sources which have

65 been paid to or for the benefit of the plaintiff or are otherwise available to him. The
66 court shall also take testimony of any amount which has been paid, contributed, or
67 forfeited by, or on behalf of the plaintiff or members of his immediate family to secure
68 his right to any collateral source benefit which he is receiving as a result of his injury,
69 and shall offset any reduction in the award by those amounts. Evidence may not be
70 received and a reduction may not be made with respect to future collateral source
71 benefits except as specified in Subsection (5).

- 72 (3) For purposes of this section "collateral source" means payments made to or for the
73 benefit of the plaintiff for:
- 74 (a) medical expenses and disability payments payable under the United States Social
75 Security Act, any federal, state, or local income disability act, or any other public
76 program, except the federal programs which are required by law to seek subrogation;
 - 77 (b) any health, sickness, or income replacement insurance, automobile accident
78 insurance that provides health benefits or income replacement coverage, and any
79 other similar insurance benefits, except life insurance benefits available to the
80 plaintiff, whether purchased by the plaintiff or provided by others;
 - 81 (c) any contract or agreement of any person, group, organization, partnership, or
82 corporation to provide, pay for, or reimburse the costs of hospital, medical, dental, or
83 other health care services, except benefits received as gifts, contributions, or
84 assistance made gratuitously; and
 - 85 (d) any contractual or voluntary wage continuation plan provided by employers or any
86 other system intended to provide wages during a period of disability.
- 87 (4) To preserve subrogation rights for amounts paid or received prior to settlement or
88 judgment, a provider of collateral sources shall, at least 30 days before settlement or trial
89 of the action, serve a written notice upon each health care provider against whom the
90 malpractice action has been asserted. The written notice shall state:
- 91 (a) the name and address of the provider of collateral sources;
 - 92 (b) the amount of collateral sources paid;
 - 93 (c) the names and addresses of all persons who received payment; and
 - 94 (d) the items and purposes for which payment has been made.
- 95 (5) Evidence is admissible of government programs that provide payments or benefits
96 available in the future to or for the benefit of the plaintiff to the extent available
97 irrespective of the recipient's ability to pay. Evidence of the likelihood or unlikelihood
98 that the programs, payments, or benefits will be available in the future is also

- 99 admissible. The trier of fact may consider the evidence in determining the amount of
 100 damages awarded to a plaintiff for future expenses.
- 101 (6) A provider of collateral sources is not entitled to recover any amount of benefits from a
 102 health care provider, the plaintiff, or any other person or entity as reimbursement for
 103 collateral source payments made prior to settlement or judgment, including any
 104 payments made under Title 26B, Chapter 3, Part 10, Medical Benefits Recovery, except
 105 to the extent that subrogation rights to amounts paid prior to settlement or judgment are
 106 preserved as provided in this section.
- 107 (7) All policies of insurance providing benefits affected by this section are construed in
 108 accordance with this section.
- 109 (8)(a) A court shall calculate any award of economic damages under this part based on
 110 the amounts the plaintiff actually paid to a medical provider.
- 111 (b) A court may not calculate an award of economic damages based on amounts a
 112 medical provider indicates on a bill or invoice.

113 Section 3. Section **78B-3-410** is amended to read:

114 **78B-3-410 . Limitation of award of noneconomic damages and economic damages**
 115 **in malpractice actions.**

- 116 (1) [~~In a malpractice action against a health care provider, an injured plaintiff may recover~~
 117 ~~noneconomic losses-] Subject to Subsection (3), an injured plaintiff in a malpractice
 118 action against a health care provider may only recover noneconomic losses to
 119 compensate for pain, suffering, and inconvenience. The amount of damages awarded
 120 for noneconomic loss may not exceed:~~
- 121 (a) for a cause of action arising before July 1, 2001, \$250,000;
- 122 (b) for a cause of action arising on or after July 1, 2001 and before July 1, 2002, the
 123 limitation is adjusted for inflation to \$400,000;
- 124 (c) for a cause of action arising on or after July 1, 2002, and before May 15, 2010 the
 125 \$400,000 limitation described in Subsection (1)(b) shall be adjusted for inflation as
 126 provided in Subsection (2); and
- 127 (d) for a cause of action arising on or after May 15, 2010, \$450,000.
- 128 (2)(a) Beginning July 1, 2002 and each July 1 thereafter until July 1, 2009, the limit for
 129 damages under Subsection (1)(c) shall be adjusted for inflation by the state treasurer.
- 130 [~~(b) By July 15 of each year until July 1, 2009, the state treasurer shall:]~~
- 131 [(i) ~~certify the inflation-adjusted limit calculated under this Subsection (2); and]~~
- 132 [(ii) ~~inform the Administrative Office of the Courts of the certified limit.]~~

- 133 ~~[(e)]~~ (b) The amount resulting from Subsection (2)(a) shall:
- 134 (i) be rounded to the nearest \$10,000; and
- 135 (ii) apply to a cause of action arising on or after the date the annual adjustment is
- 136 made.
- 137 (3) The maximum combined amount of economic and noneconomic damages awarded to
- 138 an injured plaintiff may not exceed \$1,000,000, except to the extent required under Utah
- 139 Constitution, Article XVI, Section 5, for damages for injuries resulting in death.
- 140 ~~[(3)]~~ (4) As used in this section, "inflation" means the seasonally adjusted consumer price
- 141 index for all urban consumers as published by the Bureau of Labor Statistics of the
- 142 United States Department of Labor.
- 143 ~~[(4)]~~ (5) The limit under Subsection (1) does not apply to awards of punitive damages.
- 144 Section 4. Section **78B-3-412** is amended to read:
- 145 **78B-3-412 . Notice of intent to commence action.**
- 146 (1) A malpractice action against a health care provider may not be initiated unless and until
- 147 the plaintiff:
- 148 (a) gives the prospective ~~[defendant]~~ respondent, or ~~[his]~~ the respondent's executor or
- 149 successor, at least 90 days' prior notice of intent to commence an action in
- 150 accordance with this section; and
- 151 (b) except for an action against a dentist or a dental care provider, the plaintiff receives a
- 152 certificate of compliance from the division in accordance with Section 78B-3-418.
- 153 (2) The notice shall include:
- 154 (a) a general statement of the nature of the claim;
- 155 (b) the persons involved;
- 156 (c) the date, time, and place of the occurrence;
- 157 (d) the circumstances surrounding the claim;
- 158 (e) specific allegations of misconduct on the part of the prospective ~~[defendant]~~
- 159 respondent; and
- 160 (f) the nature of the alleged injuries and other damages sustained.
- 161 (3) Notice may be in letter or affidavit form executed by the plaintiff or his attorney.
- 162 Service shall be accomplished by persons authorized and in the manner prescribed by
- 163 the Utah Rules of Civil Procedure for the service of the summons and complaint in a
- 164 civil action or by certified mail, return receipt requested, in which case notice shall be
- 165 considered served on the date of mailing.
- 166 (4) Notice shall be served within the time allowed for commencing a malpractice action

167 against a health care provider. If the notice is served less than 90 days prior to the
 168 expiration of the applicable time period, the time for commencing the malpractice action
 169 against the health care provider shall be extended to 120 days from the date of service of
 170 notice.

171 (5) This section shall, for purposes of determining its retroactivity, not be construed as
 172 relating to the limitation on the time for commencing any action, and shall apply only to
 173 causes of action arising on or after April 1, 1976. This section shall not apply to third
 174 party actions, counterclaims or crossclaims against a health care provider.

175 Section 5. Section **78B-3-416** is amended to read:

176 **78B-3-416 . Division to provide prelitigation review panel -- Exemption --**
 177 **Procedures -- Statute of limitations tolled -- Composition of panel -- Expenses -- Division**
 178 **authorized to set license fees.**

179 (1)(a) The division shall provide a [hearing] prelitigation review panel to conduct a
 180 prelitigation panel review, in accordance with this part, in [alleged medical liability
 181 cases against health care providers as defined in Section 78B-3-403,-] all malpractice
 182 actions against a health care provider, except dentists or dental care providers.

183 (b)(i) The division shall establish procedures for [prelitigation consideration of
 184 medical liability claims for damages arising out of the provision of or alleged
 185 failure to provide health care] a prelitigation panel review.

186 (ii) The division may establish rules necessary to administer the process and
 187 procedures related to [prelitigation hearings] a prelitigation panel review and the
 188 conduct of [prelitigation hearings] a member of a prelitigation review panel or
 189 participant in a prelitigation panel review in accordance with Sections 78B-3-416
 190 through 78B-3-420.

191 (c) [The proceedings are] A prelitigation panel review is informal, nonbinding, and [are-]
 192 not subject to Title 63G, Chapter 4, Administrative Procedures Act, but [are] is
 193 compulsory as a condition precedent to commencing litigation.

194 (d) [Proceedings-] A prelitigation panel review that is conducted under authority of this
 195 section [are] is confidential, privileged, and immune from civil process.

196 (e) The division may not provide more than one [hearing panel] prelitigation review panel
 197 for each alleged [medical liability case against a health care provider] malpractice
 198 action against a health care provider.

199 (2)(a) The party initiating a [medical liability action] malpractice action against a health
 200 care provider shall file a request for prelitigation panel review with the division

- 201 within 60 days after the service of a statutory notice of intent to commence action
202 under Section 78B-3-412.
- 203 (b) The request shall include a copy of the notice of intent to commence action~~[-The~~
204 ~~request-]~~ and the claimant shall [be mailed to] mail the request and notice of intent to
205 all health care providers named in the notice and request.
- 206 (3)(a) As used in this Subsection (3):
- 207 (i) "Court-appointed therapist" means a mental health therapist ordered by a court to
208 provide psychotherapeutic treatment to an individual, a couple, or a family in a
209 domestic case.
- 210 (ii) "Domestic case" means a proceeding under:
- 211 (A) Title 78B, Chapter 7, Protective Orders and Stalking Injunctions;
212 (B) Title 78B, Chapter 13, Utah Uniform Child Custody Jurisdiction and
213 Enforcement Act;
214 (C) Title 78B, Chapter 15, Utah Uniform Parentage Act;
215 (D) Title 81, Chapter 4, Dissolution of Marriage; or
216 (E) Title 81, Chapter 9, Custody, Parent-time, and Visitation.
- 217 (iii) "Mental health therapist" means the same as that term is defined in Section
218 58-60-102.
- 219 (b) If a court appoints a court-appointed therapist in a domestic case, a party to the
220 domestic case may not file a request for ~~[a-]~~prelitigation panel review for a
221 malpractice action against the court-appointed therapist during the pendency of the
222 domestic case, unless:
- 223 (i) the party has requested that the court release the court-appointed therapist from the
224 appointment; and
- 225 (ii) the court finds good cause to release the court-appointed therapist from the
226 appointment.
- 227 (c) If a party is prohibited from filing a request for ~~[a-]~~prelitigation panel review under
228 Subsection (3)(b), the applicable statute of limitations tolls until the earlier of:
- 229 (i) the court releasing the court-appointed therapist from the appointment as
230 described in Subsection (3)(b); or
- 231 (ii) the court entering a final order in the domestic case.
- 232 (4)(a) The filing of a request for prelitigation panel review under this section tolls the
233 applicable statute of limitations until the later of:
- 234 (i) 60 days following the division's issuance of:

- 235 (A) an opinion by the prelitigation panel; or
- 236 (B) a certificate of compliance under Section 78B-3-418; or
- 237 (ii) the expiration of the time for holding a ~~[hearing-]~~ prelitigation panel review under
- 238 Subsection (4)(b)(ii).
- 239 (b) The division shall:
- 240 (i) send any opinion issued by the panel to all parties by regular mail; and
- 241 (ii) complete a ~~[prelitigation hearing-]~~ prelitigation panel review under this section
- 242 within:
- 243 (A) 180 days after the filing of the request for prelitigation panel review; or
- 244 (B) any longer period as agreed upon in writing by all parties to the review.
- 245 ~~[(e) If the prelitigation hearing has not been completed within the time limits established~~
- 246 ~~in Subsection (4)(b)(ii), the claimant shall:]~~
- 247 ~~[(i) file an affidavit of merit under the provisions of Section 78B-3-423; or]~~
- 248 ~~[(ii) file an affidavit with the division within 180 days of the request for pre-litigation~~
- 249 ~~review, in accordance with Subsection (4)(d), alleging that the respondent has~~
- 250 ~~failed to reasonably cooperate in scheduling the hearing.]~~
- 251 (c) If a prelitigation panel review does not occur within the time limits under Subsection
- 252 (4)(b)(ii), the claimant may, no later than 180 days after the day on which the request
- 253 for prelitigation panel review was filed under Subsection (2), file with the division an
- 254 affidavit alleging, with supporting attachments, if any:
- 255 (i) that the respondent failed to reasonably cooperate in scheduling the prelitigation
- 256 panel review; or
- 257 (ii) any other reason that the prelitigation panel review did not occur within the time
- 258 limits under Subsection (4)(b)(ii).
- 259 (d) If the claimant files an affidavit under Subsection ~~[(4)(e)(ii)]~~ (4)(c):
- 260 (i) within 15 days of the filing of the affidavit~~[under Subsection (4)(e)(ii)]~~, the
- 261 division shall ~~[determine]~~ conclude, based solely on the affidavit and any
- 262 supporting attachments, whether~~[either the respondent or the claimant failed to~~
- 263 ~~reasonably cooperate in the scheduling of a pre-litigation hearing; and]~~ :
- 264 (A) the respondent failed to reasonably cooperate in the scheduling of the
- 265 prelitigation panel review; and
- 266 (B) the claimant failed to reasonably cooperate in the scheduling of the
- 267 prelitigation panel review; and
- 268 (ii)(A) if the ~~[determination is]~~ division finds that the ~~[respondent failed to~~

- 269 reasonably cooperate in the scheduling of a hearing, and the claimant did not
 270 fail to reasonably cooperate, the division shall issue a certificate of
 271 compliance for the claimant in accordance with ~~[Section 78B-3-418]~~ Subsection
 272 78B-3-418(3)(b), stating the division's determination and the facts upon which
 273 the determination is based; or
- 274 (B) if the division makes a determination other than the determination in
 275 Subsection (4)(d)(ii)(A), ~~[the claimant shall file an affidavit of merit in~~
 276 ~~accordance with Section 78B-3-423, within 30 days of the determination of the~~
 277 ~~division under this Subsection (4)]~~ the division shall issue a certificate of
 278 compliance for the claimant, in accordance with Subsection 78B-3-418(3)(b),
 279 stating the division's determination and the facts upon which the determination
 280 is based.
- 281 (e)(i) The claimant and any respondent may agree by written stipulation ~~[that no~~
 282 ~~useful purpose would be served by convening a prelitigation panel]~~ to waive the
 283 requirement to convene a prelitigation panel under this section.
- 284 (ii) When the stipulation is filed with the division, the division shall within 10 days
 285 after receipt issue a certificate of compliance under ~~[Section 78B-3-418]~~
 286 Subsection 78B-3-418(3)(c), as it concerns the stipulating respondent, and stating
 287 that the claimant has ~~[complied with all conditions precedent to the~~
 288 ~~commencement of litigation regarding the claim]~~ satisfied, by stipulation, the
 289 condition precedent under Subsection (1)(c) to commencing litigation.
- 290 (5) The division shall provide for and appoint an appropriate panel ~~[or panels to hear]~~ to
 291 consider complaints of medical liability and damages, made by or on behalf of any
 292 patient who is an alleged victim of ~~[medical liability]~~ malpractice. The panels are
 293 composed of:
- 294 (a) one member who is a resident lawyer currently licensed and in good standing to
 295 practice law in this state and who shall serve as chairman of the panel, who is
 296 appointed by the division from among qualified individuals who have registered with
 297 the division indicating a willingness to serve as panel members, and a willingness to
 298 comply with the rules of professional conduct governing lawyers in the state, and
 299 who has completed division training regarding conduct of ~~[panel hearings]~~
 300 prelitigation panel reviews;
- 301 (b)(i) one or more members who are licensed health care providers listed under
 302 Section 78B-3-403, who are practicing and knowledgeable in the same specialty

- 303 as the proposed [defendant] respondent, and who are appointed by the division in
304 accordance with Subsection (6); or
- 305 (ii) in claims against only a health care facility or the facility's employees, one
306 member who is an individual currently serving in a health care facility
307 administration position directly related to health care facility operations or
308 conduct that includes responsibility for the area of practice that is the subject of
309 the liability claim, and who is appointed by the division; and
- 310 (c) a lay panelist who is not a lawyer, doctor, hospital employee, or other health care
311 provider, and who is a responsible citizen of the state, selected and appointed by the
312 division from among individuals who have completed division training with respect
313 to panel [hearings] reviews.
- 314 (6)(a) Each person listed as a health care provider in Section 78B-3-403 and practicing
315 under a license issued by the state, is obligated as a condition of holding that license
316 to participate as a member of a medical liability prelitigation panel at reasonable
317 times, places, and intervals, upon issuance, with advance notice given in a reasonable
318 time frame, by the division of an Order to Participate as a Medical Liability
319 Prelitigation Panel Member.
- 320 (b) A licensee may be excused from appearance and participation as a panel member
321 upon the division finding participation by the licensee will create an unreasonable
322 burden or hardship upon the licensee.
- 323 (c) A licensee [~~whom~~] who the division finds failed to appear and participate as a panel
324 member when so ordered, without adequate explanation or justification and without
325 being excused for cause by the division, may be assessed an administrative fine not to
326 exceed \$5,000.
- 327 (d) A licensee [~~whom~~] who the division finds intentionally or repeatedly failed to appear
328 and participate as a panel member when so ordered, without adequate explanation or
329 justification and without being excused for cause by the division, may be assessed an
330 administrative fine not to exceed \$5,000, and is guilty of unprofessional conduct.
- 331 (e) All fines collected under Subsections (6)(c) and (d) shall be deposited into the
332 Physicians Education Fund created in Section 58-67a-1.
- 333 (f) The director of the division may collect a fine that is not paid by:
- 334 (i) referring the matter to a collection agency; or
- 335 (ii) bringing an action in the district court of the county where the person against
336 whom the penalty is imposed resides or in the county where the office of the

- 337 director is located.
- 338 (g) A county attorney or the attorney general of the state shall provide legal assistance
339 and advice to the director in an action to collect a fine.
- 340 (h) A court shall award reasonable attorney fees and costs to the prevailing party in an
341 action brought by the division to collect a fine.
- 342 (7) Each person selected as a panel member shall certify, under oath, that [he] the member
343 has no bias or conflict of interest with respect to any matter under consideration.
- 344 (8) A member of [the] a prelitigation [hearing] review panel may not receive compensation
345 or benefits for the member's service, but may receive per diem and travel expenses in
346 accordance with:
- 347 (a) Section 63A-3-106;
- 348 (b) Section 63A-3-107; and
- 349 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
350 63A-3-107.
- 351 (9)(a) In addition to the actual cost of administering the licensure of health care
352 providers, the division may set license fees of health care providers within the limits
353 established by law equal to their proportionate costs of administering prelitigation
354 panels.
- 355 (b) The claimant bears none of the costs of administering the prelitigation panel except
356 under Section 78B-3-420.
- 357 Section 6. Section **78B-3-416.1** is enacted to read:
- 358 **78B-3-416.1 . Division collection of prelitigation panel review data.**
- 359 (1) The division shall:
- 360 (a) compile a written report summarizing the division's administration, including at least
361 the information described in Subsection (2);
- 362 (b) in compiling the written report under Subsection (1)(a), review information received
363 from the Administrative Office of the Courts under Section 78A-2-109.6; and
- 364 (c) provide the written report under Subsection (1)(a) to the Judiciary Interim Committee
365 no later than November 1 of each year.
- 366 (2) The report under Subsection (1) shall detail, for the period beginning on the day after
367 the day through which the last report covered, and ending on the day through which data
368 is available:
- 369 (a) the number of prelitigation panel reviews the division convened, by license class of
370 the respondents;

- 371 (b) the number of cases for which a claimant filed a complaint in court;
 372 (c) the number of cases in which a provider and claimant agreed to forgo a prelitigation
 373 panel review;
 374 (d) the number of cases in which a provider and claimant agreed to use a prelitigation
 375 panel review as binding arbitration;
 376 (e) for each prelitigation panel review the division convened, the prelitigation review
 377 panel's determinations regarding merit under Subsection 78B-3-418(2)(a);
 378 (f) the number of cases that were settled after a prelitigation panel review and:
 379 (i) before a complaint alleging a malpractice action against a health care provider in
 380 court is filed in court; and
 381 (ii) after a complaint described in Subsection (2)(g)(i) is filed; and
 382 (g) for cases alleging a malpractice action against a health care provider that were
 383 resolved, including by adjudication or stipulated settlement:
 384 (i) the amount of damages sought as compared to the amount of damages awarded or
 385 otherwise obtained, if known, including by category of:
 386 (A) general or non-economic damages;
 387 (B) specific, special, or economic damages; and
 388 (C) punitive damages;
 389 (ii) the number of cases that were dismissed with prejudice and without an award of
 390 damages or any other economic relief to the claimant.
 391 (3) The division may require the following persons to submit to the division the information
 392 necessary for the division to comply with Subsection (1):
 393 (a) a claimant;
 394 (b) a respondent;
 395 (c) a member of the prelitigation review panel; or
 396 (d) a participant in the prelitigation panel review.

397 Section 7. Section **78B-3-418** is amended to read:

398 **78B-3-418 . Decision and recommendations of panel.**

- 399 (1)(a) The prelitigation review panel shall issue an opinion and the division shall issue a
 400 certificate of compliance with the [~~pre-litigation hearing~~] prelitigation requirements of
 401 this part in accordance with this section.
 402 (b) A certificate of compliance issued in accordance with this section is proof that [~~the~~
 403 ~~claimant has complied with all conditions precedent under this part prior to the~~
 404 ~~commencement of litigation as required in Subsection 78B-3-412(1)] the claimant has~~

- 405 met all conditions precedent, under this section, to commencing litigation.
- 406 (2)(a) The panel shall render [its] an opinion in writing not later than 30 days after the[
 407 ~~end of the proceedings]~~ day on which the prelitigation panel review concludes, and
 408 determine on the basis of the evidence whether:
- 409 (i) each claim against each health care provider has merit or has no merit; and
 410 (ii) if a claim is deemed meritorious under Subsection (2)(a)(i), [~~whether-~~]the conduct
 411 complained of resulted in harm to the claimant.
- 412 (b) There is no judicial or other review or appeal of the panel's [~~decision or~~
 413 ~~recommendations]~~ opinion under Subsection (2)(a).
- 414 (3) The division shall issue a certificate of compliance to the claimant, for each respondent
 415 named in the intent to file a claim under this part, if:
- 416 (a) for a named respondent, the panel issues an opinion [~~of merit]~~under [~~Subsections~~
 417 ~~(2)(a)(i) and (ii)]~~ Subsection (2)(a);
- 418 [~~(b) for a named respondent, the claimant files an affidavit of merit in accordance with~~
 419 ~~Section 78B-3-423 if the opinion under Subsection (1)(a) is non-meritorious under~~
 420 ~~either Subsection (2)(a)(i) or (ii);]~~
- 421 [~~(c)~~] (b) the claimant has complied with the provisions of Subsections 78B-3-416(4)(c)
 422 and (d); or
- 423 [~~(d)~~] (c) the parties submitted a stipulation under Subsection 78B-3-416(4)(e).

424 Section 8. Section **78B-3-418.5** is enacted to read:

425 **78B-3-418.5 . Attorney fees.**

- 426 (1) A claimant in a malpractice action against a health care provider shall pay the
 427 reasonable attorney fees and costs that any respondent incurs defending against any
 428 pleaded claim or cause of action, if:
- 429 (a) the prelitigation review panel renders an opinion under Subsection 78B-3-418(2)(a)
 430 that the claim or cause of action has no merit; and
- 431 (b) the claimant does not substantially prevail on the merits of the claim or cause of
 432 action, as determined by a court, or by a binding arbit under Section 78B-3-421.
- 433 (2) A claimant in a malpractice action against a health care provider, or the claimant's
 434 attorney, is liable to any respondent for the reasonable attorney fees and costs incurred
 435 by the respondent, or by the respondent's insurer, in connection with any filing,
 436 submission, prelitigation panel review, arbitration, or judicial proceeding under this part
 437 for which a claimant files or submits an affidavit containing an allegation that the court
 438 or arbitrator finds that the claimant knew, or should have known, to be baseless or false

439 at the time the affidavit was signed, filed, or submitted.

440 (3) A court, or an arbitrator under Section 78B-3-421, may award reasonable attorney fees
441 or costs under Subsection (1) only if the respondent files a motion for the attorney fees
442 or costs no later than 60 days after the day on which the court's or arbitrator's final
443 decision, judgment, or dismissal of all claims in the action is entered.

444 Section 9. Section **78B-3-424** is amended to read:

445 **78B-3-424 . Limitation of liability for ostensible agent.**

446 (1) For purposes of this section:

447 (a) "Agent" means a person who is an "employee," "worker," or "operative," as defined
448 in Section 34A-2-104, of a health care provider.

449 (b) "Ostensible agent" means a person:

450 (i) who is not an agent of the health care provider; and

451 (ii) who the plaintiff reasonably believes is an agent of the health care provider
452 because the health care provider intentionally, or as a result of a lack of ordinary
453 care, caused the plaintiff to believe that the person was an agent of the health care
454 provider.

455 (2) A health care provider named as a defendant in a medical malpractice action is not
456 liable for the acts or omissions of an ostensible agent if:

457 (a) the ostensible agent has privileges with the health care provider, but is not an agent
458 of the health care provider;

459 (b) the health care provider has, by policy or practice, ensured that a person providing
460 professional services has insurance of a type and amount required, if any is required,
461 by the rules or regulations as established in:

462 (i) medical staff by-laws for a health care facility; or

463 (ii) other health care facility contracts, indemnification agreements, rules or
464 regulations;

465 (c) the insurance required in Subsection (2)(b) is in effect at the time of the alleged act or
466 omission of the ostensible agent; and

467 (d) there is a claim of agency or ostensible agency in a plaintiff's notice of intent to
468 commence an action, and the health care provider, within 60 days of the service of
469 the notice of intent to commence an action, lists each person identified by the
470 plaintiff who the provider claims is not an agent or ostensible agent of the provider.

471 (3)(a) Subject to Subsection (3)(b), a health care facility or organization is not liable in a
472 malpractice action brought against the patient's health care provider if:

- 473 (i) the patient's health care provider:
 474 (A) is an employee of the health care facility, clinic, or organization; and
 475 (B) was not acting or performing within the course of the health care facility's,
 476 clinic's, or organization's employment at the time that the alleged malpractice
 477 or injury occurred; and
 478 (ii) the alleged malpractice or injury occurred at a location other than at the health
 479 care facility, clinic, or organization described in Subsection (3)(a)(i).
 480 (b) A claimant that names a health care facility, clinic, or organization described in
 481 Subsection (3)(a)(i)(A) as a defendant in violation of Subsection (3)(a) shall:
 482 (i) dismiss all claims against the health care facility, clinic, or organization no later
 483 than seven days after the date on which the court, or the arbitrator under Section
 484 78B-3-421, finds that the conditions under Subsection (3)(a) are satisfied; and
 485 (ii) pay the reasonable attorney fees and costs incurred by the health care facility,
 486 clinic, or organization that employs the patient's health care provider in defending
 487 against the malpractice action.

488 [~~3~~] (4) This section applies to a cause of action that arises on or after July 1, 2010.

489 Section 10. Section **78B-8-201** is amended to read:

490 **78B-8-201 . Basis for punitive damages awards -- Section inapplicable to DUI**
 491 **cases or providing illegal controlled substances -- Division of award with state.**

- 492 (1)(a) Except as otherwise provided by statute, punitive damages may be awarded only
 493 if compensatory or general damages are awarded and it is established by clear and
 494 convincing evidence that the acts or omissions of the tortfeasor are the result of
 495 willful and malicious or intentionally fraudulent conduct, or conduct that manifests a [
 496 ~~knowing and reckless indifference toward, and a disregard of,~~] willful or malicious
 497 disregard of the rights of others.
 498 (b) The limitations, standards of evidence, and standards of conduct of Subsection (1)(a)
 499 do not apply to any claim for punitive damages arising out of the tortfeasor's:
 500 (i) operation of a motor vehicle or motorboat while voluntarily intoxicated or under
 501 the influence of any drug or combination of alcohol and drugs as prohibited by
 502 Section 41-6a-502;
 503 (ii) causing death of another person by providing or administering an illegal
 504 controlled substance to the person under Section 78B-3-801; or
 505 (iii) providing an illegal controlled substance to any person in the chain of transfer
 506 that connects directly to a person who subsequently provided or administered the

507 substance to a person whose death was caused in whole or in part by the substance.

508 (c) The award of a penalty under Section 78B-3-108 regarding shoplifting is not subject
509 to the prior award of compensatory or general damages under Subsection (1)(a)
510 whether or not restitution has been paid to the merchant prior to or as a part of a civil
511 action under Section 78B-3-108.

512 (2) Evidence of a party's wealth or financial condition shall be admissible only after a
513 finding of liability for punitive damages has been made.

514 (a) Discovery concerning a party's wealth or financial condition may only be allowed
515 after the party seeking punitive damages has established a prima facie case on the
516 record that an award of punitive damages is reasonably likely against the party about
517 whom discovery is sought and, if disputed, the court is satisfied that the discovery is
518 not sought for the purpose of harassment.

519 (b) Subsection (2)(a) does not apply to any claim for punitive damages arising out of the
520 tortfeasor's:

521 (i) operation of a motor vehicle or motorboat while voluntarily intoxicated or under
522 the influence of any drug or combination of alcohol and drugs as prohibited by
523 Section 41-6a-502;

524 (ii) causing death of another person or causing a person to be addicted by providing
525 or administering an illegal controlled substance to the person under Section
526 78B-3-801; or

527 (iii) providing an illegal controlled substance to any person in the chain of transfer
528 that connects directly to a person who subsequently provided or administered the
529 substance to a person whose death was caused in whole or in part by the substance.

530 (3)(a) In any case where punitive damages are awarded, the court shall enter judgment as
531 follows:

532 (i) for the first \$50,000, judgment shall be in favor of the injured party; and

533 (ii) any amount in excess of \$50,000 shall be divided equally between the state and
534 the injured party, and judgment to each entered accordingly.

535 (b)(i) The actual and bona fide attorney fees and costs incurred in obtaining and
536 collecting the judgment for punitive damages shall be considered to have been
537 incurred by the state and the injured party in proportion to the judgment entered in
538 each party's behalf.

539 (A) The state and injured party shall be responsible for each one's proportionate
540 share only.

- 541 (B) The state is liable to pay its proportionate share only to the extent it receives
542 payment toward its judgment.
- 543 (ii) If the court awards attorney fees and costs to the injured party as a direct result of
544 the punitive damage award, the state shall have a corresponding credit in a
545 proportionate amount based on the amounts of the party's respective punitive
546 damage judgments. This credit may be applied as an offset against the amount of
547 attorney fees and costs charged to the state for obtaining the punitive damage
548 judgment.
- 549 (c) The state shall have all rights due a judgment creditor to collect the full amounts of
550 both punitive damage judgments until the judgments are fully satisfied.
- 551 (i) Neither party is required to pursue collection.
- 552 (ii) In pursuing collection, the state may exercise any of its collection rights under
553 Section 63A-3-301 et seq., Section 63A-3-502 et seq., and any other statutory
554 provisions. Any amounts collected on these judgments by either party shall be
555 held in trust and distributed as set forth in Subsection (3)(e).
- 556 (d) Unless all affected parties, including the state, expressly agree otherwise, collection
557 on the punitive damages judgment shall be deferred until all other judgments have
558 been fully paid. Any payment by or on behalf of any judgment debtor, whether
559 voluntary, by execution, or otherwise, shall be distributed and applied in the
560 following order:
- 561 (i) to the judgment for compensatory damage and any applicable judgment for
562 attorney fees and costs;
- 563 (ii) to the initial \$50,000 of the punitive damage judgment;
- 564 (iii) to any judgment for attorney fees and costs awarded as a direct result of the
565 punitive damages; and
- 566 (iv) to the remaining judgments for punitive damages.
- 567 (e) Any partial payments shall be distributed equally between the state and injured party.
- 568 (f) After the payment of attorney fees and costs, all amounts paid on the state's judgment
569 shall be remitted to the state treasurer to be deposited into the General Fund.

570 Section 11. **Repealer.**

571 This bill repeals:

572 Section **78B-3-423, Affidavit of merit.**

573 Section 12. **Effective Date.**

574 This bill takes effect on May 7, 2025.