

Health Care Malpractice Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Nelson T. Abbott

LONG TITLE**General Description:**

This bill addresses statutes of limitation for health care malpractice actions.

Highlighted Provisions:

This bill:

- extends statutes of limitation for health care malpractice actions;
- modifies the application of the statute of limitations, when a party files a notice of intent to allocate fault to a non-party health care provider;
- expands the definition of "collateral source";
- modifies the evidentiary rules for malpractice actions;
- increases the limitation on awards of damages for noneconomic losses in certain malpractice actions; and
- subjects the limitation on awards of damages for noneconomic losses in certain malpractice actions to an annual adjustment for inflation.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-3-404, as last amended by Laws of Utah 2012, Chapter 384

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

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

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

Section 1. Section **78B-3-404** is amended to read:

78B-3-404 . Statute of limitations -- Exceptions -- Application.

(1) [A] Subject to Subsections (2) and (3), a malpractice action against a health care provider shall be commenced within [two] four years after the plaintiff or patient

discovers, or through the use of reasonable diligence should have discovered the injury, whichever first occurs, but not to exceed ~~[four]~~ eight years after the date of the alleged act, omission, neglect, or occurrence.

(2) Notwithstanding Subsection (1):

(a) in an action where the allegation against the health care provider is that a foreign object has been wrongfully left within a patient's body, the claim shall be barred unless commenced within ~~[one year]~~ two years after the plaintiff or patient discovers, or through the use of reasonable diligence should have discovered, the existence of the foreign object wrongfully left in the patient's body, whichever first occurs; or

(b) in an action where it is alleged that a patient has been prevented from discovering misconduct on the part of a health care provider because that health care provider has affirmatively acted to fraudulently conceal the alleged misconduct, the claim shall be barred unless commenced within ~~[one year]~~ two years after the plaintiff or patient discovers, or through the use of reasonable diligence, should have discovered the fraudulent concealment, whichever first occurs.

(3) A party's filing of a notice of intent to allocate fault to a non-party health care provider constitutes any other party's discovery of injury under Subsection (1), and any other party may commence a malpractice action against the non-party health care provider for that injury within the limitation periods in this section.

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

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

(1) In all malpractice actions against health care providers as defined in Section 78B-3-403 in which damages are awarded to compensate the plaintiff for losses sustained, the court shall reduce the amount of the award by the total of all amounts paid to the plaintiff from all collateral sources which are available to him. No reduction may be made for collateral sources for which a subrogation right exists as provided in this section nor shall there be a reduction for any collateral payment not included in the award of damages.

(2) Upon a finding of liability and an awarding of damages by the trier of fact, the court shall receive evidence concerning the total amounts of collateral sources which have been paid to or for the benefit of the plaintiff or are otherwise available to him. The court shall also take testimony of any amount which has been paid, contributed, or

forfeited by, or on behalf of the plaintiff or members of his immediate family to secure his right to any collateral source benefit which he is receiving as a result of his injury, and shall offset any reduction in the award by those amounts. Evidence may not be received and a reduction may not be made with respect to future collateral source benefits~~[except as specified in Subsection (5)].~~

(3) For purposes of this section "collateral source" means payments made to or for the benefit of the plaintiff for:

- (a) medical expenses and disability payments payable under the United States Social Security Act, any federal, state, or local income disability act, or any other public program, except the state and federal programs which are required by law to seek subrogation;
- (b) any health, sickness, or income replacement insurance, automobile accident insurance that provides health benefits or income replacement coverage, and any other similar insurance benefits, except life insurance benefits available to the plaintiff, whether purchased by the plaintiff or provided by others;
- (c) any contract or agreement of any person, group, organization, partnership, or corporation to provide, pay for, or reimburse the costs of hospital, medical, dental, or other health care services, except benefits received as gifts, contributions, or assistance made gratuitously; and
- (d) any contractual or voluntary wage continuation plan provided by employers or any other system intended to provide wages during a period of disability.

(4) To preserve subrogation rights for amounts paid or received prior to settlement or judgment, a provider of collateral sources shall, at least 30 days before settlement or trial of the action, serve a written notice upon each health care provider against whom the malpractice action has been asserted. The written notice shall state:

- (a) the name and address of the provider of collateral sources;
- (b) the amount of collateral sources paid;
- (c) the names and addresses of all persons who received payment; and
- (d) the items and purposes for which payment has been made.

~~[(5) Evidence is admissible of government programs that provide payments or benefits available in the future to or for the benefit of the plaintiff to the extent available irrespective of the recipient's ability to pay. Evidence of the likelihood or unlikelihood that the programs, payments, or benefits will be available in the future is also admissible. The trier of fact may consider the evidence in determining the amount of damages awarded to a~~

plaintiff for future expenses.]

[(6)] (5) A provider of collateral sources is not entitled to recover any amount of benefits from a health care provider, the plaintiff, or any other person or entity as reimbursement for collateral source payments made prior to settlement or judgment, including any payments made under Title 26B, Chapter 3, Part 10, Medical Benefits Recovery, except to the extent that subrogation rights to amounts paid prior to settlement or judgment are preserved as provided in this section.

[(7)] (6) All policies of insurance providing benefits affected by this section are construed in accordance with this section.

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

78B-3-410 . Limitation of award of noneconomic damages in malpractice actions.

(1) In a malpractice action against a health care provider, an injured plaintiff may recover noneconomic losses to compensate for pain, suffering, and inconvenience. The amount of damages awarded for noneconomic loss may not exceed:

(a) for a cause of action arising before July 1, 2001, \$250,000;

(b) for a cause of action arising on or after July 1, 2001 and before July 1, 2002, the limitation is adjusted for inflation to \$400,000;

(c) for a cause of action arising on or after July 1, 2002, and before May 15, 2010 the \$400,000 limitation described in Subsection (1)(b) shall be adjusted for inflation as provided in Subsection (2);[and]

(d) for a cause of action arising on or after May 15, 2010, \$450,000[-] ; and

(e) for a cause of action arising on or after May 15, 2025, \$950,000.

(2)(a) [~~Beginning July 1, 2002 and each July 1 thereafter until July 1, 2009~~] Beginning July 1, 2025, the limit for damages under Subsection (1)(c) shall be adjusted for inflation by the state treasurer.

(b) By July 15 of each year[~~until July 1, 2009~~], the state treasurer shall:

(i) certify the inflation-adjusted limit calculated under this Subsection (2); and

(ii) inform the Administrative Office of the Courts of the certified limit.

(c) The amount resulting from Subsection (2)(a) shall:

(i) be rounded to the nearest \$10,000; and

(ii) apply to a cause of action arising on or after the date the annual adjustment is made.

(3) As used in this section, "inflation" means the seasonally adjusted [consumer price] medical care index for all urban consumers as published by the Bureau of Labor

134 Statistics of the United States Department of Labor.

135 (4) The limit under Subsection (1) does not apply to awards of punitive damages.

136 Section 4. **Effective Date.**

137 This bill takes effect on May 7, 2025.