

HOUSE BILL No. 4977

September 24, 1987, Introduced by Reps. Wartner, Griffin, Farhat, Middaugh, Johnson, Gnodtke, Martin, Ouwinga, Gilmer, Ostling, Weeks, DeLange, Krause, Sparks, Oxender, Stacey, Alley, Emmons, Browne, Miller, Gagliardi and Gire and referred to the Committee on Judiciary.

A bill to amend sections 5040, 5044, 5046, 5047, and 5054 of Act No. 236 of the Public Acts of 1961, entitled as amended "Revised judicature act of 1961," section 5044 as amended by Act No. 38 of the Public Acts of 1980, being sections 600.5040, 600.5044, 600.5046, 600.5047, and 600.5054 of the Michigan Compiled Laws; and to repeal certain acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 5040, 5044, 5046, 5047, and 5054 of Act
2 No. 236 of the Public Acts of 1961, section 5044 as amended by
3 Act No. 38 of the Public Acts of 1980, being sections 600.5040,
4 600.5044, 600.5046, 600.5047, and 600.5054 of the Michigan
5 Compiled Laws, are amended to read as follows:

6 Sec. 5040. (1) The provisions of this chapter shall be
7 applicable to the arbitration of a dispute, controversy, or issue

1 arising out of or resulting from injury to, or the death of, a
2 person caused by an error, omission, or negligence in the per-
3 formance of professional services by a health care provider,
4 ~~hospital~~ HEALTH FACILITY, PROVIDER PANEL, OR EXEMPT PROVIDER
5 PANEL, or their agent, or based on a claimed performance of such
6 services without consent, in breach of warranty, or in violation
7 of contract.

8 (2) As used in this chapter:

9 (a) "Association" means the American arbitration association
10 or other entity organized to arbitrate disputes pursuant to this
11 chapter.

12 (B) "EXEMPT PROVIDER PANEL" MEANS ANY CONTRACT OR ARRANGE-
13 MENT FOR THE DELIVERY OF HEALTH CARE SERVICES DESCRIBED IN
14 SECTION 7 OF THE PRUDENT PURCHASER ACT, ACT NO. 233 OF THE PUBLIC
15 ACTS OF 1984, BEING SECTION 550.57 OF THE MICHIGAN COMPILED LAWS.

16 (C) ~~(b)~~ "Health care provider" means ~~a person, partner-~~
17 ~~ship, or corporation lawfully engaged in the practice of medi-~~
18 ~~cine, surgery, dentistry, podiatry, optometry, chiropractic,~~
19 ~~nursing, or a person dispensing drugs or medicines~~ THAT TERM AS
20 DEFINED IN SECTION 2(E) OF THE MICHIGAN PROSPECTIVE MEDICAL MAL-
21 PRACTICE ARBITRATION ACT.

22 ~~(c) "Hospital" means a person, partnership, or corporation~~
23 ~~lawfully engaged in the operation of a hospital, clinic, health~~
24 ~~maintenance organization, or a sanitarium.~~

25 (D) "HEALTH FACILITY" MEANS THAT TERM AS DEFINED IN
26 SECTION 2(F) OF THE MICHIGAN PROSPECTIVE MEDICAL MALPRACTICE
27 ARBITRATION ACT.

1 (E) "PROVIDER PANEL" MEANS THAT TERM AS DEFINED IN
2 SECTION 2(K) OF THE PRUDENT PURCHASER ACT, ACT NO. 233 OF THE
3 PUBLIC ACTS OF 1984, BEING SECTION 550.52 OF THE MICHIGAN
4 COMPILED LAWS.

5 Sec. 5044. (1) The association shall administer a proceed-
6 ing without charge to the claimant. The administrative expense
7 shall be \$200.00 per party per case, or as may be agreed by the
8 parties and the association, or as may be approved by the commis-
9 sioner of insurance pursuant to law. The administrative costs on
10 account of a claimant shall be defrayed by the arbitration admin-
11 istration fund established under the insurance code or shall be
12 provided by the respondent parties.

13 (2) An arbitration under this chapter shall be heard by a
14 panel of 3 arbitrators. One shall be an attorney who shall be
15 the chairperson and shall have jurisdiction over prehearing pro-
16 cedures, 1 shall be a physician, preferably but not necessarily
17 from the respondent's medical specialty, and the third shall be a
18 person who is neither a licensee of the health profession
19 involved, a lawyer, nor a representative of a ~~hospital~~ HEALTH
20 FACILITY or an insurance company. If a case involves a
21 ~~hospital~~ HEALTH FACILITY only, a hospital administrator OR A
22 CHIEF ADMINISTRATIVE OFFICER OF A HEALTH FACILITY may be substi-
23 tuted for a physician. If a case involves a health care provider
24 other than a physician, a licensee of the health profession
25 involved shall be substituted for a physician.

26 (3) Except as otherwise provided in subsection (6),
27 arbitrator candidates shall be selected pursuant to the rules and

1 procedures of the association from a pool of candidates generated
2 by the association. The rules and procedures of the association
3 pertaining to selection of arbitrators under this chapter shall
4 require that the association send simultaneously to each party an
5 identical list of 5 arbitrator candidates in each of the 3 cate-
6 gories together with a brief biographical statement on each
7 candidate. A party may strike from the list any name which is
8 unacceptable and shall number the remaining names in order of
9 preference. When the lists are returned to the association, they
10 shall be compared and the first mutually agreeable candidate in
11 each category shall be invited to serve.

12 (4) Where no mutually agreed upon arbitrator is selected for
13 any category, a second list of that category shall be sent pursu-
14 ant to subsection (3).

15 (5) If a complete panel is not selected by mutual agreement
16 of the parties pursuant to subsections (3) and (4), then under
17 the applicable rules and procedures of the association the asso-
18 ciation shall appoint the remainder of the panel on whom agree-
19 ment has not been reached by the parties. The appointment by the
20 association shall be subject to challenge by any party for cause,
21 which challenge may allege facts to establish that unusual commu-
22 nity or professional pressures will unreasonably influence the
23 objectivity of the panelist. A request to strike an arbitrator
24 for cause shall be determined by the regional director or com-
25 parable officer of the association or as may be provided by rule
26 of the commissioner of insurance pursuant to law.

1 (6) The parties shall not be restricted to the arbitrator
2 candidates submitted for consideration. If all parties mutually
3 agree upon a panelist within a designated category, the panelist
4 shall be invited to serve.

5 Sec. 5046. (1) A party to ~~the~~ AN arbitration agreement
6 ENTERED INTO PURSUANT TO THE MICHIGAN PROSPECTIVE MEDICAL MAL-
7 PRACTICE ARBITRATION ACT may demand arbitration of a claim and
8 the proceeding shall be instituted as provided by rule of the
9 association and upon compliance with section 5044.

10 ~~(2) A minor child shall be bound by a written agreement to~~
11 ~~arbitrate disputes, controversies, or issues upon the execution~~
12 ~~of an agreement on his behalf by a parent or legal guardian. The~~
13 ~~minor child may not subsequently disaffirm the agreement.~~

14 (2) ~~(3)~~ In cases involving a common question of law or
15 fact, if separate arbitration agreements exist between a plain-
16 tiff and a number of defendants or between defendants, the dis-
17 putes, controversies, and issues shall be consolidated into a
18 single arbitration proceeding.

19 (3) ~~(4)~~ A person who is not a party to the arbitration
20 agreement may join in the arbitration at the request of any party
21 with all the rights and obligations of the original parties.
22 Each party to an arbitration under this chapter is deemed to be
23 bound by the joinder of a new party.

24 Sec. 5047. (1) Prior to the institution of a proceeding or
25 claim by a patient, any offer of reparations and all communica-
26 tions incidental thereto made in writing to a patient by a health
27 care provider, ~~or hospital~~ HEALTH FACILITY, PROVIDER PANEL, OR

1 EXEMPT PROVIDER PANEL is privileged and may not be used by any
2 party to establish the liability or measure of damages attribut-
3 able to the offeror.

4 (2) Such an offer shall provide that a patient has 30 days
5 to accept or reject the offer, or such lesser period of time as
6 may be necessitated by the condition of health of the patient.

7 (3) After any rejection or the lapse of the applicable time,
8 any party may demand arbitration, where an arbitration agreement
9 is in effect.

10 (4) Any such offer to a patient shall include a statement
11 that the patient may consult legal counsel before rejecting or
12 accepting the offer.

13 (5) In a case where a potential claim is identified by a
14 health care provider, ~~or hospital~~ HEALTH FACILITY, PROVIDER
15 PANEL, OR EXEMPT PROVIDER PANEL AND where reparations, in its
16 judgment, are not appropriate, the HEALTH CARE provider, HEALTH
17 FACILITY, PROVIDER PANEL, OR EXEMPT PROVIDER PANEL may, at its
18 option, file a demand for arbitration which demand shall identify
19 the potential claim and deny liability.

20 Sec. 5054. (1) A majority of the panel of arbitrators may
21 grant any relief deemed equitable and just, including money dam-
22 ages, provision for hospitalization, medical, or rehabilitative
23 procedures, support, or any combination thereof.

24 (2) The panel may order submission of written briefs within
25 30 days after the close of hearings. In written briefs each
26 party may summarize the evidence in testimony and may propose a
27 comprehensive award of remedial or compensatory elements.

1 (3) The panel shall render its award and opinion within 30
2 days after the close of the hearing or the receipt of briefs, if
3 ordered.

4 (4) The award in the arbitration proceeding shall be in
5 writing and shall be signed by the chairperson or by the majority
6 of a panel of arbitrators. The award shall include a determina-
7 tion of all the questions submitted to arbitration by each party,
8 the resolution of which is necessary to determine the dispute,
9 controversy, or issue. IN ADDITION, THE AWARD MAY REFLECT THE
10 ACTUAL OR APPARENT LIABILITY OF A PERSON WHO IS NOT A PARTY TO
11 THE ARBITRATION PROCEEDING, BUT WHO IS DETERMINED BY THE PANEL TO
12 HAVE ACTUAL OR APPARENT RESPONSIBILITY TO A PARTY UNDER THE
13 CIRCUMSTANCES.

14 (5) AN AWARD IN AN ARBITRATION PROCEEDING MAY BE RECOGNIZED
15 BY A COURT IN A JUDICIAL PROCEEDING INVOLVING THE SAME PARTIES
16 AND THE SAME CLAIM.

17 Section 2. Sections 5041 and 5042 of Act No. 236 of the
18 Public Acts of 1961, being sections 600.5041 and 600.5042 of the
19 Michigan Compiled Laws, are repealed.