

AN ACT

To amend chapter 383, RSMo, by adding thereto thirteen new sections relating to the Missouri health care arbitration act.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

Section A. Chapter 383, RSMo, is amended by adding thereto thirteen new sections, to be known as sections 383.700, 383.703, 383.706, 383.709, 383.712, 383.715, 383.718, 383.721, 383.724, 383.727, 383.730, 383.733, and 383.736, to read as follows:

383.700. 1. Sections 383.700 to 383.736 shall be known and may be cited as the "Missouri Health Care Arbitration Act".

2. As used in sections 383.700 to 383.736, the following terms mean:

(1) "Arbitration proceeding", an arbitration conducted under sections 383.700 to 383.736 based upon a health care arbitration agreement which has been prepared and executed in accordance with sections 383.700 to 383.736, and which is otherwise governed by sections 435.012 to 435.470, RSMo;

(2) "Health care arbitration agreement" or "agreement", a written agreement between a patient and a hospital or between a patient and a health care provider to submit medical malpractice claims to binding arbitration under sections 383.700 to 383.736.

All medical malpractice claims for damages arising out of injuries alleged to have been received by a patient or the death

of a patient due to negligence on the part of either the hospital or health care provider, or any claim against a hospital or health care provider based upon a medical malpractice claim, not including any intentional torts, but only with respect to those medical malpractice claims that are based on actions or failures to act that occur during the effective dates of health care arbitration agreement between the patient and a hospital or a health care provider;

(3) "Health care provider", a person, partnership, corporation, limited liability company, limited liability partnership, or other entity lawfully engaged in the practice of medicine, surgery, chiropractic, dentistry, podiatry, optometry, physical therapy, or nursing;

(4) "Hospital", a partnership, corporation, limited liability company, limited liability partnership, not-for-profit corporation, or other entity lawfully engaged in the operation and administration of a hospital, clinic, nursing home, or sanitarium;

(5) "Medical malpractice claim", a claim of personal injury or wrongful death by a patient based upon the failure on the part of either a health care provider or a hospital to provide the same or similar health care as the ordinarily careful and prudent health care provider or hospital would have provided under the same or similar circumstances, including any claim based on

negligence, failure to warn as to risks, failure to obtain the informed consent of the patient, as well as any claim for damages based on loss of income, pain, suffering, loss of consortium, shortened life expectancy, loss of last change of survival, or any similar economic loss which was proximately caused by such personal injury or death;

(6) "Patient", any person who receives health care services from a health care provider;

(7) "Qualified arbitrator", a person who is eligible to act as an arbitrator under section 383.730.

383.703. Sections 383.700 to 383.736 shall apply to and govern all health care arbitration agreements executed in accordance with this section and arising out of the provision of health care services by a health care provider or hospital to a patient. Except where inconsistent with the provisions of sections 383.700 to 383.736, the provisions of sections 435.012 to 435.470, RSMo, shall apply to and govern all health care arbitration agreements.

383.706. By consent of the existing parties to an arbitration proceeding, a third party who is not a signatory to a health care arbitration agreement may join in the arbitration proceeding and be bound in accordance with the terms of thereof. Any such additional party shall execute a written statement agreeing to be so bound.

383.709. A necessary party to any medical malpractice claim that is subject to an arbitration proceeding under sections 383.700 to 383.736, in whole or in part, shall have the right to join the arbitration proceeding if any party to the proceeding consents to such joinder; except that, if the necessary third party refuses to join the arbitration proceeding but is a necessary party because such third party is alleged to a joint tortfeasor in a medical malpractice claim, a circuit court may, on application of any party to the arbitration proceeding, stay the arbitration proceeding that otherwise would be commenced under the health care arbitration agreement entered into by some of the parties, and the issues involving the third party shall be heard by the circuit court. To the maximum extent reasonable, the circuit court shall permit the parties who are bound by a health care arbitration agreement to arbitrate the issues between them, and only those issues which must be heard before the circuit court based on refusal of a third party to join the arbitration proceeding shall be so heard by the circuit court.

383.712. The employees of a hospital or the employees of a health care provider shall be deemed to be parties to every health care arbitration agreement signed by the employer. A health care arbitration agreement may bar an action at law against any employee of a hospital or health care provider who is a party to a health care arbitration agreement on the grounds of

respondeat superior for the negligence or other wrongful act of any employee reasonably alleged to have caused the injuries on which the medical malpractice claim is based.

383.715. A minor or person disabled for whom a guardian has been appointed shall be bound by a health care arbitration agreement that is executed on behalf of such minor or disabled person by the guardian. For this purpose, either parent of a minor shall have the authority to execute a health care arbitration agreement on behalf of the minor and to bind such minor accordingly.

383.718. A health care arbitration agreement shall not be valid unless the agreement:

(1) Is clearly captioned "Health Care Arbitration Agreement";

(2) Contains language substantially similar to the following:

"The patient who has signed this agreement understands that any dispute as to medical malpractice, that is, as to whether any medical services rendered to the patient by the [health care provider or hospital] were necessary, authorized, or improperly, negligently, or incompetently rendered, will be determined by submission of such claim to arbitration as provided by the laws of the state of Missouri, and not by a lawsuit or resort to the judicial process through litigation except as Missouri law allows

for the judicial review of arbitration proceedings. Both the [health care provider or hospital] and the patient, by entering into this agreement, are waiving and giving up their constitutional right to have any such dispute decided by a court of law before a jury. Instead, the parties to this agreement have agreed to accept the use of binding arbitration to resolve any such disputes.";

(3) Contains the following notice:

"NOTICE: By signing this agreement, your right to a trial by a jury or a judge in a court will be barred as to any dispute relating to injuries that may result from negligence during your treatment or care by the [health care provider or hospital] who or that is the other party to this agreement. Your rights to a trial by jury or a judge will be replaced by an arbitration proceeding. This agreement provides that any claims that may arise as a result of your care by the [health care provider or hospital] who or that is a party to this agreement will be submitted to a panel of arbitrators rather than to a court for determination. You will be required to abide by the decision of the arbitration panel if such decision is otherwise lawful under the laws of the state of Missouri, and you will not thereafter have the right to a trial by jury or judge with respect to your claims of medical malpractice or health care malpractice.";

(4) Contains immediately above the signature line provided

for the patient who will sign and agree to the terms of a health care arbitration agreement the following in at least ten-point bold type:

"NOTICE: BY SIGNING THIS HEALTH CARE ARBITRATION AGREEMENT YOU ARE AGREEING TO HAVE ANY ISSUE OF MEDICAL MALPRACTICE DECIDED BY ARBITRATION, AND YOU ARE GIVING UP YOUR RIGHT TO A JURY OR COURT TRIAL."

This notice shall appear in lieu of, and shall eliminate the need for, compliance with section 435.460, RSMo;

(5) Prescribes that either the health care provider or hospital that is the signatory to the agreement is required to furnish a complete and conformed copy of the health care arbitration agreement to the patient at the time the patient executes the same and, upon reasonable request thereafter, the patient executing the health care arbitration agreement shall have the right to request and obtain from the health care provider or hospital additional copies of their currently effective health care arbitration agreement upon payment to the health care provider or hospital a reasonable copying charge equal to the then applicable copying cost for other medical records;

(6) Gives the patient the right to rescind and cancel the patient's consent to the health care arbitration agreement at any

time prior to the rendering of health care services by the health care provider or hospital; except that, upon such rescission or cancellation by the patient, and unless the care of the patient constitutes an emergency within generally accepted medical standards, the health care provider or hospital may thereafter refuse to render care to the patient due to such rescission or cancellation; and

(7) Specifies that its duration shall be for a stated period of time not to exceed two years from the date of execution; except that, such agreement may provide for automatic renewal from year-to-year after the date of its scheduled expiration unless cancelled at any time or by either party at least fifteen days prior to the expiration date specified therein.

383.721. Every health care arbitration agreement shall be subject to the following conditions:

(1) The agreement by a patient to enter into a health care arbitration agreement shall not be a condition precedent to receiving emergency health care services by any health care provider or hospital;

(2) A health care arbitration agreement must be a separate document complete in itself and not be a part of any other contract or agreement;

(3) A health care arbitration agreement shall not limit,

impair, or waive any substantive rights or defenses of any party, including any applicable statute of limitations;

(4) A health care arbitration agreement shall not limit, impair, waive, or modify any procedural rights to present material evidence, to cross examine witnesses, to be represented by an attorney, or any other procedural rights of due process possessed by a party;

(5) No health care arbitration agreement shall limit a party's rights to conduct prehearing discovery in the form of interrogatories, depositions, production of documents and records, and other similar forms of discovery. Any party to a health care arbitration agreement may apply to a court of competent jurisdiction for protective orders or orders compelling discovery in the same manner as if the medical malpractice claim was being adjudicated by such court;

(6) In all health care arbitration proceedings under sections 383.700 to 383.736, the rules of evidence as applicable in the courts of the state of Missouri shall apply, and the health care arbitration agreement shall not limit the applicability of such rules of evidence.

383.724. An arbitration proceeding under sections 383.700 to 383.736 shall be commenced by serving notice of demand for arbitration, together with a statement of the medical malpractice claim and cause of action that the patient asserts against a

health care provider or hospital. Such notice shall be served upon all parties to the agreement from whom damages are sought by certified mail, postage prepaid in the proper amount, return receipt requested, or by service of process in the same manner as the commencement of a civil proceeding in the courts of the state of Missouri. The statement of the medical malpractice claim and damages to which the patient believes he or she is entitled shall be in substantially the same form as a petition under the rules of civil procedure governing legal actions in the courts of the state of Missouri. For purposes of any applicable statute of limitations, mailing of a conformed copy of a medical malpractice claim through the United States mail together with a notice of demand for arbitration to any party from whom damages are sought, or the service of such notice upon such party, shall be deemed to have tolled the statute of limitations as to all parties named in the notice; except that, reasonable efforts shall be made to obtain service of process upon or delivery of such notice to such party or parties within a reasonable period of time thereafter.

383.727. In all arbitration proceedings under sections 383.700 to 383.736, the number and manner of the selection of the qualified arbitrators shall be as follows:

(1) The parties to an arbitration proceeding may agree that the arbitration of a medical malpractice claim shall be conducted by a single qualified arbitrator who is mutually acceptable to

all parties. If the parties are unable to agree to a single qualified arbitrator, all arbitration proceedings under sections 383.700 to 383.736 shall be conducted by a panel of three qualified arbitrators selected as provided in this section. If the proceedings are to be conducted by a single qualified arbitrator, the parties to the arbitration must agree in writing to the selection of the qualified arbitrator. If the parties cannot agree, the parties shall each select a person who is a qualified arbitrator and the two arbitrators selected shall mutually agree upon a third qualified arbitrator, which shall constitute the panel to decide the medical malpractice claim submitted to them;

(2) No party to an arbitration proceeding shall designate as that party's designated arbitrator a person who is not a qualified arbitrator. If a party to a health care arbitration agreement fails or refuses to designate a qualified arbitrator, the other party to the proceeding shall have the right to petition the circuit court of the county in which the party resides for the appointment of a qualified arbitrator who, upon appointment by the circuit court, shall be considered the qualified arbitrator designated by the party initially refusing to select a qualified arbitrator;

(3) A party to the health care arbitration agreement who gives notice that a medical malpractice claim will be submitted

to arbitration under sections 383.700 to 383.736, together with such notice as prescribed in sections 383.700 to 383.736, shall also specify the name of the qualified arbitrator selected by such party, or such party may delay naming such party's qualified arbitrator until a date that is not later than thirty days subsequent to the date notice and demand for arbitration under sections 383.700 to 383.736 is secured upon the other party. However, both parties to a health care arbitration agreement shall each specify the name of the person selected by them as their designated qualified arbitrator no later than the thirtieth day subsequent to the date when the notice of arbitration under sections 383.700 to 383.736 has been served upon the other party;

(4) If the two qualified arbitrators selected by parties are unable to agree on the selection of a third qualified arbitrator, the third qualified arbitrator may be appointed by the circuit court of the county of residence of either party to the health care arbitration agreement, and if both such parties seek the appointment of a third qualified arbitrator by a circuit court, the court in which such appointment first is sought shall have jurisdiction to name the third qualified arbitrator in such arbitration proceeding;

(5) After the qualified arbitrators have been selected, they shall proceed to determine the medical malpractice claims submitted to them in accordance with the uniform arbitration act

and sections 383.700 to 383.736;

(6) During the arbitration proceeding, the third qualified arbitrator jointly selected or appointed by the court shall decide all evidentiary and procedural questions during the course of the arbitration proceeding;

(7) If there are more than two parties to an arbitration proceeding, the parties shall be classified as those parties who are seeking damages and those parties from whom damages are being sought. The parties from whom damages are being sought shall be entitled to designate one qualified arbitrator and the parties who are seeking damages shall be entitled to select one qualified arbitrator. The two qualified arbitrators chosen shall select the third qualified arbitrator as prescribed in sections 383.700 to 383.736. If any class of parties cannot agree on the qualified arbitrator to be designated by such class, they may apply to the circuit court of the county in which any party in such class resides, and the court shall appoint the qualified arbitrator for such class;

(8) All arbitration proceedings shall be resolved by an agreement of two out of three arbitrators selected. The unanimous agreement of the three qualified arbitrators selected shall not be required;

(9) Any decision by the qualified arbitrators that awards damages to a person or persons seeking recovery because of a

medical malpractice claim shall not exceed any statutory limit imposed by the laws of the state of Missouri upon awards for pain and suffering, or any other statutory limit on damages in medical malpractice proceedings.

383.730. To be a qualified arbitrator within the meaning of sections 383.700 to 383.736, a person who is selected as a qualified arbitrator shall possess each of the following characteristics:

(1) A qualified arbitrator shall not be a party or anyone who is related within the third degree on consanguinity or affinity to a party, nor shall such arbitrator be a person who is married to a party or married to any person within the third degree of consanguinity or affinity to a party;

(2) A qualified arbitrator shall not be employed by the health care provider or hospital from whom relief is sought, nor shall such arbitrator have been so employed at any time during the period of twelve months immediately prior to the commencement of the arbitration proceeding;

(3) A qualified arbitrator shall either be an attorney licensed in this state, a health care provider licensed in this state, or a retired judge of the circuit court, court of appeals, or supreme court of Missouri;

(4) A qualified arbitrator shall be a resident of the state of Missouri at the time of commencement of the arbitration

proceeding; and

(5) A qualified arbitrator shall be impartial and shall execute an affidavit at the commencement of the arbitration proceeding that such arbitrator has not prejudged or predetermined the outcome of the proceeding, and that such arbitrator will conduct himself or herself with impartiality and fairness to all parties during the course of the arbitration proceeding.

383.733. The costs and expenses of an arbitration proceeding under sections 383.700 to 383.736 shall be apportioned and awarded as follows:

(1) The qualified arbitrators selected to determine a medical malpractice claim shall have the authority to award or tax costs and expenses between the parties as they, in their judgment, deem appropriate;

(2) No health care arbitration agreement shall specify that the patient shall pay more than fifty percent of the costs and expenses of an arbitration proceeding unless the qualified arbitrators determine that more than fifty percent of such costs and expenses shall be apportioned to or awarded against the patient;

(3) Qualified arbitrators shall be entitled to compensation for their services rendered in connection with serving as a qualified arbitrator, and the amount of such compensation shall

be based upon the usual, customary, and reasonable costs and charges of similar arbitrators at the time of such arbitration proceeding. Such compensation may include an hourly charge plus require reimbursement for all ordinary and necessary expenses incurred by the qualified arbitrator, such as travel, meals, and lodging, and in this regard, the annual compensation of a circuit judge in the state of Missouri and the expense reimbursement procedures and amounts for a circuit judge in the state of Missouri shall be deemed an appropriate guideline for use in establishing reasonable compensation payable to qualified arbitrators under sections 383.700 to 383.736;

(4) Prior to the commencement of an arbitration proceeding, the qualified arbitrators shall specify the compensation that will be payable to the arbitrators in consideration for their services pursuant to the arbitration proceeding. Any party to the arbitration proceeding who objects to the rate of compensation announced for the qualified arbitrators shall specify the nature and extent of their objection to such compensation at that time. A failure to state an objection to the announced rate of compensation at the commencement of a proceeding shall constitute a waiver of a party's right to object to such rate of compensation. The rate of compensation shall be equal for all three qualified arbitrators. If a party objects to the rate of compensation announced by the qualified arbitrators,

the proceeding shall be adjourned until the circuit court of the county in which the proceeding is to be conducted determines such rate of compensation. The determination of the court shall be binding and conclusive upon the arbitrators and the parties;

(5) Unless the parties otherwise unanimously agree, all arbitration proceedings shall be transcribed in the same manner as judicial proceedings before a circuit court, and the costs shall be taxed and apportioned between the parties by the qualified arbitrators.

383.736. A health care arbitration agreement executed in accordance with sections 383.700 to 383.736 shall not be construed as a contract of adhesion, nor shall it be deemed unconscionable or otherwise improper so long as such agreement complies with sections 383.700 to 383.736. All health care arbitration agreements that are executed and prepared in accordance with sections 383.700 to 383.736 shall be enforceable in the same manner as other binding agreements to arbitrate under the Missouri uniform arbitration act.