

I Mina'trentai Ocho Na Liheslaturan Guåhan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	FISCAL NOTES	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	NOTES
82-38 (COR)	William A. Parkinson	AN ACT TO AMEND CHAPTER 10 OF DIVISION 1, TITLE 10, GUAM CODE ANNOTATED; TO ADD A NEW § 42A101(i)(20) TO CHAPTER 42A OF DIVISION 3, TITLE 7, GUAM CODE ANNOTATED; TO AMEND § 42A101(j) OF CHAPTER 42A, DIVISION 3, TITLE 7, GUAM CODE ANNOTATED; RELATIVE TO MEDICAL MALPRACTICE IN THE TERRITORY OF GUAM; AND TO CITE THIS ACT THE "DO NO HARM: THE ANTI-MEDICAL MISCONDUCT ACT OF 2025".	3/5/25 3:56 p.m.						

I MINA'TRENTAI OCHO NA LIHESLATURAN GUÅHAN
2025 (FIRST) Regular Session

Bill No. 82-38 (COR)

Introduced by:

William A. Parkinson



AN ACT TO *AMEND* CHAPTER 10 OF DIVISION 1, TITLE 10, GUAM CODE ANNOTATED; TO *ADD A NEW* § 42A101(i)(20) TO CHAPTER 42A OF DIVISION 3, TITLE 7, GUAM CODE ANNOTATED; TO *AMEND* § 42A101(j) OF CHAPTER 42A, DIVISION 3, TITLE 7, GUAM CODE ANNOTATED; RELATIVE TO MEDICAL MALPRACTICE IN THE TERRITORY OF GUAM; AND TO CITE THIS ACT THE “DO NO HARM: THE ANTI-MEDICAL MISCONDUCT ACT OF 2025”.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Chapter 10 of Division 1, Title 10, Guam Code Annotated, is hereby *amended*, to read:

“CHAPTER 10

**~~MEDICAL MALPRACTICE — MANDATORY ARBITRATION~~ DO
NO HARM: THE ANTI-MEDICAL MISCONDUCT ACT OF 2025**

§ 10100. Title.

§ 10100.1 Legislative Findings and Intent. ~~Definitions.~~

§ 10102. Definitions ~~Mandatory Arbitration.~~

§ 10103. Initiation of Complaint and Pre-Screening ~~Arbitration.~~

§ 10104. Response to Demand.

§ 10105. Applicability of Statute of Limitations.

§ 10106. Standard of Care.

§ 10107. Medical Malpractice Pre-Screening ~~Administration of Arbitration.~~

§ 10108. Authority to Enact Rules and Procedures ~~Selection of Arbitrators.~~

§ 10109. Mediation ~~Challenge for Bias.~~

§ 10110. Application of Guam International Arbitration Law; Decision shall
be Final and Binding ~~Rules of Arbitration.~~

§ 10111. Arbitration of Disputes Involving Sexual Assault and Sexual
Harassment. ~~Multiple Petitioners and Multiple Respondents.~~

§ 10112. Offer of Reparation.

§ 10113. Appointment of Guardian Ad Litem.

§ 10114. Stay of Proceedings When Suit is Filed.

§ 10115. Failure to ~~Arbitrate~~ Pre-Screen under this Chapter.

~~§ 10116. Service of Documents upon Arbitrators; Ex Parte Contract.~~

§ 10117~~6~~. Witnesses before Pre-Screening Judge ~~Arbitrators.~~

§ 10118~~7~~. Evidence and Testimony.

§ 10119~~8~~. Identification of Expert Witnesses.

§ 10120~~19. Identification of Witnesses and Documents.~~

§ 10120~~1~~4. Additional Discovery.

§ 10121~~2~~2. Time and Place of Pre-Screening ~~Arbitration~~ Hearing.

§ 10122~~3~~3. Pre-Screening ~~Arbitration~~ Briefs.

§ 10123~~4~~4. Representation by Counsel.

§ 10124~~5~~5. Attendance at Hearings.

§ 10125~~6~~6. Oaths.

§ 10126~~7~~7. Arbitration in the Absence of a Party.

§ 10127~~8~~8. Adjournments.

~~§ 10129. Waiver of Statutory Rights.~~

§ 10128~~30. Fees and Costs of Arbitration.~~

1 § 1012934. Damages.
2 ~~§ 10132. Timely Award.~~
3 § 101303. Award of Pre-Screening Judge Arbitrators.
4 ~~§ 10134. Delivery of Award to Parties.~~
5 § 101315. Confirmation of Award.
6 § 101326. Vacation of Pre-Screening Arbitration Award.
7 § 101337. Modification of Award.
8 § 101348. Notice of Motion to Vacate or Modify.
9 § 101359. Notice of Appeal and Request for Trial de Novo.
10 ~~§ 10140. Procedures at Trial de Novo.~~
11 § 1013644. Scheduling of the Trial de Novo.
12 § 1013742. The Prevailing Party in the Trial de Novo; Costs.
13 § 1013843. Sanction for Failing to Prevail in the Trial de Novo.
14 § 1013944. Applicability to Government of Guam and its Agencies.
15 § 101405. Prospective Effect of Chapter.
16 § 101416. This Chapter to Prevail.
17 § 101427. Reporting Requirement
18 § 10143. Severability Clause.
19 **§ 10100. Title.** This Chapter may be cited as the ~~Medical Malpractice~~
20 ~~Mandatory Arbitration Act~~ Do No Harm: The Anti-Medical Misconduct Act of
21 2025.

22 **§ 10100.1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
23 that P.L. 21-43, also known as the Medical Malpractice Mandatory Arbitration Act,
24 raises the costs of medical malpractice claims to prohibitive amounts. Such financial
25 barriers can prevent those who have suffered medical malpractice injuries from
26 seeking justice and reparations.

1 However, *I Liheslaturan Guåhan* also recognizes the unique medical climate
2 on Guam, where there has always been a shortage of medical practitioners. It is not
3 our intent to drive these numbers lower, but to find a fair and balanced solution for
4 all parties involved which prioritize patients' protection.

5 The history of medical malpractice legislation on Guam is lengthy, originating
6 with Bill No. 441 in 1975, also known as the Malpractice Claims Mandatory
7 Screening and Mandatory Arbitration Act. Bill No. 441 was found unconstitutional
8 and struck down in the 1984 court case *Awa v. Guam Memorial Hospital Authority*,
9 finding "it impossible to construe the Act so as to give effect to its contradictory and
10 incomplete provisions." In 1991, the Committee on Health, Ecology, and Welfare
11 found that the medical malpractice problem had reached crisis levels in recent years.
12 In an effort to lower prohibitive medical malpractice insurance premiums, Bill No.
13 325 was introduced by the 21st Guam Legislature, which then became the Medical
14 Malpractice Mandatory Arbitration Act that stands today.

15 The goal of any legislation addressing medical malpractice claims should be
16 as follows: (1) to prevent the filing in court of actions against healthcare providers
17 for liability in situations where the facts do not permit a reasonable judgement of
18 malpractice; and (2) to make fair and impartial the proceeding of such claims that
19 are, or reasonably may be, well-founded.

20 It is, therefore, the intent of *I Liheslaturan Guåhan* to enact such legislation.

21 **§ 10101. Definitions.** For the purposes of ~~As used in~~ this chapter:

22 (a) “*Arbitration*” means any arbitration pursuant to the Guam
23 International Arbitration Law (Chapter 42A, Division 3, Title 7, of the
24 Guam Code Annotated).

25 (b) “*Arbitral tribunal*” means a sole arbitrator, or a panel of
26 arbitrators selected pursuant to the Guam International Arbitration Law.

27 (c) “*Claimant*” means the patient, his relatives, his heirs-at-law or

1 personal representative pursuing a claim, or any third party or other party
2 pursuing a claim against a health professional or healthcare provider.

3 (d) “Defendant” means the health professional or healthcare provider
4 defending a claim pursuant to this Chapter filed by a claimant.

5 ~~(a) “Association” means the American Arbitration Association or~~
6 ~~other entity organized to arbitrate disputes pursuant to this Chapter.~~

7 ~~(c)~~ “Health professional” or “Healthcare provider” means any
8 person licensed or certified to practice the healing arts within the territory of
9 Guam.

10 ~~(e) “Health care institution” means any health care facility, health~~
11 ~~maintenance organization or independent practice association operated~~
12 ~~primarily to provide medical services.~~

13 (f) “Informed Consent” is defined pursuant to the provision of §
14 11104, § 11105, § 11106, and § 11107 of Chapter 11, Title 10, Guam Code
15 Annotated.

16 ~~(g)~~ “Malpractice” means any tort or breach of contract based on
17 health care or professional services rendered or which should have been
18 rendered by a health professional or a health care institution to a patient.

19 ~~(e) “Petitioner” means the patient, his relatives, his heirs at law or~~
20 ~~personal representative pursuing a claim in arbitration, or any third party or~~
21 ~~other party pursuing a claim in arbitration, against a health professional or~~
22 ~~health care provider.~~

23 ~~(f) “Respondent” means the health professional or health care provider~~
24 ~~defending a claim in arbitration filed by a petitioner.~~

25 **§ 10102. Mandatory Medical Malpractice Pre-Screening Arbitration.**

26 Any claim for damages for personal injury or death on account of alleged medical
27 malpractice of a healthcare provider that accrues or is being pursued in the territory

1 of Guam, whether in tort, contract, or otherwise, shall be submitted to mandatory
2 Malpractice Pre-Screening ~~arbitration~~ pursuant to the terms of this Chapter if it is a
3 controversy between the patient, his relatives, his heirs-at-law or personal
4 representative or any third party or other party, and the health professional or
5 health care institution, or their employees or agents, and is based on malpractice,
6 tort, contract, strict liability, or any other alleged violation of a legal duty incident
7 to the acts of the health professional or health care institution, or incident to
8 services rendered or to be rendered by the health professional or health care
9 institution.

10 **§ 10103. Initiation of Complaint and Pre-Screening Arbitration.**

11 ~~Arbitration~~ A claim is initiated by a claimant or claimants' ~~petitioner or petitioners~~
12 filing a Pre-Screening Complaint in the Superior Court of Guam and serving Pre-
13 Screening Complaint ~~a written demand for arbitration~~ upon a ~~respondent or~~
14 ~~respondents~~ defendant or defendants in the same manner provided by law for the
15 service of summons in the Superior Court of Guam; except that the petitioner or
16 his agent may serve the Complaint demand without the necessity of it being served
17 by a Marshal of the Superior Court of Guam. The Complaint demand ~~for~~
18 ~~arbitration~~ shall ~~not~~ be filed in the Superior Court of Guam, ~~and arbitration shall~~
19 ~~not be filed in the Superior Court of Guam, unless including when~~ the claimant or
20 claimants' ~~petitioner or petitioners~~ require the appointment of a Guardian Ad
21 Litem, as provided for in § 10113 of this Chapter. ~~The demand for arbitration shall~~
22 ~~be filed with the Association.~~ The Pre-Screening Complaint demand ~~for arbitration~~
23 shall state the name and address of the claimant or claimants' ~~petitioner or~~
24 ~~petitioners~~, identify the defendant or defendants' ~~respondent or respondents~~, and
25 shall outline the factual basis of the claim and the alleged acts of negligence or
26 wrongdoing of the defendant or defendants' ~~respondent or respondents~~.

1 **§ 10104. Response to Demand.** Within twenty (20) days after service of
2 a Pre-Screening Complaint pursuant to this chapter ~~demand for arbitration~~, the
3 ~~respondent or respondents~~ defendant or defendants shall file an response. Answer
4 to the Pre-Screening Complaint pursuant to this chapter ~~demand for arbitration~~ and
5 serve it upon the claimant or claimants' ~~petitioner or petitioners~~, or their attorney.
6 The response shall identify any defenses then known to the defendant or
7 defendants' ~~respondent or respondents~~. If a defendant ~~respondent~~ fails to file a
8 response, then the claimant or claimants' ~~petitioner or petitioners~~ may proceed in
9 default to Pre-Screening ~~appoint an arbitration panel pursuant to § 10108 of this~~
10 Chapter.

11 **§ 10105. Applicability of Statute of Limitations.** A claim shall be
12 waived and forever barred as against a respondent if on the date the Pre-Screening
13 Complaint ~~demand~~ is served the applicable statute of limitations would bar the
14 claim.

15 **§ 10106. Standard of Care.** The prevailing standard of duty, practice, or
16 care by a reasonable physician in the same field practicing medicine in the
17 community at the time of the alleged malpractice shall be the standard applied in
18 the Pre-Screening, arbitration, and trial.

19 **§ 10107. Medical Malpractice Pre-Screening. Administration of**
20 **Arbitration.**

21 ~~The Association shall administer a proceeding filed under this Chapter. The~~
22 ~~administrative expense shall be as agreed to by the parties and the Association, or~~
23 ~~as may be provided by the Association. The administrative costs shall be equally~~
24 ~~shared by the parties subject to an award of costs by the panel as provided in §~~
25 ~~10130 herein.~~

26 (a) Prior to the filing for a Medical Malpractice Pre-Screening, a
27 claimant shall provide no less than a forty-five (45) day notification to a

1 Healthcare Provider for whom a complaint of medical malpractice is
2 claimed against, of his or her intent to file for a Pre-Screening.

3 (b) Nothing herein shall prohibit a healthcare provider from exercising
4 his or her right to expressions of sympathy or benevolence relating to the
5 pain, suffering, or death of a patient involved in the incident with the health
6 professional, to the patient or the family of the patient, which is inadmissible
7 as evidence of an admission of liability in any civil action or any arbitration
8 proceedings pursuant to the Medical Malpractice Reform Act of 1975
9 codified in §11112 of Chapter 11, Title 10, Guam Code Annotated.

10 (c) Immediately following receipt of a Pre-Screening Complaint
11 pursuant to this Chapter, the Superior Court of Guam, shall seal the case and
12 refer the matter to a Judge for Pre-Screening.

13 (d) A Pre-Screening shall be conducted promptly upon notice in
14 writing to all parties and their counsel. The Pre-Screening shall be held in
15 camera. Pre-Screening shall examine, but not be limited to the following:

16 (1) Testimony of witnesses which may be taken remotely by
17 telephone, videoconference, or any other electronic means.

18 (2) Any findings of fact and decisions made by Guam health
19 licensing boards on the same subject of the complaint.

20 (3) Expert witness affidavits submitted by both claimant and
21 defendant from a medical professional in the same or similar field,
22 licensed to practice on Guam or any other U.S. jurisdictions, that
23 attest to whether or not there may be a breach in the standard of care
24 pursuant to § 10104 of this chapter.

25 (4) Any records for examination to determine whether the
26 defendant acquired informed consent from the claimant prior to and

1 during treatment pursuant to the provisions of § 11104, § 11105,
2 §11106, and § 11107 of Chapter 11, Title 10, Guam Code Annotated.

3 (e) Upon consideration of the above records, the Judge shall decide
4 whether:

5 (1) The evidence supports the conclusion that the defendant or
6 defendants failed to comply with the appropriate standard of care.

7 (2) The evidence does not support the conclusion that the
8 defendant or defendants failed to meet the applicable standard of care.

9 (3) The conduct complained of was or was not a factor in the
10 resultant damages.

11 (f) If the Judge finds that the evidence supports the conclusion that the
12 defendant(s) failed to comply with the appropriate standard of care and that
13 the conduct complained of was a factor in causing damages to claimants(s),
14 the Judge shall proceed to set a monetary settlement value on the claim,
15 distinguishing between economic and noneconomic damages.

16 (g) The record of Pre-Screening proceedings and the Pre-Screening
17 decision reached by the Judge shall remain sealed for thirty (30) days;
18 however, the Pre-Screening Judge may order the Pre-Screening Decision
19 sealed temporarily or permanently upon agreement by the parties, and
20 permanently if a trial is not pursued.

21 (h) Either party may pursue their right to a jury or a non-jury trial
22 within 30 days after the Pre-Screening Judge renders its decision by
23 notifying the court of the party's intent to proceed to trial.

24 (i) The Pre-Screening Decision of the Judge shall be admissible as
25 evidence in the pending Superior Court action brought by the claimant, but
26 such a decision shall not be conclusive and can be refuted given admissible
27 conflicting evidence.

1 § 10108. Authority to Enact Rules and Procedures ~~Selection for~~
2 ~~Arbitrators.~~

3 The Supreme Court of Guam is authorized to enact rules and procedures
4 implementing the Pre-Screening provisions of this Act.

5 ~~An arbitration under this Chapter shall be heard by a panel of three (3)~~
6 ~~arbitrators. The chairperson shall be decided by the three (3) panel members and~~
7 ~~shall have jurisdiction over pre-hearing procedures. The three (3) panel members~~
8 ~~shall include an attorney, a physician, preferably but not necessarily from the~~
9 ~~respondent's medical specialty, and the third shall be a person who is neither a~~
10 ~~doctor, lawyer, or representative of a health care institution or insurance company.~~
11 ~~A minimum of two (2) of the three (3) panel members shall be residents of Guam.~~

12 ~~(a) Except as otherwise provided in subsection (d), arbitrator~~
13 ~~candidates shall be selected pursuant to the rules and procedures of the~~
14 ~~Association from a pool of candidates generated by the Association. The~~
15 ~~rules and procedures of the Association pertaining to a selection of~~
16 ~~arbitrators under this chapter shall require that the Association send~~
17 ~~simultaneously to each party an identical list of five (5) arbitrator candidates~~
18 ~~in each of the three (3) categories together with a brief biographical~~
19 ~~statement on each candidate. A party may strike from the list any name~~
20 ~~which is unacceptable and shall number the remaining names in order of~~
21 ~~preference. When the lists are returned to the Association they shall be~~
22 ~~compared and the first mutually agreeable candidate in each category shall~~
23 ~~be invited to serve.~~

24 ~~(b) Where no mutually agreed upon arbitrator is selected for any~~
25 ~~category, a second list of that category shall be sent pursuant to subsection~~
26 ~~(a).~~

27 ~~(c) If a complete panel is not selected by mutual agreement of the~~

1 ~~parties pursuant to subsections (a) and (b) then under the applicable rules~~
2 ~~and procedures of the Association, the Association shall appoint the~~
3 ~~remainder of the panel on whom agreement has not been reached by the~~
4 ~~parties. The appointment by the Association shall be subject to challenge~~
5 ~~by any party for cause which challenge may allege facts to establish that~~
6 ~~unusual community or professional pressures will unreasonably influence~~
7 ~~the objectivity of the panelists. A request to strike an arbitrator for cause~~
8 ~~shall be determined by the regional director or comparable officer of the~~
9 ~~Association.~~

10 (d) ~~The parties shall not be restricted to the arbitrator candidates~~
11 ~~submitted for consideration. If all parties mutually agree upon a panelist~~
12 ~~within a designated category, the panelist shall be invited to serve.~~

13 **§ 10109. Mediation Challenge for Bias.**

14 Parties may, at any time make a motion to the Pre-Screening Judge to hold
15 proceedings in abeyance upon mutual consent and pursuant to any agreed upon
16 terms and conditions, while the parties submit their dispute to Mediation pursuant
17 to the provisions of Chapter 43A, Title 7, of the Guam Code Annotated.

18 ~~The Association shall make an initial screening for bias as may be~~
19 ~~appropriate and shall require a candidate for a particular case to complete a current~~
20 ~~personal disclosure statement under oath. In addition to other relevant information~~
21 ~~this statement shall disclose any personal acquaintance with any of the parties or~~
22 ~~their counsel and the nature of such acquaintance. If this statement reveals facts~~
23 ~~which suggest the possibility of partiality, the Association shall communicate those~~
24 ~~facts to the parties if the panelist is proposed by the arbitration association.~~

25 (a) ~~Any party may propound reasonable questions to an arbitrator~~
26 ~~candidate if such questions are propounded within ten (10) days of the~~
27 ~~receipt of the candidate's name. Such questions shall be propounded through~~

1 ~~the Association and the candidate shall respond to the Association promptly.~~

2 ~~(b) A party shall not communicate with a candidate directly or~~
3 ~~indirectly except through the Association at any time after the filing of the~~
4 ~~demand for arbitration. Any candidate who is aware of such communication~~
5 ~~shall immediately notify the Association.~~

6 **§ 10110. Application of Guam International Arbitration Law;**
7 **Decision shall be Final and Binding Rules of Arbitration.**

8 Parties may, at any time make a motion to the Pre-Screening Judge to hold
9 proceedings in abeyance upon mutual consent and pursuant to any agreed upon
10 terms and conditions, while the parties submit their dispute to arbitration pursuant
11 to the Guam International Arbitration Law provided for in Chapter 42A, Division
12 3, Title 7, of the Guam Code Annotated. The decision of an arbitral tribunal
13 involving a medical malpractice dispute submitted in accordance to the Guam
14 International Arbitration Law shall be final and binding.

15 ~~The arbitration proceeding shall be subject to rules promulgated by the~~
16 ~~Association in conformance with this chapter.~~

17 **§ 10111. Arbitration of Disputes Involving Sexual Assault and Sexual**
18 **Harassment Multiple Petitioners and Multiple Respondents.**

19 Notwithstanding any other provision of law, at the election of the person
20 alleging conduct constituting a sexual assault dispute or sexual harassment dispute,
21 or the named representative of a class or in a collective action alleging such
22 conduct, this chapter shall not apply.

23 ~~In cases involving a common question of law or fact, when there are~~
24 ~~multiple petitioners and/or multiple respondents, the disputes, controversies, and~~
25 ~~issues shall be consolidated into a single arbitration proceeding.~~

26 ~~(a) A person who is not a party to the arbitration may join in the~~
27 ~~arbitration at the request of any party with all the rights and obligations of~~

1 ~~the original parties. Each party to an arbitration under this chapter is deemed~~
2 ~~to be bound by the joinder of a new party.~~

3 **§ 10112. Offer of Reparation.** Prior to the institution of a proceeding or
4 claim, or Pre-Screening Complaint by a patient, any offer of reparations and all
5 communications incidental thereto made in writing to a patient by a health
6 professional or health care institution are privileged and may not be used by any
7 party to establish the liability or measure of damages attributable to the offeror.

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

11 (b) After any rejection or the lapse of the applicable time, any party
12 may file a Pre-Screening Complaint pursuant to this chapter ~~or demand~~
13 ~~arbitration.~~

14 (c) Any such offer to a patient shall include a statement that the
15 patient may consult legal counsel before rejecting or accepting the offer.

16 (d) In a case where a potential claim is identified by a health
17 professional or health care institution where reparations, in its judgment, are
18 not appropriate, the professional or institution may, at its option, ~~file a~~
19 ~~demand for arbitration~~ file a Pre-Screening Complaint which ~~demand~~ shall
20 identify the potential claim and deny liability.

21 **§ 10113. Appointment of Guardian Ad Litem.**

22 (a) When a minor, or an insane or incompetent person is a petitioner,
23 he must appear either by general guardian or a Guardian Ad Litem appointed
24 by the Superior Court of Guam. A Guardian Ad Litem may be appointed ~~in a~~
25 ~~claim for arbitration under this chapter~~ when it is deemed by a judge of the
26 Superior Court of Guam expedient to represent the minor, insane, or
27 incompetent person in the ~~arbitration~~ proceeding, notwithstanding he may

1 have a general guardian and may have appeared by him. The general
2 guardian or Guardian Ad Litem so appearing for an infant, insane or
3 incompetent person in any ~~arbitration~~ proceeding shall have the power to
4 compromise the same and to agree to any settlement or decision ~~of the~~
5 ~~arbitrators~~ to be entered therein against his ward, subject to the approval of
6 the Judge. ~~or a majority of the arbitrators.~~

7 (b) A Guardian Ad Litem appointed by the Superior Court of Guam to
8 pursue a claim ~~for arbitration~~ shall be appointed pursuant to §373 of the
9 Guam Code of Civil Procedure. Any petition to appoint a Guardian Ad
10 Litem to pursue a claim for arbitration shall have a copy of the Pre-
11 Screening Complaint ~~or demand for arbitration~~ attached thereto.

12 **§ 10114. Stay of Proceedings When Suit Is Filed.** If any suit or
13 proceeding is brought in the courts of Guam upon any issue referable to arbitration
14 under this chapter, the court in which said suit is pending, upon being satisfied that
15 the issue involved in such suit or proceeding is referable to Pre-Screening
16 ~~arbitration~~ under this chapter, shall upon application of one of the parties, stay all
17 proceedings in the action until such Pre-Screening ~~arbitration~~ has been had in
18 accordance with the terms of this chapter.

19 **§ 10115. Failure to Arbitrate Under This Chapter.** The party
20 aggrieved by the alleged failure, neglect, or refusal of another to Pre-Screening
21 ~~arbitrate~~ under this chapter, may petition the Superior Court of Guam, for an order
22 directing that such Pre-Screening ~~arbitration~~ proceed in the manner provided for in
23 this chapter. Five (5) days' notice in writing of such application shall be served
24 upon the party in default. Service thereof shall be made in the manner provided by
25 law for the service of summons in the Superior Court of Guam. The court shall
26 hear the parties, and the court shall then make an order directing the parties to
27 proceed to Pre-Screening ~~arbitration~~ in accordance with the terms of this chapter.

1 ~~§ 10116. — Service of Documents upon Arbitrators; Ex Parte Contract.~~

2 ~~Once the arbitration panel has been selected, each of the arbitrators shall be~~
3 ~~provided with a copy of the demand for arbitration and any responses thereto by~~
4 ~~the Association. Each of the arbitrators shall also be provided by the Association~~
5 ~~with the parties' notices to each other identifying experts, witnesses, documents~~
6 ~~and arbitration briefs as authorized in this chapter. Any motions or requests for~~
7 ~~additional discovery shall also be served upon each of the arbitrators through the~~
8 ~~Association.~~

9 **§ 101176. Witnesses Before Pre-Screening Judge Arbitrators.** The Pre-
10 Screening Judge panel or its chairperson in the arbitration proceeding shall, upon
11 application by a party to the proceeding, and may upon its own determination,
12 issue a subpoena requiring a person to appear and be examined with reference to a
13 matter within the scope of the proceeding, and to produce books, records, or papers
14 pertinent to the proceeding. In case of disobedience to the subpoena, the Judge in
15 Pre-Screening may chairperson or a majority of the arbitration panel in the
16 arbitration proceeding may petition the Superior Court of Guam to require the
17 attendance and testimony of the witness and the production of books, papers, and
18 documents. The Superior Court of Guam, in case of contumacy or refusal to obey a
19 subpoena, may issue an order requiring that person to appear and to produce books,
20 records, and papers and give evidence touching the matter in question. Failure to
21 obey the order of the Court may be punished by the Court as contempt. The fees
22 for the attendance of any person to attend before the Pre-Screening arbitration
23 panel as a witness shall be the same as the fees for witnesses subpoenaed before
24 the Superior Court of Guam. The Superior Court of Guam shall order a witness to
25 pay the cost of the aggrieved party, to include attorney's fees, if it is determined
26 that the witness wrongfully failed to appear during Pre-Screening before the
27 arbitration panel.

1 **§ 101187. Evidence and Testimony.** A hearing shall be informal and the
2 Pre-Screening Judge arbitrators shall be the sole judge of the relevancy and
3 materiality of the evidence offered.

4 (a) The Pre-Screening Judge arbitrators may receive and consider
5 evidence in the form of an affidavit but shall give appropriate weight to any
6 objections made. All documents to be considered by the Pre-Screening
7 Judge arbitrators shall be filed at the hearing.

8 (b) Testimony shall be taken under oath and a record of the
9 proceedings shall be made by a tape recording. Any party, at the party's
10 expense, may have transcriptions or copies of the recording made or may
11 provide for a written transcript of the proceedings. The costs of any
12 transcription ordered by the panel for its own use shall be deemed part of the
13 costs of the proceedings.

14 (c) Expert testimony shall not be required but where expert testimony
15 is used, it shall be admitted under the same circumstances as in a civil trial
16 and be subject to cross-examination.

17 (d) The party with the burden of establishing a standard of care and
18 breach thereof shall establish such standards whether by the introduction of
19 expert testimony, or by other competent proof of the standard and the breach
20 thereof, which may include the use of published works as provided in
21 subsection (e).

22 (e) Authoritative, published works on the general and specific subjects
23 in issue may be admitted and argued from, upon prior notice to all other
24 parties.

25 (f) The Pre-Screening Judge panel shall accord such weight and
26 probative worth to expert evidence as it deems appropriate. The Pre-
27 Screening Judge panel may call a neutral expert on its own motion, which

expert witness shall be subject to cross-examination by the parties. The costs of the expert will be deemed a cost of the proceeding.

§ 101198. Identification of Expert Witnesses. Within thirty (30) days after receipt of defendant's answer ~~the arbitrators have been selected~~, any claimant ~~petitioner~~ pursuing a claim against a defendant ~~respondent~~ shall identify the expert witnesses that the claimant ~~petitioner~~ will call at the Pre-Screening arbitration hearing. When identifying such experts, the claimant ~~petitioner~~ shall provide the name of the expert, the address of the expert, and shall state the subject matter on which the expert is expected to testify, and state the substance of the facts and opinions to which the expert is to testify and a summary of the grounds for each opinion. Within thirty (30) days after the claimant ~~petitioner~~ has identified his experts, the defendant ~~respondent~~ shall identify the expert witnesses that the defendant ~~respondent~~ will call to testify at the Pre-Screening arbitration hearing. The defendant ~~respondent~~ shall provide the name of the expert witness, the address of the expert witness, and state the subject matter on which the expert is expected to testify, and state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

§ 1012019. Identification of Witnesses and Documents. Within thirty (30) days after the defendant ~~respondent~~ has identified defendant's ~~respondent's~~ expert witnesses, the parties shall exchange a list of witnesses that they expect to call to testify at the Pre-Screening arbitration hearing along with a summary of each witness's proposed testimony. The parties shall also provide each other with copies of all documents and material that they intend to introduce as evidence at the Pre-Screening arbitration hearing.

§ 101204. Additional Discovery. Additional discovery, not otherwise provided for in this chapter, such as depositions, interrogatories and requests to produce, shall not be permitted unless:

1 (a) The parties stipulate to allow additional discovery; or,

2 (b) A Pre-Screening Judge at Pre-Screening may ~~A majority of the~~
3 ~~arbitrators at the pre-arbitration conference provided for in § 10122 of this~~
4 ~~chapter~~ authorize additional discovery for good cause shown upon the
5 application of a party to the Pre-Screening arbitration proceeding. The Pre-
6 Screening Judge ~~arbitrators~~ shall liberally authorize additional discovery if it
7 is necessary in order for a claimant or defendant ~~petitioner or respondent~~ to
8 more adequately present or defend a claim.

9 **§ 101212. Time and Place of Pre-Screening Arbitration Hearing.**

10 Within thirty (30) days after the parties have exchanged their lists of
11 witnesses and provided each other with the documents that the parties intend to
12 introduce as evidence at the Pre-Screening arbitration hearing, ~~the arbitrators shall~~
13 ~~meet at a place designated by the chairperson and~~ the Pre-Screening Judge shall
14 conduct a pre-screening arbitration conference for the purpose of deciding upon a
15 date and place for the Pre-Screening arbitration hearing, and for the purpose of
16 deciding whether additional discovery should be permitted pursuant to § 10121 of
17 this chapter. ~~The arbitrators, or a majority of them, shall agree upon a date and~~
18 ~~place for the arbitration hearing.~~ The Pre-Screening arbitration hearing shall be
19 conducted within ninety (90) days after the pre-screening arbitration conference
20 between the ~~arbitrators and the parties~~ unless agreed otherwise by the parties. Oral
21 notice to the parties at the pre-screening arbitration conference of the date, time,
22 and location of the Pre-Screening arbitration hearing shall be deemed sufficient.

23 **§ 101223. Pre-Screening Arbitration Briefs.** Any Pre-Screening
24 ~~arbitration~~ brief to be filed by a claimant ~~petitioner~~ must be filed at least ten (10)
25 working days before the Pre-screening arbitration hearing. Any Pre-Screening
26 ~~arbitration~~ brief to be filed by a defendant ~~respondent~~ must be filed at least five (5)
27 working days before the Pre-Screening arbitration hearing. A claimant ~~petitioner~~

1 may file a reply brief, which shall respond only to matters discussed in the
2 defendant's ~~respondent's~~ Pre-Screening arbitration brief, no later than two (2)
3 working days before the arbitration hearing.

4 (a) The Pre-Screening Judge panel may order submission of post-
5 hearing briefs within ten (10) calendar days after the closing of hearings. In
6 written briefs, each party may summarize the evidence in testimony and may
7 propose a comprehensive award of remedial or compensatory elements.

8 **§ 101234. Representation by Counsel.** Any party may be represented in
9 hearings ~~before the arbitration panel~~ by counsel. A party may appear without
10 counsel, and shall be advised of such right and the right to retain counsel in a
11 manner calculated to inform the person of the nature and complexity of a
12 proceeding. ~~by a simple concise form to be distributed by the Association~~
13 ~~administering the arbitration.~~

14 **§ 101245. Attendance at Hearings.** Parties ~~to the arbitration~~ and their
15 counsel are entitled to attend all hearings. Non-party witnesses may be excluded by
16 either party upon request.

17 **§ 101256. Oaths.** The Pre-Screening Judge arbitrators shall require all
18 witnesses at the Pre-Screening arbitration hearing to testify under oath.

19 **§ 101267. Pre-Screening Arbitration in the Absence of a Party.** The
20 Pre-Screening arbitration may proceed in the absence of any party who, after due
21 notice, fails to be present. An award shall not be made solely on the default of a
22 party. The Pre-Screening Judge arbitrators shall require the attending party to
23 submit evidence.

24 **§ 101278. Adjournments.** Hearings may be adjourned by the Pre-
25 Screening Judge ~~a majority of the arbitrators~~ only for good cause, and an
26 appropriate fee will be charged if the arbitrators determine that a party has
27 wrongfully caused an adjournment to take place.

1 ~~§ 10129. — Waiver of Statutory Rights.~~ Any party who proceeds with
2 arbitration after knowledge that any provision of this chapter has not been
3 complied with and fails to state his objections thereto in writing shall be deemed to
4 have waived his right to object.

5 ~~§ 1012830.~~ **Fees and Costs of Pre-Screening Arbitration.** Except for the
6 parties to the Pre-Screening arbitration and their agents, officers, and employees,
7 all witnesses appearing pursuant to subpoena are entitled to receive fees and
8 mileage in the same amount and under the same circumstances as prescribed by
9 law for witnesses in civil actions in the Superior Court of Guam. The fee and
10 mileage of a witness subpoenaed upon the application of a party to the Pre-
11 Screening arbitration shall be paid by that party. The fee and mileage of a witness
12 subpoenaed solely upon the determination of the Pre-Screening Judge ~~the arbitrator~~
13 ~~or the the majority of a panel of arbitrators~~ shall be divided by the Parties or as
14 decided by the Pre-Screening Judge, ~~paid in the manner provided for the payment~~
15 ~~of the arbitrators' expenses.~~

16 (a) The costs of each arbitrator's fees and expenses, together with any
17 administrative fee, may be assessed against any party in the award or may be
18 assessed among parties in such proportions as may be determined in the Pre-
19 Screening arbitration award. Each party shall bear its own attorney's fees in
20 the Pre-Screening arbitration proceeding.

21 ~~§ 1012934.~~ **Damages.** Damages shall be monetary only and shall be
22 without limitation as to nature or amount unless otherwise provided by law.

23 ~~§ 10132. — Timely Award.~~ The award of the arbitrators shall be rendered
24 promptly by the arbitrators and, unless otherwise agreed by the parties, not later
25 than twenty (20) business days from the date of the close of the hearing. However,
26 if the arbitrators fail to render an award within twenty (20) business days from the
27 date of the close of the hearing, the arbitrators' award shall not be vacated on this

1 ground unless it can be proven that a party has been seriously prejudiced due to the
2 fact that the arbitrators have not rendered an award within twenty (20) business
3 days.

4 **§ 101303. Award of Pre-Screening Judge Arbitrators.** A Pre-Screening
5 Judge majority of the panel of arbitrators may grant monetary damages only
6 deemed equitable and just.

7 (a) The award in the Pre-Screening arbitration proceeding shall be in
8 writing and shall be signed by the Pre-Screening Judge arbitrators or a
9 majority of the panel of arbitrators. An award cannot be rendered unless it
10 is signed by a majority of the arbitrators. The award shall include a
11 determination of all the questions submitted to Pre-Screening arbitration by
12 each party, the resolution of which is necessary to determine the dispute,
13 controversy, or issue.

14 (b) The Pre-Screening Judge panel shall determine the degree to
15 which each defendant respondent party, if more than one, was at fault for
16 the total damages accruing to any other party to the Pre-Screening
17 arbitration, considering all sources of damage involving parties to the Pre-
18 Screening arbitration, but excluding the damages attributable to persons not
19 parties to the Pre-Screening arbitration.

20 (c) The panel shall prepare a schedule of contributions according to
21 the relative fault of each party, which schedule shall be binding on those
22 parties, but such determination shall not affect a claimant's right to recover
23 jointly and severally from all parties where such right otherwise exists in the
24 law.

25 **~~§ 10134. Delivery of Award to Parties.~~** The parties shall accept as legal
26 ~~delivery of the award the placing of the award or a true copy thereof in the mail by~~

1 ~~the arbitrators addressed to such party at its last known address or to the party's~~
2 ~~attorney, or personal service of the award on the party or the party's attorney.~~

3 **§ 101315. Confirmation of Award.** At any time within one (1) year after
4 a Pre-Screening award is made, any party to the Pre-Screening ~~arbitration~~ may
5 apply to the Superior Court of Guam for an order confirming the award and
6 thereupon the court must grant such an order unless the award is vacated, modified,
7 corrected, or appealed as prescribed in §§ 10136, 10137, and 10139 of this
8 Chapter. Notice of the application shall be served upon the adverse party, and
9 thereupon the court shall have jurisdiction of such party as though he had appeared
10 generally in the proceeding. If the adverse party is a resident of Guam, service
11 shall be made upon the adverse party as prescribed by law for the service of a civil
12 action in the Superior Court of Guam. If the adverse party is a non-resident, then
13 the notice of the application shall be served in like manner as other process of the
14 Superior Court of Guam served upon non-residents.

15 **§ 101326. Vacation of Pre-Screening ~~Arbitration~~ Award.** In any of the
16 following cases, the Superior Court of Guam may make an order vacating the Pre-
17 Screening award upon the application of any party ~~to the arbitration~~:

18 (a) Where the Pre-Screening award was procured by corruption, fraud,
19 or undue means;

20 (b) Where there was corruption in any of Pre-Screening proceedings
21 ~~the arbitrators~~;

22 (c) Where the Pre-Screening Judge ~~arbitrators~~ exceeded his or her
23 ~~their~~ powers and the award cannot be corrected without affecting the merits
24 of the decision upon the controversy submitted;

25 (d) Where the rights of such party were substantially prejudiced by the
26 refusal of the Pre-Screening Judge ~~arbitrators~~ to postpone the hearing upon
27 sufficient cause being shown therefore or by the refusal of the Pre-Screening

1 Judge arbitrators to hear evidence material to the controversy or by other
2 conduct of the Judge arbitrators contrary to the provisions of this chapter.

3 Where an award is vacated, the court shall direct a Pre-Screening re-
4 hearing ~~by the arbitrators~~, or if the court deems it appropriate, shall direct the
5 parties to select a new Judge arbitrators for another Pre-Screening arbitration
6 proceeding.

7 **§ 101337. Modification of Award.** In any of the following cases, the
8 Superior Court of Guam may make an order modifying or correcting the Pre-
9 Screening award upon the application of any party to the Pre-Screening arbitration:

10 (a) Where there was an evident material miscalculation of figures or
11 an evident material mistake in the description of any person, thing, or
12 property referred to in the award;

13 (b) Where the Pre-Screening Judge arbitrators have awarded upon a
14 matter not submitted to them, unless it is a matter not effecting the merits of
15 the decision upon the matter submitted;

16 (c) Where the award is imperfect in matter or form not effecting the
17 merits of the controversy. The court may modify and correct the award so as
18 to effect the intent thereof and promote justice between the parties.

19 **§ 101348. Notice of Motion to Vacate or Modify.** Notice of a motion to
20 vacate, modify, or correct an Pre-Screening award must be served upon the adverse
21 party or his attorney within thirty (30) days after the award is served upon the party
22 seeking to vacate, modify or correct the award.

23 **§ 101359. Notice of Appeal and Request for Trial De Novo.**

24 (a) Within thirty (30) days after the Pre-Screening award is served
25 upon the parties, any party may file with the clerk of the Superior Court of
26 Guam and serve on the other parties ~~and the Association~~ a written Notice of
27 Appeal and Request for Trial De Novo of the action.

1 (b) After the filing and service of the written Notice of Appeal and
2 Request for Trial De Novo, the case shall be set for trial pursuant to
3 applicable court rules.

4 (c) If the action is triable by right to a jury, and a jury was not
5 originally demanded but is demanded within ten (10) days of service of the
6 Notice of Appeal and Request for Trial De Novo by a party having the right
7 of trial by jury, the trial de novo shall include a jury, and a jury trial fee shall
8 be paid as provided by law.

9 **~~§ 10140. Procedures at Trial De Novo.~~**

10 ~~(a) The clerk shall seal any arbitration award if a trial de novo is~~
11 ~~requested. The jury will not be informed of the arbitration proceeding, the~~
12 ~~award, or about any other aspect of the arbitration proceedings. The sealed~~
13 ~~arbitration award shall not be opened until after the verdict is received and~~
14 ~~filed in a jury trial, or until after the judge has rendered a decision in a court~~
15 ~~trial.~~

16 ~~(db)~~ All discovery permitted during the course of the Pre-Screening
17 ~~arbitration~~ proceedings shall be admissible in the trial de novo subject to all
18 applicable rules of civil procedure and evidence. The court in the trial de
19 novo shall ensure that any reference to the arbitration proceeding is omitted
20 from any discovery taken therein and sought to be introduced at the trial de
21 novo.

22 ~~(c) No statements or testimony made in the course of the arbitration~~
23 ~~hearing shall be admissible in evidence for any purpose in the trial de novo.~~

24 **§ 1013641. Scheduling of the Trial De Novo.** Every case transferred to the
25 court shall maintain the approximate position on the civil trial docket as if the case
26 had not been so transferred, unless at the discretion of the court, the docket
27 position is modified.

1 **§ 1013742. The Prevailing Party in the Trial De Novo; Costs.**

2 (a) The Prevailing Party in a trial de novo is the party who has (1)
3 appealed and improved upon the Pre-Screening ~~arbitration~~ award by forty
4 percent (40%) or more, or (2) has not appealed and the opposing party
5 has appealed and failed to improve upon the Pre-Screening ~~arbitration~~ award
6 by forty percent (40%) or more. For the purpose of this rule, improve or
7 improved means to increase the award for a plaintiff or to decrease the
8 award for the defendant.

9 (b) The Prevailing Party under these rules, as defined above, is
10 deemed the prevailing party under any statute or rule of court, and as such
11 is entitled to costs of trial ~~trial~~ and all other remedies as provided by law.

12 **§ 1013843. Sanction for Failing to Prevail in the Trial De Novo.**

13 (a) After the verdict is received and filed, or the court's decision
14 rendered in a trial de novo, the trial court shall impose sanctions, as set forth
15 below, against the non-prevailing party whose appeal resulted in the trial de
16 novo.

17 (b) The sanctions to be imposed by the court are as follows: (1)
18 Reasonable costs and fees (other than attorneys' fees) actually incurred by
19 the party but not otherwise taxable under the law; (2) Costs of jurors; (3)
20 Reasonable attorneys' fees actually incurred by the prevailing party.

21 (c) Sanctions imposed against a plaintiff will be deducted from any
22 award rendered. Sanctions imposed against a defendant will be added to any
23 award rendered.

24 **§ 1013944. Applicability to Claims.**

25 **(A) Government of Guam and Its Agencies.** Claims against the
26 government of Guam and its agencies are governed by the Government
27 Claims Act. Thus, this chapter does not apply to claims against the Guam

1 Memorial Hospital Authority or other health care institutions established by
2 the government of Guam.

3 **(B) Small Claims.** Notwithstanding 7 GCA, Chapter 4, Article 2,
4 §4202, a claim against any defendant for the small claims statutory limit or
5 less, or any subsequently amended Small Claims Statutory limit, shall be
6 exempt from this Chapter if filed with the Small Claims Division.

7 **§ 101405. Prospective Effect of Chapter.** This chapter may ~~shall not~~
8 apply to any claim that accrues before the date that the chapter becomes law, at the
9 election of any party or agreement by both parties.

10 **§ 101416. This Chapter to Prevail.** The provisions of Title 5, Chapter 32,
11 Guam Code Annotated, entitled, Deceptive Trade Practices - Consumer Protection
12 Act, shall not be applicable to this chapter and to the extent any of the provisions
13 of this chapter are inconsistent or conflict with the provisions of the Deceptive
14 Trade Practices - Consumer Protection Act or any other provision of law, the terms
15 of this chapter shall prevail and control.

16 **§ 101427. Reporting Requirement Severability Clause.** ~~If any section~~
17 ~~or sentence of this chapter is deemed unconstitutional, then that section or sentence~~
18 ~~shall be severed from the chapter and the remainder of the chapter shall remain and~~
19 ~~be of full force and effect.~~ The Judiciary of Guam shall submit an annual report of
20 the number of medical malpractice claims filed, the number of cases that opted for
21 mediation or arbitration, the number of cases resolved through the pre-screening
22 process, the number of cases found to be meritorious, and the number of and
23 outcomes of cases that proceeded to trial.

24 **§ 10143. Severability Clause.** If any provision of this Act or its
25 application to any person or circumstance is found to be invalid or inorganic, such
26 invalidity shall not affect other provisions or applications of this Act that can be

1 given effect without the invalid provision or application, and to this end the
2 provisions of this Act is severable.

3 **Section 2.** A new § 42A101(i)(20) is *added* to Chapter 42A of Division 3,
4 Title 7, Guam Code Annotated, to read:

5 “(20) Medical Malpractice.”

6 **Section 3.** § 42A101(j) of Chapter 42A, Division 3, Title 7, Guam Code
7 Annotated, is *amended* to read:

8 “(j) This Chapter 42A shall not affect any other law of Guam by virtue of
9 which certain disputes may not be submitted to arbitration or may be submitted to
10 arbitration only according to provisions other than those of this Chapter 42A
11 ~~including, but not limited to, arbitrations conducted pursuant to 10 GCA §§ 10100-~~
12 ~~10147.”~~

13 **Section 4.** This Act shall be effective one hundred and eighty (180) days
14 after enactment.