

I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN
2022 (SECOND) Regular Session

Bill No. 112-36 (COR)

As Substituted and further Amended by the
Committee on Health, Land, Justice, and Culture

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**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**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

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

4

5 **“CHAPTER 10**

1 § 10123. Pre-Screening ~~Arbitration~~ Briefs.

2 § 10124. Representation by Counsel.

3 § 10125. Attendance at Hearings.

4 § 10126. Oaths

5 § 10127. ~~Arbitration~~ Pre-Screening in the Absence of a Party.

6 § 10128. Adjournments.

7 ~~§ 10129. Waiver of Statutory Rights.~~

8 § 10130. Fees and Costs of Arbitration.

9 § 10131. Damages.

10 ~~§ 10132. Timely Award.~~

11 § 10133. Award of Pre-Screening Judge ~~Arbitrators~~.

12 ~~§ 10134. Delivery of Award to Parties.~~

13 § 10135. Confirmation of Award.

14 § 10136. Vacation of Pre-Screening ~~Arbitration~~ Award.

15 § 10137. Modification of Award.

16 § 10138. Notice of Motion to Vacate or Modify.

17 § 10139. Notice of Appeal and Request for Trial de Novo.

18 § 10140. Procedures at Trial de Novo

19 § 10141. Scheduling of the Trial de Novo.

20 § 10142. The Prevailing Party in the Trial de Novo; Costs.

21 § 10143. Sanction for Failing to Prevail in the Trial de Novo.

22 § 10144. Applicability to Government of Guam and its Agencies.

23 § 10145. ~~Prospective~~ Effect of Chapter.

24 § 10146. This Chapter to Prevail.

25 § 10147. Reporting Requirement ~~Severability Clause~~.

26 § 10148. Severability Clause.

1 § 10100. Title. This Chapter may be cited as the Medical Malpractice Pre-
2 Screening Mandatory Arbitration Act.

3 § 10100.1 Legislative Statement. I Liheslaturan Guåhan finds that P.L. 21-
4 43, also known as the Medical Malpractice Mandatory Arbitration Act, raises the
5 costs of medical malpractice claims to prohibitive amounts. Such financial barriers
6 can prevent those who have suffered medical malpractice injuries from seeking
7 justice and reparations.

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

12 The history of medical malpractice legislation on Guam is lengthy, originating
13 with Bill No. 441 in 1975, also known as the Malpractice Claims Mandatory
14 Screening and Mandatory Arbitration Act. Bill No. 441 was found unconstitutional
15 and struck down in the 1984 court case Awa v. Guam Memorial Hospital Authority,
16 finding "it impossible to construe the Act so as to give effect to its contradictory and
17 incomplete provisions." In 1991, the Committee on Health, Ecology, and Welfare
18 found that the medical malpractice problem had reached crisis levels in recent years.
19 In an effort to lower prohibitive medical malpractice insurance premiums, Bill No.
20 325 was introduced by the 21st Guam Legislature, which then became the Medical
21 Malpractice Mandatory Arbitration Act that stands today.

22 It was determined in U.S. District Court cases, Nicholas v. Guam Healthcare
23 Dev. Inc. et al. Civil Case Nos. 1:20-cv-00004, ECF No.45; DelaRosa v. Arqfiles, et
24 al., 1:20-cv-00015, ECF No.33. by Chief Judge Mangloña that Guam's current
25 mandatory arbitration law does not explain what to do when an indigent plaintiff is
26 incapable of paying his or her half of the cost of arbitration. Judge Mangloña further
27 stated: "It would be manifestly unfair to enforce the statutory requirement against a

1 person financially incapable of arbitrating. Doing so would have the absurd result
2 of prohibiting the poor from recovering on a claim they might be otherwise entitled
3 to. It would likewise shield the healthcare industry from ever owing liability to the
4 underprivileged. There is no evidence to indicate that the Guam legislature enacted
5 the MMMAA with such a draconian purpose in mind.”

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

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

12 **§ 10101. Definitions.** For the purposes of As used in this chapter:

13 (a) Arbitration means any arbitration pursuant to the Guam
14 International Arbitration Law (Chapter 42A, Division 3, Title 7, of the Guam
15 Code Annotated).

16 (b) Arbitral tribunal means a sole arbitrator, or a panel of arbitrators
17 selected pursuant to the Guam International Arbitration Law.

18 (c) Claimant or Patient means the person, his relatives, his heirs-at-
19 law or personal representative pursuing a claim, or any third party or other
20 party pursuing a claim against a health professional or healthcare provider.

21 (d) Defendant means the health professional or healthcare provider
22 defending a claim pursuant to this Chapter filed by a claimant.

23 ~~(a) Association means the American Arbitration Association or other~~
24 ~~entity organized to arbitrate disputes pursuant to this Chapter.~~

25 ~~(e)~~ (b) Health professional or healthcare provider means any person
26 licensed or certified to practice the healing arts within the territory of Guam.

1 ~~(c) Health care institution means any health care facility, health~~
2 ~~maintenance organization or independent practice association operated~~
3 ~~primarily to provide medical services.~~

4 ~~(fd) Malpractice~~ means any tort or breach of contract based on health
5 care or professional services rendered or which should have been rendered by
6 a health professional or a health care institution to a patient.

7 ~~(g) Informed Consent is defined pursuant to the provision of § 11104,~~
8 ~~§ 11105, § 11106, and § 11107 of Chapter 11, Title 10, Guam Code~~
9 ~~Annotated.~~

10 ~~(e) Petitioner means the patient, his relatives, his heirs-at-law or~~
11 ~~personal representative pursuing a claim in arbitration, or any third party or~~
12 ~~other party pursuing a claim in arbitration, against a health professional or~~
13 ~~health care provider.~~

14 ~~(f) Respondent means the health professional or health care provider~~
15 ~~defending a claim in arbitration filed by a petitioner.~~

16 ~~(h) Judge means judge or magistrate of court of competent jurisdiction.~~

17 **§ 10102. Mandatory Medical Malpractice Pre-Screening Arbitration.**

18 Any claim for damages for personal injury or death on account of alleged medical
19 malpractice of a healthcare provider that accrues or is being pursued in the territory
20 of Guam, whether in tort, contract, or otherwise, shall be submitted to mandatory
21 Malpractice Pre-Screening arbitration pursuant to the terms of this Chapter if it is a
22 controversy between the patient, his relatives, his heirs-at-law or personal
23 representative or any third party or other party, and the health professional or health
24 care institution, or their employees or agents, and is based on malpractice, tort,
25 contract, strict liability, or any other alleged violation of a legal duty incident to the
26 acts of the health professional or health care institution, or incident to services
27 rendered or to be rendered by the health professional or health care institution.

1 **§ 10103. Initiation of Complaint and Pre-Screening Arbitration.**

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

18 (a) Prior to the filing for a Medical Malpractice Pre-Screening, a claimant
19 shall provide no less than ninety (90) day notification in writing to a defendant, for
20 whom a complaint of medical malpractice is claimed against, of his or her intent to
21 file for a Pre-Screening, in the same manner provided by law for a service of
22 summons in the Court; except that the claimant or his or her agent may serve the
23 Pre-Screening Notification. The notification shall state the name and address of the
24 claimant or claimants, identify the defendant or defendants, and shall outline the
25 factual basis of the claim and the alleged acts of negligence or wrongdoing of the
26 defendant or defendants. The applicable statute of limitation shall be tolled during
27 the ninety (90) day period.

1 (b) Nothing herein shall prohibit a healthcare provider from exercising his or
2 her right to expressions of sympathy or benevolence relating to the pain, suffering,
3 or death of a patient involved in the incident with the health professional, to the
4 patient or the family of the patient, which is inadmissible as evidence of an admission
5 of liability in any civil action or any arbitration proceedings.

6 (c) Immediately following receipt of a Pre-Screening Complaint pursuant to
7 this Chapter, the Court shall seal the case and refer the matter to a Judge for Pre-
8 Screening.

9 (d) Pre-Dispute Arbitration Agreements. Should a claimant have a Pre-
10 Dispute Arbitration Agreement to arbitrate a malpractice claim with a health
11 professional or healthcare provider, the claimant may not pursue his remedies under
12 the Medical Malpractice Pre-Screening Act.

13 **§ 10104. Response to Demand.** Within twenty (20) days after service of a
14 Pre-Screening Complaint pursuant to this chapter ~~demand for arbitration~~, the
15 ~~respondent or respondents~~ defendant or defendants shall file an response Answer to
16 the Pre-Screening Complaint pursuant to this chapter ~~demand for arbitration~~ and
17 serve it upon the claimant or claimants ~~petitioner or petitioners~~, or their attorney.
18 The response shall identify any defenses then known to the defendant or defendants
19 ~~respondent or respondents~~. If a defendant ~~respondent~~ fails to timely file an answer a
20 ~~response~~, then the claimant or claimants ~~petitioner or petitioners~~ may proceed in
21 default to Pre-Screening ~~appoint an arbitration panel pursuant to § 10108 of this~~
22 Chapter.

23 **§ 10105. Applicability of Statute of Limitations.** A claim shall be waived
24 and forever barred as against a defendant ~~respondent~~ if on the date the Pre-Screening
25 Complaint ~~demand~~ is filed ~~served~~ the applicable statute of limitations would bar the
26 claim.

1 **§ 10106. Standard of Care.** The prevailing standard of duty, practice, or care
2 by a reasonable physician in the same field practicing medicine in the community at
3 the time of the alleged malpractice shall be the standard applied in the Pre-Screening,
4 arbitration, and trial provided that it shall be an affirmative defense that can be
5 disputed for a physician who in good faith with the informed consent in writing of
6 the patient, provided care in another specialty because of the unavailability of a
7 practitioner on island who offers said specialty, when the failure to provide said care
8 would have adverse consequences for the patient.

9 **§ 10107. Administration of Medical Malpractice Pre-Screening**
10 **~~Arbitration.~~** ~~The Association shall administer a proceeding filed under this Chapter.~~
11 ~~The administrative expense shall be as agreed to by the parties and the Association,~~
12 ~~or as may be provided by the Association. The administrative costs shall be equally~~
13 ~~shared by the parties subject to an award of costs by the panel as provided in § 10130~~
14 ~~herein~~

15 (a) A Pre-Screening shall be conducted promptly upon notice in writing to all
16 parties and their counsel. Pre-Screening shall examine, but not be limited to the
17 following:

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

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

22 (3) Expert witness testimony or affidavits submitted by both claimant
23 and defendant from a medical professional in the same or similar field,
24 licensed to practice on Guam or any other U.S. jurisdictions, that attest
25 to whether or not there may be a breach of the standard of care pursuant
26 to § 10106 of this chapter.

1 (4) Any records for examination to determine whether the defendant
2 acquired informed consent from the claimant prior to and during
3 treatment pursuant to the provisions of § 11104, § 11105, §11106, and
4 § 11107 of Chapter 11, Title 10, Guam Code Annotated.

5 (b) Upon consideration of the above evidence, the Judge shall make a pre-
6 screening decision as to whether:

7 (1) The evidence supports the preliminary conclusion that the defendant
8 or defendants failed to comply with the appropriate standard of care;

9 (2) The evidence does not support the preliminary conclusion that the
10 defendant or defendants failed to meet the applicable standard of care; and

11 (3) The conduct complained of was or was not a factor in any resultant
12 damages.

13 (4) The evidence supports the preliminary conclusion that a claim or
14 defense may be frivolous in nature and impose sanctions, as appropriate
15 against a claimant or defendant in accordance with the standards set forth in
16 Guam Rules of Civil Procedure, Rule 11 (b), in addition to any sanctions
17 imposed on counsel.

18 (c) If the Judge finds that the evidence supports the preliminary conclusion
19 that the defendant(s) failed to comply with the appropriate standard of care and that
20 the conduct complained of was a factor in causing damages to claimants(s), the
21 Judge shall proceed to set a preliminary monetary settlement value on the claim,
22 distinguishing between economic and noneconomic damages.

23 (d) The record of Pre-Screening proceedings and the Pre-Screening decision
24 reached by the Judge shall be sealed permanently if a trial is not pursued.

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

1 (f) The Pre-Screening Decision of the Judge shall be admissible as evidence
2 in the pending trial brought by the claimant, but such a decision shall not be
3 conclusive and can be refuted by admissible evidence.

4 (g) Pre-Screening Decision of the Judge shall not be considered a civil
5 judgement or a court-ordered action, finding, admission, or statement of liability.

6 **§ 10108. Authority to Enact Rules and Procedures ~~Selection for~~**
7 **~~Arbitrators.~~**

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

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

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

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

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

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

15 **§ 10109. Mediation Challenge for Bias.**

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

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

1 ~~(a) Any party may propound reasonable questions to an arbitrator~~
2 ~~candidate if such questions are propounded within ten (10) days of the receipt~~
3 ~~of the candidate's name. Such questions shall be propounded through the~~
4 ~~Association and the candidate shall respond to the Association promptly.~~

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

9 **§ 10110. Application of Guam International Arbitration Law;**
10 **Decision shall be Final and Binding Rules of Arbitration.**

11 Parties may, at any time make a motion to the Pre-Screening Judge to hold
12 proceedings in abeyance upon mutual consent and pursuant to any agreed upon terms
13 and conditions, while the parties submit their dispute to arbitration pursuant to the
14 Guam International Arbitration Law provided for in Chapter 42A, Division 3, Title
15 7, of the Guam Code Annotated. The decision of an arbitral tribunal involving a
16 medical malpractice dispute submitted in accordance to the Guam International
17 Arbitration Law shall be final and binding.

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

20 **§ 10111. Arbitration of Disputes Involving Sexual Assault and Sexual**
21 **Harassment Multiple Petitioners and Multiple Respondents.**

22 Pursuant to Public Law 36-120, at the election of the person alleging
23 conduct constituting a sexual assault dispute or sexual harassment dispute, or the
24 named representative of a class or in a collective action alleging such conduct, this
25 chapter shall not apply.

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

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

8 **§ 10112. Offer of Reparation.** Prior to the institution of a proceeding or
9 claim, or Pre-Screening Complaint by a patient, any offer of reparations and all
10 communications incidental thereto made in writing to a patient by a health
11 professional or health care institution are privileged and may not be used by any
12 party to establish the liability or measure of damages attributable to the offeror.

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

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

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

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

26 **§ 10113. Appointment of Guardian Ad Litem.**

1 (a) When a minor, or an insane or incompetent person is a claimant
2 ~~petitioner~~, he must appear either by general guardian or a Guardian Ad Litem
3 appointed by a Court of competent jurisdiction ~~the Superior Court of Guam~~.
4 A Guardian Ad Litem may be appointed ~~in a claim for arbitration under this~~
5 ~~chapter~~ when it is deemed by a judge of such Court ~~the Superior Court of~~
6 ~~Guam~~ to be expedient to represent the minor, insane, or incompetent person
7 in the ~~arbitration~~ proceeding, notwithstanding he may have a general guardian
8 and may have appeared by him. The general guardian or Guardian Ad Litem
9 so appearing for an infant, insane or incompetent person in any ~~arbitration~~
10 proceeding shall have the power to compromise the same and to agree to any
11 settlement or decision ~~of the arbitrators~~ to be entered therein against his ward,
12 subject to the approval of the Judge. ~~a majority of the arbitrators.~~

13 (b) A Guardian Ad Litem appointed by the ~~Superior Court of Guam~~ to
14 pursue a claim ~~for arbitration~~ shall be appointed pursuant to §373 of the Guam
15 Code of Civil Procedure. Any petition to appoint a Guardian Ad Litem to
16 pursue a claim for arbitration shall have a copy of the Pre-Screening
17 Complaint ~~demand for arbitration~~ attached thereto.

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

25 **§ 10115. Failure to Pre-Screen Arbitrate Under This Chapter.** The party
26 aggrieved by the alleged failure, neglect, or refusal of another to Pre-Screening
27 ~~arbitrate~~ under this chapter, may petition the ~~Superior Court of Guam~~, for an order

1 directing that such Pre-Screening arbitration proceed in the manner provided for in
2 this chapter. Five (5) days' notice in writing of such application shall be served upon
3 the party in default. Service thereof shall be made in the manner provided by law for
4 the service of summons in the ~~Superior Court of Guam~~. The court shall hear the
5 parties, and the court shall then make an order directing the parties to proceed to Pre-
6 Screening arbitration in accordance with the terms of this chapter.

7 **§ 10116. Service of Documents upon Arbitrators; Ex Parte Contract.**

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

14 **§ 10117. Witnesses Before Pre-Screening Judge Arbitrators.** The Pre-
15 ~~Screening Judge panel or its chairperson in the arbitration proceeding~~ shall, upon
16 application by a party to the proceeding, and may upon its own determination, issue
17 a subpoena requiring a person to appear and be examined with reference to a matter
18 within the scope of the proceeding, and to produce books, records, or papers
19 pertinent to the proceeding. In case of disobedience to the subpoena, the Judge in
20 Pre-Screening ~~may chairperson or a majority of the arbitration panel in the~~
21 ~~arbitration proceeding may petition the Superior Court of Guam to require the~~
22 attendance and testimony of the witness and the production of books, papers, and
23 documents. The ~~Superior Court of Guam~~, in case of contumacy or refusal to obey a
24 subpoena, may issue an order requiring that person to appear and to produce books,
25 records, and papers and give evidence touching the matter in question. Failure to
26 obey the order of the Court may be punished by the Court as contempt. The fees for
27 the attendance of any person to attend before the Pre-Screening arbitration panel as

1 a witness shall be the same as the fees for witnesses subpoenaed before the ~~Superior~~
2 ~~Court of Guam~~. The ~~Superior Court of Guam~~ shall order a witness to pay the cost of
3 the aggrieved party, to include attorney's fees, if it is determined that the witness
4 wrongfully failed to appear during Pre-Screening ~~before the arbitration panel~~.

5 **§ 10118. Evidence and Testimony.** A hearing shall be informal and the Pre-
6 Screening Judge ~~arbitrators~~ shall be the sole judge of the relevancy and materiality
7 of the evidence offered.

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

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

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

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

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

1 (f) The Pre-Screening Judge panel shall accord such weight and
2 probative worth to expert evidence as it deems appropriate. The Pre-Screening
3 Judge panel may call a neutral expert on its own motion, which expert witness
4 shall be subject to cross-examination by the parties. The costs of the expert
5 will be deemed a cost of the proceeding.

6 **§ 10119. Identification of Expert Witnesses.** Within thirty (30) days after
7 receipt of defendants answer the arbitrators have been selected, any claimant
8 petitioner pursuing a claim against a defendant respondent shall identify the expert
9 witnesses that the claimant petitioner will call at the Pre-Screening arbitration
10 hearing. When identifying such experts, the claimant petitioner shall provide the
11 name of the expert, the address of the expert, and shall state the subject matter on
12 which the expert is expected to testify and state the substance of the facts and
13 opinions to which the expert is to testify and a summary of the grounds for each
14 opinion. Within thirty (30) days after the claimant petitioner has identified his
15 experts, the defendant respondent shall identify the expert witnesses that the
16 defendant respondent will call to testify at the Pre-Screening arbitration hearing. The
17 defendant respondent shall provide the name of the expert witness, the address of
18 the expert witness, and state the subject matter on which the expert is expected to
19 testify, and state the substance of the facts and opinions to which the expert is
20 expected to testify and a summary of the grounds for each opinion.

21 **§ 10120. Identification of Witnesses and Documents.** Within thirty (30)
22 days after the defendant respondent has identified defendant's respondent's expert
23 witnesses, the parties shall exchange a list of witnesses that they expect to call to
24 testify at the Pre-Screening arbitration hearing along with a summary of each
25 witnesses' proposed testimony. The parties shall also provide each other with copies
26 of all documents and material that they intend to introduce as evidence at the Pre-
27 Screening arbitration hearing.

1 **§ 10121. Additional Discovery.** Additional discovery, not otherwise
2 provided for in this chapter, such as depositions, interrogatories and requests to
3 produce, shall not be permitted unless:

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

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

12 **§ 10122. Time and Place of Pre-Screening Arbitration Hearing.** Within
13 thirty (30) days after the parties have exchanged their lists of witnesses and provided
14 each other with the documents that the parties intend to introduce as evidence at the
15 Pre-Screening ~~arbitration hearing, the arbitrators shall meet at a place designated by~~
16 ~~the chairperson and the Pre-Screening Judge shall~~ conduct a pre-screening
17 ~~arbitration~~ conference for the purpose of deciding upon a date and place for the Pre-
18 Screening ~~arbitration~~ hearing, and for the purpose of deciding whether additional
19 discovery should be permitted pursuant to § 10121 of this chapter. ~~The arbitrators,~~
20 ~~or a majority of them, shall agree upon a date and place for the arbitration hearing.~~
21 The Pre-Screening ~~arbitration~~ hearing shall be conducted within ninety (90) days
22 after the pre-screening ~~arbitration~~ conference between the ~~arbitrators and the parties~~
23 unless agreed otherwise by the parties. Oral notice to the parties at the pre-screening
24 ~~arbitration~~ conference of the date, time and location of the Pre-Screening ~~arbitration~~
25 hearing shall be deemed sufficient. On a motion of any party, a Pre-Screening Judge
26 may enlarge any Pre-Screening deadline in this chapter on a showing of good cause.

1 **§ 10123. Pre-Screening Arbitration Briefs.** Any Pre-Screening arbitration
2 brief to be filed by a claimant petitioner must be filed at least ten (10) working days
3 before the Pre-screening arbitration hearing. Any Pre-Screening arbitration brief to
4 be filed by a defendant respondent must be filed at least five (5) working days before
5 the Pre-Screening arbitration hearing. A claimant petitioner may file a reply brief,
6 which shall respond only to matters discussed in the defendant's respondent's Pre-
7 Screening arbitration brief, no later than two (2) working days before the arbitration
8 hearing.

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

13 **§ 10124. Representation by Counsel.** Any party may be represented in
14 hearings ~~before the arbitration panel~~ by counsel. A party may appear without
15 counsel, and shall be advised of such right and the right to retain counsel in a manner
16 calculated to inform the person of the nature and complexity of a proceeding. ~~by a~~
17 ~~simple concise form to be distributed by the Association administering the~~
18 ~~arbitration.~~

19 **§ 10125. Attendance at Hearings.** Parties ~~to the arbitration~~ and their counsel
20 are entitled to attend all hearings. Non-party witnesses may be excluded by either
21 party upon request.

22 **§ 10126. Oaths.** The Pre-Screening Judge arbitrators shall require all
23 witnesses at the Pre-Screening arbitration hearing to testify under oath.

24 **§ 10127. Pre-Screening Arbitration in the Absence of a Party.** The Pre-
25 Screening arbitration may proceed in the absence of any party who, after due notice,
26 fails to be present. An award shall not be made solely on the default of a party. The
27 Pre-Screening Judge arbitrators shall require the attending party to submit evidence.

1 ~~§ 10128. Adjournments.~~ Hearings may be adjourned by the Pre-Screening
2 Judge a majority of the arbitrators only for good cause, and an appropriate fee will
3 be charged if the arbitrators determine that a party has wrongfully caused an
4 adjournment to take place.

5 ~~§ 10129. Waiver of Statutory Rights.~~ Any party who proceeds with
6 arbitration after knowledge that any provision of this chapter has not been complied
7 with and fails to state his objections thereto in writing shall be deemed to have
8 waived his right to object.

9 **§ 10130. Fees and Costs of Pre-Screening Arbitration.** Except for the
10 parties to the Pre-Screening arbitration and their agents, officers, and employees, all
11 witnesses appearing pursuant to subpoena are entitled to receive fees and mileage in
12 the same amount and under the same circumstances as prescribed by law for
13 witnesses in civil actions in ~~the Superior Court of Guam~~. The fee and mileage of a
14 witness subpoenaed upon the application of a party to the Pre-Screening arbitration
15 shall be paid by that party. The fee and mileage of a witness subpoenaed solely upon
16 the determination of the Pre-Screening Judge ~~the arbitrator or the majority of a panel~~
17 ~~of arbitrators~~ shall be divided by the Parties or as decided by the Pre-Screening Judge
18 ~~paid in the manner provided for the payment of the arbitrators' expenses.~~

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

24 **§ 10131. Damages.** Damages shall be monetary only and shall be without
25 limitation as to nature or amount unless otherwise provided by law.

26 ~~§ 10132. Timely Award.~~ The award of the arbitrators shall be rendered
27 promptly by the arbitrators and, ~~unless otherwise agreed by the parties, not later than~~

1 ~~twenty (20) business days from the date of the close of the hearing. However, if the~~
2 ~~arbitrators fail to render an award within twenty (20) business days from the date of~~
3 ~~the close of the hearing, the arbitrators' award shall not be vacated on this ground~~
4 ~~unless it can be proven that a party has been seriously prejudiced due to the fact that~~
5 ~~the arbitrators have not rendered an award within twenty (20) business days.~~

6 **§ 10133. Award of Pre-Screening Judge Arbitrators.** A Pre-Screening
7 Judge majority of the panel of arbitrators may grant monetary damages only deemed
8 equitable and just.

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

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

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

1 ~~§ 10134. Delivery of Award to Parties.~~ The parties shall accept as legal
2 delivery of the award the placing of the award or a true copy thereof in the mail by
3 the arbitrators addressed to such party at its last known address or to the party's
4 attorney, or personal service of the award on the party or the party's attorney.

5 **§ 10135. Confirmation of Award.** At any time within one (1) year after an
6 Pre-Screening award is made, any party to the Pre-Screening ~~arbitration~~ may apply
7 to the ~~Superior~~ Court of ~~Guam~~ for an order confirming the award and thereupon the
8 court must grant such an order unless the award is vacated, modified, corrected, or
9 appealed as prescribed in §§ 10136, 10137 and 10139 of this Chapter. Notice of the
10 application shall be served upon the adverse party, and thereupon the court shall
11 have jurisdiction of such party as though he had appeared generally in the
12 proceeding. If the adverse party is a resident of Guam, service shall be made upon
13 the adverse party as prescribed by law for the service of a civil action in the ~~Superior~~
14 Court of ~~Guam~~. If the adverse party shall be a non-resident, then the notice of the
15 application shall be served in like manner as other process of the ~~Superior~~ Court of
16 ~~Guam~~ served upon non-residents.

17 **§ 10136. Vacation of Pre-Screening ~~Arbitration~~ Award.** In any of the
18 following cases, the ~~Superior~~ Court of ~~Guam~~ may make an order vacating the Pre-
19 Screening award upon the application of any party ~~to the arbitration~~:

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

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

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

1 (d) Where the rights of such party were substantially prejudiced by the
2 refusal of the Pre-Screening Judge arbitrators to postpone the hearing upon
3 sufficient cause being shown therefore or by the refusal of the Pre-Screening
4 Judge arbitrators to hear evidence material to the controversy or by other
5 conduct of the Judge arbitrators contrary to the provisions of this chapter.
6 Where an award is vacated, the court shall direct a Pre-Screening re-hearing
7 ~~by the arbitrators~~, or if the court deems it appropriate, shall direct the parties
8 to select a new Judge arbitrators—for another Pre-Screening arbitration
9 proceeding.

10 **§ 10137. Modification of Award.** In any of the following cases, the ~~Superior~~
11 ~~Court of Guam~~ may make an order modifying or correcting the Pre-Screening award
12 upon the application of any party to the Pre-Screening arbitration:

13 (a) Where there was an evident material miscalculation of figures or an
14 evident material mistake in the description of any person, thing, or property
15 referred to in the award.

16 (b) Where the Pre-Screening Judge arbitrators ~~have~~ has awarded upon
17 a matter not submitted to them, unless it is a matter not effecting the merits of
18 the decision upon the matter submitted.

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

22 **§ 10138. Notice of Motion to Vacate or Modify.** Notice of a motion to
23 vacate, modify, or correct an Pre-Screening award must be served upon the adverse
24 party or his attorney within thirty (30) days after the award is served upon the party
25 seeking to vacate, modify or correct the award.

26 **§ 10139. Notice of Appeal and Request for Trial De Novo.**

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

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

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

13 **~~§ 10140. Procedures at Trial De Novo.~~**

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

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

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

1 **§ 10141. Scheduling of the Trial De Novo.** Every case transferred to the
2 court shall maintain the approximate position on the civil trial docket as if the case
3 had not been so transferred, unless at the discretion of the court, the docket position
4 is modified.

5 **§ 10142. The Prevailing Party in the Trial De Novo; Costs.**

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

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

16 **§ 10143. Sanction for Failing to Prevail in the Trial De Novo.**

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

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

25 (c) Sanctions imposed against a plaintiff will be deducted from any
26 award rendered. Sanctions imposed against a defendant will be added to any
27 award rendered.

1 (d) After the verdict is received and filed, or the court's decision
2 rendered in a *trial de novo*, the trial court *sua sponte* shall issue findings of
3 fact and conclusions of law announcing whether plaintiff filed a frivolous suit
4 and if so, impose sanctions, as appropriate against plaintiff in accordance with
5 the standards set forth in Guam Rules of Civil Procedure, Rule 11 (b), in
6 addition to any sanctions imposed on counsel.

7 **§ 10144. Applicability to Claims.**

8 **(A) Government of Guam and Its Agencies.** Claims against the
9 government of Guam and its agencies are governed by the Government Claims Act.
10 Thus, this chapter does not apply to claims against the Guam Memorial Hospital
11 Authority or other health care institutions established by the government of Guam.

12 **(B) Small Claims.** Notwithstanding 7 GCA, Chapter 4, Article 2,
13 §4202, a claim against any defendant for the small claims statutory limit or less, or
14 any subsequently amended Small Claims Statutory limit, shall be exempt from this
15 Chapter if filed with the Small Claims Division.

16 **§ 10145. Prospective Effect of Chapter.** This chapter ~~may~~ shall not apply to
17 any claim that accrues before the date that the chapter becomes law, ~~at the election~~
18 ~~of any party or agreement by both parties.~~

19 **§ 10146. This Chapter to Prevail.** The provisions of Title 5, Chapter 32,
20 Guam Code Annotated, entitled, Deceptive Trade Practices - Consumer Protection
21 Act, shall not be applicable to this chapter and to the extent any of the provisions of
22 this chapter are inconsistent or conflict with the provisions of the Deceptive Trade
23 Practices - Consumer Protection Act or any other provision of law, the terms of this
24 chapter shall prevail and control.

25 **§ 10147. Reporting Requirement.** The Judiciary of Guam shall submit an
26 annual report of the number of medical malpractice claims filed, the number of cases
27 that opted for mediation or arbitration, the number of cases resolved through the pre-

1 screening process, the number of cases found to be meritorious, and the number of
2 and outcomes of cases that proceeded to trial.

3 **§ 101478. Severability Clause.** If any section or sentence of this chapter is
4 deemed unconstitutional, then that section or sentence shall be severed from the
5 chapter and the remainder of the chapter shall remain and be of full force and effect.

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

8 “(20) Medical Malpractice.”

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

11 “(j) This Chapter 42A shall not affect any other law of Guam by virtue of
12 which certain disputes may not be submitted to arbitration or may be submitted to
13 arbitration only according to provisions other than those of this Chapter 42A
14 ~~including, but not limited to, arbitrations conducted pursuant to 10-GCA §§ 10100-~~
15 ~~10147.”~~

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