

1 **MARKETING AND DISTRIBUTION OF**
2 **PRESCRIPTION DRUGS**

3 2001 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Dan R. Eastman**

6 **This act modifies the Insurance Code to prohibit insurance companies from structuring**
7 **health care contracts so that out-of-state mail service pharmacies may offer benefits to**
8 **insured individuals that in-state pharmacies may not offer.**

9 This act affects sections of Utah Code Annotated 1953 as follows:

10 AMENDS:

11 **31A-8-103 (Effective 04/30/01)**, as last amended by Chapter 300, Laws of Utah 2000

12 ENACTS:

13 **31A-22-631**, Utah Code Annotated 1953

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

15 Section 1. Section **31A-8-103 (Effective 04/30/01)** is amended to read:

16 **31A-8-103 (Effective 04/30/01). Applicability to other provisions of law.**

17 (1) Except for exemptions specifically granted under this title, organizations are subject
18 to regulation under all of the provisions of this title. Notwithstanding any provision of this title,
19 organizations licensed under this chapter are wholly exempt from the provisions of Chapters 7, 9,
20 10, 11, 12, 13, 19, and 28. In addition, organizations are not subject to:

21 (a) Chapter 3, except for Part I;

22 (b) Section 31A-4-107;

23 (c) Chapter 5, except for provisions specifically made applicable by this chapter;

24 (d) Chapter 14, except for provisions specifically made applicable by this chapter;

25 (e) Chapters 17 and 18, except as made applicable by the commissioner by rule consistent
26 with this chapter; and

27 (f) Chapter 22, except for Parts VI, VII, and XII.

28 (2) The commissioner may by rule waive other specific provisions of this title that he
29 considers inapplicable to health maintenance organizations or limited health plans, upon a finding
30 that such a waiver will not endanger the interests of enrollees, investors, or the public.

31 (3) Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, and Title 16, Chapter
32 10a, Utah Revised Business Corporation Act, do not apply to organizations except as specifically
33 made applicable by:

34 (a) this chapter;

35 (b) a provision referenced under this chapter; or

36 (c) a rule adopted by the commissioner to deal with corporate law issues of health
37 maintenance organizations that are not settled under this chapter.

38 (4) Whenever in this chapter a section, subsection, or paragraph of Chapter 5 or 14 is made
39 applicable to organizations, the application is of those provisions that apply to mutual corporations
40 if the organization is nonprofit and of those that apply to stock corporations if the organization is
41 for profit. Whenever a provision under Chapter 5 or 14 is made applicable to organizations under
42 this chapter, "mutual" means nonprofit organization.

43 (5) Solicitation of enrollees by an organization is not a violation of any provision of law
44 relating to solicitation or advertising by health professionals if that solicitation is made in
45 accordance with the provisions of this chapter and Chapter 23.

46 (6) Nothing in this title prohibits any health maintenance organization from meeting the
47 requirements of any federal law that enables the health maintenance organization to receive federal
48 funds or to obtain or maintain federal qualification status.

49 (7) Except as provided in [~~Section~~] Sections 31A-8-501 and 31A-22-631, organizations
50 are exempt from statutes in this title or department rules that restrict or limit their freedom of
51 choice in contracting with or selecting health care providers, including Section 31A-22-618.

52 (8) Organizations are exempt from the assessment or payment of premium taxes imposed
53 by Sections 59-9-101 through 59-9-104.

54 Section 2. Section **31A-22-631** is enacted to read:

55 **31A-22-631. Market equity for pharmacy providers.**

56 (1) For purposes of this section:

57 (a) "Out-of-state mail service pharmacy" has the same meaning as provided in Subsection
58 58-17a-102(26).

59 (b) (i) "Pharmacy" means a facility or location where the practice of pharmacy is carried
60 out that is licensed or otherwise authorized to practice pharmacy in this state, and that is:

61 (A) a preferred provider or eligible for reimbursement under Section 31A-22-617;

62 (B) a participating provider as defined in Subsection 31A-8-101(9); or

63 (C) otherwise eligible for reimbursement from the insured's health care plan.

64 (ii) This Subsection (1)(b) is not intended to create an any willing provider law for
65 pharmacies.

66 (2) An insurer shall permit a contracted in-state pharmacy to provide similar services as
67 those provided by an out-of-state mail service pharmacy if the insurer includes prescription
68 coverage in its health care insurance, and if that coverage:

69 (a) allows for contracted out-of-state mail service pharmacy benefits; and

70 (b) contracted in-state pharmacy benefits.

71 (3) For purposes of Subsection (2), the services may include dispensing a three-month
72 prescription or supplies with a single or reduced copay.

Legislative Review Note
as of 1-18-01 2:22 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel