

1 **CHOICE IN HEALTH CARE**

2 2004 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Katherine M. Bryson**

5

LONG TITLE

6 **General Description:**

7
8 This bill amends the Unfair Practices Act to prohibit unfair competition by a health
9 insurer who owns hospitals and employs health care providers in certain markets.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines terms;
13 ▶ establishes what constitutes unfair competition;
14 ▶ establishes standing to enforce the act; and
15 ▶ provides for remedies for a violation of the act.

16 **Monies Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 ENACTS:

22 **13-5-19**, Utah Code Annotated 1953

23

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

24 Section 1. Section **13-5-19** is enacted to read:

25 **13-5-19. Unfair competition between insurers, health care providers, and**
26 **hospitals.**
27



28 (1) For purposes of this section:

29 (a) "Affiliated company" means a person or group of persons who own a controlling
30 interest in another person.

31 (b) "Health care provider" means a physician licensed under Title 58, Chapter 67, Utah
32 Medical Practice Act, or an osteopathic physician licensed under Title 58, Chapter 68, Utah
33 Osteopathic Medical Practice Act.

34 (c) "Hospital" means a general acute hospital licensed under Title 26, Chapter 21,
35 Health Care Facility Licensing and Inspection Act.

36 (d) "Insurer" means an entity offering accident and health insurance, or health care
37 services through a health maintenance organization regulated under:

38 (i) Title 31A, Insurance Code; or

39 (ii) the federal Employee Retirement Income Security Act.

40 (e) "Market area" means the service area designated for a health maintenance
41 organization pursuant to Title 31A, Chapter 8, Health Maintenance Organizations and Limited
42 Health Plans, or the geographic area in which an accident and health insurance plan is offered.

43 (2) (a) It is a violation of this chapter for a person to own a controlling interest in an
44 affiliated company that:

45 (i) is an insurer in a market area;

46 (ii) owns more than 55% of the available licensed hospital beds in the market area in
47 which the insurer offers its product; and

48 (iii) employs more than 15% of the health care providers who practice in the health
49 care market.

50 (b) The Legislature finds that a violation of Subsection (2)(a) impairs or prevents fair
51 competition, injures the public welfare, and is unfair competition contrary to public policy and
52 the policy of this chapter.

53 (3) In addition to any other person with standing to bring an action to enforce the
54 provisions of this chapter under Section 13-5-14, the following health care providers have
55 standing to bring an action to enforce this section and the provisions of this chapter:

56 (a) a health care provider who is not a contracted health care provider for an insurer
57 described in Subsection (2)(a)(i); and

58 (b) a health care provider who is not credentialed at a hospital described in Subsection

59 (2)(a)(ii).

60 (4) In addition to any other remedies provided by this chapter, a court may require the
61 person charged with a violation of Subsection (2) to divest itself of its ownership in affiliated
62 companies, such as:

63 (a) the insurer;

64 (b) a percentage of the hospitals in the market area; or

65 (c) the affiliated company that employs health care providers in the market area.

Legislative Review Note
as of 2-5-04 4:15 PM

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

Office of Legislative Research and General Counsel

State Impact

Passage of this bill could cause some disruption in Medicaid services in the short run, but overall, any fiscal impact to the State is expected to be minimal.

Individual and Business Impact

This bill will not allow qualifying companies to operate as integrated health systems. Cost to restructure could be substantial. These costs would ultimately be borne by Utah's and other surrounding states' consumers.

Office of the Legislative Fiscal Analyst