

Senator D. Chris Buttars proposes the following substitute bill:

MEDICAL PRACTICE SELF REFERRAL

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: D. Chris Buttars

House Sponsor: _____

LONG TITLE

General Description:

This bill amends the Health Code and the Division of Occupational and Professional Licensing code to require disclosure and reporting by a health care provider when the health care provider refers a patient for imaging services and the provider has a financial interest in the imaging services.

Highlighted Provisions:

This bill:

- ▶ requires the state Health Data Committee to track and report on trends regarding health care provider referral patterns for imaging services;
- ▶ authorizes the Health Department to adopt administrative rules that designate rural areas in the state that are not subject to the prohibition on self-referral;
- ▶ defines terms;
- ▶ requires a health care provider to disclose to the patient any profit interest the health care provider may have for ordering the imaging services if:
 - the health care provider is not performing the professional or technical component of the imaging services; and
 - the health care provider or a member of the health care provider's family has a beneficial interest in or compensation arrangement with the imaging services;



- 26 ▶ exempts imaging centers in rural areas from the requirements of the legislation;
- 27 ▶ specifies the disclosure and reporting requirements; and
- 28 ▶ makes it unprofessional conduct to violate the disclosure or reporting requirements.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **26-33a-106.5**, as last amended by Laws of Utah 2005, Chapter 266

36 ENACTS:

37 **58-1-505**, Utah Code Annotated 1953



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

40 Section 1. Section **26-33a-106.5** is amended to read:

41 **26-33a-106.5. Comparative analyses.**

42 (1) The committee may publish compilations or reports that compare and identify
43 health care providers or data suppliers from the data it collects under this chapter or from any
44 other source.

45 (2) (a) The committee shall publish compilations or reports from the data it collects
46 under this chapter or from any other source which:

- 47 (i) contain the information described in Subsection (2)(b); and
- 48 (ii) compare and identify by name at least a majority of the health care facilities and
49 institutions in the state.

50 (b) The report required by this Subsection (2) shall:

- 51 (i) be published at least annually; and
- 52 (ii) contain comparisons based on at least the following factors:
 - 53 (A) nationally recognized quality standards;
 - 54 (B) charges; [~~and~~]
 - 55 (C) nationally recognized patient safety standards[-]; and
 - 56 (D) health care provider self-referral patterns for imaging services as provided in

57 Section 58-1-505, including the names of the health care providers engaged in self-referral, and
58 a comparison of the self-referring health care provider's rate of ordering imaging services with
59 other similar health care provider's rates of ordering imaging services.

60 (3) The committee may contract with a private, independent analyst to evaluate the
61 standard comparative reports of the committee that identify, compare, or rank the performance
62 of data suppliers by name. The evaluation shall include a validation of statistical
63 methodologies, limitations, appropriateness of use, and comparisons using standard health
64 services research practice. The analyst must be experienced in analyzing large databases from
65 multiple data suppliers and in evaluating health care issues of cost, quality, and access. The
66 results of the analyst's evaluation must be released to the public before the standard
67 comparative analysis upon which it is based may be published by the committee.

68 (4) The committee shall adopt by rule a timetable for the collection and analysis of data
69 from multiple types of data suppliers.

70 (5) The comparative analysis required under Subsection (2) shall be available free of
71 charge and easily accessible to the public.

72 (6) The department shall adopt administrative rules in accordance with Title 63G,
73 Chapter 3, Utah Administrative Rulemaking Act, to designate rural areas that are exempt from
74 the requirements of Section 58-1-505.

75 Section 2. Section **58-1-505** is enacted to read:

76 **58-1-505. Restriction on health care provider imaging service self-referral.**

77 (1) As used in this section:

78 (a) (i) "Beneficial interest" means ownership, through equity, debt, or other means, of
79 any financial interest.

80 (ii) "Beneficial interest" does not include ownership, through equity, debt, or other
81 means, or securities, including shares or bonds, debentures, or other debt instruments:

82 (A) in a corporation that is traded on a national exchange or over the counter on the
83 national market system;

84 (B) that at the time of acquisition, were purchased at the same price and on the same
85 terms generally available to the public;

86 (C) that are available to individuals who are not in a position to refer patients to the
87 health care entity on the same terms that are offered to health care practitioners who may refer

88 patients to the health care center; and

89 (D) that are unrelated to the past or expected volume of referrals from the health care
90 practitioner to the health care entity.

91 (b) (i) "Compensation arrangement" means any agreement or system involving any
92 remuneration between a health care practitioner or the immediate family member of the health
93 care practitioner and a health care entity.

94 (ii) "Compensation arrangement" does not include:

95 (A) compensation or shares under a faculty practice plan or a professional corporation
96 affiliated with a teaching hospital and comprised of health care practitioners who are members
97 of the faculty of a university;

98 (B) amounts paid under a bona fide employment agreement between a health care
99 entity and a health care practitioner or an immediate family member of the health care
100 practitioner;

101 (C) compensation for health care services pursuant to a referral from a health care
102 practitioner and rendered by a health care entity, that employs or contracts with an immediate
103 family member of the health care practitioner, in which the immediate family member's
104 compensation is not based on the referral;

105 (D) an arrangement for compensation which is provided by a health care entity to a
106 health care practitioner or the immediate family member of the health care practitioner to
107 induce the health care practitioner or the immediate family member of the health care
108 practitioner to relocate to the geographic area served by the healthcare entity in order to be a
109 member of the medical staff of a hospital, if the arrangement does not violate federal law;

110 (E) payments are made for the rental or lease of office space if the payments are at fair
111 market value and in accordance with an arm's length transaction;

112 (F) payments made for the rental or lease of equipment if the payments are at fair
113 market value and in accordance with an arm's length transaction; or

114 (G) payments made for the sale of property or a health care practice if payments are at
115 fair market value, in accordance with an arm's length transaction, and the remuneration is
116 provided in accordance with an agreement that would be commercially reasonable even if no
117 referrals were made.

118 (iii) "Compensation arrangement" does not include an arrangement between a health

119 care entity and a health care practitioner or the immediate family member of a health care
120 practitioner for the provision of any services, as an independent contractor, if:

121 (A) the arrangement is for identifiable services;

122 (B) the amount of the remuneration under the arrangement is consistent with the fair
123 market value of the service and is not determined in a manner that takes into account, directly
124 or indirectly, the volume or value of any referrals by the referring health care practitioner; and

125 (C) the compensation is provided in accordance with an agreement that would be
126 commercially reasonable even if no referrals were made to the health care provider.

127 (c) "Health care provider" includes:

128 (i) an advanced practice registered nurse licensed under Chapter 31b, Nurse Practice
129 Act;

130 (ii) a chiropractic physician licensed under Chapter 73, Chiropractic Physician Practice
131 Act;

132 (iii) a nurse midwife licensed under Chapter 44a, Nurse Midwife Practice Act;

133 (iv) a podiatric physician licensed under Chapter 5a, Podiatric Physician Licensing Act;

134 (v) a physician licensed under Chapter 67, Utah Medical Practice Act or Chapter 68,
135 Utah Osteopathic Medical Practice Act; and

136 (vi) a physician assistant licensed under Chapter 70a, Physician Assistant Act.

137 (d) "Imaging service" means:

138 (i) computed tomography scan;

139 (ii) positron emission tomography; or

140 (iii) magnetic resonance imaging.

141 (2) (a) The disclosure requirements in this section do not apply to imaging centers
142 located in a rural area as defined by the Department of Health by administrative rule.

143 (b) A health care provider who orders imaging services for a patient, but does not
144 directly perform or interpret either the technical or professional component of the imaging
145 services shall, if the health care provider or a member of the health care provider's immediate
146 family has a beneficial interest in or compensation arrangement with the imaging services:

147 (i) provide to the patient the disclosure required by Subsection (3); and

148 (ii) submit the report required by Subsection (4).

149 (c) Nothing in Subsection (2)(b) restricts the ability of a health care provider who has

150 personally performed and interpreted either the technical or professional component of the
 151 imaging services to obtain payment for services related to the technical or professional
 152 component of providing the imaging services.

153 (3) (a) A health care provider subject to Subsection (2)(b) shall provide the patient with
 154 the following disclosure:

155 "The most important element of a physician-patient relationship is trust. Therefore, as
 156 your doctor, I am ethically obligated to tell you that I have a conflict of interest. Either myself
 157 or a member of my family has a beneficial interest in a facility or a compensation arrangement
 158 with a facility that performs MRI, CT, or PET scanning. ~~§→ [All of these tests have been shown to~~
 159 ~~be subject to self-referral abuse.] ←§~~ I am also required to tell you under both federal and state law,
 160 that you have a choice in which imaging facility you are sent to. Here is a list of other facilities
 161 that can perform the work needed within a 25 mile radius. Having competition makes us all
 162 better."

163 (b) The disclosure required by Subsection (3)(a) shall be:

164 (i) read out loud to the patient by the health care provider;

165 (ii) delivered in writing to the patient at the time the disclosure is read to the patient;

166 and

167 (iii) witnessed and signed by a third party.

168 (4) A health care provider who provides the disclosure required by Subsection (3) shall
 169 submit the following information on a weekly basis to the Health Data Committee created
 170 under Section 26-1-7:

171 (a) the health care provider name, address, and phone number;

172 (b) the unique NPI health care practitioner identification number;

173 (c) the date of the health care provider's referral of the patient for the imaging services;

174 (d) the type of examination performed on the patient by the health care provider;

175 (e) the billing codes associated with the examination;

176 (f) the clinical justification for the imaging services; and

177 (g) an attestation by the health care provider affirming that the report submitted to the
 178 Health Data Committee is accurate.

179 (5) Failure to comply with the requirements of this section is unprofessional conduct.

FISCAL NOTE

S.B. 91 1st Sub. (Green)

SHORT TITLE: Medical Practice Self Referral

SPONSOR: **Buttars, D. C.**

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill will cost the Department of Health \$7,200 one-time from the General Fund in FY 2011 to set-up administrative rules and reporting requirements. The bill will cost the Department of Commerce \$78,800 ongoing from the Commerce Service Fund beginning in FY 2012 for complaint investigations. Finally, the bill generates \$10,000 in ongoing revenue to the Physicians Education and Enforcement Fund. Commerce Service Fund expenditures impact annual deposits to the General Fund.

STATE BUDGET DETAIL TABLE

	FY 2011	FY 2012	FY 2013
Revenue:			
General Fund	\$0	(\$78,800)	(\$78,800)
Restricted Funds	\$0	\$10,000	\$10,000
Commerce Service Fund	\$0	\$78,800	\$78,800
Total Revenue	\$0	\$10,000	\$10,000
Expenditure:			
General Fund, One-Time	\$7,200	\$0	\$0
Commerce Service Fund	\$0	\$78,800	\$78,800
Total Expenditure	\$7,200	\$78,800	\$78,800
Net Impact, All Funds (Rev.-Exp.)	(\$7,200)	(\$68,800)	(\$68,800)
Net Impact, General/Education Funds	(\$7,200)	(\$78,800)	(\$78,800)

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

The \$10,000 ongoing revenues comes from \$500 fines paid by approximately 20 health care providers who have profit interest in making referrals for imaging services.