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S.B. 61
2nd Sub. (Salmon)

Senator Darin G. Peterson proposes the following substitute bill:

1 # PRIVATELY OWNED HEALTH CARE
2 # ORGANIZATION AMENDMENTS

3 2005 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Michael G. Waddoups**

6 D. Chris Buttars, Thomas V. Hatch, Mark B. Madsen
7 Gene Davis, Parley G. Hellewell, Ed Mayne
8 Mike Dmitrich, Scott K. Jenkins, Darin G. Peterson
9 Dan R. Eastman, Sheldon L. Killpack, Howard A. Stephenson
10 Beverly Ann Evans, Peter C. Knudson, David L. Thomas

11

12 **LONG TITLE**

13 **General Description:**

14 This bill amends the Unfair Practices Act to prohibit unfair competition by a person
15 who owns a controlling interest in a hospital and an insurer in the state, and establishes
16 an exception to this prohibition if the person provides access to rural health care
17 providers and unique services.

18 **Highlighted Provisions:**

19 This bill:

20 ▸ defines terms;
21 ▸ establishes what constitutes unfair competition;
22 ▸ provides for remedies for a violation of unfair competition;
23 ▸ provides an exception to the application of the unfair competition provisions;
24 ▸ establishes access to unique medical services; and
25 ▸ provides a private right of action to enforce access to rural health care provider
26 requirements.

27 **Monies Appropriated in this Bill:**
28 None
29 **Other Special Clauses:**
30 This bill provides an effective date.
31 **Utah Code Sections Affected:**
32 AMENDS:
33 **31A-8-501**, as last amended by Chapters 90, 229 and 367, Laws of Utah 2004
34 ENACTS:
35 **13-5-19**, Utah Code Annotated 1953
36 **26-21-2.2**, Utah Code Annotated 1953
37

38 *Be it enacted by the Legislature of the state of Utah:*
39 Section 1. Section **13-5-19** is enacted to read:
40 **13-5-19. Unfair competition between insurers and hospitals.**
41 (1) For purposes of this section:
42 (a) "Controlling interest" shall have the same meaning as in Section 16-6a-102.
43 (b) "Hospital" means a general acute hospital licensed under Title 26, Chapter 21,
44 Health Care Facility Licensing and Inspection Act.
45 (c) "Insurer" means:
46 (i) an entity offering:
47 (A) accident and health insurance; or
48 (B) health care services through a health maintenance organization; and
49 (ii) regulated in this state under:
50 (A) Title 31A, Insurance Code; or
51 (B) the federal Employee Retirement Income Security Act.
52 (2) It is a violation of this chapter for a person to own a controlling interest in an
53 insurer and a hospital in this state.
54 (3) The Legislature finds that a violation of Subsection (2) impairs or prevents fair
55 competition, injures the public welfare, and is unfair competition contrary to public policy and
56 the policy of this chapter. The prohibition in Subsection (2) is intended to promote
57 competition and to prevent market concentration.

58 (4) In addition to any other remedies provided by this chapter, a court may require the
59 person charged with a violation of Subsection (2) to divest itself of all or part of its ownership
60 in:
61 (a) the insurer; or
62 (b) the hospital in the state.
63 (5) This section does not apply to a person who complies with the provisions of
64 Sections 26-21-2.2 and 31A-8-501.
65 Section 2. Section **26-21-2.2** is enacted to read:
66 **26-21-2.2. Patient access to unique services.**
67 (1) For purposes of this section:
68 (a) "affiliated health care insurer" means a health maintenance organization as defined
69 in Section 31A-8-101 or an insurer offering health care insurance as defined in Section
70 31A-1-301 that is under the same or substantially the same ownership or control as a hospital;
71 (b) "discount" means:
72 (i) any fee reduction given to an affiliated health care insurer that is based on the
73 volume of participating consumers;
74 (ii) any rebates;
75 (iii) half backs;
76 (iv) internal transfers; or
77 (v) any other mechanism that has the effect in whole or in part, of reducing the actual
78 fee paid to or ultimately received by a hospital for a service in comparison to the price charged
79 for the same service to one or more nonaffiliated insurers;
80 (c) "hospital" means a general acute hospital or specialty hospital licensed under this
81 chapter;
82 (d) "patient" means any natural person who, as a result of a diagnosis, illness, or injury,
83 needs treatment of a unique service from a hospital;
84 (e) "service area" means the geographic area from which a hospital derives 80% of its
85 total patient admissions; and
86 (f) "unique service" means the following services which are available only at a single
87 hospital within that hospital's service area:
88 (i) newborn intensive care unit level III and level IV neonatology services;

89 (ii) cardiothoracic services including thoracic surgery, vascular surgeries, and
90 electrophysiology;
91 (iii) pediatric intensive care services;
92 (iv) oncology services;
93 (v) high-risk obstetrical services; and
94 (vi) neuro surgery.
95 (2) (a) Each hospital that offers a unique service shall:
96 (i) offer the unique service to all patients, including subscribers of any health care
97 insurance as defined in Section 31A-1-301 authorized to be sold in the state, or a health
98 maintenance organization;
99 (ii) for any patient who is not a recipient of the state Medicaid program, offer the
100 unique service at the universal rate established in accordance with Subsection (3); and
101 (iii) offer any discount in compliance with Subsection (2)(b).
102 (b) (i) If a hospital offers a discount for a unique service to an affiliated health care
103 insurer, the hospital shall offer the same discount on the same basis to any patient or health
104 care insurer.
105 (ii) Subsection (2)(b)(i) does not apply to a patient who is a recipient of the state
106 Medicaid program.
107 (3) (a) Each hospital offering a unique service shall establish a universal rate for the
108 service in accordance with this Subsection (3).
109 (b) Hospitals shall establish a universal rate by adopting the state Medicaid program's
110 reimbursement rate for that service plus 20%.
111 (4) Hospitals performing a unique service in a county of the first class as defined in
112 Section 17-50-501 are exempt from this section.
113 (5) A hospital subject to this section shall:
114 (a) annually certify to the department that the hospital has complied with this section;
115 and
116 (b) provide timely and accurate information on any discounts given for a service upon
117 the request of the department.
118 (6) In addition to the penalty in Section 26-21-16, a hospital that knowingly or with
119 conscious disregard violates this section may be subject to:

120 (a) contractual damages that are otherwise available;
121 (b) other civil remedies that are not based on this chapter, including Title 13, Chapter
122 5, Unfair Practices Act and Title 76, Chapter 10, Part 9, Trade and Commerce; and
123 (c) other criminal penalties that are not based on this chapter.
124 Section 3. Section **31A-8-501** is amended to read:
125 **31A-8-501. Access to health care providers.**
126 (1) As used in this section:
127 (a) "Class of health care provider" means a health care provider or a health care facility
128 regulated by the state within the same professional, trade, occupational, or certification
129 category established under Title 58, Occupations and Professions, or within the same facility
130 licensure category established under Title 26, Chapter 21, Health Care Facility Licensing and
131 Inspection Act.
132 (b) "Covered health care services" or "covered services" means health care services for
133 which an enrollee is entitled to receive under the terms of a health maintenance organization
134 contract.
135 (c) "Credentialed staff member" means a health care provider with active staff
136 privileges at an independent hospital or federally qualified health center.
137 (d) "Federally qualified health center" means as defined in the Social Security Act, 42
138 U.S.C. Sec. 1395x.
139 (e) "Independent hospital" means a general acute hospital or a critical access hospital
140 that:
141 (i) is either:
142 (A) located 20 miles or more from any other general acute hospital or critical access
143 hospital; or
144 (B) licensed as of January 1, 2004;
145 (ii) is licensed pursuant to Title 26, Chapter 21, Health Care Facility Licensing and
146 Inspection Act; and
147 (iii) is controlled by a board of directors of which 51% or more reside in the county
148 where the hospital is located and:
149 (A) the board of directors is ultimately responsible for the policy and financial
150 decisions of the hospital; or

151 (B) the hospital is licensed for 60 or fewer beds and is not owned, in whole or in part,
152 by an entity that owns or controls a health maintenance organization if the hospital is a
153 contracting facility of the organization.
154 (f) "Noncontracting provider" means an independent hospital, federally qualified health
155 center, or credentialed staff member who has not contracted with a health maintenance
156 organization to provide health care services to enrollees of the organization.
157 (2) Except for a health maintenance organization which is under the common
158 ownership or control of an entity with a hospital located within ten paved road miles of an
159 independent hospital, a health maintenance organization shall pay for covered health care
160 services rendered to an enrollee by an independent hospital, a credentialed staff member at an
161 independent hospital, or a credentialed staff member at his local practice location if:
162 (a) the enrollee:
163 (i) lives or resides within 30 paved road miles of the independent hospital; or
164 (ii) if Subsection (2)(a)(i) does not apply, lives or resides in closer proximity to the
165 independent hospital than a contracting hospital;
166 (b) the independent hospital is located prior to December 31, 2000 in a county with a
167 population density of less than 100 people per square mile, or the independent hospital is
168 located in a county with a population density of less than 30 people per square mile; and
169 (c) the enrollee has complied with the prior authorization and utilization review
170 requirements otherwise required by the health maintenance organization contract.
171 (3) A health maintenance organization shall pay for covered health care services
172 rendered to an enrollee at a federally qualified health center if:
173 (a) the enrollee:
174 (i) lives or resides within 30 paved road miles of the federally qualified health center;
175 or
176 (ii) if Subsection (3)(a)(i) does not apply, lives or resides in closer proximity to the
177 federally qualified health center than a contracting provider;
178 (b) the federally qualified health center is located in a county with a population density
179 of less than 30 people per square mile; and
180 (c) the enrollee has complied with the prior authorization and utilization review
181 requirements otherwise required by the health maintenance organization contract.

182 (4) (a) A health maintenance organization shall reimburse a noncontracting provider or
183 the enrollee for covered services rendered pursuant to Subsection (2) a like dollar amount as it
184 pays to contracting providers under a noncapitated arrangement for comparable services.
185 (b) A health maintenance organization shall reimburse a federally qualified health
186 center or the enrollee for covered services rendered pursuant to Subsection (3) a like amount as
187 paid by the health maintenance organization under a noncapitated arrangement for comparable
188 services to a contracting provider in the same class of health care providers as the provider who
189 rendered the service.
190 (5) A noncontracting provider may only refer an enrollee to another noncontracting
191 provider so as to obligate the enrollee's health maintenance organization to pay for the resulting
192 services if:
193 (a) the noncontracting provider making the referral or the enrollee has received prior
194 authorization from the organization for the referral; or
195 (b) the practice location of the noncontracting provider to whom the referral is made:
196 (i) is located in a county with a population density of less than 25 people per square
197 mile; and
198 (ii) is within 30 paved road miles of:
199 (A) the place where the enrollee lives or resides; or
200 (B) the independent hospital or federally qualified health center at which the enrollee
201 may receive covered services pursuant to Subsection (2) or (3).
202 (6) Notwithstanding this section, a health maintenance organization may contract
203 directly with an independent hospital, federally qualified health center, or credentialed staff
204 member.
205 (7) (a) A health maintenance organization that violates any provision of this section is
206 subject to sanctions as determined by the commissioner in accordance with Section 31A-2-308.
207 (b) Violations of this section include:
208 (i) failing to provide the notice required by Subsection (7)(d) by placing the notice in
209 any health maintenance organization's provider list that is supplied to enrollees, including any
210 website maintained by the health maintenance organization;
211 (ii) failing to provide notice of an enrolles's rights under this section when:
212 (A) an enrollee makes personal contact with the health maintenance organization by

213 telephone, electronic transaction, or in person; and
214 (B) the enrollee inquires about his rights to access an independent hospital or federally
215 qualified health center; and
216 (iii) refusing to reprocess or reconsider a claim, initially denied by the health
217 maintenance organization, when the provisions of this section apply to the claim.
218 (c) The commissioner shall, pursuant to Chapter 2, Part 2, Duties and Powers of
219 Commissioner:
220 (i) adopt rules as necessary to implement this section;
221 (ii) identify in rule:
222 (A) the counties with a population density of less than 100 people per square mile;
223 (B) independent hospitals as defined in Subsection (1)(e); and
224 (C) federally qualified health centers as defined in Subsection (1)(d).
225 (d) (i) A health maintenance organization shall:
226 (A) use the information developed by the commissioner under Subsection (7)(c) to
227 identify the rural counties, independent hospitals, and federally qualified health centers that are
228 located in the health maintenance organization's service area; and
229 (B) include the providers identified under Subsection (7)(d)(i)(A) in the notice required
230 in Subsection (7)(d)(ii).
231 (ii) The health maintenance organization shall provide the following notice, in bold
232 type, to enrollees as specified under Subsection (7)(b)(i), and shall keep the notice current:
233 "You may be entitled to coverage for health care services from the following non-HMO
234 contracted providers if you live or reside within 30 paved road miles of the listed providers, or
235 if you live or reside in closer proximity to the listed providers than to your HMO contracted
236 providers:
237 This list may change periodically, please check on our website or call for verification.
238 Please be advised that if you choose a noncontracted provider you will be responsible for any
239 charges not covered by your health insurance plan.
240 If you have questions concerning your rights to see a provider on this list you may
241 contact your health maintenance organization at ________. If the HMO does not resolve your
242 problem, you may contact the Office of Consumer Health Assistance in the Insurance
243 Department, toll free."

244 (e) A person whose interests are affected by an alleged violation of this section:

245 (i) may contact the Office of Consumer Health Assistance and request assistance[, or];

246 (ii) file a complaint as provided in Section 31A-2-216[.]; or

247 (iii) file a private right of action to enforce the provisions of this section.

248 Section 4. **Effective date.**

249 Sections 13-5-19 and 26-21-2.2 take effect on January 1, 2006 and the amendments to

250 Section 31A-8-501 take effect on May 2, 2005.