LEGISLATIVE GENERAL COUNSEL
₵ Approved for Filing: C.J. Dupont ₵
₵ 01-31-07 2:40 PM ₵

S.B. 66
1st Sub. (Green)

Senator Michael G. Waddoups proposes the following substitute bill:

EMPLOYER HEALTH INSURANCE OPTIONS - CAFETERIA PLANS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael G. Waddoups

House Sponsor: _____

Cosponsors:
D. Chris Buttars
Allen M. Christensen
Gene Davis
Margaret Dayton
John W. Hickman
Ed Mayne

LONG TITLE

General Description:

This bill amends the Insurance Code to require certain health insurers to offer a swing out option to employers and employees.

Highlighted Provisions:

This bill:

- defines terms;
- beginning July 1, 2007, requires health insurers to offer to employers a swing out option;
- if an employer chooses a swing out option, requires an insurer to inform employees of the swing out option;
- permits an employer to pass the cost of a swing out option on to the employee;
- establishes a reimbursement rate for noncontracted providers;
- establishes certain requirements for applying out-of-pocket expenses;
- prohibits an insurer from discriminating against a health care provider under

S.B. 66

contract with the insurer when the health care provider refers patients with a swing out option out of network;

- requires the Insurance Department to report by November 2010 to the legislative Business and Labor Interim Committee concerning swing out options in the state;
- coordinates requirements of the swing out option with the preferred provider contract provisions; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

31A-8-103, as last amended by Chapters 2 and 90, Laws of Utah 2004

ENACTS:

31A-22-635, Utah Code Annotated 1953

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

Section 1. Section **31A-8-103** is amended to read:

31A-8-103. Applicability to other provisions of law.

(1) (a) Except for exemptions specifically granted under this title, an organization is subject to regulation under all of the provisions of this title.

(b) Notwithstanding any provision of this title, an organization licensed under this chapter:

(i) is wholly exempt from:

(A) Chapter 7, Nonprofit Health Service Insurance Corporations;

(B) Chapter 9, Insurance Fraternals;

(C) Chapter 10, Annuities;

(D) Chapter 11, Motor Clubs;

(E) Chapter 12, State Risk Management Fund;

(F) Chapter 13, Employee Welfare Funds and Plans;

(G) Chapter 19a, Utah Rate Regulation Act; and

(H) Chapter 28, Guaranty Associations; and

(ii) is not subject to:

(A) Chapter 3, Department Funding, Fees, and Taxes, except for Part 1;

(B) Section 31A-4-107;

(C) Chapter 5, Domestic Stock and Mutual Insurance Corporations, except for provisions specifically made applicable by this chapter;

(D) Chapter 14, Foreign Insurers, except for provisions specifically made applicable by this chapter;

(E) Chapter 17, Determination of Financial Condition, except:

(I) Parts 2 and 6; or

(II) as made applicable by the commissioner by rule consistent with this chapter;

(F) Chapter 18, Investments, except as made applicable by the commissioner by rule consistent with this chapter; and

(G) Chapter 22, Contracts in Specific Lines, except for Parts 6, 7, and 12.

(2) The commissioner may by rule waive other specific provisions of this title that the commissioner considers inapplicable to health maintenance organizations or limited health plans, upon a finding that the waiver will not endanger the interests of:

(a) enrollees;

(b) investors; or

(c) the public.

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

(a) this chapter;

(b) a provision referenced under this chapter; or

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

(4) (a) Whenever in this chapter, Chapter 5, or Chapter 14 is made applicable to an organization, the application is:

(i) of those provisions that apply to a mutual corporation if the organization is

nonprofit; and

(ii) of those that apply to a stock corporation if the organization is for profit.

(b) When Chapter 5 or 14 is made applicable to an organization under this chapter, "mutual" means nonprofit organization.

(5) Solicitation of enrollees by an organization is not a violation of any provision of law relating to solicitation or advertising by health professionals if that solicitation is made in accordance with:

(a) this chapter; and

(b) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries.

(6) This title does not prohibit any health maintenance organization from meeting the requirements of any federal law that enables the health maintenance organization to:

(a) receive federal funds; or

(b) obtain or maintain federal qualification status.

(7) (a) Except as provided in Section 31A-8-501, and Subsection (7)(b), an organization is exempt from statutes in this title or department rules that restrict or limit the organization's freedom of choice in contracting with or selecting health care providers, including Section 31A-22-618.

(b) An organization shall offer a swing out option in compliance with Section 31A-22-635.

(8) An organization is exempt from the assessment or payment of premium taxes imposed by Sections 59-9-101 through 59-9-104.

Section 2. Section **31A-22-635** is enacted to read:

31A-22-635. Offer of swing out option.

(1) For purposes of this section:

(a) "Class of health care provider" means all health care providers as defined in Section 78-14-3:

(i) who are licensed or certified by the state under either:

(A) Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act; or

(B) Title 58, Occupations and Professions; and

(ii) who are within the same professional, trade, occupational, or facility licensure or

certification category established pursuant to Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, and Title 58 Occupations and Professions.

(b) "Employer" means an employer with 2 or more employees.

(c) "Fee schedule rate" means the total amount a contracted or participating provider is entitled to receive for covered services regardless of how the responsibility for payment is divided between the insurer and the insured.

(d) "Swing out option" means a health insurance plan or rider to a health insurance plan under which the insurer will reimburse a health care provider for providing covered services to an insured, without regard to whether the health care provider is a participating provider or belongs to the health insurance plan network.

(2) (a) This section applies to an insurer who is subject to:

(i) Chapter 8, Health Maintenance Organizations and Limited Health Plans;

(ii) Chapter 22, Part 6, Accident and Health Insurance;

(iii) Chapter 30, Individual, Small Employer, and Group Health Insurance Act, to the extent required by Subsection (1)(b); and

(iv) notwithstanding Section 31A-1-103, Title 49, Chapter 20, Public Employees' Benefit and Insurance Program Act.

(b) This section does not apply when an individual's health maintenance organization benefit plan or health insurance plan is a Medicaid program or the Children's Health Insurance Program under Title 26, Chapter 18, Medicaid Assistance Act.

(3) (a) (i) Beginning with policies issued after or renewed after July 1, 2007, an insurer subject to Subsection (2)(a) shall offer at least one swing out option in accordance with this section.

(ii) (A) An insurer shall offer a swing out option to every employer which would allow an enrollee to receive covered services from out-of-network health care providers without having to obtain a referral or prior authorization from the insurer.

(B) An insurer shall provide each enrollee in a plan whose employer elects the swing out option, with the opportunity, at the time of enrollment and during the open enrollment period, to enroll in the swing-out option. The insurer shall provide written notice of the swing-out option to each enrollee in a plan whose employer elects the swing-out option and shall include in that notice a detailed explanation of the financial costs to be incurred by an

enrollee who selects that plan.

(iii) Any premium differential associated with the swing out option shall be:

(A) actuarially sound; and

(B) explained to the employer in writing.

(iv) The commission may audit any records necessary to determine compliance with this section.

(v) An employer may chose to pay any, all, or no part of additional cost that is associated with an employee's selection of a swing out option.

(b) The commissioner shall report to the Legislature's Business and Labor Interim Committee by November 1, 2010 concerning:

(i) the number of swing out options offered in the state;

(ii) the number of lives covered by swing out options in the state; and

(iii) premium differentials for the swing out options offered in the state.

(c) A swing out option required by this section shall pay for covered services provided by a nonparticipating provider as follows:

(i) pay an amount equal to 85% of the fee schedule rate that would be paid to the insured for covered services by a participating provider who is a member of the same class of health care provider;

(ii) pay the provider directly for the services; and

(iii) calculate and apply deductibles and cost sharing in accordance with Subsection (4).

(4) (a) A swing out option subject to this section:

(i) may require that an enrollee pay a higher deductible or copayment for the plan pursuant to Subsection (4)(b); and

(ii) may not require that an enrollee pay a separate deductible, separate copayment or separate coinsurance for services provided by a noncontracted or nonparticipating provider.

(b) Higher copayments, coinsurance, and deductibles permitted by Subsection (4)(a)(i):

(i) may not exceed, in the aggregate, 150% of the copayments, coinsurance, and deductibles required for contracted or participating providers; and

(ii) are subject to other limits established by the department by administrative rule adopted pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(5) When an insured receives services from a nonparticipating provider who is reimbursed under the provisions of Subsection (3), the insured is responsible for:

(a) any copayments or deductibles that are imposed by the insurer under Subsection (4); and

(b) in accordance with Subsection (6), the balance of provider charges that are not reimbursed by the insurer.

(6) Notwithstanding any other section of this title, a provider who accepts direct payment for health care services from an insurer may not collect from an insured an amount that exceeds the insurer's fee schedule rate unless the insured has been informed of and agreed to in writing, the specific cost of the service.

(7) An insurer subject to this section may not discriminate against a health care provider based on a health care provider's referral patterns for patients who are covered by a swing out option.

(8) (a) Except as provided in this Subsection (8) and Section 31A-8-103, an insurer regulated by Chapter 22, Part 6, Accident and Health Insurance, must comply with Section 31A-22-617.

(b) When reimbursing under a swing out option required by this section:

(i) the reimbursement provisions of Subsection (3) of this section supercede the reimbursement provisions in Subsection 31A-22-617(2)(b);

(ii) the cost sharing provisions of Subsection (4) supercede Subsection 31A-22-617(2)(d); and

(iii) the requirement for payment directly to the provider in Subsection (3)(c)(ii) supercedes Subsection 31A-22-617(2)(c).

(9) The department may require an insurer to submit information to the department to demonstrate compliance with this section.