

1 **HEALTH INSURANCE AND PROGRAM**

2 **AMENDMENTS**

3 2009 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: James A. Dunnigan**

6 **Senate Sponsor: Daniel R. Liljenquist**

---

---

8 **LONG TITLE**

9 **General Description:**

10 This bill amends the Insurance Code and the Children's Health Insurance Program.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ clarifies that the Children's Health Insurance Program should have access to at least  
14 two different provider networks;

15 ▶ extends the COBRA premium assistance provided under Section 3001 of the  
16 American Recovery and Reinvestment Act of 2009 (Pub. S. 111-5) to state  
17 mini-COBRA benefits; and

18 ▶ makes technical amendments to the health benefit plan broker disclosure  
19 requirement.

20 **Monies Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 This bill provides an immediate effective date.

24 This bill coordinates with H.B. 188, Health System Reform-Insurance Market, by  
25 providing that parts of this bill supersede parts of H.B. 188.

26 **Utah Code Sections Affected:**

27 AMENDS:

28 **26-40-110**, as last amended by Laws of Utah 2008, Chapters 208 and 382

29 **31A-23a-501**, as renumbered and amended by Laws of Utah 2003, Chapter 298

30 ENACTS:

31 **31A-22-722.5**, Utah Code Annotated 1953

32 

---

---

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

34 Section 1. Section **26-40-110** is amended to read:

35 **26-40-110. Managed care -- Contracting for services.**

36 (1) Program benefits provided to enrollees under the program, as described in Section  
37 26-40-106, shall be delivered in a managed care system if the department determines that  
38 adequate services are available where the enrollee lives or resides.

39 (2) (a) The department shall use the following criteria to evaluate bids from health  
40 plans:

- 41 (i) ability to manage medical expenses, including mental health costs;
- 42 (ii) proven ability to handle accident and health insurance;
- 43 (iii) efficiency of claim paying procedures;
- 44 (iv) proven ability for managed care and quality assurance;
- 45 (v) provider contracting and discounts;
- 46 (vi) pharmacy benefit management;
- 47 (vii) an estimate of total charges for administering the pool;
- 48 (viii) ability to administer the pool in a cost-efficient manner;
- 49 (ix) the ability to provide adequate providers and services in the state; and
- 50 (x) other criteria established by the department.

51 (b) The dental benefits required by Section 26-40-106 may be bid out separately from  
52 other program benefits.

53 (c) Except for dental benefits, the department shall request bids for the program's  
54 benefits in 2008. The department shall request bids for the program's dental benefits in 2009.  
55 The department shall request bids for the program's benefits at least once every five years  
56 thereafter.

57 (d) The department's contract with health plans for the program's benefits shall include

58 risk sharing provisions in which the health plan must accept at least 75% of the risk for any  
 59 difference between the department's premium payments per client and actual medical  
 60 expenditures.

61 (3) The executive director shall report to and seek recommendations from the Health  
 62 Advisory Council created in Section 26-1-7.5:

63 (a) if the division receives less than two bids or proposals under Subsection (1) that  
 64 are acceptable to the division or responsive to the bid; and

65 (b) before awarding a contract to a managed care system.

66 (4) (a) The department shall award contracts to [~~at least two~~] responsive bidders;

67 (i) if the department determines that [~~two or more bids are~~] a bid is acceptable and  
 68 [~~meet~~] meets the criteria of Subsections (2)(a) and (d)[-]; and

69 (ii) (A) the responsive bidder is able to offer the program access to two different  
 70 provider networks; or

71 (B) the selection of two different responsive bidders will provide the program with  
 72 access to two different provider networks.

73 (b) The department may contract with the Group Insurance Division within the Utah  
 74 State Retirement Office to provide services under Subsection (1) if:

75 (i) the department is not able to contract with [~~at least two private carriers~~] private  
 76 carriers that under Subsection (4)(a) are able to provide the program access to two different  
 77 provider networks;

78 (ii) the executive director seeks the recommendation of the Health Advisory Council  
 79 under Subsection (3); and

80 (iii) the executive director determines that either:

81 (A) [~~at least two~~] responsive bids that could provide the program with access to two  
 82 different provider networks were not received by the department; or

83 (B) [~~less than two~~] the bids were not acceptable to the department.

84 (c) In accordance with Section 49-20-201, a contract awarded under Subsection (4)(b)  
 85 is not subject to the risk sharing required by Subsection (2)(d).

86 (5) Title 63G, Chapter 6, Utah Procurement Code, shall apply to this section.

87 Section 2. Section **31A-22-722.5** is enacted to read:

88 **31A-22-722.5. Mini-COBRA election -- American Recovery and Reinvestment**

89 **Act.**

90 (1) An individual has a right, until April 18, 2009, to contact the individual's employer  
91 or the insurer for the employer to participate in a second election period for mini-COBRA  
92 benefits under Section 31A-22-722 in accordance with Section 3001 of the American  
93 Recovery and Reinvestment Act of 2009 (Pub. S. 111-5) if the individual:

94 (a) was involuntarily terminated from employment between September 1, 2008 and  
95 February 17, 2009, as defined in Section 3001 of the American Recovery and Reinvestment  
96 Act of 2009 (Pub. S. 111-5);

97 (b) is eligible for COBRA premium assistance under Section 3001 of the American  
98 Recovery and Reinvestment Act of 2009 (Pub. S. 111-5); and

99 (c) was eligible for Utah mini-COBRA as provided in Section 31A-22-722 at the time  
100 of termination.

101 (2) (a) An individual or the employer of the individual shall contact the insurer and  
102 inform the insurer that the individual wants to take advantage of the second election period for  
103 mini-COBRA coverage under the provisions of Section 3001 of the American Recovery and  
104 Reinvestment Act of 2009 (Pub. S. 111-5).

105 (b) An individual or an employer on behalf of an eligible individual must submit the  
106 enrollment forms for coverage under Subsection (1) to the insurer prior to May 1, 2009.

107 (3) The provision regarding the application of pre-existing condition waivers to the  
108 extended second election period for federal COBRA under Section 3001 of the American  
109 Recovery and Reinvestment Act of 2009 (Pub. S. 111-5) shall apply to the extended second  
110 election for state mini-COBRA under this section.

111 (4) An insurer that violates this section is subject to penalties in accordance with  
112 Section 31A-2-308.

113 Section 3. Section **31A-23a-501** is amended to read:

114 **31A-23a-501. Licensee compensation.**

115 (1) As used in this section:

116 (a) "Commission compensation" includes funds paid to or credited for the benefit of a  
117 licensee from:

118 (i) commission amounts deducted from insurance premiums on insurance sold by or  
119 placed through the licensee; or

120 (ii) commission amounts received from an insurer or another licensee as a result of the  
121 sale or placement of insurance.

122 (b) (i) "Compensation from an insurer or third party administrator" means  
123 commissions, fees, awards, overrides, bonuses, contingent commissions, loans, stock options,  
124 gifts, prizes, or any other form of valuable consideration:

125 (A) whether or not payable pursuant to a written agreement; and

126 (B) received from:

127 (I) an insurer; or

128 (II) a third party to the transaction for the sale or placement of insurance.

129 (ii) "Compensation from an insurer or third party administrator" does not mean  
130 compensation from a customer that is:

131 (A) a fee or pass-through costs as provided in Subsection (1)(e); or

132 (B) a fee or amount collected by or paid to the producer that does not exceed an  
133 amount established by the commissioner by administrative rule.

134 (c) (i) "Customer" means:

135 (A) the person signing the application or submission for insurance; or

136 (B) the authorized representative of the insured actually negotiating the placement of  
137 insurance with the producer.

138 (ii) "Customer" does not mean a person who is a participant or beneficiary of:

139 (A) an employee benefit plan; or

140 (B) a group or blanket insurance policy or group annuity contract sold, solicited, or  
141 negotiated by the producer or affiliate.

142           ~~[(b)]~~ (d) (i) "Noncommission compensation" includes all funds paid to or credited for  
143 the benefit of a licensee other than commission compensation.

144           (ii) "Noncommission compensation" does not include charges for pass-through costs  
145 incurred by the licensee in connection with obtaining, placing, or servicing an insurance  
146 policy.

147           ~~[(c)]~~ (e) "Pass-through costs" include:

148           (i) costs for copying documents to be submitted to the insurer; and

149           (ii) bank costs for processing cash or credit card payments.

150           (2) A licensee may receive from an insured or from a person purchasing an insurance  
151 policy, noncommission compensation if the noncommission compensation is stated on a  
152 separate, written disclosure.

153           (a) The disclosure required by this Subsection (2) shall:

154           (i) include the signature of the insured or prospective insured acknowledging the  
155 noncommission compensation;

156           (ii) clearly specify the amount or extent of the noncommission compensation; and

157           (iii) be provided to the insured or prospective insured before the performance of the  
158 service.

159           (b) Noncommission compensation shall be:

160           (i) limited to actual or reasonable expenses incurred for services; and

161           (ii) uniformly applied to all insureds or prospective insureds in a class or classes of  
162 business or for a specific service or services.

163           (c) A copy of the signed disclosure required by this Subsection (2) must be maintained  
164 by any licensee who collects or receives the noncommission compensation or any portion  
165 ~~[thereof]~~ of the noncommission compensation.

166           (d) All accounting records relating to noncommission compensation shall be  
167 maintained by the person described in Subsection (2)(c) in a manner that facilitates an audit.

168           (3) (a) A licensee may receive noncommission compensation when acting as a  
169 producer for the insured in connection with the actual sale or placement of insurance if:

170 (i) the producer and the insured have agreed on the producer's noncommission  
171 compensation; and

172 (ii) the producer has disclosed to the insured the existence and source of any other  
173 compensation that accrues to the producer as a result of the transaction.

174 (b) The disclosure required by this Subsection (3) shall:

175 (i) include the signature of the insured or prospective insured acknowledging the  
176 noncommission compensation;

177 (ii) clearly specify the amount or extent of the noncommission compensation and the  
178 existence and source of any other compensation; and

179 (iii) be provided to the insured or prospective insured before the performance of the  
180 service.

181 (c) The following additional noncommission compensation is authorized:

182 (i) compensation received by a producer of a compensated corporate surety who under  
183 procedures approved by a rule or order of the commissioner is paid by surety bond principal  
184 debtors for extra services;

185 (ii) compensation received by an insurance producer who is also licensed as a public  
186 adjuster under Section 31A-26-203, for services performed for an insured in connection with a  
187 claim adjustment, so long as the producer does not receive or is not promised compensation  
188 for aiding in the claim adjustment prior to the occurrence of the claim;

189 (iii) compensation received by a consultant as a consulting fee, provided the  
190 consultant complies with the requirements of Section 31A-23a-401; or

191 (iv) other compensation arrangements approved by the commissioner after a finding  
192 that they do not violate Section 31A-23a-401 and are not harmful to the public.

193 (4) (a) For purposes of this Subsection (4), "producer" includes:

194 (i) a producer;

195 (ii) an affiliate of a producer; or

196 (iii) a consultant.

197 (b) Beginning January 1, 2010, in addition to any other disclosures required by this

198 section, a producer may not accept or receive any compensation from an insurer or third party  
199 administrator for the placement of a health benefit plan, other than a hospital confinement  
200 indemnity policy, unless prior to the customer's purchase of the health benefit plan the  
201 producer:

202 (i) except as provided in Subsection (4)(c), discloses in writing to the customer that  
203 the producer will receive compensation from the insurer or third party administrator for the  
204 placement of insurance, including the amount or type of compensation known to the producer  
205 at the time of the disclosure; and

206 (ii) except as provided in Subsection (4)(c):

207 (A) obtains the customer's signed acknowledgment that the disclosure under  
208 Subsection (4)(b)(i) was made to the customer; or

209 (B) certifies to the insurer that the disclosure required by Subsection (4)(b)(i) was  
210 made to the customer.

211 (c) If the compensation to the producer from an insurer or third party administrator is  
212 for the renewal of a health benefit plan, once the producer has made an initial disclosure that  
213 complies with Subsection (4)(b), the producer does not have to disclose compensation  
214 received for the subsequent yearly renewals in accordance with Subsection (4)(b) until the  
215 renewal period immediately following 36 months after the initial disclosure.

216 (d) (i) A copy of the signed acknowledgment required by Subsection (4)(b) must be  
217 maintained by the licensee who collects or receives any part of the compensation from an  
218 insurer or third party administrator in a manner that facilitates an audit.

219 (ii) The standard application developed in accordance with Section 31A-22-635 shall  
220 include a place for a producer to provide the disclosure required by this Subsection (4), and if  
221 completed, shall satisfy the requirement of Subsection (4)(d)(i).

222 (e) Subsection (4)(b)(ii) does not apply to:

223 (i) a person licensed as a producer who acts only as an intermediary between an  
224 insurer and the customer's producer, including a managing general agent; or

225 (ii) the placement of insurance in a secondary or residual market.



226            [~~(4)~~] (5) This section does not alter the right of any licensee to recover from an insured  
227 the amount of any premium due for insurance effected by or through that licensee or to charge  
228 a reasonable rate of interest upon past-due accounts.

229            [~~(5)~~] (6) This section does not apply to bail bond producers or bail enforcement agents  
230 as defined in Section 31A-35-102.

231            Section 4. **Effective date.**

232            If approved by two-thirds of all the members elected to each house, this bill takes effect  
233 upon approval by the governor, or the day following the constitutional time limit of Utah  
234 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,  
235 the date of veto override.

236            Section 5. **Coordinating H.B. 178 with H.B. 188 -- Substantively superseding**  
237 **amendments.**

238            If this H.B. 178 and H.B. 188, Health System Reform - Insurance Market, both pass, it  
239 is the intent of the Legislature that Section 31A-23a-501 in this H.B. 178 supersede the  
240 provisions of Section 31A-23a-501 in H.B. 188, when the Office of Legislative Research and  
241 General Counsel prepares the Utah Code database for publication.