

**INSURANCE COVERAGE FOR ESSENTIAL
MEDICAL SERVICES**

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael G. Waddoups

House Sponsor: _____

LONG TITLE

General Description:

This bill amends the Health Care Facility Licensing and Inspection Act and the Physician Licensing Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires a health care facility that is the only provider in a service area to offer an essential medical service to make the essential medical service available to an unaffiliated managed care organization;
- ▶ requires individual physicians and groups of physicians in a clinic who provide essential medical services to:
 - make those services available to all managed care organizations; and
 - provide discounted pricing on the same basis to all managed care organizations.
- ▶ regulates the pricing of an essential medical service;
- ▶ creates a reporting requirement;
- ▶ adds members to the Health Facility Committee within the Department of Health;
- ▶ creates enforcement provisions for access to essential medical services, including a private right of action; and
- ▶ makes technical and cross referencing amendments.



28 **Monies Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 This bill takes effect on July 1, 2009.

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **26-21-2**, as last amended by Laws of Utah 2005, Chapter 31

35 **26-21-5**, as last amended by Laws of Utah 2008, Chapter 382

36 **26-21-6**, as last amended by Laws of Utah 1998, Chapter 169

37 **26-21-11**, as last amended by Laws of Utah 1997, Chapter 209

38 **26-35a-103**, as last amended by Laws of Utah 2005, Chapter 31

39 **31A-8-105**, as last amended by Laws of Utah 1998, Chapter 329

40 **58-13-2.6**, as last amended by Laws of Utah 2008, Chapter 76

41 **64-13-39.5**, as last amended by Laws of Utah 2008, Chapter 382

42 ENACTS:

43 **26-21-2.3**, Utah Code Annotated 1953

44 **58-67-804**, Utah Code Annotated 1953

45 **Uncodified Material Affected:**

46 ENACTS UNCODIFIED MATERIAL



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

49 Section 1. Section **26-21-2** is amended to read:

50 **26-21-2. Definitions.**

51 As used in this chapter:

52 (1) "Abortion clinic" means a facility, other than a general acute or specialty hospital,
53 that performs abortions and provides abortion services during the second trimester of
54 pregnancy.

55 (2) "Activities of daily living" means essential activities including:

56 (a) dressing;

57 (b) eating;

58 (c) grooming;

- 59 (d) bathing;
- 60 (e) toileting;
- 61 (f) ambulation;
- 62 (g) transferring; and
- 63 (h) self-administration of medication.

64 (3) "Affiliated managed care organization" means a managed care organization that
65 directly or indirectly through one or more intermediaries controls, is controlled by, or is under
66 common control with an urban or rural hospital.

67 [~~3~~] (4) "Ambulatory surgical facility" means a freestanding facility, which provides
68 surgical services to patients not requiring hospitalization.

69 [~~4~~] (5) "Assistance with activities of daily living" means providing of or arranging for
70 the provision of assistance with activities of daily living.

71 [~~5~~] (6) (a) "Assisted living facility" means:

72 (i) a type I assisted living facility, which is a residential facility that provides assistance
73 with activities of daily living and social care to two or more residents who:

74 (A) require protected living arrangements; and

75 (B) are capable of achieving mobility sufficient to exit the facility without the
76 assistance of another person; and

77 (ii) a type II assisted living facility, which is a residential facility with a home-like
78 setting that provides an array of coordinated supportive personal and health care services
79 available 24 hours per day to residents who have been assessed under department rule to need
80 any of these services.

81 (b) Each resident in a type I or type II assisted living facility shall have a service plan
82 based on the assessment, which may include:

83 (i) specified services of intermittent nursing care;

84 (ii) administration of medication; and

85 (iii) support services promoting residents' independence and self sufficiency.

86 [~~6~~] (7) "Birthing center" means a freestanding facility, receiving maternal clients and
87 providing care during pregnancy, delivery, and immediately after delivery.

88 [~~7~~] (8) "Committee" means the Health Facility Committee created in Section
89 26-1-7[-], which shall include after July 1, 2009:

90 (a) a person with expertise in economics; and

91 (b) a person with expertise in health insurance administration.

92 [~~8~~] (9) "Consumer" means any person not primarily engaged in the provision of
93 health care to individuals or in the administration of facilities or institutions in which such care
94 is provided and who does not hold a fiduciary position, or have a fiduciary interest in any entity
95 involved in the provision of health care, and does not receive, either directly or through his
96 spouse, more than 1/10 of his gross income from any entity or activity relating to health care.

97 (10) "Discount price" means the price offered to a managed care organization that is
98 below a health care provider's usual and customary retail charge.

99 [~~9~~] (11) "End stage renal disease facility" means a facility which furnishes
100 staff-assisted kidney dialysis services, self-dialysis services, or home-dialysis services on an
101 outpatient basis.

102 (12) "Essential medical service" means a service that is essential to the state's health
103 care market because:

104 (a) the service is available only at a single urban hospital within that hospital's service
105 area; and

106 (b) a managed care organization would be at a significant competitive disadvantage if
107 the organization's participating consumers were denied access to that service.

108 [~~10~~] (13) "Freestanding" means existing independently or physically separated from
109 another health care facility by fire walls and doors and administrated by separate staff with
110 separate records.

111 [~~11~~] (14) "General acute hospital" means a facility which provides diagnostic,
112 therapeutic, and rehabilitative services to both inpatients and outpatients by or under the
113 supervision of physicians.

114 [~~12~~] (15) "Governmental unit" means the state, or any county, municipality, or other
115 political subdivision or any department, division, board, or agency of the state, a county,
116 municipality, or other political subdivision.

117 [~~13~~] (16) (a) "Health care facility" means general acute hospitals, specialty hospitals,
118 home health agencies, hospices, nursing care facilities, residential-assisted living facilities,
119 birthing centers, ambulatory surgical facilities, small health care facilities, abortion clinics,
120 facilities owned or operated by health maintenance organizations, end stage renal disease

121 facilities, and any other health care facility which the committee designates by rule.

122 (b) "Health care facility" does not include the offices of private physicians or dentists,
123 whether for individual or group practice.

124 [~~14~~] (17) "Health maintenance organization" means an organization, organized under
125 the laws of any state which:

126 (a) is a qualified health maintenance organization under 42 U.S.C. Sec. 300e-9; or

127 (b) (i) provides or otherwise makes available to enrolled participants at least the
128 following basic health care services: usual physician services, hospitalization, laboratory, x-ray,
129 emergency, and preventive services and out-of-area coverage;

130 (ii) is compensated, except for copayments, for the provision of the basic health
131 services listed in Subsection [~~14~~] (17)(b)(i) to enrolled participants by a payment which is
132 paid on a periodic basis without regard to the date the health services are provided and which is
133 fixed without regard to the frequency, extent, or kind of health services actually provided; and

134 (iii) provides physicians' services primarily directly through physicians who are either
135 employees or partners of such organizations, or through arrangements with individual
136 physicians or one or more groups of physicians organized on a group practice or individual
137 practice basis.

138 [~~15~~] (18) (a) "Home health agency" means an agency, organization, or facility or a
139 subdivision of an agency, organization, or facility which employs two or more direct care staff
140 persons who provide licensed nursing services, therapeutic services of physical therapy, speech
141 therapy, occupational therapy, medical social services, or home health aide services on a
142 visiting basis.

143 (b) "Home health agency" does not mean an individual who provides services under
144 the authority of a private license.

145 [~~16~~] (19) "Hospice" means a program of care for the terminally ill and their families
146 which occurs in a home or in a health care facility and which provides medical, palliative,
147 psychological, spiritual, and supportive care and treatment.

148 (20) "Managed care organization" includes:

149 (a) a preferred provider organization;

150 (b) a third party administrator;

151 (c) a network administrator;

152 (d) a health maintenance organization; and

153 (e) any other health care delivery system that manages costs and directs participating
154 consumers to selected health care providers.

155 (21) "Network administrator" means any person who arranges for health care services
156 to be provided to a participating consumer by a selected or preferred group of health care
157 providers in return for a discount price but who does not pay the medical claims directly to the
158 provider.

159 ~~[(17)]~~ (22) "Nursing care facility" means a health care facility, other than a general
160 acute or specialty hospital, constructed, licensed, and operated to provide patient living
161 accommodations, 24-hour staff availability, and at least two of the following patient services:

162 (a) a selection of patient care services, under the direction and supervision of a
163 registered nurse, ranging from continuous medical, skilled nursing, psychological, or other
164 professional therapies to intermittent health-related or paraprofessional personal care services;

165 (b) a structured, supportive social living environment based on a professionally
166 designed and supervised treatment plan, oriented to the individual's habilitation or
167 rehabilitation needs; or

168 (c) a supervised living environment that provides support, training, or assistance with
169 individual activities of daily living.

170 ~~[(18)]~~ (23) "Person" means any individual, firm, partnership, corporation, company,
171 organization, association, or joint stock association, and the legal successor thereof.

172 (24) "Preferred provider organization" means any person who:

173 (a) arranges for health care services to be provided to a participating consumer by a
174 selected or preferred group of providers in return for a discount price;

175 (b) pays medical claims directly to the provider; and

176 (c) provides financial or other meaningful incentives to participating consumers to use
177 the selected or preferred group of providers.

178 ~~[(19)]~~ (25) "Resident" means a person 21 years of age or older who:

179 (a) as a result of physical or mental limitations or age requires or requests services
180 provided in an assisted living facility; and

181 (b) does not require intensive medical or nursing services as provided in a hospital or
182 nursing care facility.

183 (26) "Rural hospital" means a general acute hospital or specialty hospital located in a
184 county of the third, fourth, fifth, or sixth class, as defined in Section 17-50-501.

185 (27) "Service area" means the geographic area from which an urban hospital derives
186 80% of its total annual patient volume.

187 [~~(28)~~] (28) "Small health care facility" means a four to sixteen bed facility that
188 provides licensed health care programs and services to residents.

189 [~~(29)~~] (29) "Specialty hospital" means a facility which provides specialized diagnostic,
190 therapeutic, or rehabilitative services in the recognized specialty or specialties for which the
191 hospital is licensed.

192 [~~(30)~~] (30) "Substantial compliance" means in a department survey of a licensee, the
193 department determines there is an absence of deficiencies which would harm the physical
194 health, mental health, safety, or welfare of patients or residents of a licensee.

195 (31) "Third party administrator" means:

196 (a) any person who collects charges or premiums from residents of the state in
197 connection with health insurance coverage; or

198 (b) any person who, for consideration, adjusts or settles claims of residents of the state
199 in connection with health insurance coverage.

200 (32) "Urban hospital" means a general acute hospital or specialty hospital located in a
201 county of the first or second class, as defined in Section 17-50-501.

202 Section 2. Section **26-21-2.3** is enacted to read:

203 **26-21-2.3. Pricing requirements of rural and urban hospitals -- Access to hospitals**
204 **-- Definitions -- Rulemaking authority -- Cost reporting.**

205 (1) A rural hospital that provides a discount price to an affiliated managed care
206 organization shall offer the same discount price on the same basis to any other managed care
207 organization.

208 (2) An urban hospital shall provide access to an essential medical service to the
209 participating consumers of any managed care organization.

210 (3) An urban hospital that provides a discount price to an affiliated managed care
211 organization for an essential medical service shall offer the same discount price on the same
212 basis to any other managed care organization.

213 (4) If a rural or urban hospital offers a discount price to a managed care organization

214 based on the volume of participating consumers, the hospital shall offer the same discount
215 price on the same basis to any other managed care organization.

216 (5) Urban and rural hospitals shall fairly and accurately calculate the actual price
217 charged to an affiliated managed care organization for a service that is subject to this section,
218 including any resulting discount rate, using generally accepted accounting principles. This
219 calculation shall take into account any rebates, halfbacks, internal transfers, or other
220 mechanisms that have the effect, in whole or in part, of providing any discount from the
221 hospital's usual and customary retail charges for the service.

222 (6) An urban or rural hospital that provides a service that is subject to this section shall
223 annually certify to the department that the hospital has complied with this section.

224 (7) (a) The department shall, by rule, designate each essential medical service in the
225 state.

226 (b) The department may:

227 (i) adopt other rules as necessary to implement this section; and

228 (ii) audit an urban or rural hospital that provides a service that is subject to this section
229 to determine compliance and, if necessary, take disciplinary action if an allegation of
230 non-compliance is submitted to the department.

231 (8) In addition to the penalty in Section 26-21-16, an urban or rural hospital that
232 violates this section may be subject to:

233 (a) a private right of action for damages;

234 (b) contractual damages that are otherwise available; and

235 (c) other civil remedies that are not based on this chapter, including Title 13, Chapter
236 5, Unfair Practices Act.

237 Section 3. Section **26-21-5** is amended to read:

238 **26-21-5. Duties of committee.**

239 The committee shall:

240 (1) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
241 Rulemaking Act:

242 (a) for the licensing of health-care facilities; ~~and~~

243 (b) requiring the submission of architectural plans and specifications for any proposed
244 new health-care facility or renovation to the department for review; and

- 245 (c) requiring compliance with Section 26-21-2.3;
- 246 (2) approve the information for applications for licensure pursuant to Section 26-21-9;
- 247 (3) advise the department as requested concerning the interpretation and enforcement
- 248 of the rules established under this chapter; and
- 249 (4) advise, consult, cooperate with, and provide technical assistance to other agencies
- 250 of the state and federal government, and other states and affected groups or persons in carrying
- 251 out the purposes of this chapter.

252 Section 4. Section **26-21-6** is amended to read:

253 **26-21-6. Duties of department.**

254 (1) The department shall:

- 255 (a) enforce rules established pursuant to this chapter;
- 256 (b) authorize an agent of the department to conduct inspections of health-care facilities
- 257 pursuant to this chapter;
- 258 (c) collect information;
- 259 (i) authorized by the committee that may be necessary to ensure that adequate
- 260 health-care facilities are available to the public; and

261 (ii) necessary to ensure that urban and rural hospitals comply with Section 26-21-2.3;

262 (d) collect and credit fees for:

263 (i) licenses as free revenue; and

264 [~~(e) collect and credit fees for~~]

265 (ii) conducting plan reviews as dedicated credits;

266 [~~(f)~~] (e) designate an executive secretary from within the department to assist the

267 committee in carrying out its powers and responsibilities;

268 [~~(g)~~] (f) establish reasonable standards for criminal background checks by public and

269 private entities;

270 [~~(h)~~] (g) recognize those public and private entities which meet the standards

271 established in Subsection (1)[~~(g)~~](f); and

272 [~~(i)~~] (h) provide necessary administrative and staff support to the committee.

273 (2) The department may:

274 (a) exercise all incidental powers necessary to carry out the purposes of this chapter;

275 (b) review architectural plans and specifications of proposed health-care facilities or

276 renovations of health-care facilities to ensure that the plans and specifications conform to rules
277 established by the committee; and

278 (c) make rules as necessary to implement the provisions of this chapter, except as
279 authority is specifically delegated to the committee.

280 Section 5. Section **26-21-11** is amended to read:

281 **26-21-11. Violations -- Denial or revocation of license -- Restricting or prohibiting**
282 **new admissions -- Monitor.**

283 If the department finds a violation of this chapter or any rules adopted pursuant to this
284 chapter the department may take one or more of the following actions:

285 (1) serve a written statement of violation requiring corrective action, which shall
286 include time frames for correction of all violations;

287 (2) deny or revoke a license if it finds:

288 (a) there has been a failure to comply with the rules established pursuant to this
289 chapter;

290 (b) evidence of aiding, abetting, or permitting the commission of any illegal act; or

291 (c) conduct adverse to the public health, morals, welfare, and safety of the people of
292 the state, including conduct in violation of Section 26-21-2.3;

293 (3) restrict or prohibit new admissions to a health care facility or revoke the license of a
294 health care facility for:

295 (a) violation of any rule adopted under this chapter; or

296 (b) permitting, aiding, or abetting the commission of any illegal act in the health care
297 facility;

298 (4) place a department representative as a monitor in the facility until corrective action
299 is completed;

300 (5) assess to the facility the cost incurred by the department in placing a monitor;

301 (6) assess an administrative penalty as allowed by Subsection 26-23-6(1)(a); or

302 (7) issue a cease and desist order to the facility.

303 Section 6. Section **26-35a-103** is amended to read:

304 **26-35a-103. Definitions.**

305 As used in this chapter:

306 (1) (a) "Nursing care facility" means:

- 307 (i) a nursing care facility described in [~~Subsection~~] Section 26-21-2~~(17)~~;
- 308 (ii) beginning January 1, 2006, a designated swing bed in:
 - 309 (A) a general acute hospital as defined in [~~Subsection~~] Section 26-21-2~~(11)~~; and
 - 310 (B) a critical access hospital which meets the criteria of 42, U.S.C. 1395i-4(c)(2)
 - 311 (1998); and
 - 312 (iii) an intermediate care facility for the mentally retarded that is licensed under Section
 - 313 26-21-13.5.
- 314 (b) "Nursing care facility" does not include:
 - 315 (i) the Utah State Developmental Center;
 - 316 (ii) the Utah State Hospital;
 - 317 (iii) a general acute hospital, specialty hospital, or small health care facility as defined
 - 318 in Section 26-21-2; or
 - 319 (iv) the Utah State Veteran's Home.
- 320 (2) "Patient day" means each calendar day in which an individual patient is admitted to
- 321 the nursing care facility during a calendar month, even if on a temporary leave of absence from
- 322 the facility.

323 Section 7. Section **31A-8-105** is amended to read:

324 **31A-8-105. General powers of organizations.**

325 Organizations may:

- 326 (1) buy, sell, lease, encumber, construct, renovate, operate, or maintain hospitals,
- 327 health care clinics, other health care facilities, and other real and personal property incidental to
- 328 and reasonably necessary for the transaction of the business and for the accomplishment of the
- 329 purposes of the organization;
- 330 (2) furnish health care through providers which are under contract with the
- 331 organization;
- 332 (3) contract with insurance companies licensed in this state or with health service
- 333 corporations authorized to do business in this state for insurance, indemnity, or reimbursement
- 334 for the cost of health care furnished by the organization;
- 335 (4) offer to its enrollees, in addition to health care, insured indemnity benefits, but only
- 336 for emergency care, out-of-area coverage, unusual or infrequently used health services as
- 337 defined in Section 31A-8-101, and adoption benefits as provided in Section 31A-22-610.1;

338 (5) receive from governmental or private agencies payments covering all or part of the
339 cost of the health care furnished by the organization;

340 (6) lend money to a medical group under contract with it or with a corporation under its
341 control to acquire or construct health care facilities or for other uses to further its program of
342 providing health care services to its enrollees;

343 (7) be owned jointly by health care professionals and persons not professionally
344 licensed without violating Utah law; and

345 (8) ~~[do all other things necessary]~~ conduct other lawful business activity for the
346 accomplishment of the purposes of the organization.

347 Section 8. Section **58-13-2.6** is amended to read:

348 **58-13-2.6. Emergency care rendered by a person or health care facility.**

349 (1) For purposes of this section:

350 (a) "Emergency" means an unexpected occurrence involving injury, the threat of injury,
351 or illness to a person or the public due to:

- 352 (i) a natural disaster;
- 353 (ii) bioterrorism;
- 354 (iii) an act of terrorism;
- 355 (iv) a pandemic; or
- 356 (v) other event of similar nature.

357 (b) "Emergency care" includes actual assistance or advice offered to avoid, mitigate, or
358 attempt to mitigate the effects of an emergency.

359 (c) "Person" is defined in [~~Subsection~~] Section 26-21-2~~(18)~~.

360 (2) (a) A person who, in good faith, assists governmental agencies or political
361 subdivisions with the activities described in Subsection (2)(b) is not liable for civil damages or
362 penalties as a result of any act or omission unless the person rendering the assistance:

- 363 (i) is grossly negligent;
- 364 (ii) caused the emergency; or
- 365 (iii) has engaged in criminal conduct.

366 (b) The following activities are protected from liability in accordance with Subsection
367 (2)(a):

- 368 (i) implementing measures to control the causes of epidemic, pandemic, communicable

369 diseases, or other conditions significantly affecting public health, as necessary to protect the
370 public health in accordance with Title 26A, Chapter 1, Local Health Departments;

371 (ii) investigating, controlling, and treating suspected bioterrorism or disease in
372 accordance with Title 26, Chapter 23b, Detection of Public Health Emergencies Act;

373 (iii) responding to:

374 (A) a national, state, or local emergency;

375 (B) a public health emergency as defined in Section 26-23b-102; or

376 (C) a declaration by the President of the United States or other federal official

377 requesting public health related activities; and

378 (iv) providing a facility for use by a governmental agency or political subdivision to
379 distribute pharmaceuticals or administer vaccines to the public.

380 (c) Subsection (2)(a) applies to a person even if that person has:

381 (i) a duty to respond; or

382 (ii) an expectation of payment or remuneration.

383 (3) The immunity in Subsection (2) is in addition to any immunity protections that may
384 apply in state or federal law.

385 Section 9. Section **58-67-804** is enacted to read:

386 **58-67-804. Physician contracting for essential medical services -- Unprofessional**
387 **conduct -- Private right of action.**

388 (1) For purposes of this section:

389 (a) "Discounted price" means the price offered to a managed care organization that is
390 below a physician's usual and customary retail charge.

391 (b) "Essential medical service" means a service that is essential to the state's health care
392 market because:

393 (i) the service is available only at a single physician's office or clinical setting within a
394 geographic service area; and

395 (ii) a managed care organization would be at a significant competitive disadvantage if
396 the organization's participating consumers were denied access to that service.

397 (c) "Managed care organization" includes:

398 (i) a preferred provider organization;

399 (ii) a third party administrator;

400 (iii) a network administrator;

401 (iv) a health maintenance organization; and

402 (v) any other health care delivery system that manages costs and directs participating
403 consumers to selected health care providers.

404 (d) "Network administrator" means any person who arranges for health care services to
405 be provided to a participating consumer by a selected or preferred group of health care
406 providers in return for a discount price but who does not pay the medical claims directly to the
407 provider.

408 (e) "Preferred provider organization" means any person who:

409 (i) arranges for health care services to be provided to a participating consumer by a
410 selected or preferred group of providers in return for a discount price;

411 (ii) pays medical claims directly to the provider; and

412 (iii) provides financial or other meaningful incentives to participating consumers to use
413 the selected or preferred group of providers.

414 (f) "Service area" means the geographic area from which a physician or a group of
415 physicians in a clinic setting derives 80% of its total annual patient volume.

416 (g) "Third party administrator" means:

417 (i) any person who collects charges or premiums from residents of the state in
418 connection with health insurance coverage; or

419 (ii) any person who, for consideration, adjusts or settles claims of residents of the state
420 in connection with health insurance coverage.

421 (2) (a) A physician or group of physicians in a clinic setting that provides a discount
422 price to a managed care organization for essential medical services shall offer the same
423 discount price on the same basis to any other managed care organization.

424 (b) A physician or group of physicians in a clinic setting shall provide access to an
425 essential medical service to the participating consumers of any managed care organization.

426 (3) If a physician or a group of physicians in a clinic offer a discount price for essential
427 medical services to a managed care organization based on the volume of participating
428 consumers, the physician shall offer the same discount price on the same basis to any other
429 managed care organization.

430 (4) A physician or group of physicians in a clinic setting shall fairly and accurately

431 calculate the actual price charged to a managed care organization for an essential medical
432 service that is subject to this section, including any resulting discount rate, using generally
433 accepted accounting principles. This calculation shall take into account any rebates, halfbacks,
434 internal transfers, or other mechanisms that have the effect, in whole or in part, of providing
435 any discount from the physician's usual and customary retail charges for the service.

436 (5) A physician or group of physicians that provide an essential medical service that is
437 subject to this section shall:

438 (a) annually certify to the board and the division that the physician or group of
439 physicians in a clinic setting have complied with this section; and

440 (b) provide timely and accurate information on the cost and price of a service upon the
441 request of the board and the division.

442 (6) (a) The board and the division shall, by rule, and in cooperation with the Health
443 Facility Committee created in Section 26-1-7, designate each essential medical service in the
444 state.

445 (b) The board and division may:

446 (i) adopt other rules as necessary to implement this section; and

447 (ii) audit a physician or a group of physicians in a clinic setting that provide a service
448 that is subject to this section to determine compliance and, if necessary, take disciplinary
449 action.

450 (7) (a) It is unprofessional conduct for a physician to violate this section.

451 (b) In addition to the penalty that may be imposed for unprofessional conduct under
452 this title and chapter, a physician who violates this section may be subject to:

453 (i) a private right of action for damages;

454 (ii) contractual damages that are otherwise available; and

455 (iii) other civil remedies that are not based on this chapter, including Title 13, Chapter
456 5, Unfair Practices Act.

457 Section 10. Section **64-13-39.5** is amended to read:

458 **64-13-39.5. Definitions -- Health care for chronically or terminally ill offenders --**
459 **Notice to health care facility.**

460 (1) As used in this section:

461 (a) "Department or agency" means the Utah Department of Corrections or a department

462 of corrections or government entity responsible for placing an offender in a facility located in
463 Utah.

464 (b) "Chronically ill" has the same meaning as in Section 31A-36-102.

465 (c) "Facility":

466 (i) means:

467 (A) an assisted living facility as defined in ~~[Subsection]~~ Section 26-21-2~~(5)~~; and

468 (B) a nursing care facility as defined in ~~[Subsection]~~ Section 26-21-2~~(17)~~, ~~except~~
469 ~~that~~; and

470 (ii) does not include transitional care units and other long term care beds owned or
471 operated on the premises of acute care hospitals or critical care hospitals ~~[are not facilities for~~
472 ~~the purpose of this section]~~.

473 (d) "Offender" means an inmate whom the department or agency has given an early
474 release, pardon, or parole due to a chronic or terminal illness.

475 (e) "Terminally ill" has the same meaning as in Subsection 31A-36-102(11).

476 (2) If an offender from Utah or any other state is admitted as a resident of a facility due
477 to the chronic or terminal illness, the department or agency placing the offender shall:

478 (a) provide written notice to the administrator of the facility no later than 15 days prior
479 to the offender's admission as a resident of a facility, stating:

480 (i) the offense for which the offender was convicted and a description of the actual
481 offense;

482 (ii) the offender's status with the department or agency;

483 (iii) that the information provided by the department or agency regarding the offender
484 shall be provided to employees of the facility no later than ten days prior to the offender's
485 admission to the facility; and

486 (iv) the contact information for:

487 (A) the offender's parole officer and also a point of contact within the department or
488 agency, if the offender is on parole; and

489 (B) a point of contact within the department or agency, if the offender is not under
490 parole supervision but was given an early release or pardon due to a chronic or terminal illness;

491 (b) make available to the public on the Utah Department of Corrections' website and
492 upon request:

493 (i) the name and address of the facility where the offender resides; and
494 (ii) the date the offender was placed at the facility; and
495 (c) provide a training program for employees who work in a facility where offenders
496 reside, and if the offender is placed at the facility by:

497 (i) the Utah Department of Corrections, the department shall provide the training
498 program for the employees; and
499 (ii) by a department or agency from another state, that state's department or agency
500 shall arrange with the Utah Department of Corrections to provide the training required by this
501 Subsection (2), if training has not already been provided by the Utah Department of
502 Corrections, and shall provide to the Utah Department of Corrections any necessary
503 compensation for this service.

504 (3) The administrator of the facility shall:

505 (a) provide residents of the facility or their guardians notice that a convicted felon is
506 being admitted to the facility no later than ten days prior to the offender's admission to the
507 facility;

508 (b) advise potential residents or their guardians of persons under Subsection (2) who
509 are current residents of the facility; and

510 (c) provide training, offered by the Utah Department of Corrections, in the safe
511 management of offenders for all employees.

512 (4) The Utah Department of Corrections shall make rules under Title 63G, Chapter 3,
513 Utah Administrative Rulemaking Act, establishing:

514 (a) a consistent format and procedure for providing notification to facilities and
515 information to the public in compliance with Subsection (2); and

516 (b) a training program, in compliance with Subsection (3) for employees, who work at
517 facilities where offenders reside to ensure the safety of facility residents and employees.

518 **Section 11. Purpose statement.**

519 The purpose of this legislation is to provide improved access to health care for Utah's
520 citizens, to permit and encourage fair and effective competition between managed care
521 organizations, to prevent monopolistic practices, and to continue to assure that organizations
522 offering health plans within this state are financially and administratively sound and able to
523 deliver benefits as promised.

524 Section 12. **Effective date.**
525 This bill takes effect on July 1, 2009.

Legislative Review Note
as of 2-5-09 10:23 AM

Office of Legislative Research and General Counsel

S.B. 62 - Insurance Coverage for Essential Medical Services

Fiscal Note

2009 General Session
State of Utah

State Impact

This legislation requires a one-time appropriation of \$120,000 General Fund in FY 2010 and \$200,000 ongoing General Fund to the Department of Health.

	<u>2009</u> <u>Approp.</u>	<u>2010</u> <u>Approp.</u>	<u>2011</u> <u>Approp.</u>	<u>2009</u> <u>Revenue</u>	<u>2010</u> <u>Revenue</u>	<u>2011</u> <u>Revenue</u>
General Fund	\$0	\$200,000	\$200,000	\$0	\$0	\$0
General Fund, One-Time	\$0	\$120,000	\$0	\$0	\$0	\$0
Total	\$0	\$320,000	\$200,000	\$0	\$0	\$0

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments. Some businesses may see a change in revenues and some insured individuals may have access to more medical services.