

SB0091S01 compared with SB0091

~~{deleted text}~~ shows text that was in SB0091 but was deleted in SB0091S01.

inserted text shows text that was not in SB0091 but was inserted into SB0091S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will not be completely accurate. Therefore, you need to read the actual bill. This automatically generated document could experience abnormalities caused by: limitations of the compare program; bad input data; the timing of the compare; and other potential causes.

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;

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- ▶ 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;
- ▶ exempts imaging centers in rural areas from the requirements of the legislation;
- ▶ specifies the disclosure and reporting requirements;^f
→ ~~prohibits a health care provider from establishing a beneficial interest in or compensation arrangement with an imaging center after May 15, 2011;~~^f and
- ▶ makes it unprofessional conduct to violate the disclosure or reporting requirements.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

ENACTS:

58-1-505, Utah Code Annotated 1953

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

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

26-33a-106.5. Comparative analyses.

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

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

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

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institutions in the state.

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

(i) be published at least annually; and

(ii) contain comparisons based on at least the following factors:

(A) nationally recognized quality standards;

(B) charges; ~~and~~

(C) nationally recognized patient safety standards~~[-]; and~~

(D) health care provider self-referral patterns for imaging services as provided in Section 58-1-505, including the names of the health care providers engaged in self-referral, and a comparison of the self-referring health care provider's rate of ordering imaging services with other similar health care provider's rates of ordering imaging services.

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

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

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

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

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

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

(1) As used in this section:

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

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

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

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

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

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

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

(ii) "Compensation arrangement" does not include:

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

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

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

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

(E) payments are made for the rental or lease of office space if the payments are at fair

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market value and in accordance with an arm's length transaction;

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

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

(iii) "Compensation arrangement" does not include an arrangement between a health care entity and a health care practitioner or the immediate family member of a health care practitioner for the provision of any services, as an independent contractor, if:

(A) the arrangement is for identifiable services;

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

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

(c) "Health care provider" includes:

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

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

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

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

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

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

(d) "Imaging service" means:

(i) computed tomography scan;

(ii) positron emission tomography; or

(iii) magnetic resonance imaging.

(2) (a) The disclosure requirements in this section do not apply to imaging centers

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located in a rural area as defined by the Department of Health by administrative rule.

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

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

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

(c) Nothing in Subsection (2)(b) restricts the ability of a health care provider who has personally performed and interpreted either the technical or professional component of the imaging services to obtain payment for services related to the technical or professional component of providing the imaging services.

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

~~"{ I am involved in the practice of self-referral. }~~ ~~The most important element of a physician-patient relationship is trust. Therefore, as your doctor, I am ethically obligated to tell you that I have a conflict of interest.~~ Either myself or a member of my family has a beneficial interest in a facility or a compensation arrangement with a facility that performs MRI, CT, or PET scanning. ~~{ When I order one of these tests, I can make substantially more than the cost of your visit today. Thus, there is a significant incentive to increase utilization of expensive imaging tests. Numerous national studies have consistently shown that the practice of self-referral can increase utilization rates by up to seven-fold, increasing the cost of medicine for all.~~

~~——— } All of these tests have been shown to be subject to self-referral abuse. I am also required to tell you under both federal and state law, that you have a choice in which imaging facility you are sent to. { } Here is a list of other facilities that can perform the work needed within a {fifteen} 25 mile radius. { You have a right to choose as other studies have shown that oftentimes the quality of studies performed by sites that engage in the practice of self-referral is substandard."~~

~~{ Having competition makes us all better."~~

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

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

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

(iii) witnessed and signed by a third party.

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

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

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

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

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

(e) the billing codes associated with the examination;

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

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

~~{ (5) A health care provider may not have a beneficial interest in or a compensation arrangement with an imaging center unless:~~

~~—— (a) the beneficial interest in or compensation arrangement with the imaging center was created prior to May 15, 2011; or~~

~~—— (b) the imaging center is located in a rural area as defined by the Department of Health by administrative rule.~~

~~† (†6) (5) Failure to comply with the requirements of this section is unprofessional conduct.~~

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Legislative Review Note

~~—— as of 2-2-11 2:40 PM~~

~~—— Office of Legislative Research and General Counsel}~~