

MEDICAL RETAINER AGREEMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ken Ivory

Senate Sponsor: Aaron Osmond

LONG TITLE

General Description:

This bill amends the Insurance Code to clarify when certain health care services are not subject to regulation as a health insurance plan.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides that a medical retainer agreement in which a health care provider agrees to provide routine health care services to a patient in exchange for a prepaid fee is not a health benefit plan subject to regulation by the Insurance Department; and
- ▶ permits a health care provider to include limited services performed by a third party in the retainer agreement.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

31A-4-106, as last amended by Laws of Utah 2008, Chapters 3 and 345

ENACTS:

31A-4-106.5, Utah Code Annotated 1953

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

30 Section 1. Section **31A-4-106** is amended to read:

31 **31A-4-106. Provision of health care.**

32 (1) As used in this section, "health care provider" has the same definition as in Section
33 78B-3-403.

34 (2) Except under Subsection (3) or (4), unless authorized to do so or employed by
35 someone authorized to do so under Chapter 5, 7, 8, 9, or 14, a person may not:

- 36 (a) directly or indirectly provide health care;
- 37 (b) arrange for health care;
- 38 (c) manage or administer the provision or arrangement of health care;
- 39 (d) collect advance payments for health care; or
- 40 (e) compensate a provider of health care.

41 (3) Subsection (2) does not apply to:

42 (a) a natural person or professional corporation that alone or with others professionally
43 associated with the natural person or professional corporation, and except as provided in
44 Subsection (3)(f), without receiving consideration for services in advance of the need for a
45 particular service, provides the service personally with the aid of nonprofessional assistants;

46 (b) a health care facility as defined in Section 26-21-2 that:

47 (i) is licensed or exempt from licensing under Title 26, Chapter 21, Health Care
48 Facility Licensing and Inspection Act; and

49 (ii) does not engage in health care insurance as defined under Section 31A-1-301;

50 (c) a person who files with the commissioner a certificate from the United States
51 Department of Labor, or other evidence satisfactory to the commissioner, showing that the laws
52 of Utah are preempted under Section 514 of the Employee Retirement Income Security Act of
53 1974 or other federal law;

54 (d) a person licensed under Chapter 23a, Insurance Marketing - Licensing Producers,
55 Consultants, and Reinsurance Intermediaries, who:

56 (i) arranges for the insurance of all services under:

57 (A) Subsection (2) by an insurer authorized to do business in Utah; or

58 (B) Section 31A-15-103; or
59 (ii) works for an uninsured employer that complies with Chapter 13, Employee Welfare
60 Funds and Plans; [or]
61 (e) an employer that self-funds its obligations to provide health care services or
62 indemnity for its employees if the employer complies with Chapter 13, Employee Welfare
63 Funds and Plans[-]; or

64 (f) notwithstanding the provisions of Subsection (3)(a), a natural person or professional
65 corporation that alone or with others professionally associated with the natural person or
66 professional corporation enters into a medical retainer agreement in accordance with Section
67 31A-4-106.5.

68 (4) A person may not provide administrative or management services for another
69 person subject to Subsection (2) and not exempt under Subsection (3) unless the person:

- 70 (a) is an authorized insurer under Chapter 5, 7, 8, 9, or 14; or
- 71 (b) complies with Chapter 25, Third Party Administrators.

72 (5) An insurer or person who provides, administers, or manages health care insurance
73 under Chapter 5, 7, 8, 9, or 14 may not enter into a contract that limits a health care provider's
74 ability to advise the health care provider's patients or clients fully about treatment options or
75 other issues that affect the health care of the health care provider's patients or clients.

76 Section 2. Section **31A-4-106.5** is enacted to read:

77 **31A-4-106.5. Medical retainer agreements.**

78 (1) For purposes of this section:

79 (a) "Medical retainer agreement" means a written contract:

80 (i) between:

81 (A) except as provided in Subsection (1)(b)(iii)(B), a natural person or a professional
82 corporation, alone or with others professionally associated with the natural person or
83 professional corporation; and

84 (B) an individual patient or a patient's representative; and

85 (ii) in which:

86 (A) the person described in Subsection (1)(a)(i)(A) agrees to provide routine health
87 care services to the individual patient for an agreed upon fee and period of time; and

88 (B) either party to the contract may terminate the agreement upon written notice to the
89 other party.

90 (b) "Routine health care services" include:

91 (i) screening, assessment, diagnosis, and treatment for the purpose of promotion of
92 health, and detection and management of disease or injury;

93 (ii) supplies and prescription drugs that are dispensed in a health care provider's office;
94 and

95 (iii) laboratory work, such as routine blood screening or routine pathology screening
96 performed by a laboratory that:

97 (A) is associated with the health care provider entering into the medical retainer
98 agreement; or

99 (B) if not associated with the health care provider, has entered into an agreement with
100 the health care provider to provide the laboratory work without charging a fee to the patient for
101 the laboratory work.

102 (2) A medical retainer agreement exempt from the provisions of Subsection
103 31A-4-106(2) shall:

104 (a) describe the specific routine health care services that are included in the contract;

105 (b) prominently state in writing that the retainer agreement is not health insurance; and

106 (c) prohibit the health care provider, but not the patient, from billing an insurer for the
107 services provided under the medical retainer agreement.