

HEALTH CARE PROVIDER AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Francis D. Gibson

Senate Sponsor: Gene Davis

LONG TITLE

General Description:

This bill amends the definition of "health care provider" in the Utah Health Care Malpractice Act.

Highlighted Provisions:

This bill:

- ▶ expands the definition of "health care provider" to include licensed athletic trainers;
- ▶ exempts the term "licensed athletic trainer" from the definition of "health care provider" in provisions of the insurance code; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

31A-8a-102, as last amended by Laws of Utah 2008, Chapter 3

31A-22-617, as last amended by Laws of Utah 2009, Chapter 12

31A-29-103, as last amended by Laws of Utah 2011, Chapters 284 and 400

78B-3-403, as last amended by Laws of Utah 2009, Chapter 220



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

29 Section 1. Section **31A-8a-102** is amended to read:

30 **31A-8a-102. Definitions.**

31 For purposes of this chapter:

32 (1) "Fee" means any periodic charge for use of a discount program.

33 (2) "Health care provider" means a health care provider as defined in Section

34 78B-3-403, with the exception of "licensed athletic trainer," who:

35 (a) is practicing within the scope of the provider's license; and

36 (b) has agreed either directly or indirectly, by contract or any other arrangement with a
37 health discount program operator, to provide a discount to enrollees of a health discount
38 program.

39 (3) "Health discount program" means a business arrangement or contract in which a
40 person pays fees, dues, charges, or other consideration in exchange for a program that provides
41 access to health care providers who agree to provide a discount for health care services.

42 (4) "Operates a health discount program" or "health discount program operator" means
43 to:

44 (a) enter into a contract or agreement either directly or indirectly with a health care
45 provider in this state which the health care provider agrees to provide discounts to enrollees of
46 the health discount program;

47 (b) enter into a contract or agreement either directly or indirectly with a person in this
48 state to provide access to more than one health care provider who has agreed to provide
49 discounts for medical services to enrollees of the health discount program;

50 (c) sell or distribute a health discount program in this state; or

51 (d) place your name on and market or promote a health discount program in this state.

52 (5) "Value-added benefit" means a discount offering with no additional charge made by
53 a health insurer or health maintenance organization that is licensed under this title, in
54 connection with existing contracts with the health insurer or health maintenance organization.

55 Section 2. Section **31A-22-617** is amended to read:

56 **31A-22-617. Preferred provider contract provisions.**

57 Health insurance policies may provide for insureds to receive services or
58 reimbursement under the policies in accordance with preferred health care provider contracts as

59 follows:

60 (1) Subject to restrictions under this section, any insurer or third party administrator
61 may enter into contracts with health care providers as defined in Section 78B-3-403 under
62 which the health care providers agree to supply services, at prices specified in the contracts, to
63 persons insured by an insurer.

64 (a) (i) A health care provider contract may require the health care provider to accept the
65 specified payment as payment in full, relinquishing the right to collect additional amounts from
66 the insured person.

67 (ii) In any dispute involving a provider's claim for reimbursement, the same shall be
68 determined in accordance with applicable law, the provider contract, the subscriber contract,
69 and the insurer's written payment policies in effect at the time services were rendered.

70 (iii) If the parties are unable to resolve their dispute, the matter shall be subject to
71 binding arbitration by a jointly selected arbitrator. Each party is to bear its own expense except
72 the cost of the jointly selected arbitrator shall be equally shared. This Subsection (1)(a)(iii)
73 does not apply to the claim of a general acute hospital to the extent it is inconsistent with the
74 hospital's provider agreement.

75 (iv) An organization may not penalize a provider solely for pursuing a claims dispute
76 or otherwise demanding payment for a sum believed owing.

77 (v) If an insurer permits another entity with which it does not share common ownership
78 or control to use or otherwise lease one or more of the organization's networks of participating
79 providers, the organization shall ensure, at a minimum, that the entity pays participating
80 providers in accordance with the same fee schedule and general payment policies as the
81 organization would for that network.

82 (b) The insurance contract may reward the insured for selection of preferred health care
83 providers by:

- 84 (i) reducing premium rates;
- 85 (ii) reducing deductibles;
- 86 (iii) coinsurance;
- 87 (iv) other copayments; or
- 88 (v) any other reasonable manner.

89 (c) If the insurer is a managed care organization, as defined in Subsection

90 31A-27a-403(1)(f):

91 (i) the insurance contract and the health care provider contract shall provide that in the
92 event the managed care organization becomes insolvent, the rehabilitator or liquidator may:

93 (A) require the health care provider to continue to provide health care services under
94 the contract until the earlier of:

95 (I) 90 days after the date of the filing of a petition for rehabilitation or the petition for
96 liquidation; or

97 (II) the date the term of the contract ends; and

98 (B) subject to Subsection (1)(c)(v), reduce the fees the provider is otherwise entitled to
99 receive from the managed care organization during the time period described in Subsection
100 (1)(c)(i)(A);

101 (ii) the provider is required to:

102 (A) accept the reduced payment under Subsection (1)(c)(i)(B) as payment in full; and

103 (B) relinquish the right to collect additional amounts from the insolvent managed care
104 organization's enrollee, as defined in Subsection 31A-27a-403(1)(b);

105 (iii) if the contract between the health care provider and the managed care organization
106 has not been reduced to writing, or the contract fails to contain the language required by
107 Subsection (1)(c)(i), the provider may not collect or attempt to collect from the enrollee:

108 (A) sums owed by the insolvent managed care organization; or

109 (B) the amount of the regular fee reduction authorized under Subsection (1)(c)(i)(B);

110 (iv) the following may not bill or maintain any action at law against an enrollee to
111 collect sums owed by the insolvent managed care organization or the amount of the regular fee
112 reduction authorized under Subsection (1)(c)(i)(B):

113 (A) a provider;

114 (B) an agent;

115 (C) a trustee; or

116 (D) an assignee of a person described in Subsections (1)(c)(iv)(A) through (C); and

117 (v) notwithstanding Subsection (1)(c)(i):

118 (A) a rehabilitator or liquidator may not reduce a fee by less than 75% of the provider's
119 regular fee set forth in the contract; and

120 (B) the enrollee shall continue to pay the copayments, deductibles, and other payments

121 for services received from the provider that the enrollee was required to pay before the filing
122 of:

123 (I) a petition for rehabilitation; or

124 (II) a petition for liquidation.

125 (2) (a) Subject to Subsections (2)(b) through (2)(f), an insurer using preferred health
126 care provider contracts shall pay for the services of health care providers not under the contract,
127 unless the illnesses or injuries treated by the health care provider are not within the scope of the
128 insurance contract. As used in this section, "class of health care providers" means all health
129 care providers licensed or licensed and certified by the state within the same professional,
130 trade, occupational, or facility licensure or licensure and certification category established
131 pursuant to Titles 26, Utah Health Code and 58, Occupations and Professions.

132 (b) (i) Until July 1, 2012, when the insured receives services from a health care
133 provider not under contract, the insurer shall reimburse the insured for at least 75% of the
134 average amount paid by the insurer for comparable services of preferred health care providers
135 who are members of the same class of health care providers.

136 (ii) Notwithstanding Subsection (2)(b)(i), an insurer may offer a health plan that
137 complies with the provisions of Subsection 31A-22-618.5(3).

138 (iii) The commissioner may adopt a rule dealing with the determination of what
139 constitutes 75% of the average amount paid by the insurer under Subsection (2)(b)(i) for
140 comparable services of preferred health care providers who are members of the same class of
141 health care providers.

142 (c) When reimbursing for services of health care providers not under contract, the
143 insurer may make direct payment to the insured.

144 (d) Notwithstanding Subsection (2)(b), an insurer using preferred health care provider
145 contracts may impose a deductible on coverage of health care providers not under contract.

146 (e) When selecting health care providers with whom to contract under Subsection (1),
147 an insurer may not unfairly discriminate between classes of health care providers, but may
148 discriminate within a class of health care providers, subject to Subsection (7).

149 (f) For purposes of this section, unfair discrimination between classes of health care
150 providers shall include:

151 (i) refusal to contract with class members in reasonable proportion to the number of

152 insureds covered by the insurer and the expected demand for services from class members; and

153 (ii) refusal to cover procedures for one class of providers that are:

154 (A) commonly utilized by members of the class of health care providers for the
155 treatment of illnesses, injuries, or conditions;

156 (B) otherwise covered by the insurer; and

157 (C) within the scope of practice of the class of health care providers.

158 (3) Before the insured consents to the insurance contract, the insurer shall fully disclose
159 to the insured that it has entered into preferred health care provider contracts. The insurer shall
160 provide sufficient detail on the preferred health care provider contracts to permit the insured to
161 agree to the terms of the insurance contract. The insurer shall provide at least the following
162 information:

163 (a) a list of the health care providers under contract and if requested their business
164 locations and specialties;

165 (b) a description of the insured benefits, including any deductibles, coinsurance, or
166 other copayments;

167 (c) a description of the quality assurance program required under Subsection (4); and

168 (d) a description of the adverse benefit determination procedures required under
169 Subsection (5).

170 (4) (a) An insurer using preferred health care provider contracts shall maintain a quality
171 assurance program for assuring that the care provided by the health care providers under
172 contract meets prevailing standards in the state.

173 (b) The commissioner in consultation with the executive director of the Department of
174 Health may designate qualified persons to perform an audit of the quality assurance program.
175 The auditors shall have full access to all records of the organization and its health care
176 providers, including medical records of individual patients.

177 (c) The information contained in the medical records of individual patients shall
178 remain confidential. All information, interviews, reports, statements, memoranda, or other data
179 furnished for purposes of the audit and any findings or conclusions of the auditors are
180 privileged. The information is not subject to discovery, use, or receipt in evidence in any legal
181 proceeding except hearings before the commissioner concerning alleged violations of this
182 section.

183 (5) An insurer using preferred health care provider contracts shall provide a reasonable
 184 procedure for resolving complaints and adverse benefit determinations initiated by the insureds
 185 and health care providers.

186 (6) An insurer may not contract with a health care provider for treatment of illness or
 187 injury unless the health care provider is licensed to perform that treatment.

188 (7) (a) A health care provider or insurer may not discriminate against a preferred health
 189 care provider for agreeing to a contract under Subsection (1).

190 (b) Any health care provider licensed to treat any illness or injury within the scope of
 191 the health care provider's practice, who is willing and able to meet the terms and conditions
 192 established by the insurer for designation as a preferred health care provider, shall be able to
 193 apply for and receive the designation as a preferred health care provider. Contract terms and
 194 conditions may include reasonable limitations on the number of designated preferred health
 195 care providers based upon substantial objective and economic grounds, or expected use of
 196 particular services based upon prior provider-patient profiles.

197 (8) Upon the written request of a provider excluded from a provider contract, the
 198 commissioner may hold a hearing to determine if the insurer's exclusion of the provider is
 199 based on the criteria set forth in Subsection (7)(b).

200 (9) Insurers are subject to the provisions of Sections 31A-22-613.5, 31A-22-614.5, and
 201 31A-22-618.

202 (10) Nothing in this section is to be construed as to require an insurer to offer a certain
 203 benefit or service as part of a health benefit plan.

204 (11) This section does not apply to catastrophic mental health coverage provided in
 205 accordance with Section 31A-22-625.

206 (12) Notwithstanding the provisions of Subsection (1) ~~H→~~, Subsection (7)(b), and
 206a Section 31A-22-618 ~~←H~~, an insurer or third party
 207 administrator is not required to, but may, enter into contracts with licensed athletic trainers,
 208 licensed under Title 58, Chapter 40a, Athletic Trainer Licensing Act.

209 Section 3. Section **31A-29-103** is amended to read:

210 **31A-29-103. Definitions.**

211 As used in this chapter:

212 (1) "Board" means the board of directors of the pool created in Section 31A-29-104.

213 (2) (a) "Creditable coverage" has the same meaning as provided in Section 31A-1-301.

214 (b) "Creditable coverage" does not include a period of time in which there is a
215 significant break in coverage, as defined in Section 31A-1-301.

216 (3) "Domicile" means the place where an individual has a fixed and permanent home
217 and principal establishment:

218 (a) to which the individual, if absent, intends to return; and

219 (b) in which the individual, and the individual's family voluntarily reside, not for a
220 special or temporary purpose, but with the intention of making a permanent home.

221 (4) "Enrollee" means an individual who has met the eligibility requirements of the pool
222 and is covered by a pool policy under this chapter.

223 (5) "Health benefit plan":

224 (a) is defined in Section 31A-1-301; and

225 (b) does not include a plan that:

226 (i) (A) has a maximum actuarial value less than 100% of a health benefit plan
227 described in Subsection (5)(c); or

228 (B) has a maximum annual limit of \$100,000 or less; and

229 (ii) meets other criteria established by the board.

230 (c) For purposes of Subsection (5)(b)(i)(A) the health benefit plan shall:

231 (i) be a federally qualified high deductible health plan;

232 (ii) have a deductible that has the lowest deductible that qualifies as a federally
233 qualified high deductible health plan as adjusted by federal law; and

234 (iii) not exceed an annual out-of-pocket maximum equal to three times the amount of
235 the deductible.

236 (6) "Health care facility" means any entity providing health care services which is
237 licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

238 (7) "Health care insurance" is defined in Section 31A-1-301.

239 (8) "Health care provider" has the same meaning as provided in Section 78B-3-403[-],
240 with the exception of "licensed athletic trainer."

241 (9) "Health care services" means:

242 (a) any service or product:

243 (i) used in furnishing to any individual medical care or hospitalization; or

244 (ii) incidental to furnishing medical care or hospitalization; and

245 (b) any other service or product furnished for the purpose of preventing, alleviating,
246 curing, or healing human illness or injury.

247 (10) "Health maintenance organization" has the same meaning as provided in Section
248 31A-8-101.

249 (11) "Health plan" means any arrangement by which an individual, including a
250 dependent or spouse, covered or making application to be covered under the pool has:

251 (a) access to hospital and medical benefits or reimbursement including group or
252 individual insurance or subscriber contract;

253 (b) coverage through:

254 (i) a health maintenance organization;

255 (ii) a preferred provider prepayment;

256 (iii) group practice;

257 (iv) individual practice plan; or

258 (v) health care insurance;

259 (c) coverage under an uninsured arrangement of group or group-type contracts
260 including employer self-insured, cost-plus, or other benefits methodologies not involving
261 insurance;

262 (d) coverage under a group type contract which is not available to the general public
263 and can be obtained only because of connection with a particular organization or group; and

264 (e) coverage by Medicare or other governmental benefit.

265 (12) "HIPAA" means the Health Insurance Portability and Accountability Act.

266 (13) "HIPAA eligible" means an individual who is eligible under the provisions of the
267 Health Insurance Portability and Accountability Act.

268 (14) "Insurer" means:

269 (a) an insurance company authorized to transact accident and health insurance business
270 in this state;

271 (b) a health maintenance organization; or

272 (c) a self-insurer not subject to federal preemption.

273 (15) "Medicaid" means coverage under Title XIX of the Social Security Act, 42 U.S.C.
274 Sec. 1396 et seq., as amended.

275 (16) "Medicare" means coverage under both Part A and B of Title XVIII of the Social

276 Security Act, 42 U.S.C. Sec. 1395 et seq., as amended.

277 (17) "Plan of operation" means the plan developed by the board in accordance with
278 Section 31A-29-105 and includes the articles, bylaws, and operating rules adopted by the board
279 under Section 31A-29-106.

280 (18) "Pool" means the Utah Comprehensive Health Insurance Pool created in Section
281 31A-29-104.

282 (19) "Pool fund" means the Comprehensive Health Insurance Pool Enterprise Fund
283 created in Section 31A-29-120.

284 (20) "Pool policy" means a health benefit plan policy issued under this chapter.

285 (21) "Preexisting condition" has the same meaning as defined in Section 31A-1-301.

286 (22) (a) "Resident" or "residency" means a person who is domiciled in this state.

287 (b) A resident retains residency if that resident leaves this state:

288 (i) to serve in the armed forces of the United States; or

289 (ii) for religious or educational purposes.

290 (23) "Third party administrator" has the same meaning as provided in Section
291 31A-1-301.

292 Section 4. Section **78B-3-403** is amended to read:

293 **78B-3-403. Definitions.**

294 As used in this part:

295 (1) "Audiologist" means a person licensed to practice audiology under Title 58,
296 Chapter 41, Speech-language Pathology and Audiology Licensing Act.

297 (2) "Certified social worker" means a person licensed to practice as a certified social
298 worker under Section 58-60-205.

299 (3) "Chiropractic physician" means a person licensed to practice chiropractic under
300 Title 58, Chapter 73, Chiropractic Physician Practice Act.

301 (4) "Clinical social worker" means a person licensed to practice as a clinical social
302 worker under Section 58-60-205.

303 (5) "Commissioner" means the commissioner of insurance as provided in Section
304 31A-2-102.

305 (6) "Dental hygienist" means a person licensed to engage in the practice of dental
306 hygiene as defined in Section 58-69-102.

307 (7) "Dentist" means a person licensed to engage in the practice of dentistry as defined
308 in Section 58-69-102.

309 (8) "Division" means the Division of Occupational and Professional Licensing created
310 in Section 58-1-103.

311 (9) "Future damages" includes a judgment creditor's damages for future medical
312 treatment, care or custody, loss of future earnings, loss of bodily function, or future pain and
313 suffering.

314 (10) "Health care" means any act or treatment performed or furnished, or which should
315 have been performed or furnished, by any health care provider for, to, or on behalf of a patient
316 during the patient's medical care, treatment, or confinement.

317 (11) "Health care facility" means general acute hospitals, specialty hospitals, home
318 health agencies, hospices, nursing care facilities, assisted living facilities, birthing centers,
319 ambulatory surgical facilities, small health care facilities, health care facilities owned or
320 operated by health maintenance organizations, and end stage renal disease facilities.

321 (12) "Health care provider" includes any person, partnership, association, corporation,
322 or other facility or institution who causes to be rendered or who renders health care or
323 professional services as a hospital, health care facility, physician, registered nurse, licensed
324 practical nurse, nurse-midwife, licensed Direct-entry midwife, dentist, dental hygienist,
325 optometrist, clinical laboratory technologist, pharmacist, physical therapist, physical therapist
326 assistant, podiatric physician, psychologist, chiropractic physician, naturopathic physician,
327 osteopathic physician, osteopathic physician and surgeon, audiologist, speech-language
328 pathologist, clinical social worker, certified social worker, social service worker, marriage and
329 family counselor, practitioner of obstetrics, licensed athletic trainer, or others rendering similar
330 care and services relating to or arising out of the health needs of persons or groups of persons
331 and officers, employees, or agents of any of the above acting in the course and scope of their
332 employment.

333 (13) "Hospital" means a public or private institution licensed under Title 26, Chapter
334 21, Health Care Facility Licensing and Inspection Act.

335 (14) "Licensed athletic trainer" means a person licensed under Title 58, Chapter 40a,
336 Athletic Trainer Licensing Act.

337 [~~14~~] (15) "Licensed Direct-entry midwife" means a person licensed under the

338 Direct-entry Midwife Act to engage in the practice of direct-entry midwifery as defined in
339 Section 58-77-102.

340 ~~[(15)]~~ (16) "Licensed practical nurse" means a person licensed to practice as a licensed
341 practical nurse as provided in Section 58-31b-301.

342 ~~[(16)]~~ (17) "Malpractice action against a health care provider" means any action against
343 a health care provider, whether in contract, tort, breach of warranty, wrongful death, or
344 otherwise, based upon alleged personal injuries relating to or arising out of health care rendered
345 or which should have been rendered by the health care provider.

346 ~~[(17)]~~ (18) "Marriage and family therapist" means a person licensed to practice as a
347 marriage therapist or family therapist under Sections 58-60-305 and 58-60-405.

348 ~~[(18)]~~ (19) "Naturopathic physician" means a person licensed to engage in the practice
349 of naturopathic medicine as defined in Section 58-71-102.

350 ~~[(19)]~~ (20) "Nurse-midwife" means a person licensed to engage in practice as a nurse
351 midwife under Section 58-44a-301.

352 ~~[(20)]~~ (21) "Optometrist" means a person licensed to practice optometry under Title 58,
353 Chapter 16a, Utah Optometry Practice Act.

354 ~~[(21)]~~ (22) "Osteopathic physician" means a person licensed to practice osteopathy
355 under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

356 ~~[(22)]~~ (23) "Patient" means a person who is under the care of a health care provider,
357 under a contract, express or implied.

358 ~~[(23)]~~ (24) "Periodic payments" means the payment of money or delivery of other
359 property to a judgment creditor at intervals ordered by the court.

360 ~~[(24)]~~ (25) "Pharmacist" means a person licensed to practice pharmacy as provided in
361 Section 58-17b-301.

362 ~~[(25)]~~ (26) "Physical therapist" means a person licensed to practice physical therapy
363 under Title 58, Chapter 24b, Physical Therapy Practice Act.

364 ~~[(26)]~~ (27) "Physical therapist assistant" means a person licensed to practice physical
365 therapy, within the scope of a physical therapist assistant license, under Title 58, Chapter 24b,
366 Physical Therapy Practice Act.

367 ~~[(27)]~~ (28) "Physician" means a person licensed to practice medicine and surgery under
368 Title 58, Chapter 67, Utah Medical Practice Act.

369 [~~(28)~~] (29) "Podiatric physician" means a person licensed to practice podiatry under
370 Title 58, Chapter 5a, Podiatric Physician Licensing Act.

371 [~~(29)~~] (30) "Practitioner of obstetrics" means a person licensed to practice as a
372 physician in this state under Title 58, Chapter 67, Utah Medical Practice Act, or under Title 58,
373 Chapter 68, Utah Osteopathic Medical Practice Act.

374 [~~(30)~~] (31) "Psychologist" means a person licensed under Title 58, Chapter 61,
375 Psychologist Licensing Act, to engage in the practice of psychology as defined in Section
376 58-61-102.

377 [~~(31)~~] (32) "Registered nurse" means a person licensed to practice professional nursing
378 as provided in Section 58-31b-301.

379 [~~(32)~~] (33) "Relative" means a patient's spouse, parent, grandparent, stepfather,
380 stepmother, child, grandchild, brother, sister, half brother, half sister, or spouse's parents. The
381 term includes relationships that are created as a result of adoption.

382 [~~(33)~~] (34) "Representative" means the spouse, parent, guardian, trustee,
383 attorney-in-fact, person designated to make decisions on behalf of a patient under a medical
384 power of attorney, or other legal agent of the patient.

385 [~~(34)~~] (35) "Social service worker" means a person licensed to practice as a social
386 service worker under Section 58-60-205.

387 [~~(35)~~] (36) "Speech-language pathologist" means a person licensed to practice
388 speech-language pathology under Title 58, Chapter 41, Speech-language Pathology and
389 Audiology Licensing Act.

390 [~~(36)~~] (37) "Tort" means any legal wrong, breach of duty, or negligent or unlawful act
391 or omission proximately causing injury or damage to another.

392 [~~(37)~~] (38) "Unanticipated outcome" means the outcome of a medical treatment or
393 procedure that differs from an expected result.

Legislative Review Note
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Office of Legislative Research and General Counsel