

**Representative Norman K Thurston** proposes the following substitute bill:

**HEALTH INSURANCE RIGHT TO SHOP AMENDMENTS**

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Norman K Thurston**

Senate Sponsor: Evan J. Vickers

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**LONG TITLE**

**General Description:**

This bill authorizes a health insurer to develop a program to reward enrollees for selecting high quality and low cost health care providers.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ amends the inducements provisions of the Insurance Code;
- ▶ authorizes a health insurer to develop and implement a savings reward program for enrollees;
- ▶ requires the Public Employees' Benefit and Insurance Program to implement a savings reward program;
- ▶ requires an insurer to obtain approval of the savings reward program from the insurance commissioner; and
- ▶ gives the commissioner authority to make administrative rules.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None



26 **Utah Code Sections Affected:**

27 AMENDS:

28 **31A-23a-402.5**, as last amended by Laws of Utah 2015, Chapters 145 and 244

29 ENACTS:

30 **31A-22-645**, Utah Code Annotated 1953

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

33 Section 1. Section **31A-22-645** is enacted to read:

34 **31A-22-645. Insurer shared savings program -- Public employees health plan**  
35 **shared savings program.**

36 (1) For purposes of this section:

37 (a) "Insurer" means an insurer, including a health maintenance organization, that offers  
38 a health benefit plan.

39 (b) "PEHP" means a health plan offered to state employees under Title 49, Chapter 20,  
40 Public Employees' Benefit and Insurance Program Act.

41 (c) "Savings reward program" means a program developed by an insurer or PEHP to  
42 reward an enrollee if the enrollee receives services from a provider whose costs for a procedure  
43 are lower than the average costs for the procedure.

44 (2) (a) The provisions of this section apply to a health benefit plan offered by an  
45 insurer and entered into or renewed on or after January 1, 2018.

46 (b) An insurer may, in accordance with Subsection (4), establish a savings reward  
47 program to reward the insurer's enrollees for selecting health care providers who provide  
48 covered health care services that are low cost and meet quality standards.

49 (3) PEHP shall, for health plans entered into or renewed on or after July 1, 2018, and in  
50 accordance with Subsection (4), establish a savings reward program.

51 (4) A savings reward program under Subsections (2) and (3) may include, in  
52 accordance with federal and state law, rewards to the enrollee through:

53 (a) premium discounts;

54 (b) rebates;

55 (c) reduction of out-of-pocket costs; or

56 (d) other rewards or incentives developed by the insurer.

57 Section 2. Section 31A-23a-402.5 is amended to read:

58 **31A-23a-402.5. Inducements.**

59 (1) (a) Except as provided in Subsection (2), a producer, consultant, or other licensee  
60 under this title, or an officer or employee of a licensee, may not induce a person to enter into,  
61 continue, or terminate an insurance contract by offering a benefit that is not:

62 (i) specified in the insurance contract; or

63 (ii) directly related to the insurance contract.

64 (b) An insurer may not make or knowingly allow an agreement of insurance that is not  
65 clearly expressed in the insurance contract to be issued or renewed.

66 (c) A licensee under this title may not absorb the tax under Section 31A-3-301.

67 (2) This section does not apply to a title insurer, an individual title insurance producer,  
68 or agency title insurance producer, or an officer or employee of a title insurer, an individual  
69 title insurance producer, or an agency title insurance producer.

70 (3) Items not prohibited by Subsection (1) include an insurer:

71 (a) reducing premiums because of expense savings;

72 (b) providing to a policyholder or insured one or more incentives, as defined by the  
73 commissioner by rule made in accordance with Title 63G, Chapter 3, Utah Administrative  
74 Rulemaking Act, to participate in a program or activity designed to reduce claims or claim  
75 expenses, including:

76 (i) a premium discount offered to a small or large employer group based on a wellness  
77 program if:

78 (A) the premium discount for the employer group does not exceed 20% of the group  
79 premium; and

80 (B) the premium discount based on the wellness program is offered uniformly by the  
81 insurer to all employer groups in the large or small group market;

82 (ii) a premium discount offered to employees of a small or large employer group in an  
83 amount that does not exceed federal limits on wellness program incentives; [or]

84 (iii) a combination of premium discounts offered to the employer group and the  
85 employees of an employer group, based on a wellness program, if:

86 (A) the premium discounts for the employer group comply with Subsection (3)(b)(i);

87 and

88 (B) the premium discounts for the employees of an employer group comply with  
89 Subsection (3)(b)(ii); or

90 (iv) premium discounts or credits towards deductibles or out-of-pocket costs for  
91 employees of an employer group, if the discounts or credits are for a savings reward program  
92 under Section 31A-22-645; or

93 (c) receiving premiums under an installment payment plan.

94 (4) Items not prohibited by Subsection (1) include a producer, consultant, or other  
95 licensee, or an officer or employee of a licensee, either directly or through a third party:

96 (a) engaging in a usual kind of social courtesy if receipt of the social courtesy is not  
97 conditioned on a quote or the purchase of a particular insurance product;

98 (b) extending credit on a premium to the insured:

99 (i) without interest, for no more than 90 days from the effective date of the insurance  
100 contract;

101 (ii) for interest that is not less than the legal rate under Section 15-1-1, on the unpaid  
102 balance after the time period described in Subsection (4)(b)(i); and

103 (iii) except that an installment or payroll deduction payment of premiums on an  
104 insurance contract issued under an insurer's mass marketing program is not considered an  
105 extension of credit for purposes of this Subsection (4)(b);

106 (c) preparing or conducting a survey that:

107 (i) is directly related to an accident and health insurance policy purchased from the  
108 licensee; or

109 (ii) is used by the licensee to assess the benefit needs and preferences of insureds,  
110 employers, or employees directly related to an insurance product sold by the licensee;

111 (d) providing limited human resource services that are directly related to an insurance  
112 product sold by the licensee, including:

113 (i) answering questions directly related to:

114 (A) an employee benefit offering or administration, if the insurance product purchased  
115 from the licensee is accident and health insurance or health insurance; and

116 (B) employment practices liability, if the insurance product offered by or purchased  
117 from the licensee is property or casualty insurance; and

118 (ii) providing limited human resource compliance training and education directly

- 119 pertaining to an insurance product purchased from the licensee;
- 120 (e) providing the following types of information or guidance:
- 121 (i) providing guidance directly related to compliance with federal and state laws for an  
122 insurance product purchased from the licensee;
- 123 (ii) providing a workshop or seminar addressing an insurance issue that is directly  
124 related to an insurance product purchased from the licensee; or
- 125 (iii) providing information regarding:
- 126 (A) employee benefit issues;
- 127 (B) directly related insurance regulatory and legislative updates; or
- 128 (C) similar education about an insurance product sold by the licensee and how the  
129 insurance product interacts with tax law;
- 130 (f) preparing or providing a form that is directly related to an insurance product  
131 purchased from, or offered by, the licensee;
- 132 (g) preparing or providing documents directly related to a premium only cafeteria plan  
133 within the meaning of Section 125, Internal Revenue Code, or a flexible spending account, but  
134 not providing ongoing administration of a flexible spending account;
- 135 (h) providing enrollment and billing assistance, including:
- 136 (i) providing benefit statements or new hire insurance benefits packages; and
- 137 (ii) providing technology services such as an electronic enrollment platform or  
138 application system;
- 139 (i) communicating coverages in writing and in consultation with the insured and  
140 employees;
- 141 (j) providing employee communication materials and notifications directly related to an  
142 insurance product purchased from a licensee;
- 143 (k) providing claims management and resolution to the extent permitted under the  
144 licensee's license;
- 145 (l) providing underwriting or actuarial analysis or services;
- 146 (m) negotiating with an insurer regarding the placement and pricing of an insurance  
147 product;
- 148 (n) recommending placement and coverage options;
- 149 (o) providing a health fair or providing assistance or advice on establishing or

150 operating a wellness program, but not providing any payment for or direct operation of the  
151 wellness program;

152 (p) providing COBRA and Utah mini-COBRA administration, consultations, and other  
153 services directly related to an insurance product purchased from the licensee;

154 (q) assisting with a summary plan description, including providing a summary plan  
155 description wraparound;

156 (r) providing information necessary for the preparation of documents directly related to  
157 the Employee Retirement Income Security Act of 1974, 29 U.S.C. Sec. 1001, et seq., as  
158 amended;

159 (s) providing information or services directly related to the Health Insurance Portability  
160 and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 1936, as amended, such as services  
161 directly related to health care access, portability, and renewability when offered in connection  
162 with accident and health insurance sold by a licensee;

163 (t) sending proof of coverage to a third party with a legitimate interest in coverage;

164 (u) providing information in a form approved by the commissioner and directly related  
165 to determining whether an insurance product sold by the licensee meets the requirements of a  
166 third party contract that requires or references insurance coverage;

167 (v) facilitating risk management services directly related to property and casualty  
168 insurance products sold or offered for sale by the licensee, including:

169 (i) risk management;

170 (ii) claims and loss control services;

171 (iii) risk assessment consulting, including analysis of:

172 (A) employer's job descriptions; or

173 (B) employer's safety procedures or manuals; and

174 (iv) providing information and training on best practices;

175 (w) otherwise providing services that are legitimately part of servicing an insurance  
176 product purchased from a licensee; and

177 (x) providing other directly related services approved by the department.

178 (5) An inducement prohibited under Subsection (1) includes a producer, consultant, or  
179 other licensee, or an officer or employee of a licensee:

180 (a) (i) providing a rebate, except as permitted under Section [31A-22-645](#);

181 (ii) paying the salary of an employee of a person who purchases an insurance product  
182 from the licensee; or

183 (iii) if the licensee is an insurer, or a third party administrator who contracts with an  
184 insurer, paying the salary for an onsite staff member to perform an act prohibited under  
185 Subsection (5)(b)(xii); or

186 (b) except as provided in Subsection (10), engaging in one or more of the following,  
187 unless a fee is paid in accordance with Subsection (8):

188 (i) performing background checks of prospective employees;

189 (ii) providing legal services by a person licensed to practice law;

190 (iii) performing drug testing that is directly related to an insurance product purchased  
191 from the licensee;

192 (iv) preparing employer or employee handbooks, except that a licensee may:

193 (A) provide information for a medical benefit section of an employee handbook;

194 (B) provide information for the section of an employee handbook directly related to an  
195 employment practices liability insurance product purchased from the licensee; or

196 (C) prepare or print an employee benefit enrollment guide;

197 (v) providing job descriptions, postings, and applications for a person;

198 (vi) providing payroll services;

199 (vii) providing performance reviews or performance review training;

200 (viii) providing union advice;

201 (ix) providing accounting services;

202 (x) providing data analysis information technology programs, except as provided in  
203 Subsection (4)(h)(ii);

204 (xi) providing administration of health reimbursement accounts or health savings  
205 accounts; or

206 (xii) if the licensee is an insurer, or a third party administrator who contracts with an  
207 insurer, the insurer issuing an insurance policy that lists in the insurance policy one or more of  
208 the following prohibited benefits:

209 (A) performing background checks of prospective employees;

210 (B) providing legal services by a person licensed to practice law;

211 (C) performing drug testing that is directly related to an insurance product purchased

212 from the insurer;

213 (D) preparing employer or employee handbooks;

214 (E) providing job descriptions postings, and applications;

215 (F) providing payroll services;

216 (G) providing performance reviews or performance review training;

217 (H) providing union advice;

218 (I) providing accounting services;

219 (J) providing discrimination testing; or

220 (K) providing data analysis information technology programs.

221 (6) A producer, consultant, or other licensee or an officer or employee of a licensee  
222 shall itemize and bill separately from any other insurance product or service offered or  
223 provided under Subsection (5)(b).

224 (7) (a) A de minimis gift or meal not to exceed a fair market value of \$100 for each  
225 individual receiving the gift or meal is presumed to be a social courtesy not conditioned on a  
226 quote or purchase of a particular insurance product for purposes of Subsection (4)(a).

227 (b) Notwithstanding Subsection (4)(a), a de minimis gift or meal not to exceed \$10  
228 may be conditioned on receipt of a quote of a particular insurance product.

229 (8) If as provided under Subsection (5)(b) a producer, consultant, or other licensee is  
230 paid a fee to provide an item listed in Subsection (5)(b), the licensee shall comply with  
231 Subsection 31A-23a-501(2) in charging the fee, except that the fee paid for the item shall equal  
232 or exceed the fair market value of the item.

233 (9) For purposes of this section, "fair market value" means what a knowledgeable,  
234 willing, and unpressured buyer would pay for a product or service to a knowledgeable, willing,  
235 and unpressured seller in the open market without any connection to other goods, services,  
236 including insurance services, or contracts, including insurance contracts, sold by the producer,  
237 consultant, or other licensee, or an officer or employee of the licensee.

238 (10) Notwithstanding any other provision of this section, a producer, consultant, or  
239 other licensee, or an officer or employee of a licensee, may offer, make available, or provide  
240 goods or services, whether or not the goods or services are directly related to an insurance  
241 contract, for free or for less than fair market value if:

242 (a) the goods or services are available on the same terms to the general public;

243 (b) receipt of the goods or services is not contingent upon the immediate or future  
244 purchase, continuation, or termination of an insurance product or receipt of a quote for an  
245 insurance product; and

246 (c) the producer, consultant, or other licensee, or an officer or an employee of a  
247 licensee, does not retroactively charge for the goods or services based on an event subsequent  
248 to receipt of the goods or services.

249 (11) (a) A producer, consultant, or other licensee, or an officer or employee of a  
250 licensee, that provides or offers goods or services that are not described in Subsection (3) or (4)  
251 for free or less than fair market value shall conspicuously disclose to the recipient before the  
252 purchase of insurance, receipt of a quote for insurance, or designation of an agent of record,  
253 that receipt of the goods or services is not contingent on the purchase, continuation, or  
254 termination of an insurance product or receiving a quote for an insurance product.

255 (b) A producer, consultant, or other licensee, or an officer or employee of the licensee,  
256 may comply with this Subsection (11) by an oral or written disclosure.