

1 **ACCESS TO HEALTH CARE FACILITIES**

2 1999 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Peter C. Knudson**

5 AN ACT RELATING TO HEALTH; DEFINING TERMS; REQUIRING THAT RURAL
6 HEALTH CARE SERVICES AND ESSENTIAL HEALTH CARE SERVICES BE ACCESSIBLE
7 TO NONAFFILIATED MANAGED CARE ORGANIZATIONS; REQUIRING THAT
8 DISCOUNT PRICES FOR RURAL HEALTH CARE SERVICES AND ESSENTIAL HEALTH
9 CARE SERVICES BE EXTENDED TO NONAFFILIATED MANAGED CARE
10 ORGANIZATIONS; IMPOSING A REPORTING REQUIREMENT; ADDING MEMBERS TO
11 THE HEALTH FACILITY COMMITTEE; EXTENDING RULEMAKING AUTHORITY;
12 ESTABLISHING ENFORCEMENT PROVISIONS, INCLUDING A PRIVATE RIGHT OF
13 ACTION; PROVIDING A PURPOSE STATEMENT; MAKING TECHNICAL CHANGES; AND
14 PROVIDING AN EFFECTIVE DATE.

15 This act affects sections of Utah Code Annotated 1953 as follows:

16 AMENDS:

17 **26-21-2**, as last amended by Chapters 13 and 192, Laws of Utah 1998

18 **26-21-5**, as last amended by Chapter 209, Laws of Utah 1997

19 **26-21-6**, as last amended by Chapter 169, Laws of Utah 1998

20 **26-21-11**, as last amended by Chapter 209, Laws of Utah 1997

21 **31A-8-105**, as last amended by Chapter 329, Laws of Utah 1998

22 ENACTS:

23 **26-21-2.3**, Utah Code Annotated 1953

24 This act enacts uncodified material.

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

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

27 **26-21-2. Definitions.**

28 As used in this chapter:

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

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

32 (a) dressing;

33 (b) eating;

34 (c) grooming;

35 (d) bathing;

36 (e) toileting;

37 (f) ambulation;

38 (g) transferring; and

39 (h) self-administration of medication.

40 (3) "Affiliated managed care organization" means a managed care organization that is
41 under the same or substantially the same ownership or control as an urban or rural hospital.

42 [~~3~~] (4) "Ambulatory surgical facility" means a freestanding facility, which provides
43 surgical services to patients not requiring hospitalization.

44 [~~4~~] (5) "Assistance with activities of daily living" means providing of or arranging for
45 the provision of assistance with activities of daily living.

46 [~~5~~] (6) (a) "Assisted living facility" means:

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

49 (A) require protected living arrangements; and

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

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

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

58 [~~a~~] (i) specified services of intermittent nursing care;

59 [(b)] (ii) administration of medication; and

60 [(c)] (iii) support services promoting residents' independence and self sufficiency.

61 [(6)] (7) "Birthing center" means a freestanding facility, receiving maternal clients and
62 providing care during pregnancy, delivery, and immediately after delivery.

63 [(7)] (8) "Committee" means the Health Facility Committee created in Section 26-1-7[-],
64 which shall include, after July 1, 1999:

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

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

67 [(8)] (9) "Consumer" means any person not primarily engaged in the provision of health
68 care to individuals or in the administration of facilities or institutions in which such care is
69 provided and who does not hold a fiduciary position, or have a fiduciary interest in any entity
70 involved in the provision of health care, and does not receive, either directly or through his spouse,
71 more than 1/10 of his gross income from any entity or activity relating to health care.

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

74 [(9)] (11) "End stage renal disease facility" means a facility which furnishes staff-assisted
75 kidney dialysis services, self-dialysis services, or home-dialysis services on an outpatient basis.

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

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

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

82 [(10)] (13) "Freestanding" means existing independently or physically separated from
83 another health care facility by fire walls and doors and administrated by separate staff with separate
84 records.

85 [(11)] (14) "General acute hospital" means a facility which provides diagnostic,
86 therapeutic, and rehabilitative services to both inpatients and outpatients by or under the
87 supervision of physicians.

88 [(12)] (15) "Governmental unit" means the state, or any county, municipality, or other
89 political subdivision or any department, division, board, or agency of the state, a county,

90 municipality, or other political subdivision.

91 ~~[(13)]~~ (16) (a) "Health care facility" means general acute hospitals, specialty hospitals,
92 home health agencies, hospices, nursing care facilities, residential-assisted living facilities, birthing
93 centers, ambulatory surgical facilities, small health care facilities, abortion clinics, facilities owned
94 or operated by health maintenance organizations, end stage renal disease facilities, and any other
95 health care facility which the committee designates by rule.

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

98 ~~[(14)]~~ (17) "Health maintenance organization" means an organization, organized under the
99 laws of any state which:

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

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

104 (ii) is compensated, except for copayments, for the provision of the basic health services
105 listed in Subsection (14)(b)(i) to enrolled participants by a payment which is paid on a periodic
106 basis without regard to the date the health services are provided and which is fixed without regard
107 to the frequency, extent, or kind of health services actually provided; and

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

111 ~~[(15)]~~ (18) (a) "Home health agency" means an agency, organization, or facility or a
112 subdivision of an agency, organization, or facility which employs two or more direct care staff
113 persons who provide licensed nursing services, therapeutic services of physical therapy, speech
114 therapy, occupational therapy, medical social services, or home health aide services on a visiting
115 basis.

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

118 ~~[(16)]~~ (19) "Hospice" means a program of care for the terminally ill and their families
119 which occurs in a home or in a health care facility and which provides medical, palliative,
120 psychological, spiritual, and supportive care and treatment.

121 (20) "Managed care organization" includes:

122 (a) a preferred provider organization;

123 (b) a third-party administrator;

124 (c) a network administrator;

125 (d) a health maintenance organization; and

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

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

131 [(17)] (22) "Nursing care facility" means a health care facility, other than a general acute
132 or specialty hospital, constructed, licensed, and operated to provide patient living accommodations,
133 24-hour staff availability, and at least two of the following patient services:

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

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

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

141 [(18)] (23) "Person" means any individual, firm, partnership, corporation, company,
142 organization, association, or joint stock association, and the legal successor thereof.

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

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

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

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

149 [(19)] (25) "Resident" means a person 21 years of age or older who:

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

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

154 (26) "Rural hospital" means a general acute hospital or a specialty hospital located in a
155 county of the third, fourth, fifth, or sixth class, as defined in Section 17-16-13.

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

158 [~~(20)~~] (28) "Small health care facility" means a four to sixteen bed facility that provides
159 licensed health care programs and services to residents who generally do not need continuous
160 nursing care or supervision.

161 [~~(21)~~] (29) "Specialty hospital" means a facility which provides specialized diagnostic,
162 therapeutic, or rehabilitative services in the recognized specialty or specialties for which the
163 hospital is licensed.

164 [~~(22)~~] (30) "Substantial compliance" means in a department survey of a licensee, the
165 department determines there is an absence of deficiencies which would harm the physical health,
166 mental health, safety, or welfare of patients or residents of a licensee.

167 (31) "Third party administrator" means any person who collects charges or premiums
168 from, or who, for consideration, adjusts or settles claims of residents of the state in connection with
169 health insurance coverage.

170 (32) "Urban hospital" means a general acute hospital or a specialty hospital located in a
171 county of the first or second class, as defined in Section 17-16-13.

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

173 **26-21-2.3. Pricing requirements of rural and urban hospitals -- Access to hospitals**
174 **-- Definitions -- Rulemaking authority -- Cost reporting.**

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

178 (2) An urban hospital shall provide access to an essential health care service to the
179 participating consumers of any managed care organization.

180 (3) An urban hospital that provides a discount price to an affiliated managed care
181 organization for an essential health care service shall offer the same discount price on the same
182 basis to any other managed care organization.

183 (4) If a rural or urban hospital offers a discount price to a managed care organization based
184 on the volume of participating consumers, the hospital shall offer the same discount price on the
185 same basis to any other managed care organization.

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

192 (6) An urban or rural hospital that provides a service that is subject to this section shall:
193 (a) annually certify to the department that the hospital has complied with this section; and
194 (b) provide timely and accurate information on the cost and price of a service upon the
195 request of the department.

196 (7) (a) The department shall, by rule, designate each essential health care service in the
197 state.

198 (b) The department may:

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

200 (ii) audit an urban or rural hospital that provides a service that is subject to this section to
201 determine compliance and, if necessary, take disciplinary action.

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

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

205 (b) contractual damages that are otherwise available;

206 (c) other civil remedies that are not based on this chapter, including Title 13, Chapter 5,

207 Unfair Practices Act, and Title 76, Chapter 10, Part 9, Trade and Commerce; and

208 (d) other criminal penalties that are not based on this chapter.

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

210 **26-21-5. Duties of committee.**

211 The committee shall:

212 (1) make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking

213 Act:

- 214 (a) for the licensing of health-care facilities; [~~and~~]
215 (b) requiring the submission of architectural plans and specifications for any proposed new
216 health-care facility or renovation to the department for review; and
217 (c) requiring compliance with Section 26-21-2.3;
218 (2) approve the information for applications for licensure pursuant to Section 26-21-9;
219 (3) advise the department as requested concerning the interpretation and enforcement of
220 the rules established under this chapter; and
221 (4) advise, consult, cooperate with, and provide technical assistance to other agencies of
222 the state and federal government, and other states and affected groups or persons in carrying out
223 the purposes of this chapter.

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

225 **26-21-6. Duties of department.**

226 (1) The department shall:

227 (a) enforce rules established pursuant to this chapter;

228 (b) authorize an agent of the department to conduct inspections of health-care facilities
229 pursuant to this chapter;

230 (c) collect information authorized by the committee that may be necessary to ensure that
231 adequate health-care facilities are available to the public;

232 (d) collect information to ensure that all urban and rural hospitals comply with Section
233 26-21-2.3;

234 [~~(d)~~] (e) collect and credit fees for licenses as free revenue;

235 [~~(e)~~] (f) collect and credit fees for conducting plan reviews as dedicated credits;

236 [~~(f)~~] (g) designate an executive secretary from within the department to assist the
237 committee in carrying out its powers and responsibilities;

238 [~~(g)~~] (h) establish reasonable standards for criminal background checks by public and
239 private entities;

240 [~~(h)~~] (i) recognize those public and private entities which meet the standards established
241 in Subsection (1)(g); and

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

243 (2) The department may:

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

245 (b) review architectural plans and specifications of proposed health-care facilities or
246 renovations of health-care facilities to ensure that the plans and specifications conform to rules
247 established by the committee; and

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

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

251 **26-21-11. Violations -- Denial or revocation of license -- Restricting or prohibiting**
252 **new admissions -- Monitor.**

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

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

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

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

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

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

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

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

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

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

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

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

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

272 Section 6. Section **31A-8-105** is amended to read:

273 **31A-8-105. General powers of organizations.**

274 Organizations may:

275 (1) buy, sell, lease, encumber, construct, renovate, operate, or maintain hospitals, health

276 care clinics, other health care facilities, and other real and personal property incidental to and
277 reasonably necessary for the transaction of the business and for the accomplishment of the
278 purposes of the organization;

279 (2) furnish health care through providers which are under contract with the organization;

280 (3) contract with insurance companies licensed in this state or with health service
281 corporations authorized to do business in this state for insurance, indemnity, or reimbursement for
282 the cost of health care furnished by the organization;

283 (4) offer to its enrollees, in addition to health care, insured indemnity benefits, but only
284 for emergency care, out-of-area coverage, unusual or infrequently used health services as defined
285 in Section 31A-8-101, and adoption benefits as provided in Section 31A-22-610.1;

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

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

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

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

295 **Section 7. Purpose statement.**

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

301 **Section 8. Effective date.**

302 This act takes effect on July 1, 1999.

Legislative Review Note**as of 2-19-99 12:38 PM**

This legislation raises the following constitutional or statutory concerns:

This bill regulates general acute and specialty hospitals by requiring certain discount prices be offered to nonaffiliated managed care organizations. The bill, like other state laws of general applicability, may have an indirect affect on the relative price of insurance policies. This, however, would appear to be a permissible state regulation, notwithstanding the federal Employee Retirement Income Security Act of 1974, in view of the general principles set forth by the United States Supreme Court in *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers*, 514 U.S. 645 (1995) and *De Buono v. NYSA-ILA Medical and Clinical Services Fund*, 520 U.S. 806 (1997).

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