

Representative Mike Winder proposes the following substitute bill:

MEDICAL BILLING AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mike Winder

Senate Sponsor: Luz Escamilla

LONG TITLE

General Description:

This bill limits when a health care provider may seek payment for a medical service or procedure from an individual or a health benefit plan.

Highlighted Provisions:

This bill:

- ▶ prohibits a health care provider from seeking payment for a medical service or procedure from an individual or health benefit plan under certain circumstances;
- and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

13-11-4, as last amended by Laws of Utah 2021, Chapters 138 and 154

31A-26-301.5, as last amended by Laws of Utah 2018, Chapter 203

ENACTS:



13-59-202, Utah Code Annotated 1953

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

Section 1. Section 13-11-4 is amended to read:

13-11-4. Deceptive act or practice by supplier.

(1) A deceptive act or practice by a supplier in connection with a consumer transaction violates this chapter whether it occurs before, during, or after the transaction.

(2) Without limiting the scope of Subsection (1), a supplier commits a deceptive act or practice if the supplier knowingly or intentionally:

(a) indicates that the subject of a consumer transaction has sponsorship, approval, performance characteristics, accessories, uses, or benefits, if ~~[it has not]~~ the subject of the consumer transaction does not;

(b) indicates that the subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if ~~[it is not]~~ the subject of the consumer transaction is not;

(c) indicates that the subject of a consumer transaction:

(i) is new[, or] unused, if ~~[it is not, or]~~ the subject of the consumer transaction is not; or

(ii) has been used to an extent that is materially different from ~~[the fact]~~ the extent to which the subject of the consumer transaction has actually been used;

(d) indicates that the subject of a consumer transaction is available to the consumer for a reason that does not exist, including any of the following reasons falsely used in an advertisement:

(i) "going out of business";

(ii) "bankruptcy sale";

(iii) "lost our lease";

(iv) "building coming down";

(v) "forced out of business";

(vi) "final days";

(vii) "liquidation sale";

(viii) "fire sale";

(ix) "quitting business"; or

(x) an expression similar to any of the expressions in Subsections (2)(d)(i) through

(ix);

(e) indicates that the subject of a consumer transaction has been supplied in accordance with a previous representation, if ~~it~~ the subject of the consumer transaction has not;

(f) indicates that the subject of a consumer transaction will be supplied in greater quantity than the supplier intends;

(g) indicates that replacement or repair is needed, if ~~it~~ replacement or repair is not needed;

(h) indicates that a specific price advantage exists, if ~~it~~ the specific price advantage does not exist;

(i) indicates that the supplier has a sponsorship, approval, or affiliation the supplier does not have;

(j) (i) indicates that a consumer transaction involves or does not involve a warranty, a disclaimer of warranties, particular warranty terms, or other rights, remedies, or obligations, if the representation is false; or

(ii) fails to honor a warranty or a particular warranty term;

(k) indicates that the consumer will receive a rebate, discount, or other benefit as an inducement for entering into a consumer transaction in return for giving the supplier the names of prospective consumers or otherwise helping the supplier to enter into other consumer transactions, if receipt of the benefit is contingent on an event occurring after the consumer enters into the transaction;

(l) after receipt of payment for goods or services, fails to ship the goods or furnish the services within the time advertised or otherwise represented or, if no specific time is advertised or represented, fails to ship the goods or furnish the services within 30 days, unless within the applicable time period the supplier provides the buyer with the option to:

(i) cancel the sales agreement and receive a refund of all previous payments to the supplier if the refund is mailed or delivered to the buyer within 10 business days after the day on which the seller receives written notification from the buyer of the buyer's intent to cancel the sales agreement and receive the refund; or

(ii) extend the shipping date to a specific date proposed by the supplier;

(m) except as provided in Subsection (3)(b), fails to furnish a notice meeting the requirements of Subsection (3)(a) of the purchaser's right to cancel a direct solicitation sale

88 within three business days of the time of purchase if:

89 (i) the sale is made other than at the supplier's established place of business pursuant to
90 the supplier's personal contact, whether through mail, electronic mail, facsimile transmission,
91 telephone, or any other form of direct solicitation; and

92 (ii) the sale price exceeds \$25;

93 (n) promotes, offers, or grants participation in a pyramid scheme as defined under Title
94 76, Chapter 6a, Pyramid Scheme Act;

95 (o) represents that the funds or property conveyed in response to a charitable
96 solicitation will be donated or used for a particular purpose or will be donated to or used by a
97 particular organization, if the representation is false;

98 (p) if a consumer indicates the consumer's intention of making a claim for a motor
99 vehicle repair against the consumer's motor vehicle insurance policy:

100 (i) commences the repair without first giving the consumer oral and written notice of:

101 (A) the total estimated cost of the repair; and

102 (B) the total dollar amount the consumer is responsible to pay for the repair, which
103 dollar amount may not exceed the applicable deductible or other copay arrangement in the
104 consumer's insurance policy; or

105 (ii) requests or collects from a consumer an amount that exceeds the dollar amount a
106 consumer was initially told the consumer was responsible to pay as an insurance deductible or
107 other copay arrangement for a motor vehicle repair under Subsection (2)(p)(i), even if that
108 amount is less than the full amount the motor vehicle insurance policy requires the insured to
109 pay as a deductible or other copay arrangement, unless:

110 (A) the consumer's insurance company denies that coverage exists for the repair, in
111 which case, the full amount of the repair may be charged and collected from the consumer; or

112 (B) the consumer misstates, before the repair is commenced, the amount of money the
113 insurance policy requires the consumer to pay as a deductible or other copay arrangement, in
114 which case, the supplier may charge and collect from the consumer an amount that does not
115 exceed the amount the insurance policy requires the consumer to pay as a deductible or other
116 copay arrangement;

117 (q) includes in any contract, receipt, or other written documentation of a consumer
118 transaction, or any addendum to any contract, receipt, or other written documentation of a

consumer transaction, any confession of judgment or any waiver of any of the rights to which a consumer is entitled under this chapter;

(r) charges a consumer for a consumer transaction or a portion of a consumer transaction that has not previously been agreed to by the consumer;

(s) solicits or enters into a consumer transaction with a person who lacks the mental ability to comprehend the nature and consequences of:

(i) the consumer transaction; or

(ii) the person's ability to benefit from the consumer transaction;

(t) solicits for the sale of a product or service by providing a consumer with an unsolicited check or negotiable instrument the presentment or negotiation of which obligates the consumer to purchase a product or service, unless the supplier is:

(i) a depository institution under Section 7-1-103;

(ii) an affiliate of a depository institution; or

(iii) an entity regulated under Title 7, Financial Institutions Act;

(u) sends an unsolicited mailing to a person that appears to be a billing, statement, or request for payment for a product or service the person has not ordered or used, or that implies that the mailing requests payment for an ongoing product or service the person has not received or requested;

(v) issues a gift certificate, instrument, or other record in exchange for payment to provide the bearer, upon presentation, goods or services in a specified amount without printing in a readable manner on the gift certificate, instrument, packaging, or record any expiration date or information concerning a fee to be charged and deducted from the balance of the gift certificate, instrument, or other record;

(w) misrepresents the geographical origin or location of the supplier's business;

(x) fails to comply with the restrictions of Section 15-10-201 on automatic renewal provisions;

(y) violates Section 13-59-201 or Section 13-59-202; or

(z) fails to comply with the restrictions of Subsection 13-54-202(2).

(3) (a) The notice required by Subsection (2)(m) shall:

(i) be a conspicuous statement written in dark bold with at least 12-point type on the first page of the purchase documentation; and

(ii) read as follows: "YOU, THE BUYER, MAY CANCEL THIS CONTRACT AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY (or time period reflecting the supplier's cancellation policy but not less than three business days) AFTER THE DATE OF THE TRANSACTION OR RECEIPT OF THE PRODUCT, WHICHEVER IS LATER."

(b) A supplier is exempt from the requirements of Subsection (2)(m) if the supplier's cancellation policy:

(i) is communicated to the buyer; and

(ii) offers greater rights to the buyer than Subsection (2)(m).

(4) (a) A gift certificate, instrument, or other record that does not print an expiration date in accordance with Subsection (2)(v) does not expire.

(b) A gift certificate, instrument, or other record that does not include printed information concerning a fee to be charged and deducted from the balance of the gift certificate, instrument, or other record is not subject to the charging and deduction of the fee.

(c) Subsections (2)(v) and (4)(b) do not apply to a gift certificate, instrument, or other record useable at multiple, unaffiliated sellers of goods or services if an expiration date is printed on the gift certificate, instrument, or other record.

Section 2. Section **13-59-202** is enacted to read:

13-59-202. Consumer medical billing safe harbor.

(1) As used in this section:

(a) "Billing period" means the period between the day of completion and the day that is 90 days after the day of completion.

(b) "Day of completion" means:

(i) the day a patient's service or procedure is completed; or

(ii) the anticipated day a service or procedure would have been completed if:

(A) upon completion of the service or procedure, the service or procedure would normally be billed as global or bundled health care; and

(B) the service or procedure was not completed.

(c) "Insured patient" means a patient for whom a responsible party has provided proof of coverage under a health benefit plan.

(d) "Patient" means an individual receiving the service or procedure.

(e) "Responsible party" means:

(i) the patient;

(ii) if the patient is a minor, the minor's parent or guardian; or

(iii) another individual designated by the patient.

(2) (a) For an insured patient, a health care provider or the health care provider's representative may not, after the billing period expires:

(i) file a claim for the service or procedure with the patient's health benefit plan; or

(ii) attempt to collect payment for the service or procedure.

(b) Subsection (2)(a) does not apply if a health care provider can show the health care provider or the health care provider's representative filed a claim with any health benefit plan on record with the health care provider within the billing period.

(3) (a) For a patient who is not an insured patient, a health care provider or the health care provider's representative may not attempt to collect payment for the service or procedure after the billing period expires.

(b) Subsection (3)(a) does not apply if a health care provider can show the health care provider or the health care provider's representative sent a bill to the responsible party's last known mailing or email address within the billing period.

(4) This section does not apply to any claim submitted to or by:

(a) the state Medicaid program; or

(b) the Medicare program.

Section 3. Section **31A-26-301.5** is amended to read:

31A-26-301.5. Health care claims practices.

(1) (a) Except as provided in Section [31A-8-407](#), an insured retains ultimate responsibility for paying for health care services the insured receives.

(b) If a health care service is covered by one or more individual or group health insurance policies, all insurers covering the insured have the responsibility to pay valid health care claims in a timely manner according to the terms and limits specified in the policies.

(2) ~~[(a)]~~ Subject to Section [13-59-202](#) and Section [31A-22-610.1](#), a health care provider may:

~~[(a) except as provided in Section [31A-22-610.1](#);~~

(a) bill and collect for any deductible, copayment, or uncovered service; and

(b) bill an insured for services covered by health insurance policies or otherwise notify the insured of the expenses covered by the policies.

(3) [~~Beginning October 31, 1992, all~~] All insurers covering the insured shall notify the insured of payment and the amount of payment made to the health care provider.

(4) A health care provider shall return to an insured any amount the insured overpaid, including interest that begins accruing 90 days after the date of the overpayment, if:

(a) the insured has multiple insurers with whom the health care provider has contracts that cover the insured; and

(b) the health care provider becomes aware that the health care provider has received, for any reason, payment for a claim in an amount greater than the health care provider's contracted rate allows.

(5) (a) The commissioner shall make rules consistent with this chapter governing disclosure to the insured of customary charges by health care providers on the explanation of benefits as part of the claims payment process.

(b) These rules shall be limited to the form and content of the disclosures on the explanation of benefits, and shall include:

(i) a requirement that the method of determination of any specifically referenced customary charges and the range of the customary charges be disclosed; and

(ii) a prohibition against an implication that the health care provider is charging excessively if the health care provider is:

(A) a participating provider; and

(B) prohibited from balance billing.