LEGISLATIVE GENERAL COUNSEL
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H.B. 252
1st Sub. (Buff)

Representative Bradley G. Last proposes the following substitute bill:

1 # HEALTH INSURANCE ATHLETIC TRAINER SERVICES
2 # MODIFICATIONS

3 2020 GENERAL SESSION
4 STATE OF UTAH
5 **Chief Sponsor: Bradley G. Last**
6 Senate Sponsor: ____________
7

8 **LONG TITLE**
9 **General Description:**
10 This bill repeals exclusions of a licensed athletic trainer from certain provisions of the
11 insurance code.
12 **Highlighted Provisions:**
13 This bill:
14 ▸ repeals exclusions of a licensed athletic trainer from:
15 • the definition of "health care provider" in the Health Discount Program
16 Consumer Protection Act; and
17 • preferred provider nondiscrimination provisions for a managed care
18 organization; and
19 ▸ makes technical changes.
20 **Money Appropriated in this Bill:**
21 None
22 **Other Special Clauses:**
23 None
24 **Utah Code Sections Affected:**
25 AMENDS:

1st Sub. H.B. 252

26 **31A-8a-102**, as last amended by Laws of Utah 2018, Chapter 319
27 **31A-22-618**, as last amended by Laws of Utah 2019, Chapter 136
28 **31A-22-618.5**, as last amended by Laws of Utah 2017, Chapter 292
29 **31A-27a-403**, as last amended by Laws of Utah 2018, Chapters 281 and 391
30 **31A-45-303**, as last amended by Laws of Utah 2019, Chapter 193
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32 *Be it enacted by the Legislature of the state of Utah:*
33 Section 1. Section **31A-8a-102** is amended to read:
34 **31A-8a-102. Definitions.**
35 As used in this chapter:
36 (1) "Fee" means any periodic charge for use of a discount program.
37 (2) "Health care provider" means a health care provider as defined in Section
38 78B-3-403[~~, with the exception of "licensed athletic trainer,"~~] who:
39 (a) is practicing within the scope of the provider's license; and
40 (b) has agreed either directly or indirectly, by contract or any other arrangement with a
41 health discount program operator, to provide a discount to enrollees of a health discount
42 program.
43 (3) (a) "Health discount program" means a business arrangement or contract in which a
44 person pays fees, dues, charges, or other consideration in exchange for a program that provides
45 access to health care providers who agree to provide a discount for health care services.
46 (b) "Health discount program" does not include a program that does not charge a
47 membership fee or require other consideration from the member to use the program's discounts
48 for health services.
49 (4) "Health discount program marketer" means a person, including a private label
50 entity, that markets, promotes, sells, or distributes a health discount program but does not
51 operate a health discount program.
52 (5) "Health discount program operator" means a person that provides a health discount
53 program by entering into a contract or agreement, directly or indirectly, with a person or
54 persons in this state who agree to provide discounts for health care services to enrollees of the
55 health discount program and determines the charge to members.
56 (6) "Marketing" means making or causing to be made any communication that contains

57 information that relates to a product or contract regulated under this chapter.
58 (7) "Value-added benefit" means a discount offering with no additional charge made by
59 a health insurer or health maintenance organization that is licensed under this title, in
60 connection with existing contracts with the health insurer or health maintenance organization.
61 Section 2. Section **31A-22-618** is amended to read:
62 **31A-22-618. Nondiscrimination among health care professionals.**
63 (1) (a) Except as provided [~~under Section 31A-45-303 and~~] in Subsection (2), and
64 except as to insurers licensed under Chapter 8, Health Maintenance Organizations and Limited
65 Health Plans, no insurer may unfairly discriminate against any licensed class of health care
66 providers by structuring contract exclusions which exclude payment of benefits for the
67 treatment of any illness, injury, or condition by any licensed class of health care providers
68 when the treatment is within the scope of the licensee's practice and the illness, injury, or
69 condition falls within the coverage of the contract.
70 (b) Upon the written request of an insured alleging an insurer has violated this section,
71 the commissioner shall hold a hearing to determine if the violation exists.
72 (c) The commissioner may consolidate two or more related alleged violations into a
73 single hearing.
74 (2) (a) Coverage for licensed providers for behavioral analysis may be limited by an
75 insurer in accordance with Section 58-61-714.
76 (b) Nothing in this section prohibits an insurer from electing to provide coverage for
77 other licensed professionals whose scope of practice includes behavior analysis.
78 Section 3. Section **31A-22-618.5** is amended to read:
79 **31A-22-618.5. Coverage of insurance mandates imposed after January 1, 2009.**
80 (1) The purpose of this section is to increase the range of health benefit plans available
81 in the small group, small employer group, large group, and individual insurance markets.
82 (2) A health maintenance organization that is subject to Chapter 8, Health Maintenance
83 Organizations and Limited Health Plans:
84 (a) shall offer to potential purchasers at least one health benefit plan that is subject to
85 the requirements of Chapter 8, Health Maintenance Organizations and Limited Health Plans;
86 and
87 (b) may offer to a potential purchaser one or more health benefit plans that:

88 (i) are not subject to one or more of the following:
89 (A) the limitations on insured indemnity benefits in Subsection 31A-8-105(4);
90 (B) except as provided in Subsection (2)(b)(ii), basic health care services as defined in
91 Section 31A-8-101; or
92 (C) coverage mandates enacted after January 1, 2009 that are not required by federal
93 law, provided that the insurer offers one plan under Subsection (2)(a) that covers the mandate
94 enacted after January 1, 2009; and
95 (ii) when offering a health plan under this section, provide coverage for an emergency
96 medical condition as required by Section 31A-22-627.
97 (3) An insurer that offers a health benefit plan that is not subject to Chapter 8, Health
98 Maintenance Organizations and Limited Health Plans:
99 (a) may offer a health benefit plan that is not subject to Section 31A-22-618 and
100 Subsection [~~31A-45-303(3)(b)(iii)~~] <u>31A-45-303(4)</u>;
101 (b) when offering a health plan under this Subsection (3), shall provide coverage of
102 emergency care services as required by Section 31A-22-627; and
103 (c) is not subject to coverage mandates enacted after January 1, 2009 that are not
104 required by federal law, provided that an insurer offers one plan that covers a mandate enacted
105 after January 1, 2009.
106 (4) Section 31A-8-106 does not prohibit the offer of a health benefit plan under
107 Subsection (2)(b).
108 (5) (a) Any difference in price between a health benefit plan offered under Subsections
109 (2)(a) and (b) shall be based on actuarially sound data.
110 (b) Any difference in price between a health benefit plan offered under Subsection
111 (3)(a) shall be based on actuarially sound data.
112 (6) Nothing in this section limits the number of health benefit plans that an insurer may
113 offer.
114 Section 4. Section **31A-27a-403** is amended to read:
115 **31A-27a-403. Continuance of coverage -- Health maintenance organizations.**
116 (1) As used in this section:
117 (a) "Basic health care services" [~~is as~~] <u>means the same as that term is</u> defined in
118 Section 31A-8-101.

119 [(b) "Enrollee" is as defined in Section 31A-8-101.]
120 [(c)] (b) "Health care" [is as] means the same as that term is defined in Section
121 31A-1-301.
122 [(d)] (c) "Health maintenance organization" [is as] means the same as that term is
123 defined in Section 31A-8-101.
124 [(e)] (d) "Limited health plan" [is as] means the same as that term is defined in Section
125 31A-8-101.
126 [(f)] (e) (i) "Managed care organization" means an entity licensed by, or holding a
127 certificate of authority from, the department to furnish health care services or health insurance.
128 (ii) "Managed care organization" includes:
129 (A) a limited health plan;
130 (B) a health maintenance organization;
131 (C) a preferred provider organization;
132 (D) a fraternal benefit society; or
133 (E) an entity similar to an entity described in Subsections (1)[(f)](e)(ii)(A) through (D).
134 (iii) "Managed care organization" does not include:
135 (A) an insurer or other person that is eligible for membership in a guaranty association
136 under Chapter 28, Guaranty Associations;
137 (B) a mandatory state pooling plan;
138 (C) a mutual assessment company or an entity that operates on an assessment basis; or
139 (D) an entity similar to an entity described in Subsections (1)[(f)](e)(iii)(A) through
140 (C).
141 [(g)] (f) "Participating provider" means a provider who, under a contract with a
142 managed care organization authorized under Section 31A-8-407, agrees to provide health care
143 services to enrollees with an expectation of receiving payment:
144 (i) directly or indirectly, from the managed care organization; and
145 (ii) other than a copayment.
146 [(h)] (g) "Participating provider contract" means the agreement between a participating
147 provider and a managed care organization authorized under Section 31A-8-407.
148 [(i)] (h) "Preferred provider" means a provider who agrees to provide health care
149 services under an agreement authorized under Subsection 31A-45-303(2).

150 [(j)] (i) "Preferred provider contract" means the written agreement between a preferred
151 provider and a managed care organization authorized under Subsection 31A-45-303(2).
152 [(k)] (j) (i) Except as provided in Subsection (1)[(k)](j)(ii), "preferred provider
153 organization" means a person that:
154 (A) furnishes at a minimum, through a preferred provider, basic health care services to
155 an enrollee in return for prepaid periodic payments in an amount agreed to before the time
156 during which the health care may be furnished;
157 (B) is obligated to the enrollee to arrange for the services described in Subsection
158 (1)[(k)](j)(i)(A); and
159 (C) permits the enrollee to obtain health care services from a provider who is not a
160 preferred provider.
161 (ii) "Preferred provider organization" does not include:
162 (A) an insurer licensed under Chapter 7, Nonprofit Health Service Insurance
163 Corporations; or
164 (B) an individual who contracts to render professional or personal services that the
165 individual performs.
166 [(l)] (k) "Provider" [is as defined in Section 31A-8-101.] means any person who:
167 (i) furnishes health care directly to the enrollee; and
168 (ii) is licensed or otherwise authorized to furnish the health care in this state.
169 [(m)] (l) "Uncovered expenditure" means a cost of health care services that is covered
170 by an organization for which an enrollee is liable in the event of the managed care
171 organization's insolvency.
172 (2) The rehabilitator or liquidator may take one or more of the actions described in
173 Subsections (2)(a) through (g) to assure continuation of health care coverage for enrollees of an
174 insolvent managed care organization.
175 (a) (i) Subject to Subsection (2)(a)(ii), a rehabilitator or liquidator may require a
176 participating provider or preferred provider to continue to provide the health care services the
177 provider is required to provide under the provider's participating provider contract or preferred
178 provider contract until the earlier of:
179 (A) 90 days after the day on which the following is filed:
180 (I) a petition for rehabilitation; or

181 (II) a petition for liquidation; or
182 (B) the day on which the term of the contract ends.
183 (ii) A requirement by the rehabilitator or liquidator under Subsection (2)(a)(i) that a
184 participating provider or preferred provider continue to provide health care services under the
185 provider's participating provider contract or preferred provider contract expires when health
186 care coverage for all enrollees of the insolvent managed care organization is obtained from
187 another managed care organization or insurer.
188 (b) (i) Subject to Subsection (2)(b)(ii), a rehabilitator or liquidator may reduce the fees
189 a participating provider or preferred provider is otherwise entitled to receive from the managed
190 care organization under the provider's participating provider contract or preferred provider
191 contract during the time period in Subsection (2)(a)(i).
192 (ii) Notwithstanding Subsection (2)(b)(i), a rehabilitator or liquidator may not reduce a
193 fee to less than 75% of the regular fee set forth in the provider's participating provider contract
194 or preferred provider contract.
195 (iii) An enrollee shall continue to pay the same copayments, deductibles, and other
196 payments for services received from a participating provider or preferred provider that the
197 enrollee is required to pay before the day on which the following is filed:
198 (A) the petition for rehabilitation; or
199 (B) the petition for liquidation.
200 (c) A participating provider or preferred provider shall:
201 (i) accept the amounts specified in Subsection (2)(b) as payment in full; and
202 (ii) relinquish the right to collect additional amounts from the insolvent managed care
203 organization's enrollee.
204 (d) Subsections (2)(b) and (c) apply to the fees paid to a provider who agrees to
205 provide health care services to an enrollee but is not a preferred or participating provider.
206 (e) This Subsection (2)(e) applies to a managed care organization that is a health
207 maintenance organization for a delinquency proceeding under this chapter that is initiated
208 before May 8, 2018.
209 (i) A solvent health maintenance organization licensed under Chapter 8, Health
210 Maintenance Organizations and Limited Health Plans, shall extend to the enrollees of an
211 insolvent health maintenance organization all rights, privileges, and obligations of being an

212 enrollee in the accepting health maintenance organization:
213 (A) subject to Subsections (2)(e)(ii), (iii), and (v);
214 (B) upon notification from and subject to the direction of the rehabilitator or liquidator
215 of an insolvent health maintenance organization licensed under Chapter 8, Health Maintenance
216 Organizations and Limited Health Plans; and
217 (C) if the solvent health maintenance organization operates within a portion of the
218 insolvent health maintenance organization's service area.
219 (ii) Notwithstanding Subsection (2)(e)(i), the accepting health maintenance
220 organization shall give credit to an enrollee for any waiting period already satisfied under the
221 enrollee's contract with the insolvent health maintenance organization.
222 (iii) A health maintenance organization accepting an enrollee of an insolvent health
223 maintenance organization under Subsection (2)(e)(i) shall charge the enrollee the premiums
224 applicable to the existing business of the accepting health maintenance organization.
225 (iv) A health maintenance organization's obligation to accept an enrollee under
226 Subsection (2)(e)(i) is limited in number to the accepting health maintenance organization's pro
227 rata share of all health maintenance organization enrollees in this state, as determined after
228 excluding the enrollees of the insolvent insurer.
229 (v) (A) The rehabilitator or liquidator of an insolvent health maintenance organization
230 shall take those measures that are possible to ensure that no health maintenance organization is
231 required to accept more than its pro rata share of the adverse risk represented by the enrollees
232 of the insolvent health maintenance organization.
233 (B) If the methodology used by the rehabilitator or liquidator to assign an enrollee is
234 one that can be expected to produce a reasonably equitable distribution of adverse risk, that
235 methodology and its results are acceptable under this Subsection (2)(e)(v).
236 (vi) (A) Notwithstanding Section 31A-27a-402, the rehabilitator or liquidator may
237 require all solvent health maintenance organizations to pay for the covered claims incurred by
238 the enrollees of the insolvent health maintenance organization.
239 (B) As determined by the rehabilitator or liquidator, payments required under this
240 Subsection (2)(e)(vi) may:
241 (I) begin as of the day on which the following is filed:
242 (Aa) the petition for rehabilitation; or

243 (Bb) the petition for liquidation; and
244 (II) continue for a maximum period through the time all enrollees are assigned pursuant
245 to this section.
246 (C) If the rehabilitator or liquidator makes an assessment under this Subsection
247 (2)(e)(vi), the rehabilitator or liquidator shall assess each solvent health maintenance
248 organization its pro rata share of the total assessment based upon its premiums from the
249 previous calendar year.
250 (D) (I) A solvent health maintenance organization required to pay for covered claims
251 under this Subsection (2)(e)(vi) may file a claim against the estate of the insolvent health
252 maintenance organization.
253 (II) Any claim described in Subsection (2)(e)(vi)(D)(I), if allowed by the rehabilitator
254 or liquidator, shall share in any distributions from the estate of the insolvent health
255 maintenance organization as a Class 3 claim.
256 (f) (i) A rehabilitator or liquidator may transfer, through sale or otherwise, the group
257 and individual health care obligations of the insolvent managed care organization to one or
258 more other managed care organizations or other insurers, if those other managed care
259 organizations and other insurers:
260 (A) are licensed to provide the same health care services in this state that are held by
261 the insolvent managed care organization; or
262 (B) have a certificate of authority to provide the same health care services in this state
263 that is held by the insolvent managed care organization.
264 (ii) The rehabilitator or liquidator may combine group and individual health care
265 obligations of the insolvent managed care organization in any manner the rehabilitator or
266 liquidator considers best to provide for continuous health care coverage for the maximum
267 number of enrollees of the insolvent managed care organization.
268 (iii) If the terms of a proposed transfer of the same combination of group and
269 individual policy obligations to more than one other managed care organization or insurer are
270 otherwise equal, the rehabilitator or liquidator shall give preference to the transfer of the group
271 and individual policy obligations of an insolvent managed care organization as follows:
272 (A) from one category of managed care organization to another managed care
273 organization of the same category, as follows:

274 (I) from a limited health plan to a limited health plan;
275 (II) from a health maintenance organization to a health maintenance organization;
276 (III) from a preferred provider organization to a preferred provider organization;
277 (IV) from a fraternal benefit society to a fraternal benefit society; and
278 (V) from an entity similar to an entity described in this Subsection (2)(f)(iii)(A) to a
279 category that is similar;
280 (B) from one category of managed care organization to another managed care
281 organization, regardless of the category of the transferee managed care organization; and
282 (C) from a managed care organization to a nonmanaged care provider of health care
283 coverage, including insurers.
284 (g) If an insolvent managed care organization has required surplus, a rehabilitator or
285 liquidator may use the insolvent managed care organization's required surplus to continue to
286 provide coverage for the insolvent managed care organization's enrollees, including paying
287 uncovered expenditures.
288 Section 5. Section **31A-45-303** is amended to read:
289 **31A-45-303. Network provider contract provisions.**
290 (1) Managed care organizations may provide for enrollees to receive services or
291 reimbursement in accordance with this section.
292 (2) (a) Subject to restrictions under this section, a managed care organization may enter
293 into contracts with health care providers under which the health care providers agree to be a
294 network provider and supply services, at prices specified in the contracts, to enrollees.
295 (b) A network provider contract shall require the network provider to accept the
296 specified payment in [~~this~~] Subsection (2)(a) as payment in full, relinquishing the right to
297 collect amounts other than copayments, coinsurance, and deductibles from the enrollee.
298 (c) The insurance contract may reward the enrollee for selection of network providers
299 by:
300 (i) reducing premium rates;
301 (ii) reducing deductibles;
302 (iii) coinsurance;
303 (iv) other copayments; or
304 (v) any other reasonable manner.

305 (3) [(a)] When reimbursing for services of health care providers that are not network
306 providers, the managed care organization may:
307 [(i)] (a) make direct payment to the enrollee; and
308 [(ii)] (b) impose a deductible on coverage of health care providers not under contract.
309 [(b) (i) Subsections (3)(b)(iii) and (c) apply to a managed care organization licensed
310 under:]
311 [(A) Chapter 5, Domestic Stock and Mutual Insurance Corporations;]
312 [(B) Chapter 7, Nonprofit Health Service Insurance Corporations; or]
313 [(C) Chapter 14, Foreign Insurers; and]
314 [(ii) Subsections (3)(b)(iii) and (c) and Subsection (6)(b) do not apply to a managed
315 care organization licensed under Chapter 8, Health Maintenance Organizations and Limited
316 Health Plans.]
317 [(iii)] (4) (a) When selecting health care providers with whom to contract under
318 Subsection (2), a managed care organization [described in Subsection (3)(b)(i)] may not
319 unfairly discriminate between classes of health care providers, but may discriminate within a
320 class of health care providers, subject to [Subsection (6)] Subsections (7) and (8).
321 [(c)] (b) For purposes of this section, unfair discrimination between classes of health
322 care providers includes:
323 (i) refusal to contract with class members in reasonable proportion to the number of
324 insureds covered by the insurer and the expected demand for services from class members; and
325 (ii) refusal to cover procedures for one class of providers that are:
326 (A) commonly used by members of the class of health care providers for the treatment
327 of illnesses, injuries, or conditions;
328 (B) otherwise covered by the managed care organization; and
329 (C) within the scope of practice of the class of health care providers.
330 [(4)] (5) (a) Before the enrollee consents to the insurance contract, the managed care
331 organization shall fully disclose to the enrollee that the managed care organization has entered
332 into network provider contracts.
333 (b) The managed care organization shall provide sufficient detail on the network
334 provider contracts to permit the enrollee to agree to the terms of the insurance contract.
335 (c) The managed care organization shall provide at least the following information:

336 [(a)] (i) a list of the health care providers under contract, and if requested their business
337 locations and specialties;
338 [(b)] (ii) a description of the insured benefits, including deductibles, coinsurance, or
339 other copayments;
340 [(c)] (iii) a description of the quality assurance program required under Subsection
341 [(5)] (6); and
342 [(d)] (iv) a description of the adverse benefit determination procedures required under
343 Section 31A-22-629.
344 [(5)] (6) (a) A managed care organization using network provider contracts shall
345 maintain a quality assurance program for [assuring] ensuring that the care provided by the
346 network providers meets prevailing standards in the state.
347 (b) (i) The commissioner in consultation with the executive director of the Department
348 of Health may designate qualified persons to perform an audit of the quality assurance
349 program.
350 (ii) The auditors shall have full access to all records of the managed care organization
351 and the managed care organization's health care providers, including medical records of
352 individual patients.
353 (c) (i) The information contained in the medical records of individual patients shall
354 remain confidential.
355 (ii) All information, interviews, reports, statements, memoranda, or other data
356 furnished for purposes of the audit and any findings or conclusions of the auditors are
357 privileged.
358 (iii) The information is not subject to discovery, use, or receipt in evidence in any legal
359 proceeding except hearings before the commissioner concerning alleged violations of this
360 section.
361 [(6) (a)] (7) A health care provider or managed care organization may not discriminate
362 against a network provider for agreeing to a contract under Subsection (2).
363 [(b) (i) Subsections (6)(b) and (c) apply to a managed care organization that is
364 described in Subsection (3)(b)(i) and do not apply to a managed care organization described in
365 Subsection (3)(b)(ii).]
366 [(ii) A] (8) (a) Except as provided in Subsection (8)(b), a health care provider licensed

367 to treat an illness or injury within the scope of the health care provider's practice, that is willing
368 and able to meet the terms and conditions established by the managed care organization for
369 designation as a network provider, shall be able to apply for and receive the designation as a
370 network provider.
371 (b) Contract terms and conditions may include reasonable [limitations] limits on the
372 number of designated network providers based upon substantial objective and economic
373 grounds, or expected use of particular services based upon prior provider-patient profiles.
374 (c) Upon the written request of a provider excluded from a network provider contract,
375 the commissioner may hold a hearing to determine if the managed care organization's exclusion
376 of the provider is based on the criteria [set forth in] described in this Subsection [(6)(b)] (8).
377 (9) Subsections (4) and (8):
378 (a) apply to a managed care organization licensed under:
379 (i) Chapter 5, Domestic Stock and Mutual Insurance Corporations;
380 (ii) Chapter 7, Nonprofit Health Service Insurance Corporations; or
381 (iii) Chapter 14, Foreign Insurers; and
382 (b) do not apply to a managed care organization licensed under Chapter 8, Health
383 Maintenance Organizations and Limited Health Plans.
384 [(7)] (10) Nothing in this section [is to] may be construed as [to require] requiring a
385 managed care organization to offer a certain benefit or service as part of a health benefit plan.
386 [(8) Notwithstanding Subsection (2) or (6)(b), a managed care organization described
387 in Subsection (3)(b)(i) or third party administrator is not required to, but may, enter into a
388 contract with a licensed athletic trainer, licensed under Title 58, Chapter 40a, Athletic Trainer
389 Licensing Act.]