

HOSPITAL CREDENTIALING AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ralph Okerlund

House Sponsor: _____

LONG TITLE

General Description:

This bill amends the Health Code.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires a hospital or integrated health system to establish due process standards for a physician whose application for medical staff membership or privileges at the hospital has been denied or limited;
- ▶ prohibits a hospital or integrated health system from engaging in anticompetitive acts with regard to decisions relating to granting a physician medical staff membership or privileges;
- ▶ prohibits certain acts by a hospital or integrated health system; and
- ▶ provides a private right of action if a hospital violates the provisions of this act.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

26-21-28, Utah Code Annotated 1953



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

Section 1. Section **26-21-28** is enacted to read:

26-21-28. Hospital credentialing -- Due process -- Prohibition against economic credentialing.

(1) For purposes of this section:

(a) "Hospital" means a general acute hospital licensed under this chapter and an ambulatory surgical facility licensed under this chapter.

(b) "Integrated health system" is as defined in Section 13-5b-102.

(c) "Medical staff membership or privileges" includes:

(i) an initial application for medical staff membership or privileges; and

(ii) a re-application or request for a renewal of medical staff membership or privileges.

(d) "Physician" means a physician or osteopathic physician as defined in Section 58-67-102.

(2) (a) A hospital or integrated health system shall provide a physician with the due process required by this section before a hospital or integrated health system denies, limits, or terminates medical staff membership or privileges at a hospital.

(b) Due processes shall include:

(i) a statement, sent by certified mail, return receipt requested, or equivalent electronic communication that includes the information described in Subsections (2)(b)(ii) through (v);

(ii) a detailed explanation of the reasons for the proposed denial, limitation, or termination of medical staff membership or privileges;

(iii) notice of the physician's right to a full, fair, objective, and independent, in-person hearing at which the physician may challenge the proposed denial, limitation, or termination;

(iv) a reasonable opportunity to prepare for the hearing, which shall be no less than 60 days after the date of the communication required by Subsection (2)(b)(i); and

(v) notice that the decision resulting from the hearing may be appealed in state or federal court.

(3) A physician who receives an adverse decision subsequent to the hearing under Subsection (2)(b)(iv) may appeal the decision, de novo, in state or federal court.

(4) A hospital or integrated health system may not terminate, refuse to grant, or

59 otherwise limit medical staff privileges or membership based on a physician refusing:

60 (a) employment with the hospital or another entity affiliated with the integrated health
61 system; or

62 (b) to contract exclusively with the hospital, the hospital's affiliated hospitals, or the
63 integrated health system.

64 (5) A hospital or an entity affiliated with an integrated health system that employs
65 physicians shall adopt medical staff bylaws and policies that:

66 (a) include provisions described in Subsection (6); and

67 (b) do not discriminate with regard to the granting of privileges, medical staff
68 membership, or credentialing on the basis of whether a physician is:

69 (i) an employee of the hospital or an entity affiliated with an integrated health system;

70 (ii) a contracting physician with the hospital or an entity affiliated with the integrated
71 health system; or

72 (iii) on a provider panel for an insurer who is affiliated with the hospital or the
73 integrated health system.

74 (6) (a) A hospital or an entity affiliated with an integrated health system shall grant a
75 physician medical staff membership or privileges at a hospital based on the physician's
76 education, training, experience, and demonstrated current competence.

77 (b) In implementing the criteria described in this Subsection (6), a hospital or an
78 integrated health system shall formulate and apply reasonable, nondiscriminatory standards for
79 the evaluation of a physician's credentials. As part of its overall responsibility for the operation
80 of the hospital or integrated health system, the governing body of the hospital or integrated
81 health system shall ensure that decisions regarding hospital privileges and medical staff
82 membership are based on an objective evaluation of a physician's credentials, free of
83 anticompetitive intent or purpose. A committee or any other person who evaluates and
84 determines the qualifications of physician applicants for hospital privileges and medical staff
85 membership shall include physicians, who are currently licensed and practicing in the state in
86 the same specialty or subspecialty as the physician applicant, to help evaluate the physician
87 applicant's qualifications for hospital medical staff membership or privileges.

88 (c) A hospital or integrated health system shall not consider the following for purposes
89 of evaluating or determining qualifications of a physician for hospital medical staff

90 membership or privileges:

91 (i) a physician's decision to advertise, decrease fees, or engage in other competitive acts
92 intended to solicit business;

93 (ii) a physician's participation in prepaid group health plans or other health plans not
94 sponsored by or affiliated with an integrated health system;

95 (iii) whether a physician is employed by the hospital, an entity affiliated with the
96 hospital, or an entity affiliated with the integrated health system;

97 (iv) whether a physician is employed by a hospital that is not affiliated with the
98 integrated health system or not affiliated with the hospital that is considering the physician's
99 application for medical staff membership or privileges;

100 (v) whether a physician engages in the delivery of health services on other than a
101 fee-for-service basis;

102 (vi) a physician's support for, training of, or participation in a private group practice
103 that is independent of the hospital or integrated health system;

104 (vii) a physician's referrals to a particular hospital or integrated health system, or to a
105 particular outpatient center for surgical services, or any other facility related to the hospital or
106 the integrated health system; or

107 (viii) whether the physician or a partner, associate, or employee of the physician:

108 (A) provides medical or health care services at, has an ownership interest in, or
109 occupies a leadership position on the medical staff of a different hospital, integrated health
110 system, or health care facility; or

111 (B) participates or does not participate in any particular health plan.

112 (d) A hospital or integrated health system may not use patient admission quotas or
113 revenue generation minimums as a condition for hospital medical staff membership or
114 privileges.

115 (7) A hospital or integrated health system that violates the provisions of this section:

116 (a) has violated standards of operation for the hospital; ~~§~~→ **and** ←~~§~~

117 (b) may be held liable to the physician in a private right of action for the violations,
118 including proximately caused damages; ~~§~~→ [**and**

119 ~~(c) may be subject to regulatory action by the department]~~ ←~~§~~ .

120 (8) This section shall not affect the terms of any contract or written employment

121 arrangement that provides that credentials or staff and clinical privileges of any practitioner are
122 incident to or coterminous with the contract or employment arrangement or the individual's
123 association with a group holding the contract.

123a **§→ (9) Nothing in this section prohibits a hospital from entering into an exclusive**
123b **contract for services that are performed in the hospital if the exclusive contract is between the**
123c **hospital and a physician or physician group that is not employed by:**
123d **(i) the hospital; or**
123e **(ii) an integrated health system affiliated with the hospital. ←§**

Legislative Review Note
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Office of Legislative Research and General Counsel