

1 **UTAH EDUCATIONAL SAVINGS PLAN MEDICAID**

2 **EXEMPTIONS**

3 2017 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Bruce R. Cutler**

6 Senate Sponsor: Brian E. Shiozawa

8 **LONG TITLE**

9 **General Description:**

10 This bill amends the Medical Assistance Act in the Utah Health Code.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ instructs the state Medicaid program to:

14 • seek a plan amendment to disregard resources held by an applicant in a Utah
15 Educational Savings Plan account when determining eligibility for certain
16 benefits in the Medicaid program; and

17 • implement the plan amendment for benefit determinations made on or after the
18 date of the approval of the state plan amendment; and

19 ▶ makes technical amendments.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **26-18-3**, as last amended by Laws of Utah 2016, Chapter 168

27 **26-18-10**, as last amended by Laws of Utah 2013, Chapter 167

28 **26-40-103**, as last amended by Laws of Utah 2013, Chapter 167

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

31 Section 1. Section **26-18-3** is amended to read:

32 **26-18-3. Administration of Medicaid program by department -- Reporting to the**
33 **Legislature -- Disciplinary measures and sanctions -- Funds collected -- Eligibility**
34 **standards -- Internal audits -- Health opportunity accounts.**

35 (1) The department shall be the single state agency responsible for the administration
36 of the Medicaid program in connection with the United States Department of Health and
37 Human Services pursuant to Title XIX of the Social Security Act.

38 (2) (a) The department shall implement the Medicaid program through administrative
39 rules in conformity with this chapter, Title 63G, Chapter 3, Utah Administrative Rulemaking
40 Act, the requirements of Title XIX, and applicable federal regulations.

41 (b) The rules adopted under Subsection (2)(a) shall include, in addition to other rules
42 necessary to implement the program:

43 (i) the standards used by the department for determining eligibility for Medicaid
44 services;

45 (ii) the services and benefits to be covered by the Medicaid program;

46 (iii) reimbursement methodologies for providers under the Medicaid program; and

47 (iv) a requirement that:

48 (A) a person receiving Medicaid services shall participate in the electronic exchange of
49 clinical health records established in accordance with Section [26-1-37](#) unless the individual
50 opts out of participation;

51 (B) prior to enrollment in the electronic exchange of clinical health records the enrollee
52 shall receive notice of enrollment in the electronic exchange of clinical health records and the
53 right to opt out of participation at any time; and

54 (C) beginning July 1, 2012, when the program sends enrollment or renewal information
55 to the enrollee and when the enrollee logs onto the program's website, the enrollee shall receive
56 notice of the right to opt out of the electronic exchange of clinical health records.

57 (3) (a) The department shall, in accordance with Subsection (3)(b), report to the Social

- 58 Services Appropriations Subcommittee when the department:
- 59 (i) implements a change in the Medicaid State Plan;
- 60 (ii) initiates a new Medicaid waiver;
- 61 (iii) initiates an amendment to an existing Medicaid waiver;
- 62 (iv) applies for an extension of an application for a waiver or an existing Medicaid
- 63 waiver; or
- 64 (v) initiates a rate change that requires public notice under state or federal law.
- 65 (b) The report required by Subsection (3)(a) shall:
- 66 (i) be submitted to the Social Services Appropriations Subcommittee prior to the
- 67 department implementing the proposed change; and
- 68 (ii) include:
- 69 (A) a description of the department's current practice or policy that the department is
- 70 proposing to change;
- 71 (B) an explanation of why the department is proposing the change;
- 72 (C) the proposed change in services or reimbursement, including a description of the
- 73 effect of the change;
- 74 (D) the effect of an increase or decrease in services or benefits on individuals and
- 75 families;
- 76 (E) the degree to which any proposed cut may result in cost-shifting to more expensive
- 77 services in health or human service programs; and
- 78 (F) the fiscal impact of the proposed change, including:
- 79 (I) the effect of the proposed change on current or future appropriations from the
- 80 Legislature to the department;
- 81 (II) the effect the proposed change may have on federal matching dollars received by
- 82 the state Medicaid program;
- 83 (III) any cost shifting or cost savings within the department's budget that may result
- 84 from the proposed change; and
- 85 (IV) identification of the funds that will be used for the proposed change, including any

86 transfer of funds within the department's budget.

87 (4) Any rules adopted by the department under Subsection (2) are subject to review and
88 reauthorization by the Legislature in accordance with Section 63G-3-502.

89 (5) The department may, in its discretion, contract with the Department of Human
90 Services or other qualified agencies for services in connection with the administration of the
91 Medicaid program, including:

92 (a) the determination of the eligibility of individuals for the program;

93 (b) recovery of overpayments; and

94 (c) consistent with Section 26-20-13, and to the extent permitted by law and quality
95 control services, enforcement of fraud and abuse laws.

96 (6) The department shall provide, by rule, disciplinary measures and sanctions for
97 Medicaid providers who fail to comply with the rules and procedures of the program, provided
98 that sanctions imposed administratively may not extend beyond:

99 (a) termination from the program;

100 (b) recovery of claim reimbursements incorrectly paid; and

101 (c) those specified in Section 1919 of Title XIX of the federal Social Security Act.

102 (7) Funds collected as a result of a sanction imposed under Section 1919 of Title XIX
103 of the federal Social Security Act shall be deposited in the General Fund as dedicated credits to
104 be used by the division in accordance with the requirements of Section 1919 of Title XIX of
105 the federal Social Security Act.

106 (8) (a) In determining whether an applicant or recipient is eligible for a service or
107 benefit under this part or Chapter 40, Utah Children's Health Insurance Act, the department
108 shall, if Subsection (8)(b) is satisfied, exclude from consideration one passenger vehicle
109 designated by the applicant or recipient.

110 (b) Before Subsection (8)(a) may be applied:

111 (i) the federal government shall:

112 (A) determine that Subsection (8)(a) may be implemented within the state's existing
113 public assistance-related waivers as of January 1, 1999;

114 (B) extend a waiver to the state permitting the implementation of Subsection (8)(a); or

115 (C) determine that the state's waivers that permit dual eligibility determinations for
116 cash assistance and Medicaid are no longer valid; and

117 (ii) the department shall determine that Subsection (8)(a) can be implemented within
118 existing funding.

119 (9) (a) For purposes of this Subsection (9):

120 (i) "aged, blind, or has a disability" means an aged, blind, or disabled individual, as
121 defined in 42 U.S.C. Sec. 1382c(a)(1); and

122 (ii) "spend down" means an amount of income in excess of the allowable income
123 standard that shall be paid in cash to the department or incurred through the medical services
124 not paid by Medicaid.

125 (b) In determining whether an applicant or recipient who is aged, blind, or has a
126 disability is eligible for a service or benefit under this chapter, the department shall use 100%
127 of the federal poverty level as:

128 (i) the allowable income standard for eligibility for services or benefits; and

129 (ii) the allowable income standard for eligibility as a result of spend down.

130 (10) The department shall conduct internal audits of the Medicaid program.

131 (11) (a) The department may apply for and, if approved, implement a demonstration
132 program for health opportunity accounts, as provided for in 42 U.S.C. Sec. 1396u-8.

133 (b) A health opportunity account established under Subsection (11)(a) shall be an
134 alternative to the existing benefits received by an individual eligible to receive Medicaid under
135 this chapter.

136 (c) Subsection (11)(a) is not intended to expand the coverage of the Medicaid program.

137 (12) (a) (i) The department shall apply for, and if approved, implement an amendment
138 to the state plan under this Subsection (12) for benefits for:

139 (A) medically needy pregnant women;

140 (B) medically needy children; and

141 (C) medically needy parents and caretaker relatives.

142 (ii) The department may implement the eligibility standards of Subsection (12)(b) for
143 eligibility determinations made on or after the date of the approval of the amendment to the
144 state plan.

145 (b) In determining whether an applicant is eligible for benefits described in Subsection
146 (12)(a)(i), the department shall:

147 (i) disregard resources held in an account in the savings plan created under Title 53B,
148 Chapter 8a, Utah Educational Savings Plan, if the beneficiary of the account is:

149 (A) under the age of 26; and

150 (B) living with the account owner, as that term is defined in Section [53B-8a-102](#), or
151 temporarily absent from the residence of the account owner; and

152 (ii) include the withdrawals from an account in the Utah Educational Savings Plan as
153 resources for a benefit determination, if the withdrawal was not used for qualified higher
154 education costs as that term is defined in Section [53B-8a-102](#).

155 Section 2. Section **26-18-10** is amended to read:

156 **26-18-10. Utah Medical Assistance Program -- Policies and standards.**

157 (1) The division shall develop a medical assistance program, which shall be known as
158 the Utah Medical Assistance Program, for low income persons who are not eligible under the
159 state plan for Medicaid under Title XIX of the Social Security Act or Medicare under Title
160 XVIII of that act.

161 (2) Persons in the custody of prisons, jails, halfway houses, and other nonmedical
162 government institutions are not eligible for services provided under this section.

163 (3) The department shall develop standards and administer policies relating to
164 eligibility requirements, consistent with [~~Subsection~~] Section [26-18-3](#)~~[(8)]~~, for participation in
165 the program, and for payment of medical claims for eligible persons.

166 (4) The program shall be a payor of last resort. Before assistance is rendered the
167 division shall investigate the availability of the resources of the spouse, father, mother, and
168 adult children of the person making application.

169 (5) The department shall determine what medically necessary care or services are

170 covered under the program, including duration of care, and method of payment, which may be
171 partial or in full.

172 (6) The department may not provide public assistance for medical, hospital, or other
173 medical expenditures or medical services to otherwise eligible persons where the purpose of
174 the assistance is for the performance of an abortion, unless the life of the mother would be
175 endangered if an abortion were not performed.

176 (7) The department may establish rules to carry out the provisions of this section.

177 Section 3. Section **26-40-103** is amended to read:

178 **26-40-103. Creation and administration of the Utah Children's Health Insurance**
179 **Program.**

180 (1) There is created the Utah Children's Health Insurance Program to be administered
181 by the department in accordance with the provisions of:

182 (a) this chapter; and

183 (b) the State Children's Health Insurance Program, 42 U.S.C. Sec. 1397aa et seq.

184 (2) The department shall:

185 (a) prepare and submit the state's children's health insurance plan before May 1, 1998,
186 and any amendments to the federal Department of Health and Human Services in accordance
187 with 42 U.S.C. Sec. 1397ff; and

188 (b) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
189 Rulemaking Act regarding:

190 (i) eligibility requirements consistent with [~~Subsection~~] Section 26-18-3[(8)];

191 (ii) program benefits;

192 (iii) the level of coverage for each program benefit;

193 (iv) cost-sharing requirements for enrollees, which may not:

194 (A) exceed the guidelines set forth in 42 U.S.C. Sec. 1397ee; or

195 (B) impose deductible, copayment, or coinsurance requirements on an enrollee for
196 well-child, well-baby, and immunizations;

197 (v) the administration of the program; and

198 (vi) a requirement that:

199 (A) enrollees in the program shall participate in the electronic exchange of clinical
200 health records established in accordance with Section 26-1-37 unless the enrollee opts out of
201 participation;

202 (B) prior to enrollment in the electronic exchange of clinical health records the enrollee
203 shall receive notice of the enrollment in the electronic exchange of clinical health records and
204 the right to opt out of participation at any time; and

205 (C) beginning July 1, 2012, when the program sends enrollment or renewal information
206 to the enrollee and when the enrollee logs onto the program's website, the enrollee shall receive
207 notice of the right to opt out of the electronic exchange of clinical health records.