

26-19-7 Notice of claim by recipient -- Department response -- Conditions for proceeding -- Collection agreements -- Department's right to intervene -- Department's interests protected -- Remitting funds -- Disbursements -- Liability and penalty for noncompliance.

- (1)
- (a) A recipient may not file a claim, commence an action, or settle, compromise, release, or waive a claim against a third party for recovery of medical costs for an injury, disease, or disability for which the department has provided or has become obligated to provide medical assistance, without the department's written consent as provided in Subsection (2)(b) or (4).
 - (b) For purposes of Subsection (1)(a), consent may be obtained if:
 - (i) a recipient who files a claim, or commences an action against a third party notifies the department in accordance with Subsection (1)(d) within 10 days of making the claim or commencing an action; or
 - (ii) an attorney, who has been retained by the recipient to file a claim, or commence an action against a third party, notifies the department in accordance with Subsection (1)(d) of the recipient's claim:
 - (A) within 30 days after being retained by the recipient for that purpose; or
 - (B) within 30 days from the date the attorney either knew or should have known that the recipient received medical assistance from the department.
 - (c) Service of the notice of claim to the department shall be made by certified mail, personal service, or by e-mail in accordance with Rule 5 of the Utah Rules of Civil Procedure, to the director of the Office of Recovery Services.
 - (d) The notice of claim shall include the following information:
 - (i) the name of the recipient;
 - (ii) the recipient's Social Security number;
 - (iii) the recipient's date of birth;
 - (iv) the name of the recipient's attorney if applicable;
 - (v) the name or names of individuals or entities against whom the recipient is making the claim, if known;
 - (vi) the name of the third party's insurance carrier, if known;
 - (vii) the date of the incident giving rise to the claim; and
 - (viii) a short statement identifying the nature of the recipient's claim.
- (2)
- (a) Within 30 days of receipt of the notice of the claim required in Subsection (1), the department shall acknowledge receipt of the notice of the claim to the recipient or the recipient's attorney and shall notify the recipient or the recipient's attorney in writing of the following:
 - (i) if the department has a claim or lien pursuant to Section 26-19-5 or has become obligated to provide medical assistance; and
 - (ii) whether the department is denying or granting written consent in accordance with Subsection (1)(a).
 - (b) The department shall provide the recipient's attorney the opportunity to enter into a collection agreement with the department, with the recipient's consent, unless:
 - (i) the department, prior to the receipt of the notice of the recipient's claim pursuant to Subsection (1), filed a written claim with the third party, the third party agreed to make payment to the department before the date the department received notice of the recipient's claim, and the agreement is documented in the department's record; or
 - (ii) there has been a failure by the recipient's attorney to comply with any provision of this section by:
 - (A) failing to comply with the notice provisions of this section;

- (B) failing or refusing to enter into a collection agreement;
 - (C) failing to comply with the terms of a collection agreement with the department; or
 - (D) failing to disburse funds owed to the state in accordance with this section.
- (c)
- (i) The collection agreement shall be:
 - (A) consistent with this section and the attorney's obligation to represent the recipient and represent the state's claim; and
 - (B) state the terms under which the interests of the department may be represented in an action commenced by the recipient.
 - (ii) If the recipient's attorney enters into a written collection agreement with the department, or includes the department's claim in the recipient's claim or action pursuant to Subsection (4), the department shall pay attorney's fees at the rate of 33.3% of the department's total recovery and shall pay a proportionate share of the litigation expenses directly related to the action.
- (d) The department is not required to enter into a collection agreement with the recipient's attorney for collection of personal injury protection under Subsection 31A-22-302(2).
- (3)
- (a) If the department receives notice pursuant to Subsection (1), and notifies the recipient and the recipient's attorney that the department will not enter into a collection agreement with the recipient's attorney, the recipient may proceed with the recipient's claim or action against the third party if the recipient excludes from the claim:
 - (i) any medical expenses paid by the department; or
 - (ii) any medical costs for which the department is obligated to provide medical assistance.
 - (b) When a recipient proceeds with a claim under Subsection (3)(a), the recipient shall provide written notice to the third party of the exclusion of the department's claim for expenses under Subsection (3)(a)(i) or (ii).
- (4) If the department receives notice pursuant to Subsection (1), and does not respond within 30 days to the recipient or the recipient's attorney, the recipient or the recipient's attorney:
- (a) may proceed with the recipient's claim or action against the third party;
 - (b) may include the state's claim in the recipient's claim or action; and
 - (c) may not negotiate, compromise, settle, or waive the department's claim without the department's consent.
- (5) The department has an unconditional right to intervene in an action commenced by a recipient against a third party for the purpose of recovering medical costs for which the department has provided or has become obligated to provide medical assistance.
- (6)
- (a) If the recipient proceeds without complying with the provisions of this section, the department is not bound by any decision, judgment, agreement, settlement, or compromise rendered or made on the claim or in the action.
 - (b) The department may recover in full from the recipient or any party to which the proceeds were made payable all medical assistance which it has provided and retains its right to commence an independent action against the third party, subject to Subsection 26-19-5(3).
- (7) Any amounts assigned to and recoverable by the department pursuant to Sections 26-19-4.5 and 26-19-5 collected directly by the recipient shall be remitted to the Bureau of Medical Collections within the Office of Recovery Services no later than five business days after receipt.
- (8)
- (a) Any amounts assigned to and recoverable by the department pursuant to Sections 26-19-4.5 and 26-19-5 collected directly by the recipient's attorney shall be remitted to the Bureau of

Medical Collections within the Office of Recovery Services no later than 30 days after the funds are placed in the attorney's trust account.

- (b) The date by which the funds shall be remitted to the department may be modified based on agreement between the department and the recipient's attorney.
 - (c) The department's consent to another date for remittance may not be unreasonably withheld.
 - (d) If the funds are received by the recipient's attorney, no disbursements shall be made to the recipient or the recipient's attorney until the department's claim has been paid.
- (9) A recipient or recipient's attorney who knowingly and intentionally fails to comply with this section is liable to the department for:
- (a) the amount of the department's claim or lien pursuant to Subsection (5);
 - (b) a penalty equal to 10% of the amount of the department's claim; and
 - (c) attorney fees and litigation expenses related to recovering the department's claim.

Amended by Chapter 297, 2011 General Session