

1 **CHILDREN’S HEALTH INSURANCE PROGRAM**

2 1998 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Peter C. Knudson**

5 Mary Carlson

6 AN ACT RELATING TO HEALTH; AMENDING THE MEDICAID RESTRICTED
7 ACCOUNT; CREATING THE UTAH CHILDREN'S HEALTH INSURANCE PROGRAM;
8 PROVIDING THE BASIC STRUCTURE OF THE PROGRAM; ESTABLISHING
9 ELIGIBILITY REQUIREMENTS AND PROGRAM BENEFITS; ESTABLISHING THE
10 GENERAL DUTIES OF THE DEPARTMENT OF HEALTH UNDER THE PROGRAM;
11 CREATING AN ADVISORY COUNCIL; IMPOSING AN ASSESSMENT ON HOSPITALS
12 TO FUND THE PROGRAM; CREATING A RESTRICTED ACCOUNT; PERMITTING THE
13 DEPARTMENT TO CONTRACT WITH THE UTAH STATE RETIREMENT OFFICE TO
14 PROVIDE HEALTH INSURANCE SERVICES IF NO PRIVATE BID IS ACCEPTABLE;
15 REPEALING THE UTAH MEDICAID HOSPITAL PROVIDER TEMPORARY
16 ASSESSMENT ACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

17 This act affects sections of Utah Code Annotated 1953 as follows:

18 AMENDS:

19 **26-18-402**, as enacted by Chapter 108, Laws of Utah 1996

20 **49-8-203**, as enacted by Chapter 1, Laws of Utah 1987

21 **49-8-204**, as enacted by Chapter 200, Laws of Utah 1988

22 **49-8-401**, as last amended by Chapter 89, Laws of Utah 1990

23 ENACTS:

24 **26-40-101**, Utah Code Annotated 1953

25 **26-40-102**, Utah Code Annotated 1953

26 **26-40-103**, Utah Code Annotated 1953

27 **26-40-104**, Utah Code Annotated 1953

- 1 **26-40-105**, Utah Code Annotated 1953
- 2 **26-40-106**, Utah Code Annotated 1953
- 3 **26-40-107**, Utah Code Annotated 1953
- 4 **26-40-108**, Utah Code Annotated 1953
- 5 **26-40-109**, Utah Code Annotated 1953
- 6 **26-40-110**, Utah Code Annotated 1953
- 7 **26-40-111**, Utah Code Annotated 1953
- 8 **26-40-112**, Utah Code Annotated 1953
- 9 **26-40-113**, Utah Code Annotated 1953
- 10 **26-40-114**, Utah Code Annotated 1953

11 REPEALS:

- 12 **26-36-101**, as enacted by Chapter 187, Laws of Utah 1993
- 13 **26-36-102**, as last amended by Chapter 209, Laws of Utah 1995
- 14 **26-36-103**, as enacted by Chapter 187, Laws of Utah 1993
- 15 **26-36-104**, as last amended by Chapter 209, Laws of Utah 1997
- 16 **26-36-105**, as last amended by Chapter 178, Laws of Utah 1997
- 17 **26-36-106**, as last amended by Chapter 93, Laws of Utah 1994
- 18 **26-36-107**, as enacted by Chapter 187, Laws of Utah 1993
- 19 **26-36-108**, as enacted by Chapter 187, Laws of Utah 1993
- 20 **26-36-109**, as last amended by Chapter 209, Laws of Utah 1995
- 21 **26-36-110**, as last amended by Chapter 209, Laws of Utah 1995

22 This act enacts uncodified material.

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

24 Section 1. Section **26-18-402** is amended to read:

25 **26-18-402. Medicaid Restricted Account.**

26 (1) There is created a restricted account in the General Fund known as the Medicaid
27 Restricted Account.

28 (2) (a) Any general funds appropriated to the department for the state plan for medical
29 assistance or for the Division of Health Care Financing that are not expended by the department
30 in the fiscal year for which the general funds were appropriated and which are not otherwise
31 designated as nonlapsing shall lapse into the Medicaid Restricted Account~~[- which is the proper~~

1 account for the funds under Section 63-38-8].

2 (b) The account shall earn interest and all interest earned shall be deposited into the
3 account.

4 (c) The Legislature may appropriate monies in the restricted account to fund programs that
5 expand medical assistance coverage and private health insurance plans to low income persons who
6 have not traditionally been served by Medicaid, including the Utah Children's Health Insurance
7 Program created in Chapter 40.

8 Section 2. Section 26-40-101 is enacted to read:

9 **CHAPTER 40. UTAH CHILDREN'S HEALTH INSURANCE ACT**

10 **26-40-101. Title.**

11 This chapter is known as the "Utah Children's Health Insurance Act."

12 Section 3. Section 26-40-102 is enacted to read:

13 **26-40-102. Definitions.**

14 As used in this chapter:

15 (1) "Assessment" means the hospital provider assessment established in Section
16 26-40-112.

17 (2) "Child" means a person who is under 19 years of age.

18 (3) "Eligible child" means a child who qualifies for enrollment in the program as provided
19 in Section 26-40-105.

20 (4) "Enrollee" means any child enrolled in the program.

21 (5) "Freestanding ambulatory surgical facility" means an urban or rural nonhospital-based
22 or nonhospital-affiliated licensed facility, as defined in Section 26-21-2, as an ambulatory surgical
23 facility, with an organized professional staff that provides surgical services to patients who do not
24 require an inpatient bed.

25 (6) (a) "Hospital" means any general acute hospital, as defined in Section 26-21-2,
26 operating in this state.

27 (b) "Hospital" does not include:

28 (i) a residential care or treatment facility, as defined in Subsections 62A-2-101(16), (17),
29 and (19);

30 (ii) the Utah State Hospital;

31 (iii) any rural hospital that operates outside of a metropolitan statistical area, a

1 metropolitan area, or an urbanized area as designated by the U.S. Bureau of Census; or

2 (iv) any specialty hospital operating in this state, as defined in Section 26-21-2, that is
3 engaged exclusively in rendering psychiatric or other mental health treatment.

4 (7) "Hospital-based ambulatory surgical facility" means an urban or rural on-hospital
5 campus or hospital-affiliated licensed facility with an organized professional staff that provides
6 surgical services to patients who do not require an inpatient bed.

7 (8) "Plan" means the department's plan submitted to the United States Department of
8 Health and Human Services pursuant to 42 U.S.C. Sec. 1397ff.

9 (9) "Program" means the Utah Children's Health Insurance Program created by this
10 chapter.

11 Section 4. Section **26-40-103** is enacted to read:

12 **26-40-103. Creation and administration of the Utah Children's Health Insurance**
13 **Program.**

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

16 (a) this chapter; and

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

18 (2) The department shall:

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

22 (b) make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking
23 Act regarding:

24 (i) eligibility requirements;

25 (ii) program benefits;

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

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

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

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

31 (v) the administration of the program; and

1 (vi) the provider assessment, including:

2 (A) the factor for the assessment;

3 (B) the administration, collection, and enforcement of the assessment, including:

4 (I) auditing a provider's records; and

5 (II) imposing penalties for failure to pay the assessment as required; and

6 (C) reducing the amount of the assessment to the extent funds are deposited into the
7 Hospital Provider Assessment Account created in Section 26-40-112 as a result of private
8 contributions to the program.

9 (3) Before July 1, 2001, the Governor's Office of Planning and Budget shall study the
10 effectiveness of the department's administration of the program and report any findings to:

11 (a) the Health and Human Services Interim Committee of the Legislature;

12 (b) the Health Policy Commission; and

13 (c) the department.

14 Section 5. Section **26-40-104** is enacted to read:

15 **26-40-104. Advisory Council.**

16 (1) There is created a Utah Children's Health Insurance Program Advisory Council
17 consisting of at least eight and no more than eleven members appointed by the executive director
18 of the department. The term of each appointment shall be three years. The appointments shall be
19 staggered at one-year intervals to ensure continuity of the advisory council.

20 (2) The advisory council shall meet at least quarterly.

21 (3) The membership of the advisory council shall include at least one representative from
22 each of the following groups:

23 (a) child health care providers;

24 (b) parents and guardians of children enrolled in the program;

25 (c) ethnic populations other than American Indians;

26 (d) American Indians;

27 (e) the Health Policy Commission;

28 (f) the Utah Association of Health Care Providers;

29 (g) health and disability insurance providers; and

30 (h) the general public.

31 (4) The advisory council shall advise the department on:

- 1 (a) benefits design;
- 2 (b) eligibility criteria;
- 3 (c) outreach;
- 4 (d) evaluation; and
- 5 (e) special strategies for under-served populations.

6 (5) (a) (i) Members who are not government employees may not receive compensation or
 7 benefits for their services, but may receive per diem and expenses incurred in the performance of
 8 the member's official duties at the rates established by the Division of Finance under Sections
 9 63A-3-106 and 63A-3-107.

10 (ii) Members may decline to receive per diem and expenses for their service.

11 (b) (i) State government officer and employee members who do not receive salary, per
 12 diem, or expenses from their agency for their service may receive per diem and expenses incurred
 13 in the performance of their official duties from the committee at the rates established by the
 14 Division of Finance under Sections 63A-3-106 and 63A-3-107.

15 (ii) State government officer and employee members may decline to receive per diem and
 16 expenses for their service.

17 Section 6. Section **26-40-105** is enacted to read:

18 **26-40-105. Eligibility.**

19 (1) To be eligible to enroll in the program, a child must:

- 20 (a) be a bona fide Utah resident;
- 21 (b) be a citizen or legal resident of the United States;
- 22 (c) be under 19 years of age;
- 23 (d) not have access to or coverage under other health insurance § , INCLUDING ANY

23a **COVERAGE AVAILABLE THROUGH A PARENT OR LEGAL GUARDIAN'S EMPLOYER § :**

- 24 (e) be ineligible for Medicaid benefits;
- 25 (f) reside in a household whose gross family income, as defined by rule, is at or below
 26 § [~~h~~] § 200% § [~~h~~] **175% h** § of the federal poverty level; and
- 27 (g) not be an inmate of a public institution or a patient in an institution for mental diseases.

28 (2) A child may not be determined to be ineligible to enroll in the program based on
 29 diagnosis or pre-existing condition.

30 (3) The department shall determine eligibility and send notification of the decision within
 31 30 days after receiving the application for coverage. If the department cannot reach a decision

1 because the applicant fails to take a required action or there is an administrative or other
2 emergency beyond the department's control, the department shall:

- 3 (a) document the reason for the delay in the applicant's case record; and
- 4 (b) inform the applicant of the status of the application and time frame for completion.

5 Section 7. Section **26-40-106** is enacted to read:

6 **26-40-106. Program benefits.**

7 At a minimum, program benefits shall include:

- 8 (1) hospital services;
- 9 (2) physician services;
- 10 (3) laboratory services;
- 11 (4) prescription drugs;
- 12 (5) mental health services;

12a **h (6) BASIC DENTAL SERVICES; h**

13 **h [(6)] (7) h preventive care including:**

- 14 (a) routine physical examinations;
- 15 (b) immunizations;
- 16 (c) basic vision services; h AND h
- 17 (d) basic hearing services; h [and

18 (e) basic dental services;] h

19 **h [(7)] (8) h limited home health and durable medical equipment services; and**

20 **h [(8)] (9) h hospice care.**

21 Section 8. Section **26-40-107** is enacted to read:

22 **26-40-107. Limitation of benefits.**

23 Abortion is not a covered benefit, except as provided in 42 U.S.C. Sec. 1397ee.

24 Section 9. Section **26-40-108** is enacted to read:

25 **26-40-108. Funding.**

26 (1) The program shall be funded by federal matching funds received under, together with
27 state matching funds required by, 42 U.S.C. Sec. 1397ee.

28 (2) Program expenditures in the following categories may not exceed 10% in the aggregate
29 of all federal payments pursuant to 42 U.S.C. Sec. 1397ee:

30 (a) other forms of child health assistance for children with gross family incomes below

31 § [h+] § 200% § [h] 175% h-] § of the federal poverty level;

1 (b) other health services initiatives to improve low-income children's health;

2 (c) outreach program expenditures; and

3 (d) administrative costs.

4 Section 10. Section **26-40-109** is enacted to read:

5 **26-40-109. Evaluation.**

6 (1) The department shall develop performance measures and annually evaluate the
7 program's performance.

8 (2) The department shall report annually on its evaluation to the Health and Human
9 Services Interim Committee of the Legislature and the Health Policy Commission before
10 November 1.

11 Section 11. Section **26-40-110** is enacted to read:

12 **26-40-110. Managed care -- Contracting for services.**

13 (1) Services provided to enrollees under the program shall be delivered in a managed care
14 system if services are available within 30 paved road miles of where the enrollee lives or resides.
15 Otherwise, the program may provide services to enrollees through ~~h~~ **[traditional indemnity] FEE FOR**
15a **SERVICE h** plans.

16 (2) Before awarding a contract to a managed care system or ~~h~~ **[traditional indemnity] FEE FOR**
16a **SERVICE h** plan to
17 provide services under Subsection (1) or determining that no bid or proposal received in response
18 to such a request is acceptable, the executive director shall report that information to and seek
19 recommendations from the Health Policy Commission.

20 (3) If after seeking the recommendation of the Health Policy Commission under
21 Subsection (2), the executive director determines that no bid or proposal received in response to
22 such a request is acceptable or if no bid or proposal has been received in response to such a
23 request, the department may contract with the Group Insurance Division within the Utah State
24 Retirement Office to provide services under Subsection (1).

25 (4) Title 63, Chapter 56, Utah Procurement Code, shall apply to this section.

26 Section 12. Section **26-40-111** is enacted to read:

27 **26-40-111. Provider assessment.**

28 (1) Other than for the imposition of the assessment described in and utilized for the
29 purposes of the chapter, nothing in this chapter affects the nonprofit or tax exempt status of any
30 nonprofit charitable, religious, or educational health care provider under 26 U.S.C. Sec. 501(c),
31 as amended, or other applicable federal law, or under any state law, or any activities of or property

1 owned by any such provider with respect to exemption from ad valorem property taxes, income
2 or franchise taxes, sales or use taxes, or any other taxes, fees, or assessments whatever, whether
3 imposed or sought to be imposed by the state or any political subdivision, county, municipality,
4 district, authority, or any agency or department thereof.

5 (2) For providers subject to the assessment imposed by this chapter, and also subject to
6 the corporate franchise or income tax under Title 59, Chapter 7, all assessments paid under this
7 chapter shall be allowed as a deductible expense under Title 59, Chapter 7.

8 (3) Beginning on July 1, 1998, a uniform, broad-based, quarterly rate of assessment is
9 imposed on each hospital, hospital-based ambulatory surgical facility, and freestanding ambulatory
10 surgical facility in accordance with department rule, which:

11 (a) may not exceed \$5,500,000 in the aggregate in any fiscal year; and

12 (b) shall be reduced to the extent that funds are deposited into the Hospital Provider
13 Assessment Account created in Section 26-40-112 as a result of private contributions to the
14 program.

15 (4) A reduction in assessment that occurs as a result of Subsection (3)(b) shall apply to as
16 many subsequent fiscal years as is possible based on the total amount of funds deposited into the
17 restricted account.

18 (5) The department shall forward proceeds from the assessment imposed by this chapter
19 to the state treasurer for deposit into the Hospital Provider Assessment Account created in Section
20 26-40-112.

21 Section 13. Section **26-40-112** is enacted to read:

22 **26-40-112. Hospital Provider Assessment Account.**

23 (1) There is created within the General Fund a restricted account known as the "Hospital
24 Provider Assessment Account."

25 (2) The account shall be nonlapsing and consist of:

26 (a) proceeds from the assessment imposed in accordance with Section 26-40-111;

27 (b) funds transferred from the Medicaid Hospital Provider Temporary Assessment
28 Account;

29 (c) private contributions;

30 (d) interest earned on monies in the account; and

31 (e) any funds received by virtue of the state's action for reimbursement of medicaid funds

1 from tobacco manufacturers that are not restricted by use or purpose by:

2 (i) the federal government;

3 (ii) state or federal law; or

4 (iii) the terms of any settlement agreement, order, law, or related contract.

5 (3) Funds in the account shall be appropriated by the Legislature to fund:

6 (a) the program; and

7 (b) if funds remain after Subsection (2)(a), the Medicaid program.

8 Section 14. Section **26-40-113** is enacted to read:

9 **26-40-113. Intergovernmental transfers.**

10 The assessment imposed by this chapter otherwise applicable to the University of Utah
11 Hospital and to any other publicly owned or operated hospital may be provided by means of a
12 quarterly governmental transfer to the department in lieu of payment and collection of the
13 assessment.

14 Section 15. Section **26-40-114** is enacted to read:

15 **26-40-114. Repeal of assessment.**

16 This assessment shall be repealed upon the certification by the executive director or court
17 order that the sooner of the following has occurred:

18 (1) the effective date of any existing or future action by Congress to disqualify the
19 assessments from counting toward state funds available to be used to determine the federal
20 financial participation in the program; or

21 (2) the effective date of any decision, enactment, or other determination by the Legislature
22 or by any court, officer, department, or agency of the state or of the federal government that has
23 the effect of disqualifying the assessments from counting toward state funds available to be used
24 to determine federal financial participation in the program.

25 Section 16. Section **49-8-203** is amended to read:

26 **49-8-203. Eligibility for participation in program -- Optional for certain groups.**

27 (1) All employers of the state, its educational institutions, and political subdivisions are
28 eligible to participate in this program, but this section does not require political subdivisions,
29 school districts, or institutions of higher education, including technical colleges, to participate in
30 the program.

31 (2) The Department of Health may participate in this program for the purpose of providing

1 program benefits to children enrolled in the Utah Children's Health Insurance Program created in
 2 Title 26, Chapter 40, if the provisions in Subsection 26-40-110(4) occur. § IF THE DEPARTMENT
 2a OF HEALTH PARTICIPATES IN THE PROGRAM UNDER THE PROVISIONS OF THIS SUBSECTION (2),
 2b ALL INSURANCE RISK ASSOCIATED WITH THE CHILDREN'S HEALTH INSURANCE PROGRAM SHALL
 2c BE THE RESPONSIBILITY OF THE DEPARTMENT OF HEALTH AND NOT THE GROUP INSURANCE
 2d DIVISION OR THE RETIREMENT OFFICE. §

3 Section 17. Section 49-8-204 is amended to read:

4 **49-8-204. Group insurance division -- Establishment of separate risk pools - Rules**
 5 **governing admission to program.**

6 The group insurance division shall establish:

7 (1) separate risk pools for state employees [~~and for~~], political subdivisions and, if
 8 applicable, children enrolled in the Utah Children's Health Insurance Program, created in Title 26,
 9 Chapter 40, for purposes of providing the benefits permitted by this chapter; and

10 (2) rules and procedures governing the admission of political subdivisions to the program.

11 Section 18. Section 49-8-401 is amended to read:

12 **49-8-401. Group insurance division -- Powers and duties.**

13 (1) The group insurance division of the retirement office shall:

14 (a) act as a self-insurer of employee group benefit plans and administer those plans;

15 (b) enter into contracts with private insurers to underwrite employee group benefit plans
 16 and to reinsure any appropriate self-insured plans;

17 (c) publish and disseminate descriptions of all employee benefit plans under this chapter
 18 in cooperation with the Department of Human Resource Management and political subdivisions;

19 (d) administer the process of claims administration of all employee benefit plans under this
 20 chapter or enter into contracts, after competitive bids are taken, with other benefit administrators
 21 to provide for the administration of the claims process;

22 (e) obtain an annual actuarial evaluation of all self-insured benefit plans and prepare an
 23 annual report for the governor and the Legislature describing the employee benefit plans being
 24 administered by the retirement office detailing historical and projected program costs and the
 25 status of reserve funds;

26 (f) consult with the Department of Human Resource Management and the executive bodies
 27 of other political subdivisions to evaluate employee benefit plans and develop recommendations
 28 for new or improved benefit plans;

- 29 (g) submit annually a budget which includes total projected benefit and administrative
- 30 costs;
- 31 (h) maintain reserves sufficient to liquidate the unrevealed claims liability and other

1 liabilities of the self-funded employee group benefit plans as estimated by the board's consulting
2 actuary;

3 (i) submit its recommended benefit adjustments for state employees upon approval of the
4 board to the director of the Department of Human Resource Management. The Department of
5 Human Resource Management shall include the benefit adjustments in the total compensation plan
6 recommended to the governor required by Subsection 67-19-12(6)(a);

7 (j) adjust benefits, upon approval of the board, and upon appropriate notice to the state,
8 its educational institutions, and political subdivisions; [and]

9 (k) for the purposes of stimulating competition, establishing better geographical
10 distribution of medical care services, and providing alternative health and dental plan coverage for
11 both active and retired employees, request proposals for alternative health and dental coverage at
12 least once every three years[~~Proposals~~], proposals which meet the criteria specified in the request
13 shall be offered to active and retired state employees and may be offered to active and retired
14 employees of political subdivisions at the option of the political subdivision[~~;~~]; and

15 (l) perform the same functions established in Subsections (1)(a), (b), (d), and (g) for the
16 Department of Health if the group insurance division provides program benefits to children
17 enrolled in the Utah Children's Health Insurance Program created in Title 26, Chapter 40.

18 (2) Funds budgeted and expended shall accrue from premiums paid by the various
19 employers. Administrative costs may not exceed that percentage of premium income which is
20 recommended by the board and approved by the governor and the Legislature.

21 **Section 19. Transfer of funds.**

22 On the effective date of this act, any funds contained in the Medicaid Hospital Provider
23 Temporary Assessment Account, created in Section 26-36-107 and repealed by this act, shall be
24 transferred to the Hospital Provider Assessment Account created in Section 26-40-112.

25 **Section 20. Repealer.**

26 This act repeals:

27 **Section 26-36-101, Short title.**

28 **Section 26-36-102, Legislative findings.**

29 **Section 26-36-103, Application of act.**

30 **Section 26-36-104, Definitions.**

31 **Section 26-36-105, Assessment, collection, and payment of Medicaid Hospital Provider**

1 **Temporary Assessment.**

2 Section 26-36-106, Reporting and auditing requirements.

3 Section 26-36-107, Restricted account -- Creation -- Deposits.

4 Section 26-36-108, Intergovernmental transfers.

5 Section 26-36-109, Repeal of assessment.

6 Section 26-36-110, Federal law compliance -- Provider participation-- Waiver
7 requests.

8 Section 21. **Effective date.**

9 If approved by two-thirds of all the members elected to each house, this act takes effect
10 upon approval by the governor, or the day following the constitutional time limit of Utah
11 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the
12 date of veto override.

Legislative Review Note
as of 2-11-98 11:10 AM

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel