

**CHILDREN'S HEALTH INSURANCE PROGRAM**

1998 GENERAL SESSION

STATE OF UTAH

**Sponsor: Peter C. Knudson**

Mary Carlson

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

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

AMENDS:

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

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

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

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

ENACTS:

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

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

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

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

**26-40-105**, Utah Code Annotated 1953

**26-40-106**, Utah Code Annotated 1953

- 26-40-107**, Utah Code Annotated 1953
- 26-40-108**, Utah Code Annotated 1953
- 26-40-109**, Utah Code Annotated 1953
- 26-40-110**, Utah Code Annotated 1953
- 26-40-111**, Utah Code Annotated 1953
- 26-40-112**, Utah Code Annotated 1953
- 26-40-113**, Utah Code Annotated 1953
- 26-40-114**, Utah Code Annotated 1953

**REPEALS:**

- 26-36-101**, as enacted by Chapter 187, Laws of Utah 1993
- 26-36-102**, as last amended by Chapter 209, Laws of Utah 1995
- 26-36-103**, as enacted by Chapter 187, Laws of Utah 1993
- 26-36-104**, as last amended by Chapter 209, Laws of Utah 1997
- 26-36-105**, as last amended by Chapter 178, Laws of Utah 1997
- 26-36-106**, as last amended by Chapter 93, Laws of Utah 1994
- 26-36-107**, as enacted by Chapter 187, Laws of Utah 1993
- 26-36-108**, as enacted by Chapter 187, Laws of Utah 1993
- 26-36-109**, as last amended by Chapter 209, Laws of Utah 1995
- 26-36-110**, as last amended by Chapter 209, Laws of Utah 1995

This act enacts uncodified material.

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

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

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

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

(2) (a) Any general funds appropriated to the department for the state plan for medical assistance or for the Division of Health Care Financing that are not expended by the department in the fiscal year for which the general funds were appropriated and which are not otherwise designated

as nonlapsing shall lapse into the Medicaid Restricted Account[, which is the proper account for the funds under Section 63-38-8].

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

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

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

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

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

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

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

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

As used in this chapter:

(1) "Assessment" means the hospital provider assessment established in Section 26-40-111.

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

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

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

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

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

(b) "Hospital" does not include:

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

(ii) the Utah State Hospital;

(iii) any rural hospital that operates outside of a metropolitan statistical area, a metropolitan area, or an urbanized area as designated by the U.S. Bureau of Census; or

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

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

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

(9) "Program" means the Utah Children's Health Insurance Program created by this chapter. Section 4. Section 26-40-103 is enacted to read:

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

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

(a) this chapter; and

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

(2) The department shall:

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

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

(i) eligibility requirements;

(ii) program benefits;

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

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

(A) exceed the guidelines set forth in 42 U.S.C. Sec. 1397ee; or  
(B) impose deductible, copayment, or coinsurance requirements on an enrollee for well-child, well-baby, and immunizations;  
(v) the administration of the program; and  
(vi) the provider assessment, including:  
(A) the factor for the assessment;  
(B) the administration, collection, and enforcement of the assessment, including:  
(I) auditing a provider's records; and  
(II) imposing penalties for failure to pay the assessment as required; and  
(C) reducing the amount of the assessment to the extent funds are deposited into the Hospital Provider Assessment Account created in Section 26-40-112 as a result of private contributions to the program.

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

- (a) the Health and Human Services Interim Committee of the Legislature;
- (b) the Health Policy Commission; and
- (c) the department.

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

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

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

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

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

- (a) child health care providers;
- (b) parents and guardians of children enrolled in the program;

(c) ethnic populations other than American Indians;

(d) American Indians;

(e) the Health Policy Commission;

(f) the Utah Association of Health Care Providers;

(g) health and disability insurance providers; and

(h) the general public.

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

(a) benefits design;

(b) eligibility criteria;

(c) outreach;

(d) evaluation; and

(e) special strategies for under-served populations.

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

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

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

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

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

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

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

(a) be a bona fide Utah resident;

(b) be a citizen or legal resident of the United States;

(c) be under 19 years of age;

(d) not have access to or coverage under other health insurance, including any coverage available through a parent or legal guardian's employer;

(e) be ineligible for Medicaid benefits;

(f) reside in a household whose gross family income, as defined by rule, is at or below 200% of the federal poverty level; and

(g) not be an inmate of a public institution or a patient in an institution for mental diseases.

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

(3) The department shall determine eligibility and send notification of the decision within 30 days after receiving the application for coverage. If the department cannot reach a decision because the applicant fails to take a required action or there is an administrative or other emergency beyond the department's control, the department shall:

(a) document the reason for the delay in the applicant's case record; and

(b) inform the applicant of the status of the application and time frame for completion.

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

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

At a minimum, program benefits shall include:

(1) hospital services;

(2) physician services;

(3) laboratory services;

(4) prescription drugs;

(5) mental health services;

(6) basic dental services;

(7) preventive care including:

(a) routine physical examinations;

(b) immunizations;

(c) basic vision services; and

(d) basic hearing services;

(8) limited home health and durable medical equipment services; and

(9) hospice care.

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

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

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

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

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

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

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

(a) other forms of child health assistance for children with gross family incomes below 200% of the federal poverty level;

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

(c) outreach program expenditures; and

(d) administrative costs.

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

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

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

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

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

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

(1) Services provided to enrollees under the program shall be delivered in a managed care system if services are available within 30 paved road miles of where the enrollee lives or resides. Otherwise, the program may provide services to enrollees through fee for service plans.

(2) Before awarding a contract to a managed care system or fee for service plan to provide services under Subsection (1) or determining that no bid or proposal received in response to such a request is acceptable, the executive director shall report that information to and seek recommendations from the Health Policy Commission.

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

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

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

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

(1) Other than for the imposition of the assessment described in and utilized for the purposes of the chapter, nothing in this chapter affects the nonprofit or tax exempt status of any nonprofit charitable, religious, or educational health care provider under 26 U.S.C. Sec. 501(c), as amended, or other applicable federal law, or under any state law, or any activities of or property owned by any such provider with respect to exemption from ad valorem property taxes, income or franchise taxes, sales or use taxes, or any other taxes, fees, or assessments whatever, whether imposed or sought to be imposed by the state or any political subdivision, county, municipality, district, authority, or any agency or department thereof.

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

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

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

(b) shall be reduced to the extent that funds are deposited into the Hospital Provider

Assessment Account created in Section 26-40-112 as a result of private contributions to the program.

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

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

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

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

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

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

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

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

(c) private contributions;

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

(e) any funds received by virtue of the state's action for reimbursement of medicaid funds from tobacco manufacturers that are not restricted by use or purpose by:

(i) the federal government;

(ii) state or federal law; or

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

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

(a) the program; and

(b) if funds remain after Subsection (3)(a), the Medicaid program.

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

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

The assessment imposed by this chapter otherwise applicable to the University of Utah Hospital and to any other publicly owned or operated hospital may be provided by means of a

quarterly governmental transfer to the department in lieu of payment and collection of the assessment.

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

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

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

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

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

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

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

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

(2) The Department of Health may participate in this program for the purpose of providing program benefits to children enrolled in the Utah Children's Health Insurance Program created in Title 26, Chapter 40, if the provisions in Subsection 26-40-110(4) occur. If the Department of Health participates in the program under the provisions of this Subsection (2), all insurance risk associated with the Children's Health Insurance Program shall be the responsibility of the Department of Health and not the group insurance division or the retirement office.

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

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

The group insurance division shall establish:

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

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

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

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

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

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

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

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

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

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

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

(g) submit annually a budget which includes total projected benefit and administrative costs;

(h) maintain reserves sufficient to liquidate the unrevealed claims liability and other liabilities of the self-funded employee group benefit plans as estimated by the board's consulting actuary;

(i) submit its recommended benefit adjustments for state employees upon approval of the

board to the director of the Department of Human Resource Management. The Department of Human Resource Management shall include the benefit adjustments in the total compensation plan recommended to the governor required by Subsection 67-19-12(6)(a);

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

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

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

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

**Section 19. Transfer of funds.**

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

**Section 20. Repealer.**

This act repeals:

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

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

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

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

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

**Temporary Assessment.**

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

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

Section **26-36-108, Intergovernmental transfers.**

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

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