

1                                   **STATUTORY AMENDMENTS FOR MEDICAID**

2   **BUDGET REDUCTIONS**

3   2002 FIFTH SPECIAL SESSION

4   STATE OF UTAH

5   **Sponsor: David H. Steele**

6   **This act modifies the Health Code and the Pharmacy Practice Act. The act makes statutory**  
7   **changes to implement budget reductions in the Medicaid program. The act amends the**  
8   **state's Medicaid freedom of choice waiver. The act removes the mandate for the state to**  
9   **move certain people into managed care plans. This act establishes that it is an acceptable**  
10   **practice for a pharmacist in a nursing home or intermediate care facility for the mentally**  
11   **retarded to accept back or redistribute unused drugs in certain circumstances. The act**  
12   **requires the Department of Health to reimburse for the use of generic drugs when generic**  
13   **drugs are available. The act has an immediate effective date.**

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

15   AMENDS:

16               **26-18-3.7**, as last amended by Chapter 1, Laws of Utah 2000

17               **58-17a-605.1**, as enacted by Chapter 61, Laws of Utah 1997

18   ENACTS:

19               **58-17a-502.5**, Utah Code Annotated 1953

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

21               Section 1. Section **26-18-3.7** is amended to read:

22               **26-18-3.7. Prepaid health care delivery systems.**

23               (1) (a) Before July 1, 1996, the division [~~shall~~] may submit to the Health Care Financing  
24   Administration within the United States Department of Health and Human Services, an  
25   amendment to the state's freedom of choice waiver. That amendment shall provide that the  
26   following persons who are eligible for services under the state plan for medical assistance, who  
27   reside in Salt Lake, Utah, Davis, or Weber counties, shall enroll in the recipient's choice of a health



28 care delivery system that meets the requirements of Subsection (2):

- 29 (i) by July 1, 1994, 40% of eligible persons;
- 30 (ii) by July 1, 1995, 65% of eligible persons; and
- 31 (iii) by July 1, 1996, 100% of eligible persons.

32 (b) The division may not enter into any agreements with mental health providers that  
33 establish a prepaid capitated delivery system for mental health services that were not in existence  
34 prior to July 1, 1993, until the application of the Utah Medicaid Hospital Provider Temporary  
35 Assessment Act with regard to a specialty hospital as defined in Section 26-21-2 that may be  
36 engaged exclusively in rendering psychiatric or other mental health treatment is repealed.

37 (c) The following are exempt from the requirements of Subsection (1)(a):

38 (i) persons who:

- 39 (A) receive medical assistance for the first time after July 1, 1996;
- 40 (B) have a mental illness, as that term is defined in Section 62A-12-202; and
- 41 (C) are receiving treatment for that mental illness. The division, when appropriate, shall

42 enroll these persons in a health care delivery system that meets the requirements of this section;

43 (ii) persons who are institutionalized in a facility designated by the division as a nursing  
44 facility or an intermediate care facility for the mentally retarded; or

45 (iii) persons with a health condition that requires specialized medical treatment that is not  
46 available from a health care delivery system that meets the requirements of this section.

47 (2) In submitting the amendment to the state's freedom of choice waiver under Subsection  
48 (1), the division shall ensure that the proposed health care delivery systems have at least the  
49 following characteristics, so that the system:

50 (a) is financially at risk, for a specified continuum of health care services, for a defined  
51 population, and has incentives to balance the patient's need for care against the need for cost  
52 control;

53 (b) follows utilization and quality controls developed by the department;

54 (c) is encouraged to promote the health of patients through primary and preventive care;

55 (d) coordinates care to avoid unnecessary duplication and services;

56 (e) conserves health care resources; and

57 (f) if permissible under the waiver, utilizes private insurance plans including health  
58 maintenance organizations and other private health care delivery organizations.

59 (3) Subsection (2) does not prevent the division from contracting with other health care  
60 delivery organizations if the division determines that it is advantageous to do so.

61 (4) Health care delivery systems that meet the requirements of this section may provide  
62 all services otherwise available under the state plan for medical assistance, except prescribed  
63 drugs.

64 (5) The division shall periodically report to the Health and Human Services Interim  
65 Committee regarding the development and implementation of the amendment to the state's  
66 freedom of choice waiver required under this section.

67 Section 2. Section **58-17a-502.5** is enacted to read:

68 **58-17a-502.5. Exception to unprofessional conduct.**

69 (1) For purposes of this section:

70 (a) "ICFMR" means an intermediate care facility for the mentally retarded licensed as a  
71 nursing care facility or a small health care facility under Title 26, Chapter 21, Health Care Facility  
72 Licensing and Inspection Act;

73 (b) "nursing care facility" has the same definition as in Section 26-21-2; and

74 (c) "unit pack" means a single dose - single drug package which indicates the lot number  
75 and expiration date for the drug.

76 (2) Notwithstanding the provisions of Subsection 58-17a-502(5), a pharmacist may accept  
77 back and redistribute any unused drug, or a part of it, after it has left the premises of the pharmacy  
78 if:

79 (a) the drug was prescribed to a patient in a nursing care facility or an ICFMR;

80 (b) the drug was stored under the supervision of a licensed health care provider according  
81 to manufacturer recommendations;

82 (c) the drug is in a unit pack or in the manufacturer's sealed container;

83 (d) the drug was returned to the original dispensing pharmacy;

84 (e) the drug was initially dispensed by a licensed pharmacist or licensed pharmacy intern;

85 and

86 (f) accepting back and redistribution of the drug complies with Federal Food and Drug  
87 Administration and Drug Enforcement Administration regulations.

88 Section 3. Section **58-17a-605.1** is amended to read:

89 **58-17a-605.1. Restrictive drug formulary prohibited.**

90 (1) As used in this section[;]:

91 (a) "generic form" means a prescription drug that is available in generic form and has an  
92 A rating in the United States Pharmacopeia and Drug Index;

93 (b) "legend drug" means any drug that requires a prescription under state or federal law;  
94 and

95 (c) "restrictive drug formulary" means a list of legend drugs, other than drugs for cosmetic  
96 purposes, that are prohibited by the Utah Department of Health from dispensation, but are  
97 approved by the federal Food and Drug Administration.

98 (2) A practitioner may prescribe legend drugs in accordance with this chapter that, in his  
99 professional judgment and within the lawful scope of his practice, he considers appropriate for the  
100 diagnosis and treatment of his patient.

101 (3) ~~[The]~~ Except as provided in Subsection (4), the Utah Department of Health may not  
102 maintain a restrictive drug formulary that restricts a physician's ability to treat a patient with a  
103 legend drug that has been approved and designated as safe and effective by the federal Food and  
104 Drug Administration, except for drugs for cosmetic purposes.

105 (4) ~~[The Utah Department of Health may reimburse for]~~ When a multisource [prescription  
106 drugs] legend drug is available in the generic form, ~~[in accordance with state and federal law,~~  
107 ~~unless an exception has been made by the prescribing practitioner]~~ the Department of Health may  
108 only reimburse for the generic form of the drug unless the treating physician demonstrates to the  
109 Department of Health a medical necessity for dispensing the nongeneric, brand-name legend drug.

110 (5) This section does not affect the state's ability to exercise the exclusion options available  
111 under the federal Omnibus Budget Reconciliation Act of 1990.

112 **Section 4. Effective date.**

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

**Legislative Review Note**  
**as of 7-9-02 11:55 AM**

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

**Office of Legislative Research and General Counsel**