

MEDICAID BENEFIT AMENDMENTS

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Rebecca D. Lockhart

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This act modifies the Medicaid Assistance Act. The act authorizes the department to study a Medicaid drug program. The act establishes certain requirements for the Medicaid drug program and requires legislative oversight before a Medicaid drug program is implemented. The act clarifies that the department must implement the state Medicaid program through the administrative rule process. The act requires the department to submit a proposed administrative rule that would modify Medicaid benefits, services, or reimbursement methodologies to either the Legislative Executive Appropriations Committee or the Health and Human Services Appropriation Subcommittee before adopting the rule.

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

AMENDS:

26-18-2.3, as enacted by Chapter 21, Laws of Utah 1988

26-18-3, as last amended by Chapter 316, Laws of Utah 2000

ENACTS:

26-18-2.4, Utah Code Annotated 1953

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

Section 1. Section **26-18-2.3** is amended to read:

26-18-2.3. Division responsibilities -- Emphasis -- Periodic assessment.

(1) In accordance with the requirements of Title XIX of the Social Security Act and applicable federal regulations, the division is responsible for the effective and impartial administration of this chapter in an efficient, economical manner. The division shall:

(a) establish, on a statewide basis, a program to safeguard against unnecessary or inappropriate use of Medicaid services, excessive payments, and unnecessary or inappropriate hospital admissions or lengths of stay[. ~~The division shall~~];

(b) deny any provider claim for services that fail to meet criteria established by the division concerning medical necessity or appropriateness~~[- The division shall];~~ and

(c) place its emphasis on high quality care to recipients in the most economical and cost-effective manner possible, with regard to both publicly and privately provided services.

(2) The division shall implement and utilize cost-containment methods, where possible, which may include, but are not limited to:

(a) prepayment and postpayment review systems to determine if utilization is reasonable and necessary;

(b) preadmission certification of nonemergency admissions;

(c) mandatory outpatient, rather than inpatient, surgery in appropriate cases;

(d) second surgical opinions;

(e) procedures for encouraging the use of outpatient services;

(f) consistent with Sections 28-18-2.4 and 58-17a-605.1, a Medicaid drug program;

~~[(f)]~~ (g) coordination of benefits; and

~~[(g)]~~ (h) review and exclusion of providers who are not cost effective or who have abused the Medicaid program, in accordance with the procedures and provisions of federal law and regulation.

(3) The director of the division shall periodically assess the cost effectiveness and health implications of the existing Medicaid program, and consider alternative approaches to the provision of covered health and medical services through the Medicaid program, in order to reduce unnecessary or unreasonable utilization.

Section 2. Section **26-18-2.4** is enacted to read:

26-18-2.4. Medicaid drug program.

(1) A Medicaid drug program developed by the department under Subsection 26-18-2.3
(2)(f):

(a) shall, notwithstanding Subsection 26-18-2.3(1)(b), be based on clinical and cost-related factors which include medical necessity as determined by a provider in accordance with administrative rules established by the Drug Utilization Review Board; and

(b) may include therapeutic categories of drugs that may be exempted from the drug program.

(2) (a) (i) The department shall study the Medicaid drug program for fiscal year 2003-04, but may not implement the program unless the department reports its findings and recommendations, including any proposed rules to the Legislative Executive Appropriations Committee and Legislative Management Committee at their August 2003 meeting, or if a meeting is not held in August, at the September 2003 meeting, for their review and recommendations.

(ii) The Legislative Executive Appropriations Committee and Legislative Management Committee shall review the Medicaid drug program proposed by the department and may:

(A) recommend that the department implement the drug program;

(B) recommend that the department modify the drug program;

(C) recommend that the department terminate the drug program; or

(D) recommend to the governor that he call a special session of the Legislature to review and approve the drug program.

(b) The department may use the Medicaid drug program developed and approved under Subsection (2)(a) in subsequent fiscal years.

(3) The department shall report its findings and recommendations regarding the Medicaid drug program to the Legislative Health and Human Services Interim Committee by August 30, 2003, and to the Legislative Health and Human Services Appropriations Subcommittee during the 2004 General Session.

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

26-18-3. Administration of Medicaid program by department -- Disciplinary measures and sanctions -- Funds collected.

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

(2) (a) The department shall [~~develop implementing policy~~] implement the Medicaid

program through administrative rules in conformity with this chapter, Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the requirements of Title XIX, and applicable federal regulations.

(b) (i) The rules adopted under Subsection (2)(a) shall include, in addition to other rules necessary to implement the program, the standards used by the department for determining eligibility for Medicaid services, the services and benefits to be covered by the Medicaid program, and reimbursement methodologies for providers under the Medicaid program.

(ii) If the department implements a change in the Medicaid State Plan, initiates a new Medicaid waiver, submits an amendment to an existing Medicaid waiver, or initiates a rate change requiring public notice under state or federal law, the department shall, prior to adopting the change, report to either the Legislative Executive Appropriations Committee or the Legislative Health and Human Services Appropriations Subcommittee and include in the report:

(A) the proposed change in services or reimbursement;

(B) the effect of an increase or decrease in services or benefits on individuals and families;

(C) the degree to which any proposed cut may result in cost-shifting to more expensive services in health or human service programs; and

(D) the effect of any proposed increase of benefits or reimbursement on current and future appropriations from the Legislature to the department.

(iii) Any rules adopted by the department under this Subsection (2) are subject to review and reauthorization by the Legislature in accordance with Section 63-46a-11.5.

(3) The department may, in its discretion, contract with the Department of Human Services or other qualified agencies for services in connection with the administration of the Medicaid program, including but not limited to the determination of the eligibility of individuals for the program, recovery of overpayments, and enforcement of fraud and abuse laws, consistent with Section 26-20-13, to the extent permitted by law and quality control services.

(4) The department shall provide, by rule, disciplinary measures and sanctions for Medicaid providers who fail to comply with the rules and procedures of the program, provided

that sanctions imposed administratively may not extend beyond:

- (a) termination from the program;
- (b) recovery of claim reimbursements incorrectly paid; and
- (c) those specified in Section 1919 of Title XIX of the federal Social Security Act.

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

(6) (a) In determining whether an applicant or recipient is eligible for a service or benefit under this part or Chapter 40, Utah Children's Health Insurance [Program] Act, the department shall, if Subsection (6)(b) is satisfied, exclude from consideration one passenger vehicle designated by the applicant or recipient.

(b) Before Subsection (6)(a) may be applied:

(i) the federal government must:

(A) determine that Subsection (6)(a) may be implemented within the state's existing public assistance-related waivers as of January 1, 1999;

(B) extend a waiver to the state permitting the implementation of Subsection (6)(a); or

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

(ii) the department must determine that Subsection (6)(a) can be implemented within existing funding.