

**MEDICAL BENEFITS RECOVERY ACT**

**AMENDMENTS**

2005 GENERAL SESSION

STATE OF UTAH

**Sponsor: Sheldon L. Killpack**

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**LONG TITLE**

**General Description:**

This bill amends the Medical Benefits Recovery Act within the Utah Health Code.

**Highlighted Provisions:**

This bill:

- ▶ amends definitions;
- ▶ establishes a process for a recipient of state medical benefits to notify and obtain the consent of the Department of Health prior to taking action on a claim against a third party who may be obligated to pay for all or part of those benefits;
- ▶ establishes a process for the Department of Health to respond to the recipient's notice;
- ▶ requires the Department of Health to enter into a collection agreement with a recipient's attorney except in specified circumstances;
- ▶ specifies the conditions under which a recipient may proceed with a claim against a third party;
- ▶ makes clarifying changes;
- ▶ changes the ceiling for attorney's fees to a fixed rate;
- ▶ establishes deadlines for remitting funds assigned to and recoverable by the Department of Health;
- ▶ prohibits disbursement of funds from a claim until the Department of Health's claim has been paid;



- 28           ▶ establishes a penalty and liability for noncompliance; and
- 29           ▶ makes technical corrections.

30 **Monies Appropriated in this Bill:**

31           None

32 **Other Special Clauses:**

33           None

34 **Utah Code Sections Affected:**

35 AMENDS:

36           **26-19-2**, as last amended by Chapter 72, Laws of Utah 2004

37           **26-19-5**, as last amended by Chapter 72, Laws of Utah 2004

38           **26-19-7**, as last amended by Chapter 102, Laws of Utah 1995

39           **75-7-508**, as last amended by Chapter 72 and renumbered and amended by Chapter 89,  
40 Laws of Utah 2004



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

43           Section 1. Section **26-19-2** is amended to read:

44           **26-19-2. Definitions.**

45           As used in this chapter:

46           (1) "Annuity" shall have the same meaning as provided in Section 31A-1-301.

47           (2) "Claim" means:

48           (a) a request or demand for payment; or

49           (b) a cause of action for money or damages arising under any law.

50           ~~(2)~~ (3) "Employee welfare benefit plan" means a medical insurance plan developed  
51 by an employer under 29 U.S.C. Section 1001, et seq., the Employee Retirement Income  
52 Security Act of 1974 as amended.

53           ~~(3)~~ (4) "Estate" means, regarding a deceased recipient:

54           (a) all real and personal property or other assets included within a decedent's estate as  
55 defined in Section 75-1-201;

56           (b) the decedent's augmented estate as defined in Section 75-2-203; and

57           (c) that part of other real or personal property in which the decedent had a legal interest  
58 at the time of death including assets conveyed to a survivor, heir, or assign of the decedent

59 through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other  
60 arrangement.

61 [~~(4)~~] (5) "Insurer" includes:

62 (a) a group health plan as defined in Subsection 607(1) of the federal Employee

63 Retirement Income Security Act of 1974;

64 (b) a health maintenance organization; and

65 (c) any entity offering a health service benefit plan.

66 [~~(5)~~] (6) "Medical assistance" means:

67 (a) all funds expended for the benefit of a recipient under Title 26, Chapter 18, Medical  
68 Assistance Act, or under Titles XVIII and XIX, federal Social Security Act; and

69 (b) any other services provided for the benefit of a recipient by a prepaid health care  
70 delivery system under contract with the department.

71 (7) "Office of Recovery Services" means the Office of Recovery Services within the  
72 Department of Human Services.

73 [~~(6)~~] (8) "Provider" means a person or entity who provides services to a recipient.

74 [~~(7)~~] (9) "Recipient" means:

75 (a) a person who has applied for or received medical assistance from the state;

76 (b) the guardian, conservator, or other personal representative of a person under

77 Subsection [~~(7)~~] (9)(a) if the person is a minor or an incapacitated person; or

78 (c) the estate and survivors of a person under Subsection [~~(7)~~] (9)(a) if the person is  
79 deceased.

80 [~~(8)~~] (10) "State plan" means the state Medicaid program as enacted in accordance with  
81 Title XIX, federal Social Security Act.

82 [~~(9)~~] (11) "Third party" includes:

83 (a) an individual, institution, corporation, public or private agency, trust, estate,

84 insurance carrier, employee welfare benefit plan, health maintenance organization, health

85 service organization, preferred provider organization, governmental program such as Medicare,

86 CHAMPUS, and workers' compensation, which may be obligated to pay all or part of the

87 medical costs of injury, disease, or disability of a recipient, unless any of these are excluded by  
88 department rule; and

89 (b) a spouse or a parent who:

90 (i) may be obligated to pay all or part of the medical costs of a recipient under law or  
91 by court or administrative order; or

92 (ii) has been ordered to maintain health, dental, or accident and health insurance to  
93 cover medical expenses of a spouse or dependent child by court or administrative order.

94 [~~(10)~~] (12) "Trust" shall have the same meaning as provided in Section 75-1-201.

95 Section 2. Section **26-19-5** is amended to read:

96 **26-19-5. Recovery of medical assistance from third party -- Lien -- Notice --**  
97 **Action -- Compromise or waiver -- Recipient's right to action protected.**

98 (1) (a) When the department provides or becomes obligated to provide medical  
99 assistance to a recipient that a third party is obligated to pay for, the department may recover  
100 the medical assistance directly from that third party.

101 (b) Any claim arising under Subsection (1)(a) or Section 26-19-4.5 to recover medical  
102 assistance provided to a recipient is a lien against any proceeds payable to or on behalf of the  
103 recipient by that third party. This lien has priority over all other claims to the proceeds, except  
104 claims for attorney's fees and costs authorized under Subsection 26-19-7[~~(4)~~] (2)(c)(ii).

105 (2) (a) The department shall mail or deliver written notice of its claim or lien to the  
106 third party at its principal place of business or last-known address.

107 (b) The notice shall include:

108 (i) the recipient's name;

109 (ii) the approximate date of illness or injury;

110 (iii) a general description of the type of illness or injury; and

111 (iv) if applicable, the general location where the injury is alleged to have occurred.

112 (3) The department may commence an action on its claim or lien in its own name, but  
113 that claim or lien is not enforceable as to a third party unless:

114 (a) the third party receives written notice of the department's claim or lien before it  
115 settles with the recipient; or

116 (b) the department has evidence that the third party had knowledge that the department  
117 provided or was obligated to provide medical assistance.

118 (4) The department may:

119 (a) waive a claim or lien against a third party in whole or in part; or

120 (b) compromise, settle, or release a claim or lien.

121 (5) An action commenced under this section does not bar an action by a recipient or a  
122 dependent of a recipient for loss or damage not included in the department's action.

123 (6) The department's claim or lien on proceeds under this section is not affected by the  
124 transfer of the proceeds to a trust, annuity, financial account, or other financial instrument.

125 Section 3. Section **26-19-7** is amended to read:

126 **26-19-7. Notice of claim by recipient -- Department response -- Conditions for**  
127 **proceeding -- Collection agreements -- Department's right to intervene -- Department's**  
128 **interests protected -- Remitting funds -- Disbursements -- Liability and penalty for**  
129 **noncompliance.**

130 (1) (a) A recipient may not file a claim, commence an action, or settle, compromise,  
131 release, or waive a claim against a third party for recovery of medical costs for an injury,  
132 disease, or disability for which the department has provided or has become obligated to provide  
133 medical assistance, without the department's written consent~~[-]~~ as provided in Subsection (2)(b)  
134 or (4).

135 (b) For purposes of Subsection (1)(a), consent may be obtained if:

136 (i) a recipient who files a claim, or commences an action against a third party notifies  
137 the department in accordance with Subsection (1)(d) within ten days of making his claim or  
138 commencing an action; or

139 (ii) an attorney, who has been retained by the recipient to file a claim, or commence an  
140 action against a third party, notifies the department in accordance with Subsection (1)(d) of the  
141 recipient's claim:

142 (A) within 30 days after being retained by the recipient for that purpose; or

143 (B) within 30 days from the date the attorney either knew or should have known that  
144 the recipient received medical assistance from the department.

145 (c) Service of the notice of claim to the department shall be made by certified mail,  
146 personal service, or by e-mail in accordance with Rule 5 of the Utah Rules of Civil Procedure,  
147 to the director of the Office of Recovery Services.

148 (d) The notice of claim shall include the following information:

149 (i) the name of the recipient;

150 (ii) the recipient's Social Security number;

151 (iii) the recipient's date of birth;

- 152 (iv) the name of the recipient's attorney if applicable;  
 153 (v) the name or names of individuals or entities against whom the recipient is making  
 154 the claim, if known;  
 155 (vi) the name of the third party's insurance carrier, if known;  
 156 (vii) the date of the incident giving rise to the claim; and  
 157 (viii) a short statement identifying the nature of the recipient's claim.

158 (2) (a) Within 30 days of receipt of the notice of the claim required in Subsection (1),  
 159 the department shall acknowledge receipt of the notice of the claim to the recipient or the  
 160 recipient's attorney and shall notify the recipient or the recipient's attorney in writing of the  
 161 following:

162 (i) if the department has a claim or lien pursuant to Section 26-19-5 or has become  
 163 obligated to provide medical assistance; and

164 (ii) whether the department is denying or granting written consent in accordance with  
 165 Subsection (1)(a).

166 (b) The department shall provide the recipient's attorney the opportunity to enter into a  
 167 collection agreement with the department, with the recipient's consent, unless:

168 (i) the department, prior to the receipt of the notice of the recipient's claim pursuant to  
 169 Subsection (1), filed a written claim with the third party, the third party agreed to make  
 170 payment to the department before the date the department received notice of the recipient's  
 171 claim, and the agreement is documented in the department's record; or

172 (ii) there has been a failure by the recipient's attorney to comply with any provision of  
 173 this section by:

174 (A) failing to comply with the notice provisions of this section;

175 (B) failing or refusing to enter into a collection agreement;

176 (C) failing to comply with the terms of § [any previous] A § collection agreement with the  
 177 department; or

178 (D) failing to disburse funds owed to the state in accordance with this section § [in  
 179 previous collection agreements with the department] § .

180 (c) (i) The collection agreement shall be:

181 (A) consistent with this section and the attorney's obligation to represent the recipient  
 182 and represent the state's claim; and

183 (B) state the terms under which the interests of the department may be represented in  
184 an action commenced by the recipient.

185 (ii) If the recipient's attorney enters into a written collection agreement with the  
186 department, or includes the department's claim in the recipient's claim or action pursuant to  
187 Subsection (4), the department shall pay attorney's fees at the rate of 33.3% of the department's  
188 total recovery and shall pay a proportionate share of the litigation expenses directly related to  
189 the action.

190 (d) The department is not required to enter into a collection agreement with the  
191 recipient's attorney for collection of personal injury protection under Subsection  
192 31A-22-302(2).

193 (3) (a) If the department receives notice pursuant to Subsection (1), and notifies the  
194 recipient and the recipient's attorney that the department will not enter into a collection  
195 agreement with the recipient's attorney, the recipient may proceed with the recipient's claim or  
196 action against the third party if the recipient excludes from the claim:

197 (i) any medical expenses paid by the department; or

198 (ii) any § [medial] MEDICAL § costs for which the department is obligated to provide  
198a medical  
199 assistance.

200 (b) When a recipient proceeds with a claim under Subsection (3)(a), the recipient shall  
201 provide written notice to the third party of the exclusion of the department's claim for expenses  
202 under Subsection (3)(a)(i) or (ii).

203 (4) If the department receives notice pursuant to Subsection (1), and does not respond  
204 within 30 days to the recipient or the recipient's attorney, the recipient or the recipient's  
205 attorney:

206 (a) may proceed with the recipient's claim or action against the third party;

207 (b) may include the state's claim in the recipient's claim or action; and

208 (c) may not negotiate, compromise, settle, or waive the department's claim without the  
209 department's consent.

210 ~~[(b)]~~ (5) The department has an unconditional right to intervene in an action  
211 commenced by a recipient against a third party for [recovery] the purpose of recovering  
212 medical costs [connected with the same injury, disease, or disability,] for which [it] the  
213 department has provided or has become obligated to provide medical assistance.

214 ~~[(2)]~~ (6) (a) If the recipient proceeds without [the department's written consent as  
215 required by Subsection (1)(a)] complying with the provisions of this section, the department is  
216 not bound by any decision, judgment, agreement, settlement, or compromise rendered or made  
217 on the claim or in the action.

218 (b) The department may recover in full from the recipient or any party to which the  
219 proceeds were made payable all medical assistance which it has provided and retains its right to  
220 commence an independent action against the third party, subject to Subsection 26-19-5(3).

221 ~~[(3) The department's written consent, if given, shall state under what terms the~~  
222 ~~interests of the department may be represented in an action commenced by the recipient.]~~

223 ~~[(4) The department may not pay more than 33% of its total recovery for attorney's~~  
224 ~~fees, but shall pay a proportionate share of the costs in an action that is commenced with the~~  
225 ~~department's written consent.]~~

226 (7) Any amounts assigned to and recoverable by the department pursuant to Sections  
227 26-19-4.5 and 26-19-5 collected directly by the recipient shall be remitted to the Bureau of  
228 Medical Collections within the Office of Recovery Services no later than five business days  
229 after receipt.

230 (8) Any amounts assigned to and recoverable by the department pursuant to Sections  
231 26-19-4.5 and 26-19-5 collected directly by the recipient's attorney must be remitted to the  
232 Bureau of Medical Collections within the Office of Recovery Services no later than 30 days  
233 after the funds are placed in the attorney's trust account.

234 (a) The date by which the funds must be remitted to the department may be modified  
235 based on agreement between the department and the recipient's attorney.

236 (b) The department's consent to another date for remittance may not be unreasonably  
237 withheld.

238 (c) If the funds are received by the recipient's attorney, no disbursements shall be made  
239 to the recipient or the recipient's attorney until the department's claim has been paid.

240 (9) A recipient or recipient's attorney who knowingly and intentionally fails to comply  
241 with this section is liable to the department for:

242 (a) the amount of the department's claim or lien pursuant to Subsection (5);

243 (b) a penalty equal to 10% of the amount of the department's claim; and

244 (c) attorney's fees and litigation expenses related to recovering the department's claim.

245 Section 4. Section **75-7-508** is amended to read:

246 **75-7-508. Notice to creditors.**

247 (1) A trustee for an inter vivos revocable trust, upon the death of the settlor, may  
248 publish a notice to creditors once a week for three successive weeks in a newspaper of general  
249 circulation in the county where the settlor resided at the time of death. The notice required by  
250 this Subsection (1) must:

251 (a) provide the trustee's name and address; and

252 (b) notify creditors:

253 (i) of the deceased settlor; and

254 (ii) to present their claims within three months after the date of the first publication of  
255 the notice or be forever barred from presenting the claim.

256 (2) A trustee shall give written notice by mail or other delivery to any known creditor  
257 of the deceased settlor, notifying the creditor to present his claim within 90 days from the  
258 published notice if given as provided in Subsection (1) or within 60 days from the mailing or  
259 other delivery of the notice, whichever is later, or be forever barred. Written notice shall be the  
260 notice described in Subsection (1) or a similar notice.

261 (3) (a) If the deceased settlor received medical assistance as defined in Subsection  
262 26-19-2~~(5)~~ (6) at any time after the age of 55, the trustee for an inter vivos revocable trust,  
263 upon the death of the settlor, shall mail or deliver written notice to the Director of the Office of  
264 Recovery Services, on behalf of the Department of Health, to present any claim under Section  
265 26-19-13.5 within 60 days from the mailing or other delivery of notice, whichever is later, or  
266 be forever barred.

267 (b) If the trustee does not mail notice to the director of the Office of Recovery Services  
268 on behalf of the department in accordance with Subsection (3)(a), the department shall have  
269 one year from the death of the settlor to present its claim.

270 (4) The trustee shall not be liable to any creditor or to any successor of the deceased  
271 settlor for giving or failing to give notice under this section.

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**Legislative Review Note**

**as of 1-13-05 9:21 AM**

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

**Office of Legislative Research and General Counsel**

**State Impact**

Through more effective cost recovery of state-paid medical benefits, the Office of Recovery Services estimates additional annual collections of \$400,000. Of this amount, \$283,000 would be refunded to the federal government; \$117,000 would be returned to the Medicaid program.

	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2006</u> <u>Revenue</u>	<u>FY 2007</u> <u>Revenue</u>
Federal Funds	\$0	\$0	(\$283,000)	(\$283,000)
Federal Funds	\$0	\$0	\$283,000	\$283,000
Dedicated Credits	\$0	\$0	\$117,000	\$117,000
<b>TOTAL</b>	<b>\$0</b>	<b>\$0</b>	<b>\$117,000</b>	<b>\$117,000</b>

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**Individual and Business Impact**

A third party payer may be required to repay the State for medical benefit obligations that currently go uncollected.

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**Office of the Legislative Fiscal Analyst**