

Representative John Dougall proposes the following substitute bill:

MEDICAID PROGRAM AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: John Dougall

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends Medicaid provisions of the Utah Code.

Highlighted Provisions:

This bill:

▶ requires the Department of Health to conduct a certain level of internal audits of the Medicaid program;

▶ requires the Department of Health to study and report:

- direct contracting for primary care services; and
- the feasibility of establishing a medical homes model;

▶ allows the Department of Health to apply for and, if approved, implement a program for health opportunity accounts;

▶ requires the division to set fee schedules for an outpatient medical procedure for various types of health care facilities;

▶ requires certain funds to be deposited in the Medicaid Restricted Account; and

▶ expands the use of the Nursing Care Facilities Account, which was established to assist nursing care facilities providing services under the Medicaid program.

Monies Appropriated in this Bill:

None



26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 AMENDS:

30 **26-18-3**, as last amended by Laws of Utah 2008, Chapters 62 and 382

31 **26-18-402**, as last amended by Laws of Utah 2009, Chapters 13 and 199

32 **26-35a-106**, as last amended by Laws of Utah 2008, Chapter 382

33 ENACTS:

34 **26-18-3.8**, Utah Code Annotated 1953

35 RENUMBERS AND AMENDS:

36 **26-10-101**, (Renumbered from 26-18-301, as last amended by Laws of Utah 2008,
37 Chapter 159)

38 **26-10-102**, (Renumbered from 26-18-302, as last amended by Laws of Utah 2008,
39 Chapter 159)

40 **26-10-103**, (Renumbered from 26-18-303, as enacted by Laws of Utah 1993, Chapter
41 255)

42 **26-10-104**, (Renumbered from 26-18-304, as last amended by Laws of Utah 2008,
43 Chapters 159 and 382)

44 **26-10-105**, (Renumbered from 26-18-305, as last amended by Laws of Utah 2006,
45 Chapter 116)



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

48 Section 1. Section **26-10-101**, which is renumbered from Section 26-18-301 is
49 renumbered and amended to read:

50 ~~[26-18-301]~~. **26-10-101**. **Definitions.**

51 As used in this part:

52 (1) "Community based organization":

53 (a) means a private entity; and

54 (b) includes for profit and not for profit entities.

55 (2) "Cultural competence" means a set of congruent behaviors, attitudes, and policies
56 that come together in a system, agency, or profession and enables that system, agency, or

57 profession to work effectively in cross-cultural situations.

58 (3) "Health literacy" means the degree to which an individual has the capacity to
59 obtain, process, and understand health information and services needed to make appropriate
60 health decisions.

61 (4) "Institutional capacity" means the ability of a community based organization to
62 implement public and private contracts.

63 (5) "Medically underserved population" means the population of an urban or rural area
64 or a population group designated by the department as having a shortage of primary health care
65 services.

66 (6) "Primary health care" means:

67 (a) basic and general health care services given when a person seeks assistance to
68 screen for or to prevent illness and disease, or for simple and common illnesses and injuries;
69 and

70 (b) care given for the management of chronic diseases.

71 (7) "Primary health care services" include~~[-, but are not limited to]~~:

72 (a) services of physicians, nurses, physician's assistants, and dentists licensed to
73 practice in this state under Title 58, Occupations and Professions;

74 (b) diagnostic and radiologic services;

75 (c) preventive health services including, ~~[but not limited to,]~~ perinatal services,
76 well-child services, and other services that seek to prevent disease or its consequences;

77 (d) emergency medical services;

78 (e) preventive dental services; and

79 (f) pharmaceutical services.

80 Section 2. Section **26-10-102**, which is renumbered from Section 26-18-302 is
81 renumbered and amended to read:

82 ~~[26-18-302].~~ **26-10-102. Department to award grants and contracts --**

83 **Applications.**

84 (1) (a) Within appropriations specified by the Legislature for this purpose, the
85 department may make grants to public and nonprofit entities for the cost of operation of
86 providing primary health care services to medically underserved populations.

87 (b) The department may, as funding permits, contract with community based

88 organizations for the purpose of developing culturally and linguistically appropriate programs
89 and services for low income and medically underserved populations through a pilot program to
90 accomplish one or more of the following:

91 (i) to educate individuals:

92 (A) to use private and public health care coverage programs, products, services, and
93 resources in a timely, effective, and responsible manner;

94 (B) to make prudent use of private and public health care resources;

95 (C) to pursue preventive health care, health screenings, and disease management; and

96 (D) to locate health care programs and services;

97 (ii) to assist individuals to develop:

98 (A) personal health management;

99 (B) self-sufficiency in daily care; and

100 (C) life and disease management skills;

101 (iii) to support translation of health materials and information;

102 (iv) to facilitate an individual's access to primary care services and providers, including
103 mental health services; and

104 (v) to measure and report empirical results of the pilot project.

105 (2) (a) Grants by the department shall be awarded based on:

106 (i) applications submitted to the department in the manner and form prescribed by the
107 department; and

108 (ii) the criteria established in Section ~~[26-18-303]~~ 26-10-103.

109 (b) The application for a grant under Subsection (2)(a) shall contain:

110 (i) a requested award amount;

111 (ii) a budget; and

112 (iii) a narrative plan of the manner in which the applicant intends to provide the
113 primary health care services described in Subsection ~~[26-18-301]~~ 26-10-101(7).

114 (c) A contract bid for a service under Subsection (1)(b):

115 (i) shall be awarded in accordance with Title 63G, Chapter 6, Utah Procurement Code;

116 (ii) must include the information described in Section ~~[26-18-303]~~ 26-10-103; and

117 (iii) is subject to Subsection (3) of this section.

118 (3) (a) An applicant under this chapter must demonstrate to the department that the

119 applicant will not deny services to a person because of the person's inability to pay for the
120 services.

121 (b) Subsection (3)(a) does not preclude an applicant from seeking payment from the
122 person receiving services, a third party, or a government agency if:

123 (i) the applicant is authorized to charge for the services; and

124 (ii) the person, third party, or government agency is under legal obligation to pay the
125 charges.

126 (4) The department shall maximize the use of federal matching funds received for
127 services under Subsection (1)(b) to fund additional contracts under Subsection (1)(b).

128 Section 3. Section **26-10-103**, which is renumbered from Section 26-18-303 is
129 renumbered and amended to read:

130 ~~[26-18-303]~~. **26-10-103. Content of applications.**

131 Applications for grants under this chapter shall include:

132 (1) a statement of specific, measurable objectives, and the methods to be used to assess
133 the achievement of those objectives;

134 (2) the precise boundaries of the area to be served by the entity making the application,
135 including a description of the medically underserved population to be served by the grant;

136 (3) the results of an assessment of need demonstrating that the population to be served
137 has a need for the services provided by the applicant;

138 (4) a description of the personnel responsible for carrying out the activities of the grant
139 along with a statement justifying the use of any grant funds for the personnel;

140 (5) letters and other forms of evidence showing that efforts have been made to secure
141 financial and professional assistance and support for the services to be provided under the
142 grant;

143 (6) a list of services to be provided by the applicant;

144 (7) the schedule of fees to be charged by the applicant;

145 (8) the estimated number of medically underserved persons to be served with the grant
146 award; and

147 (9) other provisions as determined by the department.

148 Section 4. Section **26-10-104**, which is renumbered from Section 26-18-304 is
149 renumbered and amended to read:

150 ~~[26-18-304]~~. **26-10-104**. Process and criteria for awarding grants and
151 **contracts.**

152 (1) The department shall establish rules in accordance with Title 63G, Chapter 3, Utah
153 Administrative Rulemaking Act, governing the application form, process, and criteria it will
154 use in awarding grants and contracts under this chapter.

155 (2) When awarding a primary care grant under Subsection ~~[26-18-302]~~
156 26-10-102(1)(a), the department shall consider the extent to which the applicant:

157 (a) demonstrates that the area or a population group to be served under the application
158 has a shortage of primary health care and that the services will be located so that they will
159 provide assistance to the greatest number of persons residing in the area or included in the
160 population group;

161 (b) utilizes other sources of funding, including private funding, to provide primary
162 health care;

163 (c) demonstrates the ability and expertise to serve traditionally medically underserved
164 populations including persons of limited English-speaking ability, single heads of households,
165 the elderly, persons with low incomes, and persons with chronic diseases;

166 (d) demonstrates that it will assume financial risk for a specified number of medically
167 underserved persons within its catchment area for a predetermined level of care on a prepaid
168 capitation basis; and

169 (e) meets other criteria determined by the department.

170 (3) When awarding a contract for community based services under Subsection
171 ~~[26-18-302]~~ 26-10-102(1)(b), the department shall:

172 (a) consider the extent to which the applicant:

173 (i) demonstrates that the area or a population group to be served under the application
174 is a medically underserved area or population and that the services will be located so that they
175 will provide assistance to the greatest number of persons residing in the area or included in the
176 population group;

177 (ii) utilizes other sources of funding, including private funding, to provide the services
178 described in Subsection ~~[26-18-302]~~ 26-10-102(1)(b);

179 (iii) demonstrates the ability and expertise to serve traditionally medically underserved
180 populations including persons of limited English-speaking ability, single heads of households,

- 181 the elderly, persons with low incomes, and persons with chronic diseases;
- 182 (iv) meets other criteria determined by the department; and
- 183 (v) demonstrates the ability to empirically measure and report the results of all contract
- 184 supported activities;
- 185 (b) consider the extent to which the contract increases the applicant's institutional
- 186 capacity;
- 187 (c) consult with the state's:
- 188 (i) Medicaid program;
- 189 (ii) Children's Health Insurance Program; and
- 190 (iii) other assistance programs within the Department of Workforce Services and the
- 191 Department of Human Services; and
- 192 (d) as funding permits, implement the community based service contract as a pilot
- 193 program for which the department shall enter into contracts for services as follows:
- 194 (i) two contracts in the amount of \$50,000 each to be awarded to experienced and
- 195 established applicants; and
- 196 (ii) three contracts in the amount of \$30,000 each to be awarded to applicants that:
- 197 (A) are not as established or experienced as the applicants under Subsection (3)(d)(i);
- 198 or
- 199 (B) represent smaller community based approaches than the applicants described in
- 200 Subsection (3)(d)(i).
- 201 (4) Once a contract has been awarded under Subsection (3), the department shall
- 202 provide technical assistance to the contractee to familiarize the contractee with public and
- 203 private resources available to support wellness, health promotion, and disease management.

204 Section 5. Section **26-10-105**, which is renumbered from Section 26-18-305 is

205 renumbered and amended to read:

206 ~~[26-18-305]~~. **26-10-105. Report on implementation.**

207 The department shall report to the Health and Human Services Interim Committee by

208 November 1, 1994, and every year thereafter on the implementation of the grant program for

209 primary care services. The report shall include a description of the scope and level of coverage

210 provided to low-income persons by primary care grant programs.

211 Section 6. Section **26-18-3** is amended to read:

212 **26-18-3. Administration of Medicaid program by department -- Reporting to the**
213 **Legislature -- Disciplinary measures and sanctions -- Funds collected -- Eligibility**
214 **standards -- Internal audits -- Studies -- Health opportunity accounts.**

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

218 (2) (a) The department shall implement the Medicaid program through administrative
219 rules in conformity with this chapter, Title 63G, Chapter 3, Utah Administrative Rulemaking
220 Act, the requirements of Title XIX, and applicable federal regulations.

221 (b) The rules adopted under Subsection (2)(a) shall include, in addition to other rules
222 necessary to implement the program:

223 (i) the standards used by the department for determining eligibility for Medicaid
224 services;

225 (ii) the services and benefits to be covered by the Medicaid program; and

226 (iii) reimbursement methodologies for providers under the Medicaid program.

227 (3) (a) The department shall, in accordance with Subsection (3)(b), report to either the
228 Legislative Executive Appropriations Committee or the Legislative Health and Human
229 Services Appropriations Subcommittee when the department:

230 (i) implements a change in the Medicaid State Plan;

231 (ii) initiates a new Medicaid waiver;

232 (iii) initiates an amendment to an existing Medicaid waiver; or

233 (iv) initiates a rate change that requires public notice under state or federal law.

234 (b) The report required by Subsection (3)(a) shall:

235 (i) be submitted to the Legislature's Executive Appropriations Committee or the
236 legislative Health and Human Services Appropriations Subcommittee prior to the department
237 implementing the proposed change; and

238 (ii) shall include:

239 (A) a description of the department's current practice or policy that the department is
240 proposing to change;

241 (B) an explanation of why the department is proposing the change;

242 (C) the proposed change in services or reimbursement, including a description of the

243 effect of the change;

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

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

248 (F) the fiscal impact of the proposed change, including:

249 (I) the effect of the proposed change on current or future appropriations from the
250 Legislature to the department;

251 (II) the effect the proposed change may have on federal matching dollars received by
252 the state Medicaid program;

253 (III) any cost shifting or cost savings within the department's budget that may result
254 from the proposed change; and

255 (IV) identification of the funds that will be used for the proposed change, including any
256 transfer of funds within the department's budget.

257 (4) Any rules adopted by the department under Subsection (2) are subject to review and
258 reauthorization by the Legislature in accordance with Section 63G-3-502.

259 (5) The department may, in its discretion, contract with the Department of Human
260 Services or other qualified agencies for services in connection with the administration of the
261 Medicaid program, including:

262 (a) the determination of the eligibility of individuals for the program;

263 (b) recovery of overpayments; and

264 (c) consistent with Section 26-20-13, and to the extent permitted by law and quality
265 control services, enforcement of fraud and abuse laws.

266 (6) The department shall provide, by rule, disciplinary measures and sanctions for
267 Medicaid providers who fail to comply with the rules and procedures of the program, provided
268 that sanctions imposed administratively may not extend beyond:

269 (a) termination from the program;

270 (b) recovery of claim reimbursements incorrectly paid; and

271 (c) those specified in Section 1919 of Title XIX of the federal Social Security Act.

272 (7) Funds collected as a result of a sanction imposed under Section 1919 of Title XIX
273 of the federal Social Security Act shall be deposited in the General Fund as nonlapsing

274 dedicated credits to be used by the division in accordance with the requirements of Section
275 1919 of Title XIX of the federal Social Security Act.

276 (8) (a) In determining whether an applicant or recipient is eligible for a service or
277 benefit under this part or Chapter 40, Utah Children's Health Insurance Act, the department
278 shall, if Subsection (8)(b) is satisfied, exclude from consideration one passenger vehicle
279 designated by the applicant or recipient.

280 (b) Before Subsection (8)(a) may be applied:

281 (i) the federal government must:

282 (A) determine that Subsection (8)(a) may be implemented within the state's existing
283 public assistance-related waivers as of January 1, 1999;

284 (B) extend a waiver to the state permitting the implementation of Subsection (8)(a); or

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

287 (ii) the department must determine that Subsection (8)(a) can be implemented within
288 existing funding.

289 (9) (a) For purposes of this Subsection (9):

290 (i) "aged, blind, or disabled" shall be defined by administrative rule; and

291 (ii) "spend down" means an amount of income in excess of the allowable income
292 standard that must be paid in cash to the department or incurred through the medical services
293 not paid by Medicaid.

294 (b) In determining whether an applicant or recipient who is aged, blind, or disabled is
295 eligible for a service or benefit under this chapter, the department shall use 100% of the federal
296 poverty level as:

297 (i) the allowable income standard for eligibility for services or benefits; and

298 (ii) the allowable income standard for eligibility as a result of spend down.

299 (10) The department shall conduct internal audits of the Medicaid program, in
300 proportion to at least the level of funding it receives from Medicaid to conduct internal audits.

301 (11) In order to determine the feasibility of contracting for direct Medicaid providers
302 for primary care services, the department shall:

303 (a) issue a request for information for direct contracting for primary services that shall
304 provide that a provider shall exclusively serve all Medicaid clients:

305 (i) in a geographic area;
306 (ii) for a defined range of primary care services; and
307 (iii) for a predetermined total contracted amount; and
308 (b) by February 1, 2011, report to the Health and Human Services Appropriations
309 Subcommittee on the response to the request for information under Subsection (11)(a).
310 (12) (a) By December 31, 2010, the department shall:
311 (i) determine the feasibility of implementing a three year patient-centered medical
312 home demonstration project in an area of the state using existing budget funds; and
313 (ii) report the department's findings and recommendations under Subsection (12)(a)(i)
314 to the Health and Human Services Appropriations Subcommittee.
315 (b) If the department determines that the medical home demonstration project
316 described in Subsection (12)(a) is feasible, and the Health and Human Services Appropriations
317 Subcommittee recommends that the demonstration project be implemented, the department
318 shall:
319 (i) implement the demonstration project; and
320 (ii) by December 1, 2012, make recommendations to the Health and Human Services
321 Appropriations Subcommittee regarding the:
322 (A) continuation of the demonstration project;
323 (B) expansion of the demonstration project to other areas of the state; and
324 (C) cost savings incurred by the implementation of the demonstration project.
325 (13) (a) The department may apply for and, if approved, implement a demonstration
326 program for health opportunity accounts, as provided for in 42 U.S.C. Sec. 1396u-8.
327 (b) A health opportunity account established under Subsection (13)(a) shall be an
328 alternative to the existing benefits received by an individual eligible to receive Medicaid under
329 this chapter.
330 (c) Subsection (13)(a) is not intended to expand the coverage of the Medicaid program.
331 Section 7. Section **26-18-3.8** is enacted to read:
332 **26-18-3.8. Medicaid reimbursement for outpatient medical procedures.**
333 (1) As used in this section,
334 (a) "Rural hospital" means a general acute hospital, as defined in Section 26-21-2, that
335 is located in a county that has a population of less than 100,000;

336 (b) "Urban hospital" means a general acute hospital, as defined in Section 26-21-2, that
 337 is located in a county that has a population of 100,00 or more.

338 (c) " ~~H~~→ [Urban-ambulatory] Ambulatory ←~~H~~ surgical facility" means an ambulatory
 338a surgical facility, as
 339 defined in Section 26-21-2 ~~H~~→ [, that is located in a county that has a population of 100,000
 339a or more] ←~~H~~ .

340 (2) The division shall, by September 1, 2010, establish a Medicaid fee schedule for
 341 outpatient medical procedures for each of the following type of facilities:

342 (a) a rural hospital;

343 (b) an urban hospital; and

344 (c) an ~~H~~→ [urban] ←~~H~~ ambulatory surgical facility.

345 (3) The fee schedule created under Subsection (2)(a) shall establish:

346 (a) one fee for each type of procedure performed at a rural hospital;

347 (b) one fee for each type of procedure performed at an urban hospital; and

348 (c) one fee for each type of procedure performed at an ~~H~~→ [urban] ←~~H~~ ambulatory
 348a surgical
 349 facility.

350 (4) Subsection (2) does not prohibit the Medicaid program from reimbursing a general
 351 acute hospital based on:

352 (a) the general acute hospital's status as a graduate medical education program;

353 (b) disproportionate share hospital payments under 42 U.S.C. Sec. 1396r-4; or

354 (c) other supplemental payments to a state-owned teaching hospital.

355 Section 8. Section **26-18-402** is amended to read:

356 **26-18-402. Medicaid Restricted Account.**

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

359 (2) (a) Except as provided in Subsection (3), the following shall be deposited into the
 360 Medicaid Restricted Account:

361 (i) any general funds appropriated to the department for the state plan for medical
 362 assistance or for the Division of Health Care Financing that are not expended by the
 363 department in the fiscal year for which the general funds were appropriated and which are not
 364 otherwise designated as nonlapsing shall lapse into the Medicaid Restricted Account; [and]

365 (ii) any unused state funds that are associated with the Medicaid program, as defined in
 366 Section 26-18-2, from the Department of Workforce Services and the Department of Human

367 Services; and

368 [~~(ii)~~] (iii) any penalties imposed and collected under:

369 (A) Section 17B-2a-818.5;

370 (B) Section 19-1-206;

371 (C) Section 79-2-404;

372 (D) Section 63A-5-205;

373 (E) Section 63C-9-403; or

374 (F) Section 72-6-107.5.

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

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

381 (3) For fiscal years 2008-09, 2009-10, and 2010-11, any general funds appropriated to
382 the department for the state plan for medical assistance, or for the Division of Health Care
383 Financing that are not expended by the department in the fiscal year in which the general funds
384 were appropriated are nonlapsing.

385 Section 9. Section **26-35a-106** is amended to read:

386 **26-35a-106. Restricted account -- Creation -- Deposits.**

387 (1) (a) There is created a restricted account in the General Fund known as the "Nursing
388 Care Facilities Account" consisting of:

389 (i) proceeds from the assessment imposed by Section 26-35a-104 which shall be
390 deposited in the restricted account to be used for the purpose described in Subsection (1)(b);

391 (ii) money appropriated or otherwise made available by the Legislature; and

392 (iii) any interest earned on the account.

393 (b) (i) Money in the account shall only be used:

394 (A) to the extent authorized by federal law, to obtain federal financial participation in
395 the Medicaid program; [~~and~~]

396 (B) to provide the increased level of hospice reimbursement resulting from the nursing
397 care facilities assessment imposed under Section 26-35a-104; and

398 [~~(B)~~] (C) in the manner described in Subsection (1)(b)(ii).

399 (ii) The money appropriated from the restricted account to the department:

400 (A) shall be used only to increase the rates paid prior to the effective date of this act to
401 nursing care facilities for providing services pursuant to the Medicaid program and for
402 administrative expenses as described in Subsection (1)(b)(ii)(C);

403 (B) may not be used to replace existing state expenditures paid to nursing care facilities
404 for providing services pursuant to the Medicaid program, except for increased costs due to
405 hospice reimbursement under Subsection (1)(b)(i)(B); and

406 (C) may be used for administrative expenses [~~for implementation of this act~~], if the
407 administrative expenses for the fiscal year do not exceed 3% of the money deposited into the
408 restricted account during the fiscal year.

409 (2) Money shall be appropriated from the restricted account to the department for the
410 purposes described in Subsection (1)(b) in accordance with Title 63J, Chapter 1, Budgetary
411 Procedures Act.

H.B. 397 1st Sub. (Buff) - Medicaid Program Amendments

Fiscal Note

2010 General Session

State of Utah

State Impact

This legislation results in savings to the Department of Health of (\$706,200) General Fund and (\$2,788,200) federal funds in FY 2010, (\$3,660,200) General Fund and (\$11,255,100) federal funds in FY 2011, and (\$4,394,600) General Fund and (\$10,827,400) federal funds FY 2012.

	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2011</u> <u>Approp.</u>	<u>FY 2012</u> <u>Approp.</u>	<u>FY 2010</u> <u>Revenue</u>	<u>FY 2011</u> <u>Revenue</u>	<u>FY 2012</u> <u>Revenue</u>
General Fund	\$0	(\$3,660,200)	(\$4,394,600)	\$0	\$0	\$0
General Fund, One-Time	(\$706,200)	\$0	\$0	\$0	\$0	\$0
Federal Funds	(\$2,788,200)	(\$11,255,100)	(\$10,827,400)	\$0	\$0	\$0
Total	(\$3,494,400)	(\$14,915,300)	(\$15,222,000)	\$0	\$0	\$0

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals. Local governments and businesses that operate hospitals and/or ambulatory surgical centers may see a change in their revenue from Medicaid.
