

EMERGENCY ROOM SERVICES AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: John L. Valentine

House Sponsor: Ken Ivory

LONG TITLE

General Description:

This bill amends provisions of the Utah Health Code related to emergency room services.

Highlighted Provisions:

This bill:

- ▶ repeals a provision that allows an accountable care organization to audit emergency room services provided to a recipient enrolled in an accountable care plan to determine if the recipient received nonemergency care;

- ▶ repeals a provision that allows an accountable care organization to establish differential payment for emergency and nonemergency care provided in an emergency room; and

- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26-18-408, as enacted by Laws of Utah 2013, Chapter 103

26-40-110, as last amended by Laws of Utah 2013, Chapter 103



28 **26-40-116**, as enacted by Laws of Utah 2013, Chapter 103

29 _____

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

31 Section 1. Section **26-18-408** is amended to read:

32 **26-18-408. Incentives to appropriately use emergency room services.**

33 (1) (a) This section applies to the Medicaid program and to the Utah Children's Health
34 Insurance Program created in Chapter 40, Utah Children's Health Insurance Act.

35 (b) For purposes of this section:

36 (i) "Accountable care organization" means a Medicaid or Children's Health Insurance
37 Program administrator that contracts with the Medicaid program or the Children's Health
38 Insurance Program to deliver health care through an accountable care plan.

39 (ii) "Accountable care plan" means a risk based delivery service model authorized by
40 Section **26-18-405** and administered by an accountable care organization.

41 ~~[(iii) "Nonemergent care":]~~

42 ~~[(A) means use of the emergency room to receive health care that is nonemergent as~~
43 ~~defined by the department by administrative rule adopted in accordance with Title 63G,~~
44 ~~Chapter 3, Utah Administrative Rulemaking Act and the Emergency Medical Treatment and~~
45 ~~Active Labor Act; and]~~

46 ~~[(B) does not mean the medical services provided to a recipient to conduct a medical~~
47 ~~screening examination to determine if the recipient has an emergent or nonemergent condition.]~~

48 ~~[(2) (a) An accountable care organization may, in accordance with Subsection (2)(b):]~~

49 ~~[(i) audit emergency room services provided to a recipient enrolled in the accountable~~
50 ~~care plan to determine if nonemergent care was provided to the recipient; and]~~

51 ~~[(ii) establish differential payment for emergent and nonemergent care provided in an~~
52 ~~emergency room.]~~

53 ~~[(b) (i) The audits and differential payments under Subsections (2)(a) and (b) apply to~~
54 ~~services provided to a recipient on or after July 1, 2015.]~~

55 ~~[(ii) Except in cases of suspected fraud, waste, and abuse, an accountable care~~
56 ~~organization's audit of payment under Subsections (2)(a) and (b) is limited to the 18-month~~
57 ~~period of time after the date on which the medical services were provided to the recipient. If~~
58 ~~fraud, waste, or abuse is alleged, the accountable care organization's audit of payment under~~

59 Subsections (2)(a) and (b) is limited to three years after the date on which the medical services
60 were provided to the recipient.]

61 [~~(3)~~] (2) An accountable care organization shall:

62 (a) [~~use the savings under Subsection (2) to~~] maintain and improve access to primary
63 care and urgent care services for all of the recipients enrolled in the accountable care plan; and

64 (b) report to the department on how the accountable care organization complied with
65 Subsection [~~(3)~~] (2)(a).

66 [~~(4)~~] (3) (a) The department shall, through administrative rule adopted by the
67 department, develop quality measurements that evaluate an accountable care organization's
68 delivery of:

69 [~~(i) appropriate emergency room services to recipients enrolled in the accountable care
70 plan;~~]

71 [~~(ii)~~] (i) expanded primary care and urgent care for recipients enrolled in the
72 accountable care plan, with consideration of the accountable care organization's:

73 [~~(A) emergency room diversion plans;~~]

74 (A) delivery of primary care, urgent care, or other after-hours care through a means
75 other than through an emergency room;

76 (B) recipient access to primary care providers and community health centers including
77 evening and weekend access; and

78 (C) other innovations for expanding access to primary care; and

79 [~~(iii)~~] (ii) quality of care for the accountable care plan members.

80 (b) The department shall:

81 (i) compare the quality measures developed under Subsection [~~(4)~~] (3)(a) for each
82 accountable care organization; and

83 (ii) share the data and quality measures developed under Subsection [~~(4)~~] (3)(a) with
84 the Health Data Committee created in Chapter 33a, Utah Health Data Authority Act.

85 (c) The Health Data Committee may publish data in accordance with Chapter 33a,
86 Utah Health Data Authority Act which compares the quality measures for the accountable care
87 plans.

88 [~~(5)~~] (4) The department shall apply for a Medicaid waiver and a Children's Health
89 Insurance Program waiver with the Centers for Medicare and Medicaid Services within the

90 United States Department of Health and Human Services, to:

91 (a) allow the program to charge recipients who are enrolled in an accountable care plan
92 a higher copayment for emergency room services; and

93 (b) develop, by administrative rule, an algorithm to determine assignment of new,
94 unassigned recipients to specific accountable care plans based on the plan's performance in
95 relation to the quality measures developed pursuant to Subsection [~~(4)~~] (3)(a).

96 [~~(6)~~] (5) The department shall report to the Legislature's Health and Human Services
97 Interim Committee on or before October 1, 2016, regarding implementation of this section.

98 Section 2. Section 26-40-110 is amended to read:

99 **26-40-110. Managed care -- Contracting for services.**

100 (1) Program benefits provided to enrollees under the program, as described in Section
101 26-40-106, shall be delivered in a managed care system if the department determines that
102 adequate services are available where the enrollee lives or resides.

103 (2) (a) The department shall use the following criteria to evaluate bids from health
104 plans:

- 105 (i) ability to manage medical expenses, including mental health costs;
- 106 (ii) proven ability to handle accident and health insurance;
- 107 (iii) efficiency of claim paying procedures;
- 108 (iv) proven ability for managed care and quality assurance;
- 109 (v) provider contracting and discounts;
- 110 (vi) pharmacy benefit management;
- 111 (vii) an estimate of total charges for administering the pool;
- 112 (viii) ability to administer the pool in a cost-efficient manner;
- 113 (ix) the ability to provide adequate providers and services in the state;
- 114 (x) for contracts entered into or renewed on or after January 1, 2014, the ability to meet
115 quality measures for emergency room use and access to primary care established by the
116 department under Subsection 26-18-408[~~(4)~~](3); and
- 117 (xi) other criteria established by the department.

118 (b) The dental benefits required by Section 26-40-106 may be bid out separately from
119 other program benefits.

120 (c) Except for dental benefits, the department shall request bids for the program's

121 benefits in 2008. The department shall request bids for the program's dental benefits in 2009.
122 The department shall request bids for the program's benefits at least once every five years
123 thereafter.

124 (d) The department's contract with health plans for the program's benefits shall include
125 risk sharing provisions in which the health plan shall accept at least 75% of the risk for any
126 difference between the department's premium payments per client and actual medical
127 expenditures.

128 (3) The executive director shall report to and seek recommendations from the Health
129 Advisory Council created in Section 26-1-7.5:

130 (a) if the division receives less than two bids or proposals under this section that are
131 acceptable to the division or responsive to the bid; and

132 (b) before awarding a contract to a managed care system.

133 (4) (a) The department shall award contracts to responsive bidders if the department
134 determines that a bid is acceptable and meets the criteria of Subsections (2)(a) and (d).

135 (b) The department may contract with the Group Insurance Division within the Utah
136 State Retirement Office to provide services under Subsection (1) if:

137 (i) the executive director seeks the recommendation of the Health Advisory Council
138 under Subsection (3); and

139 (ii) the executive director determines that the bids were not acceptable to the
140 department.

141 (c) In accordance with Section 49-20-201, a contract awarded under Subsection (4)(b)
142 is not subject to the risk sharing required by Subsection (2)(d).

143 (5) Title 63G, Chapter 6a, Utah Procurement Code, shall apply to this section.

144 Section 3. Section 26-40-116 is amended to read:

145 **26-40-116. Program to encourage appropriate emergency room use -- Application**
146 **for waivers.**

147 The program is subject to the provisions of Section 26-18-408 and shall apply for
148 waivers in accordance with Subsection 26-18-408[~~(5)~~](4).

Legislative Review Note
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Office of Legislative Research and General Counsel