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**MEDICAL ASSISTANCE RECOVERY**

**AMENDMENTS**

1998 GENERAL SESSION

STATE OF UTAH

**Sponsor: Gary F. Cox**

AN ACT RELATING TO HEALTH; CLARIFYING PROVISIONS RELATED TO THE STATE'S RECOVERY OF MEDICAL ASSISTANCE AND THE ENROLLMENT OF A CHILD IN A PARENT'S HEALTH INSURANCE PLAN PURSUANT TO AN ORDER.

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

AMENDS:

- 26-19-2**, as last amended by Chapter 79, Laws of Utah 1996
- 26-19-4.5**, as enacted by Chapter 145, Laws of Utah 1993
- 26-19-5**, as last amended by Chapter 102, Laws of Utah 1995
- 26-19-8**, as last amended by Chapter 145, Laws of Utah 1993
- 62A-5-110**, as last amended by Chapter 179, Laws of Utah 1996
- 62A-11-326.1**, as last amended by Chapter 102, Laws of Utah 1995
- 62A-11-326.2**, as last amended by Chapter 102, Laws of Utah 1995
- 75-3-805**, as enacted by Chapter 150, Laws of Utah 1975

ENACTS:

- 26-19-13.5**, Utah Code Annotated 1953
- 26-19-13.7**, Utah Code Annotated 1953
- 26-19-19**, Utah Code Annotated 1953

REPEALS:

- 26-19-13**, as last amended by Chapter 102, Laws of Utah 1995

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

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

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

1 As used in this chapter:

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

5 (2) "Estate" means, regarding a deceased recipient, all real and personal property or other  
6 assets included within a decedent's estate as defined in Section 75-1-201 and a decedent's  
7 augmented estate as defined in Section 75-2-202.

8 (3) "Insurer" includes:

9 (a) a group health plan as defined in Subsection 607(1) of the federal Employee  
10 Retirement Income Security Act of 1974;

11 (b) a health maintenance organization; and

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

13 (4) "Medical assistance" means [any];

14 (a) all funds expended [by the state] for the benefit of a recipient under Title 26, Chapter  
15 18, Medical Assistance Act, [and] or under Titles XVIII and XIX, federal Social Security Act[-];  
16 and

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

19 (5) "Provider" means a person or entity who provides services to a recipient.

20 (6) "Recipient" means:

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

22 (b) the guardian, conservator, or other personal representative of a person under Subsection  
23 (6)(a) if the person is a minor or an incapacitated person; or

24 (c) the estate and survivors of a person under Subsection (6)(a) if the person is deceased.

25 (7) "State plan" means the state Medicaid program as enacted in accordance with Title  
26 XIX, federal Social Security Act.

27 (8) "Third party" includes:

28 (a) an individual, institution, corporation, public or private agency, trust, estate, insurance  
29 carrier, employee welfare benefit plan, health maintenance organization, health service  
30 organization, preferred provider organization, governmental program such as Medicare,  
31 CHAMPUS, and workers' compensation, which may be [liable] obligated to pay all or part of the

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

3 (b) a spouse or a parent who:

4 (i) may be [~~liable~~] obligated to pay all or part of the medical costs of a recipient under law  
5 or by court or administrative order; or

6 (ii) has been ordered to maintain health, dental, or disability insurance to cover medical  
7 expenses of a spouse or dependent child by court or administrative order.

8 Section 2. Section **26-19-4.5** is amended to read:

9 **26-19-4.5. Assignment of rights to benefits.**

10 (1) (a) To the extent that medical assistance is actually provided to a recipient, all benefits  
11 for medical services or payments from a third party otherwise payable to or on behalf of a recipient  
12 are [~~deemed to be~~] assigned by operation of law to the department if the department provides, or  
13 becomes obligated to provide, medical assistance, regardless of who made application for the  
14 benefits on behalf of the recipient. [~~That~~]

15 (b) The assignment:

16 (i) authorizes the department to submit its claim to the third party and authorizes payment  
17 of benefits directly to the department[~~. The assignment~~]; and

18 (ii) is effective for [~~services that are paid or to be paid by the department under the state~~  
19 ~~plan, Section 26-18-10, and Title XIX of the federal Social Security Act~~] all medical assistance.

20 (2) The department may recover the assigned benefits or payments in accordance with  
21 Section 26-19-5 and as otherwise provided by law.

22 (3) The assignment of benefits includes medical support and third party payments ordered,  
23 decreed, or adjudged by any court of this state or any other state or territory of the United States.  
24 That assignment is not in lieu of, and does not supersede or alter any other court order, decree, or  
25 judgment.

26 (4) When an assignment takes effect, the recipient is entitled to receive medical assistance,  
27 and the benefits paid to the department are a reimbursement to the department.

28 Section 3. Section **26-19-5** is amended to read:

29 **26-19-5. Recovery of medical assistance from third party liable for payment -- Lien**  
30 **-- Notice -- Action -- Compromise or waiver -- Recipient's right to action protected.**

31 (1) (a) When the department provides or becomes obligated to provide medical assistance

1 to a recipient because of an injury, disease, or disability [~~for which~~] that a third party is [liable]  
2 obligated to pay for, the department may recover the medical assistance directly from that third  
3 party.

4 (b) The department's claim to recover medical assistance provided as a result of the injury,  
5 disease, or disability is a lien against any proceeds payable to or on behalf of the recipient by that  
6 third party. This lien has priority over all other claims to the proceeds, except claims for attorney's  
7 fees and costs authorized under Subsection 26-19-7(4).

8 (2) The department shall mail or deliver written notice of its lien to the third party at its  
9 principal place of business or last known address. The notice shall include the recipient's name,  
10 the approximate date of injury, a general description of the type of injury and, if applicable, the  
11 general location where the injury is alleged to have occurred.

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

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

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

18 (4) The department may waive a claim against a third party in whole or in part, or may  
19 compromise, settle, or release a claim or lien.

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

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

24 Section 4. Section **26-19-8** is amended to read:

25 **26-19-8. Statute of limitations -- Survival of right of action -- Insurance policy not**  
26 **to limit time allowed for recovery.**

27 (1) (a) An action commenced by the department under this chapter against a health  
28 insurance carrier or employee welfare benefit plan must be commenced within two years after the  
29 date of the injury or onset of the illness or within six months after the date of the last payment for  
30 medical assistance [payment], whichever is later.

31 (b) An action against any other third party must be commenced within four years after the

1 date of the injury or onset of the illness, or within six months after the date of the last payment for  
2 medical assistance [payment], whichever is later.

3 (2) The death of the recipient does not abate any right of action established by this chapter.

4 (3) No insurance policy issued or renewed after June 1, 1981, may contain any provision  
5 that limits the time in which the department may submit its claim to recover medical assistance  
6 benefits to a period of less than 24 months from the date the provider furnishes services or goods  
7 to the recipient.

8 Section 5. Section **26-19-13.5** is enacted to read:

9 **26-19-13.5. Estate recovery.**

10 (1) Upon a recipient's death, the department may recover from the recipient's estate and  
11 any trust, in which the recipient is the grantor and a beneficiary, medical assistance correctly  
12 provided for the benefit of the recipient when he was 55 years of age or older if, at the time of  
13 death, the recipient has no:

14 (a) surviving spouse; or

15 (b) child:

16 (i) younger than 21 years of age; or

17 (ii) who is blind or permanently and total disabled.

18 (2) (a) The amount of medial assistance correctly provided for the benefit of a recipient  
19 and recoverable under this section is a lien against the estate of the deceased recipient or any trust  
20 when the recipient is the grantor and a beneficiary.

21 (b) The lien holds the same priority as reasonable and necessary medical expenses of the  
22 last illness as provided in Section 75-3-805.

23 (3) (a) The department shall perfect the lien by filing a notice in the court of appropriate  
24 jurisdiction for the amount of the lien prior to final distribution in the same manner as a creditor's  
25 claim is filed.

26 (b) The department may file an amended lien prior to the entry of the final order closing  
27 the estate.

28 (4) Any trust provision that denies recovery for medical assistance is void on and after the  
29 time of its making.

30 (5) Nothing in this section affects the right of the department to recover Medicaid  
31 assistance before a recipient's death under Section 26-19-4.5 or 26-19-13.7.

1 Section 6. Section 26-19-13.7 is enacted to read:

2 **26-19-13.7. Recovery from recipient of incorrectly provided medical assistance.**

3 The department may:

4 (1) recover medical assistance incorrectly provided, whether due to administrative or  
5 factual error or fraud, from the recipient or his estate; and

6 (2) pursuant to a judgment, impose a lien against real property of the recipient.

7 Section 7. Section 26-19-19 is enacted to read:

8 **26-19-19. Direct payment to the department by third party.**

9 (1) Any third party required to make payment to the department pursuant to this chapter  
10 shall make the payment directly to the department or its designee.

11 (2) The department may negotiate a payment or payment instrument it receives in  
12 connection with Subsection (1) without the cosignature or other participation of the recipient or  
13 any other party.

14 Section 8. Section 62A-5-110 is amended to read:

15 **62A-5-110. Discretionary trusts for persons with disabilities -- Impact on state**  
16 **services.**

17 (1) For purposes of this section:

18 (a) "Discretionary trust for a person with disabilities" means a trust:

19 (i) that is established for the benefit of an individual who, at the time the trust is created,  
20 is under age 65 and has a disability as defined in 42 U.S.C. Sec. 1382c;

21 (ii) under which the trustee has discretionary power to determine distributions;

22 (iii) under which the beneficiary may not control or demand payments unless an abuse of  
23 the trustee's duties or discretion is shown;

24 (iv) that contains the assets of the beneficiary and is established for the benefit of the  
25 beneficiary by a parent, grandparent, legal guardian, or court;

26 (v) that is irrevocable, except that the trust document may provide that the trust be  
27 terminated if the beneficiary no longer has a disability as defined in 42 U.S.C. Sec 1382c; [and]

28 (vi) that is invalid as to any portion funded by property that is or may be subject to a lien  
29 by the state; and

30 [(vi)] (vii) providing that, upon the death of the beneficiary, the state will receive all  
31 amounts remaining in the trust, up to an amount equal to the total medical assistance paid on

1 behalf of the beneficiary.

2 (b) "Medical assistance" means the same as that term is defined in Section 26-18-2.

3 (2) A state agency providing services or support to a person with disabilities may:

4 (a) waive application of Subsection (1)(a)(v) with respect to that individual if it determines  
5 that application of the criteria would place an undue hardship upon that individual; and

6 (b) define, by rule, what constitutes "undue hardship" for purposes of this section.

7 (3) A discretionary trust for a person with disabilities is not liable for reimbursement or  
8 payment to the state or any state agency, for financial aid or services provided to that individual  
9 except:

10 (a) to the extent that the trust property has been distributed directly to or is otherwise under  
11 the control of the disabled beneficiary; or

12 (b) as provided in Subsection (1)(a)(vi).

13 (4) Property, goods, and services that are purchased or owned by a discretionary trust for  
14 a person with disabilities and that are used or consumed by a disabled beneficiary shall not be  
15 considered trust property that is distributed to or under the control of the beneficiary.

16 (5) The benefits that a person with disabilities is otherwise legally entitled to may not be  
17 reduced, impaired, or diminished in any way because of contribution to a discretionary trust for  
18 that person.

19 (6) All state agencies shall disregard a discretionary trust for a person with disabilities, as  
20 defined in Subsection (1), as a resource when determining eligibility for services or support except  
21 as, and only to the extent that it is otherwise prohibited by federal law.

22 (7) This section applies to all discretionary trusts that meet the requirements contained in  
23 Subsection (1) created before, on, or after July 1, 1994.

24 Section 9. Section **62A-11-326.1** is amended to read:

25 **62A-11-326.1. Enrollment of child in disability insurance plan -- Order -- Notice.**

26 (1) [~~In accordance with Title 63, Chapter 46b, Administrative Procedures Act, the office~~  
27 ~~may commence an adjudicative proceeding to determine whether or not to require by order the~~  
28 ~~enrollment of a dependent child in a disability]~~ The office may issue a notice to existing and future  
29 employers or unions to enroll a dependent child in a disability insurance plan that is available  
30 through his parent or legal guardian's employer or union, when the following conditions are  
31 satisfied:

1 (a) the parent or legal guardian is already required to obtain insurance coverage for the  
2 child by a prior court or administrative order; and

3 (b) the parent or legal guardian has failed to provide written proof to the office that:

4 (i) the child has been enrolled in a disability insurance plan in accordance with the court  
5 or administrative order; or

6 (ii) the coverage required by the order was not available [~~at a reasonable cost~~] at group  
7 rates through the employer or union 30 or more days prior to the date of the mailing of the notice  
8 [~~of agency action~~] to enroll.

9 (2) The office shall provide concurrent notice to the parent or legal guardian in accordance  
10 with Section 62A-11-304.4 of:

11 (a) the notice to enroll sent to the employer or union; and

12 (b) the opportunity to contest the enrollment due to a mistake of fact by filing a written  
13 request for an adjudicative proceeding with the office within 15 days of the notice being sent.

14 (3) A notice to enroll shall result in the enrollment of the child in the parent's disability  
15 insurance plan, unless the parent successfully contests the notice based on a mistake of fact.

16 [~~(2) An order~~] (4) A notice to enroll issued under this section may be considered a  
17 "qualified medical support order" for the purposes of enrolling a dependent child in a group  
18 disability insurance plan as defined in Section 609(a), Federal Employee Retirement Income  
19 Security Act of 1974.

20 [~~(3) If the office issues an order to enroll a dependent child in a disability insurance plan~~  
21 ~~under Subsection (1), the office may serve notice of the order on all existing and future employers~~  
22 ~~or unions of the parent or guardian.~~]

23 Section 10. Section **62A-11-326.2** is amended to read:

24 **62A-11-326.2. Compliance with order -- Enrollment of dependent child for**  
25 **insurance.**

26 (1) An employer or union shall comply with [~~an order~~] a notice to enroll issued by the  
27 office under Section 62A-11-326.1 by enrolling the dependent child that is the subject of the  
28 [~~order~~] notice in the:

29 (a) disability insurance plan in which the parent or legal guardian is enrolled, if the plan  
30 satisfies the prior court or administrative order; or

31 (b) least expensive plan, assuming equivalent benefits, offered by the employer or union



1 that complies with the prior court or administrative order which provides coverage which is  
2 reasonably accessible to the dependent child.

3 (2) The employer, union, or insurer may not refuse to enroll a dependent child pursuant  
4 to [~~an office order~~] a notice to enroll because a parent or legal guardian has not signed an  
5 enrollment application.

6 (3) Upon enrollment of the dependent child, the employer shall deduct the appropriate  
7 premiums from the parent or legal guardian's wages and remit them directly to the insurer.

8 (4) The insurer shall provide proof of insurance to the office upon request.

9 (5) The signature of the custodial parent of the insured dependent is a valid authorization  
10 to the insurer for purposes of processing any insurance reimbursement claim.

11 Section 11. Section **75-3-805** is amended to read:

12 **75-3-805. Classification of claims.**

13 (1) If the applicable assets of the estate are insufficient to pay all claims in full, the personal  
14 representative shall make payment in the following order:

15 (a) reasonable funeral expenses;

16 (b) costs and expenses of administration;

17 (c) debts and taxes with preference under federal law;

18 (d) reasonable and necessary medical and hospital expenses of the last illness of the  
19 decedent, including compensation of persons attending him, and medical assistance if Section  
20 26-19-13.5 applies;

21 (e) debts and taxes with preference under other laws of this state; and

22 (f) all other claims.

23 (2) No preference shall be given in the payment of any claim over any other claim of the  
24 same class, and a claim due and payable shall not be entitled to a preference over claims not due.

25 **Section 12. Repealer.**

26 This act repeals:

27 Section **26-19-13, Recovery of medical assistance payments from recipient -- Lien**  
28 **against estate -- Recovery of incorrectly paid amounts.**

**Legislative Review Note**  
**as of 2-6-98 11:57 AM**

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

**Office of Legislative Research and General Counsel**