

MEDICAID FRAUD OVERSIGHT

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: D. Edgar Allen

AN ACT RELATING TO HEALTH; REMOVING MEDICAID FRAUD INVESTIGATIONS AND PROSECUTIONS FROM THE DEPARTMENT OF PUBLIC SAFETY; AND ESTABLISHING THE DUTIES OF THE DEPARTMENT OF HEALTH AND THE ATTORNEY GENERAL'S OFFICE WITH RESPECT TO CIVIL AND CRIMINAL ENFORCEMENT ACTIONS.

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

AMENDS:

26-18-3, as last amended by Chapter 61, Laws of Utah 1999

53-10-104, as renumbered and amended by Chapter 263, Laws of Utah 1998

53-10-302, as renumbered and amended by Chapter 263, Laws of Utah 1998

67-5-1 (Effective 01/01/01), as last amended by Chapters 371 and 372, Laws of Utah 1999

67-5-1 (Superseded 01/01/01), as last amended by Chapter 371, Laws of Utah 1999

ENACTS:

26-20-13, Utah Code Annotated 1953

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

Section 1. 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) The department shall develop implementing policy in conformity with this chapter, the requirements of Title XIX, and applicable federal regulations.

(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 [~~39~~] 40, Children's Health Insurance Program, 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.

Section 2. Section **26-20-13** is enacted to read:

26-20-13. Medicaid fraud enforcement.

(1) This chapter shall be enforced in accordance with this section.

(2) The department shall be responsible for:
(a) investigating and prosecuting all civil violations of this chapter; and
(b) promptly referring suspected criminal violations of this chapter to the attorney general for criminal investigation and prosecution.

(3) The attorney general shall be responsible for:
(a) investigating criminal violations of this chapter that are reported to the attorney general by the department or others;

(b) promptly referring probable civil violations of this chapter that are not related to a criminal investigation or prosecution to the department for civil investigation and prosecution; and

(c) prosecuting criminal violations of this chapter.

(4) The department and the attorney general may enter into an interagency agreement regarding the investigation and prosecution of violations of this chapter in accordance with this section, the requirements of Title XIX of the federal Social Security Act, and applicable federal regulations.

Section 3. Section **53-10-104** is amended to read:

53-10-104. Division duties.

The division shall:

- (1) provide and coordinate the delivery of support services to law enforcement agencies;
- (2) maintain and provide access to criminal records for use by law enforcement agencies;
- (3) publish law enforcement and statistical data;
- (4) maintain dispatch and communications services for public safety communications centers and provide emergency medical, fire suppression, highway maintenance, public works, and law enforcement communications for municipal, county, state, and federal agencies;
- (5) analyze evidence from crime scenes and crime-related incidents for criminal prosecution;
- (6) provide criminalistic laboratory services to federal, state, and local law enforcement agencies, prosecuting attorneys' and agencies, and public defenders, with the exception of those services provided by the state medical examiner in accordance with Title 26, Chapter 4, Utah Medical Examiner Act;

- (7) establish satellite laboratories as necessary to provide criminalistic services;
- (8) safeguard the public through licensing and regulation of activities that impact public safety, including concealed weapons, emergency vehicles, and private investigators;
- (9) provide investigative assistance to law enforcement and other government agencies;
- (10) collect and provide intelligence information to criminal justice agencies;
- (11) investigate crimes that jeopardize the safety of the citizens, as well as the interests, of the state;

~~[(12) investigate claims of fraud against Medicaid and other insurance carriers;]~~

~~[(13)]~~ (12) regulate and investigate laws pertaining to the sale and distribution of liquor;

~~[(14)]~~ (13) make rules to implement this chapter; and

~~[(15)]~~ (14) perform the functions specified in this chapter.

Section 4. Section **53-10-302** is amended to read:

53-10-302. Bureau duties.

The bureau shall:

- (1) upon request, provide assistance and specialized law enforcement services to local law enforcement agencies;
- (2) conduct financial investigations regarding suspicious cash transactions, fraud, and money laundering;
- (3) investigate organized crime, extremist groups, and others promoting violence;
- (4) investigate criminal activity of terrorist groups;
- (5) enforce the Utah Criminal Code;
- (6) cooperate and exchange information with other state agencies and with other law enforcement agencies of government, both within and outside of this state, to obtain information that may achieve more effective results in the prevention, detection, and control of crime and apprehension of criminals;

~~[(7) as provided for in state and federal law, investigate and prosecute health care providers who commit fraud under the Medicaid program;]~~

~~[(8) as provided for in state and federal law, review and investigate complaints of the abuse~~

~~and neglect of patients of health-care facilities that receive payments under the state medicaid program;]~~

~~[(9)]~~ (7) create and maintain a statewide criminal intelligence system;

~~[(10)]~~ (8) provide specialized case support and investigate illegal drug production, cultivation, and sales;

~~[(11)]~~ (9) investigate, follow-up, and assist in highway drug interdiction cases;

~~[(12)]~~ (10) make rules to implement this chapter; and

~~[(13)]~~ (11) perform the functions specified in Part 2, Narcotics and Alcoholic Beverage Law Enforcement Act.

Section 5. Section **67-5-1 (Effective 01/01/01)** is amended to read:

67-5-1 (Effective 01/01/01). General duties.

The attorney general shall, subject to Title 67, Chapter 23, Public Attorneys Act:

(1) except as provided in Sections 10-3-928 and 17-18-1, attend the Supreme Court and the Court of Appeals of this state, and all courts of the United States, and, as attorney, prosecute or defend all causes to which the state, or any officer, board, or commission of the state in an official capacity is a party; and, as attorney, represent the state in all civil legal matters in which the state is interested;

(2) with approval of the client:

(a) initiate legal proceedings in a court of competent jurisdiction on behalf of the state, or any officer, board, commission, agency, or instrumentality of the state for the purpose of opposing or challenging federal laws, regulations, or court orders and their impact on or applicability to the state; and

(b) as the budget permits, retain outside legal counsel with appropriate expertise to represent the state in the legal proceedings;

(3) after judgment on any cause referred to in Subsection (1), direct, with approval of the client, the issuance of process as necessary to execute the judgment;

(4) account for, and pay over to the proper officer, all moneys that come into the attorney general's possession that belong to the state;

(5) keep a file of all cases in which the attorney general is required to appear, including any documents and papers showing the court in which the cases have been instituted and tried, and whether they are civil or criminal, and:

(a) if civil, the nature of the demand, the stage of proceedings, and when prosecuted to judgment, a memorandum of the judgment and of any process issued whether satisfied, and if not satisfied, the return of the sheriff;

(b) if criminal, the nature of the crime, the mode of prosecution, the stage of proceedings, and when prosecuted to sentence, a memorandum of the sentence and of the execution, if the sentence has been executed, if not executed, of the reason of the delay or prevention; and

(c) deliver this information to the attorney general's successor in office;

(6) exercise supervisory powers over the district and county attorneys of the state in all matters pertaining to the duties of their offices, and from time to time require of them reports of the condition of public business entrusted to their charge;

(7) give the attorney general's opinion in writing and without fee to the Legislature or either house, and to any state officer, board, or commission, and to any county attorney or district attorney, when required, upon any question of law relating to their respective offices;

(8) when required by the public service or directed by the governor, assist any district or county attorney in the discharge of his duties;

(9) purchase in the name of the state, under the direction of the state Board of Examiners, any property offered for sale under execution issued upon judgments in favor of or for the use of the state, and enter satisfaction in whole or in part of the judgments as the consideration of the purchases;

(10) when the property of a judgment debtor in any judgment mentioned in Subsection (9) has been sold under a prior judgment, or is subject to any judgment, lien, or encumbrance taking precedence of the judgment in favor of the state, redeem the property, under the direction of the state Board of Examiners, from the prior judgment, lien, or encumbrance, and pay all money necessary for the redemption, upon the order of the state Board of Examiners, out of any money appropriated for these purposes;

(11) when in his opinion it is necessary for the collection or enforcement of any judgment,

institute and prosecute on behalf of the state any action or proceeding necessary to set aside and annul all conveyances fraudulently made by the judgment debtors, and pay the cost necessary to the prosecution, when allowed by the state Board of Examiners, out of any money not otherwise appropriated;

(12) discharge the duties of a member of all official boards of which the attorney general is or may be made a member by the Utah Constitution or by the laws of the state, and other duties prescribed by law;

(13) institute and prosecute proper proceedings in any court of the state or of the United States, to restrain and enjoin corporations organized under the laws of this or any other state or territory from acting illegally or in excess of their corporate powers or contrary to public policy, and in proper cases forfeit their corporate franchises, dissolve the corporations, and wind up their affairs;

(14) institute investigations for the recovery of all real or personal property that may have escheated or should escheat to the state, and for that purpose, subpoena any persons before any of the district courts to answer inquiries and render accounts concerning any property, examine all books and papers of any corporations, and when any real or personal property is discovered that should escheat to the state, institute suit in the district court of the county where the property is situated for its recovery, and escheat that property to the state;

(15) administer the Children's Justice Center as a program to be implemented in various counties pursuant to Sections 67-5b-101 through 67-5b-107; [~~and~~]

(16) assist the Constitutional Defense Council as provided in Title 63C, Chapter 4, Constitutional Defense Council[?];

(17) investigate and prosecute criminal violations of Title 26, Chapter 20, False Claims Act, in accordance with Section 26-20-13; and

(18) investigate and prosecute complaints of abuse, neglect, or exploitation of patients at health care facilities that receive payments under the state Medicaid program.

Section 6. Section **67-5-1 (Superseded 01/01/01)** is amended to read:

67-5-1 (Superseded 01/01/01). General duties.

The attorney general shall:

(1) except as provided in Sections 10-3-928 and 17-18-1, attend the Supreme Court and the Court of Appeals of this state, and all courts of the United States, and prosecute or defend all causes to which the state, or any officer, board, or commission of the state in an official capacity is a party; and take charge, as attorney, of all civil legal matters in which the state is interested;

(2) when jointly agreed by the governor and the attorney general:

(a) initiate legal proceedings in a court of competent jurisdiction on behalf of the state, or any officer, board, commission, agency, or instrumentality of the state for the purpose of opposing or challenging federal laws, regulations, or court orders and their impact on or applicability to the state; and

(b) as the budget permits, retain outside legal counsel with appropriate expertise to represent the state in the legal proceedings;

(3) after judgment on any cause referred to in Subsection (1), direct the issuance of process as necessary to execute the judgment;

(4) account for, and pay over to the proper officer, all moneys which come into his possession, that belong to the state;

(5) keep a file of all cases in which he is required to appear, including any documents and papers showing the court in which the cases have been instituted and tried, and whether they are civil or criminal, and:

(a) if civil, the nature of the demand, the stage of proceedings, and when prosecuted to judgment, a memorandum of the judgment and of any process issued whether satisfied, and if not satisfied, the return of the sheriff;

(b) if criminal, the nature of the crime, the mode of prosecution, the stage of proceedings, and when prosecuted to sentence, a memorandum of the sentence and of the execution, if the sentence has been executed, if not executed, of the reason of the delay or prevention; and

(c) deliver this information to his successor in office;

(6) exercise supervisory powers over the district and county attorneys of the state in all matters pertaining to the duties of their offices, and from time to time require of them reports of the condition of public business entrusted to their charge;

(7) give his opinion in writing and without fee to the Legislature or either house, and to any state officer, board, or commission, and to any county attorney or district attorney, when required, upon any question of law relating to their respective offices;

(8) when required by the public service or directed by the governor, assist any district or county attorney in the discharge of his duties;

(9) purchase in the name of the state, under the direction of the state Board of Examiners, any property offered for sale under execution issued upon judgments in favor of or for the use of the state, and enter satisfaction in whole or in part of the judgments as the consideration of the purchases;

(10) when the property of a judgment debtor in any judgment mentioned in Subsection (9) has been sold under a prior judgment, or is subject to any judgment, lien, or encumbrance taking precedence of the judgment in favor of the state, redeem the property, under the direction of the state Board of Examiners, from the prior judgment, lien, or encumbrance, and pay all money necessary for the redemption, upon the order of the state Board of Examiners, out of any money appropriated for these purposes;

(11) when in his opinion it is necessary for the collection or enforcement of any judgment, institute and prosecute on behalf of the state any action or proceeding necessary to set aside and annul all conveyances fraudulently made by the judgment debtors, and pay the cost necessary to the prosecution, when allowed by the state Board of Examiners, out of any money not otherwise appropriated;

(12) discharge the duties of a member of all official boards of which he is or may be made a member by the Utah Constitution or by the laws of the state, and other duties prescribed by law;

(13) institute and prosecute proper proceedings in any court of the state or of the United States, to restrain and enjoin corporations organized under the laws of this or any other state or territory from acting illegally or in excess of their corporate powers or contrary to public policy, and in proper cases forfeit their corporate franchises, dissolve the corporations, and wind up their affairs;

(14) institute investigations for the recovery of all real or personal property that may have escheated or should escheat to the state, and for that purpose he may cite any persons before any of the district courts to answer inquiries and render accounts concerning any property, may examine all

books and papers of any corporations, and when any real or personal property is discovered that should escheat to the state, the attorney general shall institute suit in the district court of the county where the property is situated for its recovery, and escheat that property to the state;

(15) administer the Children's Justice Center as a program to be implemented in various counties pursuant to Sections 67-5b-101 through 67-5b-107; [~~and~~]

(16) assist the Constitutional Defense Council as provided in Title 63C, Chapter 4, Constitutional Defense Council[-];

(17) investigate and prosecute criminal violations of Title 26, Chapter 20, False Claims Act, in accordance with Section 26-20-13; and

(18) investigate and prosecute complaints of abuse, neglect, or exploitation of patients at health care facilities that receive payments under the state Medicaid program.