

**STATUTORY AMENDMENTS FOR MEDICAID
BUDGET REDUCTIONS**

2002 FIFTH SPECIAL SESSION

STATE OF UTAH

Sponsor: David H. Steele

This act modifies the Health Code and the Pharmacy Practice Act. The act makes statutory changes to implement budget reductions in the Medicaid program. The act amends the state's Medicaid freedom of choice waiver. The act removes the mandate for the state to move certain people into managed care plans. This act establishes that it is an acceptable practice for a pharmacist in a nursing home or intermediate care facility for the mentally retarded to accept back or redistribute unused drugs in certain circumstances. The act requires the Department of Health to reimburse for the use of generic drugs when generic drugs are available. The act has an immediate effective date.

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

AMENDS:

26-18-3.7, as last amended by Chapter 1, Laws of Utah 2000

58-17a-605.1, as enacted by Chapter 61, Laws of Utah 1997

ENACTS:

58-17a-502.5, Utah Code Annotated 1953

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

Section 1. Section **26-18-3.7** is amended to read:

26-18-3.7. Prepaid health care delivery systems.

(1) (a) Before July 1, 1996, the division [~~shall~~] may submit to the Health Care Financing Administration within the United States Department of Health and Human Services, an amendment to the state's freedom of choice waiver. That amendment shall provide that the following persons who are eligible for services under the state plan for medical assistance, who reside in Salt Lake, Utah, Davis, or Weber counties, shall enroll in the recipient's choice of a health care delivery system that meets the requirements of Subsection (2):

(i) by July 1, 1994, 40% of eligible persons;

- (ii) by July 1, 1995, 65% of eligible persons; and
- (iii) by July 1, 1996, 100% of eligible persons.

(b) The division may not enter into any agreements with mental health providers that establish a prepaid capitated delivery system for mental health services that were not in existence prior to July 1, 1993, until the application of the Utah Medicaid Hospital Provider Temporary Assessment Act with regard to a specialty hospital as defined in Section 26-21-2 that may be engaged exclusively in rendering psychiatric or other mental health treatment is repealed.

(c) The following are exempt from the requirements of Subsection (1)(a):

(i) persons who:

(A) receive medical assistance for the first time after July 1, 1996;

(B) have a mental illness, as that term is defined in Section 62A-12-202; and

(C) are receiving treatment for that mental illness. The division, when appropriate, shall enroll these persons in a health care delivery system that meets the requirements of this section;

(ii) persons who are institutionalized in a facility designated by the division as a nursing facility or an intermediate care facility for the mentally retarded; or

(iii) persons with a health condition that requires specialized medical treatment that is not available from a health care delivery system that meets the requirements of this section.

(2) In submitting the amendment to the state's freedom of choice waiver under Subsection (1), the division shall ensure that the proposed health care delivery systems have at least the following characteristics, so that the system:

(a) is financially at risk, for a specified continuum of health care services, for a defined population, and has incentives to balance the patient's need for care against the need for cost control;

(b) follows utilization and quality controls developed by the department;

(c) is encouraged to promote the health of patients through primary and preventive care;

(d) coordinates care to avoid unnecessary duplication and services;

(e) conserves health care resources; and

(f) if permissible under the waiver, utilizes private insurance plans including health maintenance organizations and other private health care delivery organizations.

(3) Subsection (2) does not prevent the division from contracting with other health care delivery organizations if the division determines that it is advantageous to do so.

(4) Health care delivery systems that meet the requirements of this section may provide all services otherwise available under the state plan for medical assistance, except prescribed drugs.

(5) The division shall periodically report to the Health and Human Services Interim Committee regarding the development and implementation of the amendment to the state's freedom of choice waiver required under this section.

Section 2. Section **58-17a-502.5** is enacted to read:

58-17a-502.5. Exception to unprofessional conduct.

(1) For purposes of this section:

(a) "ICFMR" means an intermediate care facility for the mentally retarded licensed as a nursing care facility or a small health care facility under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act;

(b) "nursing care facility" has the same definition as in Section 26-21-2; and

(c) "unit pack" means a single dose - single drug package which indicates the lot number and expiration date for the drug.

(2) Notwithstanding the provisions of Subsection 58-17a-502(5), a pharmacist may accept back and redistribute any unused drug, or a part of it, after it has left the premises of the pharmacy if:

(a) the drug was prescribed to a patient in a nursing care facility or an ICFMR;

(b) the drug was stored under the supervision of a licensed health care provider according to manufacturer recommendations;

(c) the drug is in a unit pack or in the manufacturer's sealed container;

(d) the drug was returned to the original dispensing pharmacy;

(e) the drug was initially dispensed by a licensed pharmacist or licensed pharmacy intern;
and

(f) accepting back and redistribution of the drug complies with Federal Food and Drug Administration and Drug Enforcement Administration regulations.

Section 3. Section **58-17a-605.1** is amended to read:

58-17a-605.1. Restrictive drug formulary prohibited.

(1) As used in this section[;]:

(a) "generic form" means a prescription drug that is available in generic form and has an A rating in the United States Pharmacopeia and Drug Index;

(b) "legend drug" means any drug that requires a prescription under state or federal law; and

(c) "restrictive drug formulary" means a list of legend drugs, other than drugs for cosmetic purposes, that are prohibited by the Utah Department of Health from dispensation, but are approved by the federal Food and Drug Administration.

(2) A practitioner may prescribe legend drugs in accordance with this chapter that, in his professional judgment and within the lawful scope of his practice, he considers appropriate for the diagnosis and treatment of his patient.

(3) ~~[The]~~ Except as provided in Subsection (4), the Utah Department of Health may not maintain a restrictive drug formulary that restricts a physician's ability to treat a patient with a legend drug that has been approved and designated as safe and effective by the federal Food and Drug Administration, except for drugs for cosmetic purposes.

(4) ~~[The Utah Department of Health may reimburse for]~~ When a multisource [prescription drugs] legend drug is available in the generic form, [in accordance with state and federal law, unless an exception has been made by the prescribing practitioner] the Department of Health may only reimburse for the generic form of the drug unless the treating physician demonstrates to the Department of Health a medical necessity for dispensing the nongeneric, brand-name legend drug.

(5) This section does not affect the state's ability to exercise the exclusion options available under the federal Omnibus Budget Reconciliation Act of 1990.

Section 4. **Effective date.**

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

