

1 **MEDICAL BENEFITS RECOVERY ACT**

2 **AMENDMENTS**

3 2003 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: David H. Steele**

6 **This act modifies the Medical Benefits Recovery Act, the Workers' Compensation Act,**
7 **and the Utah Uniform Probate Code. The act amends definitions. The act clarifies the**
8 **Health Department's recovery of medical assistance benefits by lien. The act amends**
9 **notice provisions related to medical assistance recovery. The act amends provisions**
10 **related to the payment of attorney's fees. The act clarifies the statute of limitations**
11 **related to recovery from estates and trusts. The act requires a third party to notify the**
12 **Health Department of applicable insurance policy provisions relied upon by the third**
13 **party to deny the department's claim or lien. The act provides for third party use and**
14 **acceptance of electronic claims records. The act amends estate and trust recovery for**
15 **medical assistance. The act subjects worker's compensation claims and benefits to**
16 **recovery for medical assistance. The act amends provisions for notice to creditors to**
17 **include the Office of Recovery Services on behalf of the Department of Health in certain**
18 **circumstances. The act repeals the restriction on the release of medical billing**
19 **information by providers. The act makes technical changes.**

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

21 AMENDS:

22 **26-19-2**, as last amended by Chapter 116, Laws of Utah 2001

23 **26-19-5**, as last amended by Chapter 145, Laws of Utah 1998

24 **26-19-6**, as last amended by Chapter 21, Laws of Utah 1985

25 **26-19-7**, as last amended by Chapter 102, Laws of Utah 1995

26 **26-19-8**, as last amended by Chapter 145, Laws of Utah 1998

27 **26-19-13.5**, as enacted by Chapter 145, Laws of Utah 1998



28 34A-2-417, as last amended by Chapter 261, Laws of Utah 1999

29 34A-2-422, as renumbered and amended by Chapter 375, Laws of Utah 1997

30 75-7-308, as enacted by Chapter 227, Laws of Utah 2002

31 75-7-309, as enacted by Chapter 227, Laws of Utah 2002

32 ENACTS:

33 26-19-9.5, Utah Code Annotated 1953

34 26-19-9.7, Utah Code Annotated 1953

35 REPEALS:

36 26-19-18, as last amended by Chapter 196, Laws of Utah 1989

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

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

39 **26-19-2. Definitions.**

40 As used in this chapter:

41 (1) "Annuity" shall have the same meaning as provided in Section 31A-1-301.

42 ~~(1)~~ (2) "Employee welfare benefit plan" means a medical insurance plan developed
43 by an employer under 29 U.S.C. Section 1001, et seq., the Employee Retirement Income
44 Security Act of 1974 as amended.

45 ~~(2)~~ (3) "Estate" means, regarding a deceased recipient[;]:

46 (a) all real and personal property or other assets included within a decedent's estate as
47 defined in Section 75-1-201 ~~and a~~;

48 (b) the decedent's augmented estate as defined in Section 75-2-203[;]; and

49 (c) that part of other real or personal property in which the decedent had a legal interest
50 at the time of death including assets conveyed to a survivor, heir, or assign of the decedent
51 through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other
52 arrangement.

53 ~~(3)~~ (4) "Insurer" includes:

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

56 (b) a health maintenance organization; and

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

58 ~~(4)~~ (5) "Medical assistance" means:

59 (a) all funds expended for the benefit of a recipient under Title 26, Chapter 18, Medical
60 Assistance Act, or under Titles XVIII and XIX, federal Social Security Act; and

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

63 ~~[(5)]~~ (6) "Provider" means a person or entity who provides services to a recipient.

64 ~~[(6)]~~ (7) "Recipient" means:

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

66 (b) the guardian, conservator, or other personal representative of a person under

67 Subsection ~~[(6)]~~ (7)(a) if the person is a minor or an incapacitated person; or

68 (c) the estate and survivors of a person under Subsection ~~[(6)]~~ (7)(a) if the person is
69 deceased.

70 ~~[(7)]~~ (8) "State plan" means the state Medicaid program as enacted in accordance with
71 Title XIX, federal Social Security Act.

72 ~~[(8)]~~ (9) "Third party" includes:

73 (a) an individual, institution, corporation, public or private agency, trust, estate,
74 insurance carrier, employee welfare benefit plan, health maintenance organization, health
75 service organization, preferred provider organization, governmental program such as Medicare,
76 CHAMPUS, and workers' compensation, which may be obligated to pay all or part of the
77 medical costs of injury, disease, or disability of a recipient, unless any of these are excluded by
78 department rule; and

79 (b) a spouse or a parent who:

80 (i) may be obligated to pay all or part of the medical costs of a recipient under law or
81 by court or administrative order; or

82 (ii) has been ordered to maintain health, dental, or accident and health insurance to
83 cover medical expenses of a spouse or dependent child by court or administrative order.

84 (10) "Trust" shall have the same meaning as provided in Section 75-1-201.

85 Section 2. Section **26-19-5** is amended to read:

86 **26-19-5. Recovery of medical assistance from third party -- Lien -- Notice --**

87 **Action -- Compromise or waiver -- Recipient's right to action protected.**

88 (1) (a) When the department provides or becomes obligated to provide medical
89 assistance to a recipient [~~because of an injury, disease, or disability~~] that a third party is

90 obligated to pay for, the department may recover the medical assistance directly from that third
91 party.

92 (b) [~~The department's claim~~] Any claim arising under Subsection (1)(a) or Section
93 26-19-4.5 to recover medical assistance provided [~~as a result of the injury, disease, or~~
94 ~~disability~~] to a recipient is a lien against any proceeds payable to or on behalf of the recipient
95 by that third party. This lien has priority over all other claims to the proceeds, except claims
96 for attorney's fees and costs authorized under Subsection 26-19-7(4).

97 (2) (a) The department shall mail or deliver written notice of its claim or lien to the
98 third party at its principal place of business or last-known address.

99 (b) The notice shall include:

100 (i) the recipient's name[;];

101 (ii) the approximate date of illness or injury[;];

102 (iii) a general description of the type of illness or injury; and[;]

103 (iv) if applicable, the general location where the injury is alleged to have occurred.

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

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

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

110 (4) The department may:

111 (a) waive a claim or lien against a third party in whole or in part[;]; or [~~may~~]

112 (b) compromise, settle, or release a claim or lien.

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

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

117 Section 3. Section **26-19-6** is amended to read:

118 **26-19-6. Action by department -- Notice to recipient.**

119 (1) (a) Within 30 days after commencing an action under [~~Section~~] Subsection
120 26-19-5(3), the department shall give the recipient, his guardian, personal representative,

121 trustee, estate, or survivor, whichever is appropriate, written notice of the action by:

122 (i) personal service or certified mail to the last known address of the person receiving
123 the notice[-]; or

124 (ii) if no last known-address is available, by publishing a notice once a week for three
125 successive weeks in a newspaper of general circulation in the county where the recipient
126 resides.

127 (b) Proof of service shall be filed in the action.

128 (c) The recipient may intervene in the department's action at any time before trial.

129 (2) The notice required by Subsection (1) shall name the court in which the action is
130 commenced and advise the recipient of [~~his~~]:

131 (a) the right to intervene in the proceeding[~~, his~~];

132 (b) the right to obtain a private attorney[-]; and

133 (c) the department's right to recover medical assistance directly from the third party.

134 Section 4. Section **26-19-7** is amended to read:

135 **26-19-7. Action or claim by recipient -- Consent of department required --**

136 **Department's right to intervene -- Department's interests protected -- Attorney's fees and**
137 **costs.**

138 (1) (a) A recipient may not file a claim for recovery, commence an action, or settle,
139 compromise, release, or waive a claim against a third party for which the department has a lien
140 for recovery of medical costs [~~for an injury, disease, or disability for which the department has~~
141 ~~provided or has become obligated to provide medical assistance~~], without the department's
142 written consent.

143 (b) The department has an unconditional right to intervene in an action commenced by
144 a recipient for recovery [~~of medical costs connected with the same injury, disease, or disability,~~
145 ~~for which it has provided or has become obligated to provide medical assistance~~] from a third
146 party in any action in which the department has a lien.

147 (2) (a) If the recipient proceeds without the department's written consent as required by
148 Subsection (1)(a), the department is not bound by any decision, judgment, agreement,
149 settlement, or compromise rendered or made on the claim or in the action.

150 (b) The department may recover in full from the recipient or any party to which the
151 proceeds were made payable all medical assistance which it has provided and retains its right to

152 commence an independent action against the third party, subject to Subsection 26-19-5(3).

153 (3) The department's written consent, if given, shall state under what terms the interests
154 of the department may be represented in an action commenced by the recipient.

155 (4) ~~§ [The department]~~ **IF THE ATTORNEY ENTERED INTO A WRITTEN AGREEMENT WITH**
155a **THE DEPARTMENT, THE DEPARTMENT SHALL PAY ATTORNEY'S FEES NOT TO EXCEED 33% OF ITS**
155b **TOTAL RECOVERY AND** § [may not pay more than 33% of its total recovery for attorney's
156 fees, but §] **shall pay a proportionate share of the costs in an action that is commenced with the**
157 **department's written consent. [~~shall:~~]**

158 ~~[(a) pay attorney's fees, not to exceed 33% of the department's total recovery, if the~~
159 ~~attorney entered into a written agreement with the department; and~~

160 ~~— (b) pay costs in the action if:~~

161 ~~— (i) the department receives a recovery;~~

162 ~~— (ii) the costs to be paid by the department are a proportionate share of the total cost;~~
163 ~~and~~

164 ~~— (iii) the department entered into a written agreement with the attorney.] §~~

165 Section 5. Section 26-19-8 is amended to read:

166 **26-19-8. Statute of limitations -- Survival of right of action -- Insurance policy not**
167 **to limit time allowed for recovery.**

168 (1) (a) An action commenced by the department under this chapter against a health
169 insurance carrier or employee welfare benefit plan must be commenced within:

170 (i) two years after the date of the injury or onset of the illness; or [~~within~~]

171 (ii) six months after the date of the last payment for medical assistance, whichever is
172 later.

173 (b) An action against any other third party, the recipient, or anyone to whom the
174 proceeds are payable must be commenced within:

175 (i) four years after the date of the injury or onset of the illness[;]; or [~~within~~]

176 (ii) six months after the date of the last payment for medical assistance, whichever is
177 later.

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

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

183 services or goods to the recipient.

184 (4) The provisions of this section do not apply to Section 26-19-13.5.

185 (5) The provisions of this section supercede any other sections regarding the time limit
186 in which an action must be commenced, including Section 75-7-309.

187 Section 6. Section **26-19-9.5** is enacted to read:

188 **26-19-9.5. Availability of insurance policy.**

189 If the third party does not pay the department's claim or lien within 30 days from the
190 date the claim or lien is received, the third party shall:

191 (1) provide a written explanation if the claim is denied;

192 (2) specifically describe and request any additional information from the department
193 that is necessary to process the claim; and

194 (3) provide the department or its agent a copy of any relevant or applicable insurance
195 or benefit policy.

196 Section 7. Section **26-19-9.7** is enacted to read:

197 **26-19-9.7. Legal recognition of electronic claims records.**

198 Pursuant to Title 46, Chapter 4, Uniform Electronic Transactions Act:

199 (1) a claim submitted to the department for payment may not be denied legal effect,
200 enforceability, or admissibility as evidence in any court in any civil action because it is in
201 electronic form;

202 (2) a third party shall accept an electronic record of payments by the department for
203 medical services on behalf of a recipient as evidence in support of the department's claim; and

204 (3) an electronic record from the department showing claims submitted for medical
205 services provided to the recipient and amounts of medical assistance paid on behalf of the
206 recipient by the department is admissible as evidence as a business record of the department in
207 any civil action.

208 Section 8. Section **26-19-13.5** is amended to read:

209 **26-19-13.5. Estate and trust recovery.**

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

214 (a) surviving spouse; or

215 (b) child:

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

217 (ii) who is blind or permanently and totally disabled.

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

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

223 (3) (a) The department shall perfect the lien by filing a notice in the court of
224 appropriate jurisdiction for the amount of the lien, in the same manner as a creditor's claim is
225 filed, prior to final distribution [~~in the same manner as a creditor's claim is filed~~].

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

228 (4) Claims against a deceased recipient's inter vivos trust shall be presented in
229 accordance with Sections 75-7-309 and 75-7-310.

230 [~~(4)~~] (5) Any trust provision that denies recovery for medical assistance is void [~~on and~~
231 ~~after~~] at the time of its making.

232 [~~(5)~~] (6) Nothing in this section affects the right of the department to recover Medicaid
233 assistance before a recipient's death under Section 26-19-4.5 or Section 26-19-13.7.

234 Section 9. Section **34A-2-417** is amended to read:

235 **34A-2-417. Claims and benefits -- Time limits for filing -- Burden of proof.**

236 (1) Except with respect to prosthetic devices, in nonpermanent total disability cases an
237 employee's medical benefit entitlement ceases if for a period of three consecutive years the
238 employee does not:

239 (a) incur medical expenses reasonably related to the industrial accident; and

240 (b) submit the medical expenses incurred to the employee's employer or insurance
241 carrier for payment.

242 (2) (a) A claim described in Subsection (2)(b) is barred, unless the employee:

243 (i) files an application for hearing with the Division of Adjudication no later than six
244 years from the date of the accident; and

245 (ii) by no later than 12 years from the date of the accident, is able to meet the
246 employee's burden of proving that the employee is due the compensation claimed under this
247 chapter.

248 (b) Subsection (2)(a) applies to a claim for compensation for:

249 (i) temporary total disability benefits;

250 (ii) temporary partial disability benefits;

251 (iii) permanent partial disability benefits; or

252 (iv) permanent total disability benefits.

253 (c) The commission may enter an order awarding or denying an employee's claim for
254 compensation under this chapter within a reasonable time period beyond 12 years from the date
255 of the accident, if:

256 (i) the employee complies with [~~Subsections~~] Subsection (2)(a)~~[(i) and (ii)]~~; and

257 (ii) 12 years from the date of the accident:

258 (A) (I) the employee is fully cooperating in a commission approved reemployment
259 plan; and

260 (II) the results of that commission approved reemployment plan are not known; or

261 (B) the employee is actively adjudicating issues of compensability before the
262 commission.

263 (3) A claim for death benefits is barred unless an application for hearing is filed within
264 one year of the date of death of the employee.

265 (4) (a) (i) Subject to Subsections (2)(c) and (4)(b), after an employee files an
266 application for hearing within six years from the date of the accident, the Division of
267 Adjudication may enter an order to show cause why the employee's claim should not be
268 dismissed because the employee has failed to meet the employee's burden of proof to establish
269 an entitlement to compensation claimed in the application for hearing.

270 (ii) The order described in Subsection (4)(a)(i) may be entered on the motion of the:

271 (A) Division of Adjudication;

272 (B) employee's employer; or

273 (C) employer's insurance carrier.

274 (b) Under Subsection (4)(a), the Division of Adjudication may dismiss a claim:

275 (i) without prejudice; or

276 (ii) with prejudice only if:

277 (A) the Division of Adjudication adjudicates the merits of the employee's entitlement
278 to the compensation claimed in the application for hearing; or

279 (B) the employee fails to comply with Subsection (2)(a)(ii).

280 (c) If a claim is dismissed without prejudice under Subsection (4)(b), the employee is
281 subject to the time limits under Subsection (2)(a) to claim compensation under this chapter.

282 (5) A claim for compensation under this chapter is subject to a claim or lien for
283 recovery under Section 26-19-5.

284 Section 10. Section **34A-2-422** is amended to read:

285 **34A-2-422. Compensation exempt from execution.**

286 Compensation before payment shall be exempt from all claims of creditors, and from
287 attachment or execution, and shall be paid only to employees or their dependents, except as
288 provided in Sections 26-19-5 and 34A-2-417.

289 Section 11. Section **75-7-308** is amended to read:

290 **75-7-308. Notice to creditors.**

291 (1) A trustee for an inter vivos revocable trust, upon the death of the settlor, may
292 publish a notice to creditors once a week for three successive weeks in a newspaper of general
293 circulation in the county where the settlor resided at the time of death[~~, providing~~]. The notice
294 required by this Subsection (1) must:

295 (a) provide the trustee's name and address; and [~~notifying~~]

296 (b) notify creditors;

297 (i) of the deceased settlor; and

298 (ii) to present their claims within three months after the date of the first publication of
299 the notice or be forever barred from presenting the claim.

300 (2) A trustee **§ [may] SHALL §** give written notice by mail or other delivery to any known
300a creditor of

301 the deceased settlor, notifying the creditor to present his claim within 90 days from the
302 published notice if given as provided in Subsection (1) or within 60 days from the mailing or
303 other delivery of the notice, whichever is later, or be forever barred. Written notice shall be the
304 notice described in Subsection (1) or a similar notice.

305 (3) (a) If the deceased settlor received medical assistance as defined in Subsection
306 26-19-2(5) at any time after the age of 55, the trustee for an inter vivos revocable trust, upon

307 the death of the settlor, shall mail or deliver written notice to the Director of the Office of
 308 Recovery Services § , ON BEHALF OF THE DEPARTMENT OF HEALTH, § to present any claim under
 308a Section 26-19-13.5 within 60 days from the
 309 mailing or other delivery of notice, whichever is later, or be forever barred.

310 (b) If the trustee does not mail notice to the director of the Office of Recovery Services
 311 on behalf of the department in accordance with Subsection (3)(a), the department shall have
 312 § [two years] ONE YEAR § from the death of the settlor to present its claim.

313 ~~[(3)]~~ (4) The trustee shall not be liable to any creditor or to any successor of the
 314 deceased settlor for giving or failing to give notice under this section.

315 Section 12. Section **75-7-309** is amended to read:

316 **75-7-309. Limitations on presentation of claims.**

317 (1) § [f] All [f] ~~[Except as provided in Subsection 75-7-308(3), all]~~ § claims against a
 317a deceased

318 settlor which arose before the death of the deceased settlor, [~~including claims of the state and~~
 319 ~~any subdivision of it,~~] whether due or to become due, absolute or contingent, liquidated or
 320 unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute
 321 of limitations, are barred against the deceased settlor's estate, the trustee, the trust estate, and
 322 the beneficiaries of the deceased settlor's trust, unless presented within the earlier of the
 323 following:

324 (a) one year after the settlor's death; or

325 (b) the time provided by Subsection 75-3-308(2) or (3) for creditors who are given
 326 actual notice, and where notice is published, within the time provided in Subsection
 327 75-3-308(1) for all claims barred by publication.

328 (2) In all events, claims barred by the nonclaim statute at the deceased settlor's
 329 domicile are also barred in this state.

330 (3) § [f] All [f] ~~[Except as provided in Subsection 75-7-308(3), all]~~ § claims against a
 330a deceased

331 settlor's estate or trust estate which arise at or after the death of the settlor, [~~including claims of~~
 332 ~~the state and any of its subdivisions,~~] whether due or to become due, absolute or contingent,
 333 liquidated or unliquidated, founded on contract, tort, or other legal basis are barred against the
 334 deceased settlor's estate, the trustee, the trust estate, and the beneficiaries of the deceased
 335 settlor, unless presented as follows:

336 (a) a claim based on a contract with the trustee within three months after performance
 337 by the trustee is due; or

338 (b) any other claim within the later of three months after it arises, or the time specified
339 in Subsection (1).

340 (4) Nothing in this section affects or prevents:

341 (a) any proceeding to enforce any mortgage, pledge, or other lien upon property of the
342 deceased settlor's estate or the trust estate;

343 (b) to the limits of the insurance protection only, any proceeding to establish liability of
344 the deceased settlor or the trustee for which he is protected by liability insurance; [~~or~~]

345 (c) collection of compensation for services rendered and reimbursement for expenses
346 advanced by the trustee or by the attorney or accountant for the trustee of the trust estate[~~;~~]; or

347 (d) the right to recover medical assistance provided to the settlor under Title 26,

348 Chapter 19, Medical Benefits Recovery Act.

349 Section 13. **Repealer.**

350 This act repeals:

351 Section **26-19-18, Release of medical billing information by provider restricted --**

352 **Exception -- Liability for violation.**

Legislative Review Note
as of 2-3-03 2:12 PM

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

Office of Legislative Research and General Counsel

State Impact

Some savings may accrue to the State through more effective cost recovery for state-paid medical benefits, but the amount cannot be determined.

Individual and Business Impact

Some individuals who have received benefits from the state may have the costs of those benefits recovered by the State that currently would go uncollected.

Office of the Legislative Fiscal Analyst