

1                                   **MEDICAL BENEFITS RECOVERY ACT**

2   **AMENDMENTS**

3   2004 GENERAL SESSION

4   STATE OF UTAH

5   **Sponsor: Sheldon L. Killpack**

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7   **LONG TITLE**

8   **General Description:**

9                   This bill amends the Medical Benefits Recovery Act, the Workers' Compensation Act,  
10 and the Utah Uniform Probate Code to assist the Office of Recovery Services and  
11 Department of Health to recover on liens for medical assistance.

12 **Highlighted Provisions:**

13           This bill:

- 14           ▶ amends definitions;
- 15           ▶ clarifies the Department of Health's recovery of medical assistance benefits by lien;
- 16           ▶ amends notice provisions related to medical assistance recovery;
- 17           ▶ amends provisions related to the payment of attorney's fees;
- 18           ▶ clarifies the statute of limitations related to recovery from estates and trusts;
- 19           ▶ requires a third party to notify the Department of Health of applicable insurance  
20 policy provisions relied upon by the third party to deny the department's claim or  
21 lien;
- 22           ▶ provides for third party use and acceptance of electronic claims records;
- 23           ▶ amends estate and trust recovery for medical assistance;
- 24           ▶ subjects worker's compensation claims and benefits to recovery for medical  
25 assistance;
- 26           ▶ amends provisions for notice to creditors to include the Office of Recovery Services  
27 on behalf of the Department of Health in certain circumstances;



28           ▶ repeals the restriction on the release of medical billing information as preempted by  
29 federal privacy laws; and

30           ▶ makes technical changes.

31 **Monies Appropriated in this Bill:**

32           None

33 **Other Special Clauses:**

34           None

35 **Utah Code Sections Affected:**

36 AMENDS:

37           **26-19-2**, as last amended by Chapter 116, Laws of Utah 2001

38           **26-19-5**, as last amended by Chapter 145, Laws of Utah 1998

39           **26-19-6**, as last amended by Chapter 21, Laws of Utah 1985

40           ~~h [26-19-7, as last amended by Chapter 102, Laws of Utah 1995] h~~

41           **26-19-8**, as last amended by Chapter 145, Laws of Utah 1998

42           **26-19-13.5**, as enacted by Chapter 145, Laws of Utah 1998

43           **34A-2-417**, as last amended by Chapter 261, Laws of Utah 1999

44           **34A-2-422**, as renumbered and amended by Chapter 375, Laws of Utah 1997

45           **75-7-308**, as enacted by Chapter 227, Laws of Utah 2002

46           **75-7-309**, as enacted by Chapter 227, Laws of Utah 2002

47 ENACTS:

48           **26-19-9.5**, Utah Code Annotated 1953

49           **26-19-9.7**, Utah Code Annotated 1953

50 REPEALS:

51           **26-19-18**, as last amended by Chapter 196, Laws of Utah 1989



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

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

55           **26-19-2. Definitions.**

56           As used in this chapter:

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

58           ~~(1)~~ (2) "Employee welfare benefit plan" means a medical insurance plan developed

59 by an employer under 29 U.S.C. Section 1001, et seq., the Employee Retirement Income  
60 Security Act of 1974 as amended.

61 ~~[(2)]~~ (3) "Estate" means, regarding a deceased recipient[-];

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

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

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

69 ~~[(3)]~~ (4) "Insurer" includes:

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

72 (b) a health maintenance organization; and

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

74 ~~[(4)]~~ (5) "Medical assistance" means:

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

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

79 ~~[(5)]~~ (6) "Provider" means a person or entity who provides services to a recipient.

80 ~~[(6)]~~ (7) "Recipient" means:

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

82 (b) the guardian, conservator, or other personal representative of a person under  
83 Subsection ~~[(6)]~~ (7)(a) if the person is a minor or an incapacitated person; or

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

86 ~~[(7)]~~ (8) "State plan" means the state Medicaid program as enacted in accordance with  
87 Title XIX, federal Social Security Act.

88 ~~[(8)]~~ (9) "Third party" includes:

89 (a) an individual, institution, corporation, public or private agency, trust, estate,

90 insurance carrier, employee welfare benefit plan, health maintenance organization, health  
 91 service organization, preferred provider organization, governmental program such as Medicare,  
 92 CHAMPUS, and workers' compensation, which may be obligated to pay all or part of the  
 93 medical costs of injury, disease, or disability of a recipient, unless any of these are excluded by  
 94 department rule; and

95 (b) a spouse or a parent who:

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

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

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

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

102 **26-19-5. Recovery of medical assistance from third party -- Lien -- Notice --**  
 103 **Action -- Compromise or waiver -- Recipient's right to action protected.**

104 (1) (a) When the department provides or becomes obligated to provide medical  
 105 assistance to a recipient [~~because of an injury, disease, or disability~~] that a third party is  
 106 obligated to pay for, the department may recover the medical assistance directly from that third  
 107 party.

108 (b) [~~The department's claim~~] Any claim arising under Subsection (1)(a) or Section  
 109 26-19-4.5 to recover medical assistance provided [~~as a result of the injury, disease, or~~  
 110 ~~disability~~] to a recipient is a lien against any proceeds payable to or on behalf of the recipient  
 111 by that third party. This lien has priority over all other claims to the proceeds, except claims  
 112 for attorney's fees and costs authorized under Subsection 26-19-7(4).

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

115 (b) The notice shall include:

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

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

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

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

120 (3) The department may commence an action on its claim or lien in its own name, but

121 that claim or lien is not enforceable as to a third party unless:

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

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

126 (4) The department may:

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

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

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

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

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

134 **26-19-6. Action by department -- Notice to recipient.**

135 (1) (a) Within 30 days after commencing an action under [Section] Subsection  
136 26-19-5(3), the department shall give the recipient, his guardian, personal representative,  
137 trustee, estate, or survivor, whichever is appropriate, written notice of the action by:

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

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

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

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

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

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

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

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

150 ~~Section 4. Section 26-19-7 is amended to read:~~

151 ~~26-19-7. Action or claim by recipient -- Consent of department required --] h~~

152 ~~§ [Department's right to intervene -- Department's interests protected -- Attorney's fees and~~  
 153 ~~costs.~~

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

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

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

166 ~~—— (b) The department may recover in full from the recipient or any party to which the~~  
 167 ~~proceeds were made payable all medical assistance which it has provided and retains its right to~~  
 168 ~~commence an independent action against the third party, subject to Subsection 26-19-5(3).~~

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

171 ~~—— (4) [The department may not pay more than 33% of its total recovery for attorney's~~  
 172 ~~fees, but] If the attorney entered into a written agreement with the department, the department~~  
 173 ~~shall pay attorney's fees not to exceed 33% of its total recovery and shall pay a proportionate~~  
 174 ~~share of the costs in an action that is commenced with the department's written consent.] h~~

175 Section ~~§~~ [5] ~~4~~ ~~h~~ . Section 26-19-8 is amended to read:

176 **26-19-8. Statute of limitations -- Survival of right of action -- Insurance policy not**  
 177 **to limit time allowed for recovery.**

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

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

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

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

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

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

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

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

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

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

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

198 **26-19-9.5. Availability of insurance policy.**

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

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

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

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

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

207 **26-19-9.7. Legal recognition of electronic claims records.**

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

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

212 (2) a third party shall accept an electronic record of payments by the department for  
 213 medical services on behalf of a recipient as evidence in support of the department's claim ~~§[-and]~~ . §

214           § ~~[(3) an electronic record from the department showing claims submitted for medical~~  
215 ~~services provided to the recipient and amounts of medical assistance paid on behalf of the~~  
216 ~~recipient by the department is admissible as evidence as a business record of the department in~~  
217 ~~any civil action.]~~ §

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

219           **26-19-13.5. Estate and trust recovery.**

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

224           (a) surviving spouse; or

225           (b) child:

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

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

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

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

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

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

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

240           ~~[(4)]~~ (5) Any trust provision that denies recovery for medical assistance is void ~~[on and~~  
241 ~~after]~~ at the time of its making.

242           ~~[(5)]~~ (6) Nothing in this section affects the right of the department to recover Medicaid  
243 assistance before a recipient's death under Section 26-19-4.5 or Section 26-19-13.7.

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



245 **34A-2-417. Claims and benefits -- Time limits for filing -- Burden of proof.**

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

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

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

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

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

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

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

259 (i) temporary total disability benefits;

260 (ii) temporary partial disability benefits;

261 (iii) permanent partial disability benefits; or

262 (iv) permanent total disability benefits.

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

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

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

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

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

271 (B) the employee is actively adjudicating issues of compensability before the  
272 commission.

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

275 (4) (a) (i) Subject to Subsections (2)(c) and (4)(b), after an employee files an

276 application for hearing within six years from the date of the accident, the Division of  
277 Adjudication may enter an order to show cause why the employee's claim should not be  
278 dismissed because the employee has failed to meet the employee's burden of proof to establish  
279 an entitlement to compensation claimed in the application for hearing.

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

281 (A) Division of Adjudication;

282 (B) employee's employer; or

283 (C) employer's insurance carrier.

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

285 (i) without prejudice; or

286 (ii) with prejudice only if:

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

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

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

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

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

295 **34A-2-422. Compensation exempt from execution.**

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

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

300 **75-7-308. Notice to creditors.**

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

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

306 (b) notify creditors;

307           (i) of the deceased settlor; and  
 308           (ii) to present their claims within three months after the date of the first publication of  
 309 the notice or be forever barred from presenting the claim.

310           (2) A trustee [~~may~~] shall give written notice by mail or other delivery to any known  
 311 creditor of the deceased settlor, notifying the creditor to present his claim within 90 days from  
 312 the published notice if given as provided in Subsection (1) or within 60 days from the mailing  
 313 or other delivery of the notice, whichever is later, or be forever barred. Written notice shall be  
 314 the notice described in Subsection (1) or a similar notice.

315           (3) (a) If the deceased settlor received medical assistance as defined in Subsection  
 316 26-19-2(5) at any time after the age of 55, the trustee for an inter vivos revocable trust, upon  
 317 the death of the settlor, shall mail or deliver written notice to the Director of the Office of  
 318 Recovery Services, on behalf of the Department of Health, to present any claim under Section  
 319 26-19-13.5 within 60 days from the mailing or other delivery of notice, whichever is later, or  
 320 be forever barred.

321           (b) If the trustee does not mail notice to the director of the Office of Recovery Services  
 322 on behalf of the department in accordance with Subsection (3)(a), the department shall have  
 323 one year from the death of the settlor to present its claim.

324           ~~[(3)]~~ (4) The trustee shall not be liable to any creditor or to any successor of the  
 325 deceased settlor for giving or failing to give notice under this section.

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

327           **75-7-309. Limitations on presentation of claims.**

328           (1) All claims against a deceased settlor which arose before the death of the deceased  
 329 settlor, [~~including claims of the state and any subdivision of it,~~] whether due or to become due,  
 330 absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal  
 331 basis, if not barred earlier by other statute of limitations, are barred against the deceased  
 332 settlor's estate, the trustee, the trust estate, and the beneficiaries of the deceased settlor's trust,  
 333 unless presented within the earlier of the following:

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

335           (b) the time provided by Subsection [~~75-3-308~~] 75-7-308(2) or (3) for creditors who  
 336 are given actual notice, and where notice is published, within the time provided in Subsection  
 337 [~~75-3-308~~] 75-7-308(1) for all claims barred by publication.

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

340 (3) All claims against a deceased settlor's estate or trust estate which arise at or after  
341 the death of the settlor, [~~including claims of the state and any of its subdivisions,~~] whether due  
342 or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort,  
343 or other legal basis are barred against the deceased settlor's estate, the trustee, the trust estate,  
344 and the beneficiaries of the deceased settlor, unless presented as follows:

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

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

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

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

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

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

356 (d) the right to recover medical assistance provided to the settlor under Title 26,  
357 Chapter 19, Medical Benefits Recovery Act.

358 Section 13. **Repealer.**

359 This bill repeals:

360 Section **26-19-18, Release of medical billing information by provider restricted --**  
361 **Exception -- Liability for violation.**

**Legislative Review Note**  
**as of 12-8-03 1:31 PM**

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

**Office of Legislative Research and General Counsel**