

MEDICAL BENEFITS RECOVERY ACT

AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Sheldon L. Killpack

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ amends definitions;
- ▶ clarifies the Department of Health's recovery of medical assistance benefits by lien;
- ▶ amends notice provisions related to medical assistance recovery;
- ▶ clarifies the statute of limitations related to recovery from estates and trusts;
- ▶ requires a third party to notify the Department of Health of applicable insurance policy provisions relied upon by the third party to deny the department's claim or lien;
- ▶ provides for third party use and acceptance of electronic claims records;
- ▶ amends estate and trust recovery for medical assistance;
- ▶ subjects worker's compensation claims and benefits to recovery for medical assistance;
- ▶ amends provisions for notice to creditors to include the Office of Recovery Services on behalf of the Department of Health in certain circumstances;
- ▶ repeals the restriction on the release of medical billing information as preempted by federal privacy laws; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

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

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

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

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

ENACTS:

26-19-9.5, Utah Code Annotated 1953

26-19-9.7, Utah Code Annotated 1953

REPEALS:

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

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.

As used in this chapter:

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

[(+) (2) "Employee welfare benefit plan" means a medical insurance plan developed by an employer under 29 U.S.C. Section 1001, et seq., the Employee Retirement Income Security Act

of 1974 as amended.

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

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

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

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

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

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

(b) a health maintenance organization; and

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

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

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

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

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

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

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

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

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

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

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

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

(b) a spouse or a parent who:

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

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

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

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

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

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

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

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

(b) The notice shall include:

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

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

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

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

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

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

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

(4) The department may:

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

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

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

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

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

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

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

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

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

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

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

(2) The notice required by Subsection (1) shall name the court in which the action is

commenced and advise the recipient of ~~[his]~~:

- (a) the right to intervene in the proceeding~~[-his]~~;
- (b) the right to obtain a private attorney~~[-]~~; and
- (c) the department's right to recover medical assistance directly from the third party.

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

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

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

- (i) two years after the date of the injury or onset of the illness; or ~~[within]~~
- (ii) six months after the date of the last payment for medical assistance, whichever is later.

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

- (i) four years after the date of the injury or onset of the illness~~[-]~~; or ~~[within]~~
- (ii) six months after the date of the last payment for medical assistance, whichever is later.

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

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

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

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

Section 5. Section **26-19-9.5** is enacted to read:

26-19-9.5. Availability of insurance policy.

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

- (1) provide a written explanation if the claim is denied;
- (2) specifically describe and request any additional information from the department that is necessary to process the claim; and
- (3) provide the department or its agent a copy of any relevant or applicable insurance or benefit policy.

Section 6. Section **26-19-9.7** is enacted to read:

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

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

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

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

Section 7. Section **26-19-13.5** is amended to read:

26-19-13.5. Estate and trust recovery.

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

- (a) surviving spouse; or
- (b) child:
 - (i) younger than 21 years of age; or
 - (ii) who is blind or permanently and totally disabled.

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

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

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

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

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

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

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

Section 8. Section **34A-2-417** is amended to read:

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

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

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

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

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

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

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

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

(i) temporary total disability benefits;

(ii) temporary partial disability benefits;

(iii) permanent partial disability benefits; or

(iv) permanent total disability benefits.

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

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

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

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

and

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

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

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

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

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

(A) Division of Adjudication;

(B) employee's employer; or

(C) employer's insurance carrier.

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

(i) without prejudice; or

(ii) with prejudice only if:

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

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

(c) If a claim is dismissed without prejudice under Subsection (4)(b), the employee is

subject to the time limits under Subsection (2)(a) to claim compensation under this chapter.

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

Section 9. Section **34A-2-422** is amended to read:

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

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

Section 10. Section **75-7-308** is amended to read:

75-7-308. Notice to creditors.

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

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

(b) notify creditors;

(i) of the deceased settlor; and

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

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

(3) (a) If the deceased settlor received medical assistance as defined in Subsection 26-19-2(5) at any time after the age of 55, the trustee for an inter vivos revocable trust, upon the death of the settlor, shall mail or deliver written notice to the Director of the Office of Recovery Services, on behalf of the Department of Health, to present any claim under Section 26-19-13.5

within 60 days from the mailing or other delivery of notice, whichever is later, or be forever barred.

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

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

Section 11. Section **75-7-309** is amended to read:

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

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

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

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

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

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

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

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

(4) Nothing in this section affects or prevents:

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

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

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

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

Section 12. Repealer.

This bill repeals:

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