MEDICAL BENEFITS RECOVERY ACT AMENDMENTS

2005 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Sheldon L. Killpack

House Sponsor: Rebecca D. Lockhart

LONG TITLE

General Description:

This bill amends the Medical Benefits Recovery Act within the Utah Health Code.

Highlighted Provisions:

This bill:

- amends definitions;
- establishes a process for a recipient of state medical benefits to notify and obtain the consent of the Department of Health prior to taking action on a claim against a third party who may be obligated to pay for all or part of those benefits;
- establishes a process for the Department of Health to respond to the recipient's notice;
- requires the Department of Health to enter into a collection agreement with a recipient's attorney except in specified circumstances;
- specifies the conditions under which a recipient may proceed with a claim against a third party;
- makes clarifying changes;
- changes the ceiling for attorney's fees to a fixed rate;
- establishes deadlines for remitting funds assigned to and recoverable by the Department of Health;
- prohibits disbursement of funds from a claim until the Department of Health's claim has been paid;
- establishes a penalty and liability for noncompliance; and

▸ makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26-19-2, as last amended by Chapter 72, Laws of Utah 2004

26-19-5, as last amended by Chapter 72, Laws of Utah 2004

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

75-7-508, as last amended by Chapter 72 and renumbered and amended by Chapter 89, Laws of Utah 2004

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) "Claim" means:

(a) a request or demand for payment; or

(b) a cause of action for money or damages arising under any law.

[(2)] (3) "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.

[(3)] (4) "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;

(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.

[~~(4)~~] (5) "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.

[~~(5)~~] (6) "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.

(7) "Office of Recovery Services" means the Office of Recovery Services within the Department of Human Services.

[~~(6)~~] (8) "Provider" means a person or entity who provides services to a recipient.

[~~(7)~~] (9) "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 [~~(7)~~] (9)(a) if the person is a minor or an incapacitated person; or

(c) the estate and survivors of a person under Subsection [~~(7)~~] (9)(a) if the person is deceased.

[~~(8)~~] (10) "State plan" means the state Medicaid program as enacted in accordance with Title XIX, federal Social Security Act.

[~~(9)~~] (11) "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)~~] (12) "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 that a third party is obligated to pay for, the department may recover the medical assistance directly from that third party.

(b) Any claim arising under Subsection (1)(a) or Section 26-19-4.5 to recover medical assistance provided 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)(c)(ii).

(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

(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 **26-19-7** is amended to read:

26-19-7. Notice of claim by recipient -- Department response -- Conditions for proceeding -- Collection agreements -- Department's right to intervene -- Department's interests protected -- Remitting funds -- Disbursements -- Liability and penalty for noncompliance.

(1) (a) A recipient may not file a claim, commence an action, or settle, compromise, release, or waive a claim against a third party for recovery of medical costs for an injury, disease, or disability for which the department has provided or has become obligated to provide medical assistance, without the department's written consent[.] as provided in Subsection (2)(b) or (4).

(b) For purposes of Subsection (1)(a), consent may be obtained if:

(i) a recipient who files a claim, or commences an action against a third party notifies the department in accordance with Subsection (1)(d) within ten days of making his claim or commencing an action; or

(ii) an attorney, who has been retained by the recipient to file a claim, or commence an action against a third party, notifies the department in accordance with Subsection (1)(d) of the recipient's claim:

(A) within 30 days after being retained by the recipient for that purpose; or

(B) within 30 days from the date the attorney either knew or should have known that the recipient received medical assistance from the department.

(c) Service of the notice of claim to the department shall be made by certified mail, personal service, or by e-mail in accordance with Rule 5 of the Utah Rules of Civil Procedure, to the director of the Office of Recovery Services.

(d) The notice of claim shall include the following information:

(i) the name of the recipient;

(ii) the recipient's Social Security number;

(iii) the recipient's date of birth;

(iv) the name of the recipient's attorney if applicable;

(v) the name or names of individuals or entities against whom the recipient is making the claim, if known;

(vi) the name of the third party's insurance carrier, if known;

(vii) the date of the incident giving rise to the claim; and

(viii) a short statement identifying the nature of the recipient's claim.

(2) (a) Within 30 days of receipt of the notice of the claim required in Subsection (1), the department shall acknowledge receipt of the notice of the claim to the recipient or the recipient's attorney and shall notify the recipient or the recipient's attorney in writing of the following:

(i) if the department has a claim or lien pursuant to Section 26-19-5 or has become obligated to provide medical assistance; and

(ii) whether the department is denying or granting written consent in accordance with Subsection (1)(a).

(b) The department shall provide the recipient's attorney the opportunity to enter into a collection agreement with the department, with the recipient's consent, unless:

(i) the department, prior to the receipt of the notice of the recipient's claim pursuant to Subsection (1), filed a written claim with the third party, the third party agreed to make payment to the department before the date the department received notice of the recipient's claim, and the

agreement is documented in the department's record; or

(ii) there has been a failure by the recipient's attorney to comply with any provision of this section by:

(A) failing to comply with the notice provisions of this section;

(B) failing or refusing to enter into a collection agreement;

(C) failing to comply with the terms of a collection agreement with the department; or

(D) failing to disburse funds owed to the state in accordance with this section.

(c) (i) The collection agreement shall be:

(A) consistent with this section and the attorney's obligation to represent the recipient and represent the state's claim; and

(B) state the terms under which the interests of the department may be represented in an action commenced by the recipient.

(ii) If the recipient's attorney enters into a written collection agreement with the department, or includes the department's claim in the recipient's claim or action pursuant to Subsection (4), the department shall pay attorney's fees at the rate of 33.3% of the department's total recovery and shall pay a proportionate share of the litigation expenses directly related to the action.

(d) The department is not required to enter into a collection agreement with the recipient's attorney for collection of personal injury protection under Subsection 31A-22-302(2).

(3) (a) If the department receives notice pursuant to Subsection (1), and notifies the recipient and the recipient's attorney that the department will not enter into a collection agreement with the recipient's attorney, the recipient may proceed with the recipient's claim or action against the third party if the recipient excludes from the claim:

(i) any medical expenses paid by the department; or

(ii) any medical costs for which the department is obligated to provide medical assistance.

(b) When a recipient proceeds with a claim under Subsection (3)(a), the recipient shall provide written notice to the third party of the exclusion of the department's claim for expenses

under Subsection (3)(a)(i) or (ii).

(4) If the department receives notice pursuant to Subsection (1), and does not respond within 30 days to the recipient or the recipient's attorney, the recipient or the recipient's attorney:

(a) may proceed with the recipient's claim or action against the third party;

(b) may include the state's claim in the recipient's claim or action; and

(c) may not negotiate, compromise, settle, or waive the department's claim without the department's consent.

[~~(b)~~] (5) The department has an unconditional right to intervene in an action commenced by a recipient against a third party for [~~recovery~~] the purpose of recovering medical costs [~~connected with the same injury, disease, or disability,~~] for which [~~it~~] the department has provided or has become obligated to provide medical assistance.

[~~(2)~~] (6) (a) If the recipient proceeds without [~~the department's written consent as required by Subsection (1)(a)~~] complying with the provisions of this section, the department is not bound by any decision, judgment, agreement, settlement, or compromise rendered or made on the claim or in the action.

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

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

[~~(4) The department may not pay more than 33% of its total recovery for attorney's fees, but shall pay a proportionate share of the costs in an action that is commenced with the department's written consent.~~]

(7) Any amounts assigned to and recoverable by the department pursuant to Sections 26-19-4.5 and 26-19-5 collected directly by the recipient shall be remitted to the Bureau of Medical Collections within the Office of Recovery Services no later than five business days after receipt.

(8) (a) Any amounts assigned to and recoverable by the department pursuant to Sections

26-19-4.5 and 26-19-5 collected directly by the recipient's attorney must be remitted to the Bureau of Medical Collections within the Office of Recovery Services no later than 30 days after the funds are placed in the attorney's trust account.

(b) The date by which the funds must be remitted to the department may be modified based on agreement between the department and the recipient's attorney.

(c) The department's consent to another date for remittance may not be unreasonably withheld.

(d) If the funds are received by the recipient's attorney, no disbursements shall be made to the recipient or the recipient's attorney until the department's claim has been paid.

(9) A recipient or recipient's attorney who knowingly and intentionally fails to comply with this section is liable to the department for:

(a) the amount of the department's claim or lien pursuant to Subsection (5);

(b) a penalty equal to 10% of the amount of the department's claim; and

(c) attorney's fees and litigation expenses related to recovering the department's claim.

Section 4. Section **75-7-508** is amended to read:

75-7-508. 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. The notice required by this Subsection (1) must:

(a) provide the trustee's name and address; and

(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 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)~~] (6) 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.

(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.