

1 **HEALTH AND HUMAN SERVICES SUNSET**
2 **AND REPORTING AMENDMENTS**

3 2006 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Allen M. Christensen**

6 House Sponsor: Bradley G. Last

8 **LONG TITLE**

9 **General Description:**

10 This bill removes the sunset provisions for certain programs in the Department of
11 Health and the Department of Human Services and reduces some reporting
12 requirements to the Health and Human Services Interim Committee.

13 **Highlighted Provisions:**

14 This bill:

15 ▶ amends the Department of Health's annual reporting requirement to the Health and
16 Human Services Interim Committee for AIDS testing data, abortion informed
17 consent data, and the Utah Medical Assistance Program;

18 ▶ removes the following programs from the legislative sunset act:

- 19 • Family Health Services;
- 20 • Utah Medical Examiner Act;
- 21 • Department of Health Organization; and
- 22 • Safe Relinquishment of Newborn Child;

23 ▶ requires the Department of Health to report to the Legislative Executive
24 Appropriations Committee or the Health and Human Services Appropriations
25 Subcommittee if the department initiates an amendment to an existing Medicaid
26 waiver;

27 ▶ repeals statutes regarding the 1996 Medicaid freedom of choice waiver and the 1995
28 Section 1315 Medicaid waiver; and

29 ▶ makes conforming and technical amendments.

30 **Monies Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 None

34 **Utah Code Sections Affected:**

35 AMENDS:

36 **26-6-3.5**, as last amended by Chapter 13, Laws of Utah 1998

37 **26-18-3**, as last amended by Chapters 321 and 324, Laws of Utah 2003

38 **26-18-305**, as last amended by Chapter 13, Laws of Utah 1998

39 **62A-4a-902**, as enacted by Chapter 115, Laws of Utah 2001

40 **63-55-226**, as last amended by Chapter 86, Laws of Utah 2005

41 **63-55-262**, as last amended by Chapter 134, Laws of Utah 2001

42 **76-7-305.5**, as last amended by Chapter 13, Laws of Utah 1998

43 REPEALS:

44 **26-18-3.7**, as last amended by Chapters 8 and 18, Laws of Utah 2002, Fifth Special

45 Session

46 **26-18-401**, as last amended by Chapter 53, Laws of Utah 2001



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

49 Section 1. Section **26-6-3.5** is amended to read:

50 **26-6-3.5. Reporting AIDS and HIV infection -- Anonymous testing.**

51 (1) Because of the nature and consequences of Acquired Immunodeficiency Syndrome
52 and Human Immunodeficiency Virus infection, the department shall:

53 (a) require reporting of those conditions; and

54 (b) utilize contact tracing and other methods for "partner" identification and

55 notification. The department shall, by rule, define individuals who are considered "partners" for
56 purposes of this section.

57 (2) (a) The requirements of Subsection (1) do not apply to seroprevalence and other

58 epidemiological studies conducted by the department.

59 (b) The requirements of Subsection (1) do not apply to, and anonymity shall be
60 provided in, research studies conducted by universities or hospitals, under the authority of
61 institutional review boards if those studies are funded in whole or in part by research grants and
62 if anonymity is required in order to obtain the research grant or to carry out the research.

63 (3) For all purposes of this chapter, Acquired Immunodeficiency Syndrome and Human
64 Immunodeficiency Virus infection are considered communicable and infectious diseases.

65 (4) The department may establish or allow one site or agency within the state to
66 provide anonymous testing.

67 (a) The site or agency that provides anonymous testing shall maintain accurate records
68 regarding:

69 (i) the number of HIV positive individuals that it is able to contact or inform of their
70 condition;

71 (ii) the number of HIV positive individuals who receive extensive counseling;

72 (iii) how many HIV positive individuals provide verifiable information for partner
73 notification; and

74 (iv) how many cases in which partner notification is carried through.

75 ~~[(b) A statistical report of the information maintained under Subsection (4)(a) shall be
76 presented to the Health and Human Services Interim Committee on an annual basis. The
77 information collected under Subsection (4)(a) and the reports required by this subsection shall
78 be maintained and presented in such a way that no individual is identifiable.]~~

79 ~~[(c)]~~ (b) If the information ~~[and reports indicate]~~ maintained under Subsection (4)(a)
80 indicates anonymous testing is not resulting in partner notification, the department shall phase
81 out the anonymous testing program allowed by this Subsection (4).

82 Section 2. Section **26-18-3** is amended to read:

83 **26-18-3. Administration of Medicaid program by department -- Disciplinary**
84 **measures and sanctions -- Funds collected.**

85 (1) The department shall be the single state agency responsible for the administration

86 of the Medicaid program in connection with the United States Department of Health and
87 Human Services pursuant to Title XIX of the Social Security Act.

88 (2) (a) The department shall implement the Medicaid program through administrative
89 rules in conformity with this chapter, Title 63, Chapter 46a, Utah Administrative Rulemaking
90 Act, the requirements of Title XIX, and applicable federal regulations.

91 (b) (i) The rules adopted under Subsection (2)(a) shall include, in addition to other
92 rules necessary to implement the program, the standards used by the department for
93 determining eligibility for Medicaid services, the services and benefits to be covered by the
94 Medicaid program, and reimbursement methodologies for providers under the Medicaid
95 program.

96 (ii) If the department implements a change in the Medicaid State Plan, initiates a new
97 Medicaid waiver, [~~submits~~] initiates an amendment to an existing Medicaid waiver, or initiates
98 a rate change requiring public notice under state or federal law, the department shall, prior to
99 adopting the change, report to either the Legislative Executive Appropriations Committee or
100 the Legislative Health and Human Services Appropriations Subcommittee and include in the
101 report:

102 (A) the proposed change in services or reimbursement;

103 (B) the effect of an increase or decrease in services or benefits on individuals and
104 families;

105 (C) the degree to which any proposed cut may result in cost-shifting to more expensive
106 services in health or human service programs; and

107 (D) the effect of any proposed increase of benefits or reimbursement on current and
108 future appropriations from the Legislature to the department.

109 (iii) Any rules adopted by the department under this Subsection (2) are subject to
110 review and reauthorization by the Legislature in accordance with Section 63-46a-11.5.

111 (3) The department may, in its discretion, contract with the Department of Human
112 Services or other qualified agencies for services in connection with the administration of the
113 Medicaid program, including but not limited to the determination of the eligibility of

114 individuals for the program, recovery of overpayments, and enforcement of fraud and abuse
115 laws, consistent with Section 26-20-13, to the extent permitted by law and quality control
116 services.

117 (4) The department shall provide, by rule, disciplinary measures and sanctions for
118 Medicaid providers who fail to comply with the rules and procedures of the program, provided
119 that sanctions imposed administratively may not extend beyond:

- 120 (a) termination from the program;
- 121 (b) recovery of claim reimbursements incorrectly paid; and
- 122 (c) those specified in Section 1919 of Title XIX of the federal Social Security Act.

123 (5) Funds collected as a result of a sanction imposed under Section 1919 of Title XIX
124 of the federal Social Security Act shall be deposited in the General Fund as nonlapsing
125 dedicated credits to be used by the division in accordance with the requirements of that section.

126 (6) (a) In determining whether an applicant or recipient is eligible for a service or
127 benefit under this part or Chapter 40, Utah Children's Health Insurance Act, the department
128 shall, if Subsection (6)(b) is satisfied, exclude from consideration one passenger vehicle
129 designated by the applicant or recipient.

130 (b) Before Subsection (6)(a) may be applied:

131 (i) the federal government must:

132 (A) determine that Subsection (6)(a) may be implemented within the state's existing
133 public assistance-related waivers as of January 1, 1999;

134 (B) extend a waiver to the state permitting the implementation of Subsection (6)(a); or

135 (C) determine that the state's waivers that permit dual eligibility determinations for
136 cash assistance and Medicaid are no longer valid; and

137 (ii) the department must determine that Subsection (6)(a) can be implemented within
138 existing funding.

139 (7) (a) For purposes of this Subsection (7):

140 (i) "aged, blind, or disabled" shall be defined by administrative rule; and

141 (ii) "spend down" means an amount of income in excess of the allowable income

142 standard that must be paid in cash to the department or incurred through the medical services
143 not paid by Medicaid.

144 (b) In determining whether an applicant or recipient who is aged, blind, or disabled is
145 eligible for a service or benefit under this chapter, the department shall use 100% of the federal
146 poverty level as:

147 (i) the allowable income standard for eligibility for services or benefits; and

148 (ii) the allowable income standard for eligibility as a result of spend down.

149 Section 3. Section **26-18-305** is amended to read:

150 **26-18-305. Report on implementation.**

151 The department shall report to the Health and Human Services Interim Committee by
152 November 1, 1994, and every year thereafter on the implementation of the grant program for
153 primary care services. The report shall include a description of the scope and level of coverage
154 provided to low-income persons by primary care grant programs [~~and by the medical assistance
155 program established in Section 26-18-10. The report shall also include recommendations to
156 minimize the loss of revenue by hospitals that serve a disproportionate share of persons under
157 Section 26-18-10].~~

158 Section 4. Section **62A-4a-902** is amended to read:

159 **62A-4a-902. Definitions.**

160 (1) (a) "Adoption assistance" means direct financial subsidies and support to adoptive
161 parents of a child with special needs or whose need or condition has created a barrier that
162 would prevent a successful adoption.

163 (b) "Adoption assistance" may include state medical assistance, reimbursement of
164 nonrecurring adoption expenses, or monthly subsidies.

165 (2) "Child who has a special need" means a child who cannot or should not be returned
166 to the home of his biological parents and who meets at least one of the following conditions:

167 (a) the child is five years of age or older;

168 (b) the child is under the age of 18 with a physical, emotional, or mental disability; or

169 (c) the child is a member of a sibling group placed together for adoption.

170 (3) "Monthly subsidy" means financial support to assist with the costs of adopting and
171 caring for a child who has a special need.

172 (4) "Nonrecurring adoption expenses" means reasonably necessary adoption fees, court
173 costs, attorney's fees, and other expenses which are directly related to the legal adoption of a
174 child who has a special need.

175 (5) "State medical assistance" means the Medicaid program and medical assistance as
176 defined in Subsections 26-18-2(4) and (5)[, not limited to a prepaid health care delivery system
177 as defined in Section 26-18-3.7].

178 (6) "Supplemental adoption assistance" means financial support for extraordinary,
179 infrequent, or uncommon documented needs not otherwise covered by a monthly subsidy, state
180 medical assistance, or other public benefits for which a child who has a special need is eligible.

181 Section 5. Section **63-55-226** is amended to read:

182 **63-55-226. Repeal dates, Title 26.**

183 [~~(1) Title 26, Chapter 1, Department of Health Organization, is repealed July 1, 2006.~~]

184 [~~(2) Title 26, Chapter 4, Utah Medical Examiner Act, is repealed July 1, 2010.~~]

185 [~~(3)~~] (1) Title 26, Chapter 9f, Utah Digital Health Service Commission Act, is repealed
186 July 1, 2015.

187 [~~(4) Title 26, Chapter 10, Family Health Services, is repealed July 1, 2010.~~]

188 [~~(5)~~] (2) Title 26, Chapter 23b, Detection of Public Health Emergencies Act, is
189 repealed July 1, 2009.

190 [~~(6)~~] (3) Title 26, Chapter 33a, Utah Health Data Authority Act, is repealed July 1,
191 2014.

192 Section 6. Section **63-55-262** is amended to read:

193 **63-55-262. Repeal dates, Title 62A.**

194 [~~(1) Section 62A-4a-202.7, Pilot Program for Differentiated Responses to Child Abuse~~
195 ~~and Neglect Reports, is repealed July 1, 2005.~~]

196 [~~(2) Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child, is~~
197 ~~repealed July 1, 2006.~~]

198 Section 7. Section **76-7-305.5** is amended to read:

199 **76-7-305.5. Requirements for printed materials and informational video --**
200 **Annual report of Department of Health.**

201 (1) In order to insure that a woman's consent to an abortion is truly an informed
202 consent, the Department of Health shall publish printed materials and produce an informational
203 video in accordance with the requirements of this section. The department and each local
204 health department shall make those materials and a viewing of the video available at no cost to
205 any person. The printed material and the informational video shall be comprehensible and
206 contain all of the following:

207 (a) geographically indexed materials informing the woman of public and private
208 services and agencies available to assist her, financially and otherwise, through pregnancy, at
209 childbirth, and while the child is dependent, including services and supports available under
210 Section 35A-3-308. Those materials shall contain a description of available adoption services,
211 including a comprehensive list of the names, addresses, and telephone numbers of public and
212 private agencies and private attorneys whose practice includes adoption, and explanations of
213 possible available financial aid during the adoption process. The information regarding
214 adoption services shall include the fact that private adoption is legal, and that the law permits
215 adoptive parents to pay the costs of prenatal care, childbirth, and neonatal care. The printed
216 information and video shall present adoption as a preferred and positive choice and alternative
217 to abortion. The department may, at its option, include printed materials that describe the
218 availability of a toll-free 24-hour telephone number that may be called in order to obtain,
219 orally, the list and description of services, agencies, and adoption attorneys in the locality of the
220 caller;

221 (b) truthful and nonmisleading descriptions of the probable anatomical and
222 physiological characteristics of the unborn child at two-week gestational increments from
223 fertilization to full term, accompanied by pictures or video segments representing the
224 development of an unborn child at those gestational increments. The descriptions shall include
225 information about brain and heart function and the presence of external members and internal

226 organs during the applicable stages of development. Any pictures used shall contain the
227 dimensions of the fetus and shall be realistic and appropriate for that woman's stage of
228 pregnancy. The materials shall be designed to convey accurate scientific information about an
229 unborn child at the various gestational ages, and to convey the state's preference for childbirth
230 over abortion;

231 (c) truthful, nonmisleading descriptions of abortion procedures used in current medical
232 practice at the various stages of growth of the unborn child, the medical risks commonly
233 associated with each procedure, including those related to subsequent childbearing, the
234 consequences of each procedure to the fetus at various stages of fetal development, the possible
235 detrimental psychological effects of abortion, and the medical risks associated with carrying a
236 child to term;

237 (d) any relevant information on the possibility of an unborn child's survival at the
238 two-week gestational increments described in Subsection (1)(b);

239 (e) information on the availability of medical assistance benefits for prenatal care,
240 childbirth, and neonatal care;

241 (f) a statement conveying that it is unlawful for any person to coerce a woman to
242 undergo an abortion;

243 (g) a statement conveying that any physician who performs an abortion without
244 obtaining the woman's informed consent or without according her a private medical
245 consultation in accordance with the requirements of this section, may be liable to her for
246 damages in a civil action at law;

247 (h) a statement conveying that the state [~~of Utah~~] prefers childbirth over abortion; and

248 (i) information regarding the legal responsibility of the father to assist in child support,
249 even in instances where he has agreed to pay for an abortion, including a description of the
250 services available through the Office of Recovery Services, within the Department of Human
251 Services, to establish and collect that support.

252 (2) (a) The materials described in Subsection (1) shall be produced and printed in a
253 way that conveys the state's preference for childbirth over abortion.

254 (b) The printed material described in Subsection (1) shall be printed in a typeface large
255 enough to be clearly legible.

256 (3) Every facility in which abortions are performed shall immediately provide the
257 printed informed consent materials and a viewing of or a copy of the informational video
258 described in Subsection (1) to any patient or potential patient prior to the performance of an
259 abortion, unless the patient's attending or referring physician certifies in writing that he
260 reasonably believes that provision of the materials or video to that patient would result in a
261 severely adverse effect on her physical or mental health.

262 (4) The Department of Health shall produce a standardized videotape that may be used
263 statewide, containing all of the information described in Subsection (1), in accordance with the
264 requirements of that subsection and Subsection (2). In preparing the video, the department may
265 summarize and make reference to the printed comprehensive list of geographically indexed
266 names and services described in Subsection (1)(a). The videotape shall, in addition to the
267 information described in Subsection (1), show an ultrasound of the heart beat of an unborn
268 child at three weeks gestational age, at six to eight weeks gestational age, and each month
269 thereafter, until 14 weeks gestational age. That information shall be presented in a truthful,
270 nonmisleading manner designed to convey accurate scientific information, the state's
271 preference for childbirth over abortion, and the positive aspects of adoption.

272 (5) The Department of Health and local health departments shall provide ultrasounds in
273 accordance with the provisions of Subsection 76-7-305(1)(b), at no expense to the pregnant
274 woman.

275 (6) The Department of Health shall compile and report the following information
276 annually, preserving physician and patient anonymity:

277 (a) the total amount of informed consent material described in Subsection (1) that was
278 distributed;

279 (b) the number of women who obtained abortions in this state without receiving those
280 materials;

281 (c) the number of statements signed by attending physicians certifying to his opinion

282 regarding adverse effects on the patient under Subsection (3); and

283 (d) any other information pertaining to protecting the informed consent of women
284 seeking abortions.

285 ~~[(7) The Department of Health shall annually report to the Health and Human Services~~
286 ~~Interim Committee regarding the information described in Subsection (6), and provide a copy~~
287 ~~of the printed materials and the videotape produced in accordance with this section to that~~
288 ~~committee.]~~

289 Section 8. **Repealer.**

290 This bill repeals:

291 Section **26-18-3.7, Prepaid health care delivery systems.**

292 Section **26-18-401, Medicaid waiver.**