

**MEDICAID RECOVERY AMENDMENTS**

2007 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Allen M. Christensen**

House Sponsor: Merlynn T. Newbold

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**LONG TITLE**

**General Description:**

This bill amends the Medicaid Benefits Recovery Act and the Insurance Code to comply with the federal Deficit Reduction Act.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ establishes, as a condition of doing business in the state, requirements for health insurance entities relating to providing information to the state, accepting the right of the state to recover Medicaid expenses, and approving valid claims by the state;
- ▶ permits a claim for Medicaid recovery to be submitted up to three years after the day on which the health care item or service upon which the claim is based was provided;
- ▶ extends the statute of limitations for an action to recover Medicaid expenses, unless the action was time-barred on or before April 30, 2007;
- ▶ prohibits insurance policies from imposing a Medicaid insurance recovery deadline that is earlier than the deadline provided for in this bill;
- ▶ provides for enforcement of the provisions of this bill and for penalties against health insurance entities that are regulated by the Department of Insurance; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**



28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **26-19-2**, as last amended by Chapter 103, Laws of Utah 2005

34 **26-19-8**, as last amended by Chapter 72, Laws of Utah 2004

35 **75-7-508**, as last amended by Chapter 103, Laws of Utah 2005

36 ENACTS:

37 **26-19-4.7**, Utah Code Annotated 1953

38 **31A-4-107.5**, Utah Code Annotated 1953



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

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

42 **26-19-2. Definitions.**

43 As used in this chapter:

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

45 (2) "Claim" means:

46 (a) a request or demand for payment; or

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

48 (3) "Employee welfare benefit plan" means a medical insurance plan developed by an  
49 employer under 29 U.S.C. Section 1001, et seq., the Employee Retirement Income Security Act  
50 of 1974 as amended.

51 (4) "Estate" means, regarding a deceased recipient:

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

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

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

- 59            (5) "Health insurance entity" means:  
60            (a) an insurer;  
61            (b) a person who administers, manages, provides, offers, sells, carries, or underwrites  
62 health insurance, as defined in Section 31A-1-301;  
63            (c) a self-insured plan;  
64            (d) a group health plan, as defined in Subsection 607(1) of the federal Employee  
65 Retirement Income Security Act of 1974;  
66            (e) a service benefit plan;  
67            (f) a managed care organization;  
68            (g) a pharmacy benefit manager;  
69            (h) an employee welfare benefit plan; or  
70            (i) a person who is, by statute, contract, or agreement, legally responsible for payment  
71 of a claim for a health care item or service.  
72            ~~(5)~~ (6) "Insurer" includes:  
73            (a) a group health plan as defined in Subsection 607(1) of the federal Employee  
74 Retirement Income Security Act of 1974;  
75            (b) a health maintenance organization; and  
76            (c) any entity offering a health service benefit plan.  
77            ~~(6)~~ (7) "Medical assistance" means:  
78            (a) all funds expended for the benefit of a recipient under Title 26, Chapter 18, Medical  
79 Assistance Act, or under Titles XVIII and XIX, federal Social Security Act; and  
80            (b) any other services provided for the benefit of a recipient by a prepaid health care  
81 delivery system under contract with the department.  
82            ~~(7)~~ (8) "Office of Recovery Services" means the Office of Recovery Services within  
83 the Department of Human Services.  
84            ~~(8)~~ (9) "Provider" means a person or entity who provides services to a recipient.  
85            ~~(9)~~ (10) "Recipient" means:  
86            (a) a person who has applied for or received medical assistance from the state;  
87            (b) the guardian, conservator, or other personal representative of a person under  
88 Subsection ~~(9)~~ (10)(a) if the person is a minor or an incapacitated person; or  
89            (c) the estate and survivors of a person under Subsection ~~(9)~~ (10)(a) if the person is

90 deceased.

91 ~~[(10)]~~ (11) "State plan" means the state Medicaid program as enacted in accordance  
92 with Title XIX, federal Social Security Act.

93 ~~[(11)]~~ (12) "Third party" includes:

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

100 (b) a spouse or a parent who:

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

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

105 ~~[(12)]~~ (13) "Trust" shall have the same meaning as provided in Section 75-1-201.

106 Section 2. Section **26-19-4.7** is enacted to read:

107 **26-19-4.7. Health insurance entity -- Duties related to state claims for Medicaid**  
108 **payment or recovery.**

109 As a condition of doing business in the state, a health insurance entity shall:

110 (1) with respect to a person who is eligible for, or is provided, medical assistance under  
111 the state plan, upon the request of the Department of Health, provide information to determine:

112 (a) during what period the person, or the spouse or dependent of the person, may be or  
113 may have been, covered by the health insurance entity; and

114 (b) the nature of the coverage that is or was provided by the health insurance entity  
115 described in Subsection (1)(a), including the name, address, and identifying number of the  
116 plan;

117 (2) accept the state's right of recovery and the assignment to the state of any right of a  
118 person to payment from a party for an item or service for which payment has been made under  
119 the state plan;

120 (3) respond to any inquiry by the Department of Health regarding a claim for payment

121 for any health care item or service that is submitted no later than three years after the day on  
 122 which the health care item or service is provided; and

123 (4) not deny a claim submitted by the Department of Health solely on the basis of the  
 124 date of submission of the claim, the type or format of the claim form, or failure to present  
 125 proper documentation at the point-of-sale that is the basis for the claim, if:

126 (a) the claim is submitted no later than three years after the day on which the item or  
 127 service is furnished; and

128 (b) any action by the Department of Health to enforce the rights of the state with  
 129 respect to the claim is commenced no later than six years after the day on which the claim is  
 130 submitted.

131 Section 3. Section **26-19-8** is amended to read:

132 **26-19-8. Statute of limitations -- Survival of right of action -- Insurance policy not**  
 133 **to limit time allowed for recovery.**

134 (1) (a) [~~Am~~] Subject to Subsection (6), action commenced by the department ~~§~~→ [~~or the~~  
 135 ~~Office of Recovery Services on behalf of the department;~~] ←~~§~~ under this chapter against a health  
 136 insurance [~~carrier or employee welfare benefit plan~~] entity must be commenced within:

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

138 (i) subject to Subsection (7), six years after the day on which the department ~~§~~→ [~~or the~~  
 139 ~~Office of Recovery Services]~~ ←~~§~~ submits the claim for recovery or payment for the health care item  
 140 or service upon which the action is based; or

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

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

145 (i) four years after the date of the injury or onset of the illness; or

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

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

150 (3) (a) No insurance policy issued or renewed after June 1, 1981, may contain any  
 151 provision that limits the time in which the department may submit its claim to recover medical

152 assistance benefits to a period of less than 24 months from the date the provider furnishes  
153 services or goods to the recipient.

154 (b) No insurance policy issued or renewed after April 30, 2007, may contain any  
155 provision that limits the time in which the department may submit its claim to recover medical  
156 assistance benefits to a period of less than that described in Subsection (1)(a).

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

158 (5) The provisions of this section supercede any other sections regarding the time limit  
159 in which an action must be commenced, including Section 75-7-509.

160 (6) (a) Subsection (1)(a) extends the statute of limitations on a cause of action  
161 described in Subsection (1)(a) that was not time-barred on or before April 30, 2007.

162 (b) Subsection (1)(a) does not revive a cause of action that was time-barred on or  
163 before April 30, 2007.

164 (7) An action described in Subsection (1)(a) may not be commenced if the claim for  
165 recovery or payment described in Subsection (1)(a)(i) is submitted later than three years after  
166 the day on which the health care item or service upon which the claim is based was provided.

167 Section 4. Section **31A-4-107.5** is enacted to read:

168 **31A-4-107.5. Penalty for failure of a regulated health insurance entity to fulfill**  
169 **duties related to state claims for Medicaid payment or recovery.**

170 (1) For purposes of this section, "regulated health insurance entity" means a health  
171 insurance entity, as defined in Section 26-19-2, that is subject to regulation by the department.

172 (2) If a regulated health insurance entity fails to comply with the provisions of Section  
173 26-19-4.7:

174 (a) the commissioner may revoke or suspend, in whole or in part, a license, certificate  
175 of authority, registration, or other authority that is granted by the commissioner to the regulated  
176 health insurance entity; and

177 (b) the regulated health insurance entity is subject to the penalties and procedures  
178 provided for in Section 31A-2-308.

179 Section 5. Section **75-7-508** is amended to read:

180 **75-7-508. Notice to creditors.**

181 (1) A trustee for an inter vivos revocable trust, upon the death of the settlor, may  
182 publish a notice to creditors once a week for three successive weeks in a newspaper of general

183 circulation in the county where the settlor resided at the time of death. The notice required by  
184 this Subsection (1) must:

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

186 (b) notify creditors:

187 (i) of the deceased settlor; and

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

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

195 (3) (a) If the deceased settlor received medical assistance, as defined in [~~Subsection~~  
196 ~~26-19-2(6)~~] Section 26-19-2, at any time after the age of 55, the trustee for an inter vivos  
197 revocable trust, upon the death of the settlor, shall mail or deliver written notice to the Director  
198 of the Office of Recovery Services, on behalf of the Department of Health, to present any claim  
199 under Section 26-19-13.5 within 60 days from the mailing or other delivery of notice,  
200 whichever is later, or be forever barred.

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

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

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**Legislative Review Note**  
as of 1-9-07 8:52 AM

**Office of Legislative Research and General Counsel**

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**S.B. 117 - Medicaid Recovery Amendments**

**Fiscal Note**

2007 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations. The result could be increased collections to be used to offset escalating Medicaid expenses. The amount can not be estimated.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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*1/18/2007, 11:11:52 AM, Lead Analyst: Greer, W.*

**Office of the Legislative Fiscal Analyst**