

MEDICAID PROGRAM AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: John Dougall

Senate Sponsor: Daniel R. Liljenquist

LONG TITLE

General Description:

This bill amends Medicaid provisions of the Utah Code.

Highlighted Provisions:

This bill:

- ▶ requires the Department of Health to conduct a certain level of internal audits of the Medicaid program;

- ▶ requires the Department of Health to study and report:

- direct contracting for primary care services; and
- the feasibility of establishing a medical homes model;

- ▶ requires the Department of Human Services to report to the Legislature when changes to the state Medicaid plan, or a Medicaid waiver effect the care of children and youth in custody of the Division of Child and Family Services or the Division of Juvenile Justice Services;

- ▶ allows the Department of Health to apply for and, if approved, implement a program for health opportunity accounts;

- ▶ requires certain funds to be deposited in the Medicaid Restricted Account; and

- ▶ expands the use of the Nursing Care Facilities Account, which was established to assist nursing care facilities providing services under the Medicaid program.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **26-18-3**, as last amended by Laws of Utah 2008, Chapters 62 and 382

33 **26-18-402**, as last amended by Laws of Utah 2009, Chapters 13 and 199

34 **26-35a-106**, as last amended by Laws of Utah 2008, Chapter 382

35 RENUMBERS AND AMENDS:

36 **26-10-101**, (Renumbered from 26-18-301, as last amended by Laws of Utah 2008,
37 Chapter 159)

38 **26-10-102**, (Renumbered from 26-18-302, as last amended by Laws of Utah 2008,
39 Chapter 159)

40 **26-10-103**, (Renumbered from 26-18-303, as enacted by Laws of Utah 1993, Chapter
41 255)

42 **26-10-104**, (Renumbered from 26-18-304, as last amended by Laws of Utah 2008,
43 Chapters 159 and 382)

44 **26-10-105**, (Renumbered from 26-18-305, as last amended by Laws of Utah 2006,
45 Chapter 116)



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

48 Section 1. Section **26-10-101**, which is renumbered from Section 26-18-301 is
49 renumbered and amended to read:

50 ~~**[26-18-301].**~~ **26-10-101. Definitions.**

51 As used in this part:

52 (1) "Community based organization":

53 (a) means a private entity; and

54 (b) includes for profit and not for profit entities.

55 (2) "Cultural competence" means a set of congruent behaviors, attitudes, and policies
56 that come together in a system, agency, or profession and enables that system, agency, or
57 profession to work effectively in cross-cultural situations.

58 (3) "Health literacy" means the degree to which an individual has the capacity to
59 obtain, process, and understand health information and services needed to make appropriate
60 health decisions.

61 (4) "Institutional capacity" means the ability of a community based organization to
62 implement public and private contracts.

63 (5) "Medically underserved population" means the population of an urban or rural area
64 or a population group designated by the department as having a shortage of primary health
65 care services.

66 (6) "Primary health care" means:

67 (a) basic and general health care services given when a person seeks assistance to
68 screen for or to prevent illness and disease, or for simple and common illnesses and injuries;
69 and

70 (b) care given for the management of chronic diseases.

71 (7) "Primary health care services" include~~[-but are not limited to-]~~:

72 (a) services of physicians, nurses, physician's assistants, and dentists licensed to
73 practice in this state under Title 58, Occupations and Professions;

74 (b) diagnostic and radiologic services;

75 (c) preventive health services including, ~~[but not limited to,]~~ perinatal services,
76 well-child services, and other services that seek to prevent disease or its consequences;

77 (d) emergency medical services;

78 (e) preventive dental services; and

79 (f) pharmaceutical services.

80 Section 2. Section **26-10-102**, which is renumbered from Section 26-18-302 is
81 renumbered and amended to read:

82 ~~[26-18-302].~~ **26-10-102. Department to award grants and contracts --**

83 **Applications.**

84 (1) (a) Within appropriations specified by the Legislature for this purpose, the
85 department may make grants to public and nonprofit entities for the cost of operation of

86 providing primary health care services to medically underserved populations.

87 (b) The department may, as funding permits, contract with community based
88 organizations for the purpose of developing culturally and linguistically appropriate programs
89 and services for low income and medically underserved populations through a pilot program to
90 accomplish one or more of the following:

91 (i) to educate individuals:

92 (A) to use private and public health care coverage programs, products, services, and
93 resources in a timely, effective, and responsible manner;

94 (B) to make prudent use of private and public health care resources;

95 (C) to pursue preventive health care, health screenings, and disease management; and

96 (D) to locate health care programs and services;

97 (ii) to assist individuals to develop:

98 (A) personal health management;

99 (B) self-sufficiency in daily care; and

100 (C) life and disease management skills;

101 (iii) to support translation of health materials and information;

102 (iv) to facilitate an individual's access to primary care services and providers,
103 including mental health services; and

104 (v) to measure and report empirical results of the pilot project.

105 (2) (a) Grants by the department shall be awarded based on:

106 (i) applications submitted to the department in the manner and form prescribed by the
107 department; and

108 (ii) the criteria established in Section [~~26-18-303~~] 26-10-103.

109 (b) The application for a grant under Subsection (2)(a) shall contain:

110 (i) a requested award amount;

111 (ii) a budget; and

112 (iii) a narrative plan of the manner in which the applicant intends to provide the
113 primary health care services described in Subsection [~~26-18-301~~] 26-10-101(7).

- 114 (c) A contract bid for a service under Subsection (1)(b):
- 115 (i) shall be awarded in accordance with Title 63G, Chapter 6, Utah Procurement Code;
- 116 (ii) must include the information described in Section [~~26-18-303~~] 26-10-103; and
- 117 (iii) is subject to Subsection (3) of this section.

118 (3) (a) An applicant under this chapter must demonstrate to the department that the
119 applicant will not deny services to a person because of the person's inability to pay for the
120 services.

121 (b) Subsection (3)(a) does not preclude an applicant from seeking payment from the
122 person receiving services, a third party, or a government agency if:

- 123 (i) the applicant is authorized to charge for the services; and
- 124 (ii) the person, third party, or government agency is under legal obligation to pay the
125 charges.

126 (4) The department shall maximize the use of federal matching funds received for
127 services under Subsection (1)(b) to fund additional contracts under Subsection (1)(b).

128 Section 3. Section **26-10-103**, which is renumbered from Section 26-18-303 is
129 renumbered and amended to read:

130 ~~[26-18-303]~~. **26-10-103. Content of applications.**

131 Applications for grants under this chapter shall include:

- 132 (1) a statement of specific, measurable objectives, and the methods to be used to
133 assess the achievement of those objectives;
- 134 (2) the precise boundaries of the area to be served by the entity making the
135 application, including a description of the medically underserved population to be served by
136 the grant;
- 137 (3) the results of an assessment of need demonstrating that the population to be served
138 has a need for the services provided by the applicant;
- 139 (4) a description of the personnel responsible for carrying out the activities of the grant
140 along with a statement justifying the use of any grant funds for the personnel;
- 141 (5) letters and other forms of evidence showing that efforts have been made to secure

142 financial and professional assistance and support for the services to be provided under the
143 grant;

144 (6) a list of services to be provided by the applicant;

145 (7) the schedule of fees to be charged by the applicant;

146 (8) the estimated number of medically underserved persons to be served with the grant
147 award; and

148 (9) other provisions as determined by the department.

149 Section 4. Section **26-10-104**, which is renumbered from Section 26-18-304 is
150 renumbered and amended to read:

151 ~~[26-18-304]~~. **26-10-104**. **Process and criteria for awarding grants and**
152 **contracts.**

153 (1) The department shall establish rules in accordance with Title 63G, Chapter 3, Utah
154 Administrative Rulemaking Act, governing the application form, process, and criteria it will
155 use in awarding grants and contracts under this chapter.

156 (2) When awarding a primary care grant under Subsection ~~[26-18-302]~~
157 26-10-102(1)(a), the department shall consider the extent to which the applicant:

158 (a) demonstrates that the area or a population group to be served under the application
159 has a shortage of primary health care and that the services will be located so that they will
160 provide assistance to the greatest number of persons residing in the area or included in the
161 population group;

162 (b) utilizes other sources of funding, including private funding, to provide primary
163 health care;

164 (c) demonstrates the ability and expertise to serve traditionally medically underserved
165 populations including persons of limited English-speaking ability, single heads of households,
166 the elderly, persons with low incomes, and persons with chronic diseases;

167 (d) demonstrates that it will assume financial risk for a specified number of medically
168 underserved persons within its catchment area for a predetermined level of care on a prepaid
169 capitation basis; and

- 170 (e) meets other criteria determined by the department.
- 171 (3) When awarding a contract for community based services under Subsection
- 172 ~~[26-18-302]~~ 26-10-102(1)(b), the department shall:
- 173 (a) consider the extent to which the applicant:
- 174 (i) demonstrates that the area or a population group to be served under the application
- 175 is a medically underserved area or population and that the services will be located so that they
- 176 will provide assistance to the greatest number of persons residing in the area or included in the
- 177 population group;
- 178 (ii) utilizes other sources of funding, including private funding, to provide the services
- 179 described in Subsection ~~[26-18-302]~~ 26-10-102(1)(b);
- 180 (iii) demonstrates the ability and expertise to serve traditionally medically underserved
- 181 populations including persons of limited English-speaking ability, single heads of households,
- 182 the elderly, persons with low incomes, and persons with chronic diseases;
- 183 (iv) meets other criteria determined by the department; and
- 184 (v) demonstrates the ability to empirically measure and report the results of all
- 185 contract supported activities;
- 186 (b) consider the extent to which the contract increases the applicant's institutional
- 187 capacity;
- 188 (c) consult with the state's:
- 189 (i) Medicaid program;
- 190 (ii) Children's Health Insurance Program; and
- 191 (iii) other assistance programs within the Department of Workforce Services and the
- 192 Department of Human Services; and
- 193 (d) as funding permits, implement the community based service contract as a pilot
- 194 program for which the department shall enter into contracts for services as follows:
- 195 (i) two contracts in the amount of \$50,000 each to be awarded to experienced and
- 196 established applicants; and
- 197 (ii) three contracts in the amount of \$30,000 each to be awarded to applicants that:

198 (A) are not as established or experienced as the applicants under Subsection (3)(d)(i);
199 or

200 (B) represent smaller community based approaches than the applicants described in
201 Subsection (3)(d)(i).

202 (4) Once a contract has been awarded under Subsection (3), the department shall
203 provide technical assistance to the contractee to familiarize the contractee with public and
204 private resources available to support wellness, health promotion, and disease management.

205 Section 5. Section **26-10-105**, which is renumbered from Section 26-18-305 is
206 renumbered and amended to read:

207 ~~[26-18-305]~~. **26-10-105. Report on implementation.**

208 The department shall report to the Health and Human Services Interim Committee by
209 November 1, 1994, and every year thereafter on the implementation of the grant program for
210 primary care services. The report shall include a description of the scope and level of coverage
211 provided to low-income persons by primary care grant programs.

212 Section 6. Section **26-18-3** is amended to read:

213 **26-18-3. Administration of Medicaid program by department -- Reporting to the**
214 **Legislature -- Disciplinary measures and sanctions -- Funds collected -- Eligibility**
215 **standards -- Internal audits -- Studies -- Health opportunity accounts.**

216 (1) The department shall be the single state agency responsible for the administration
217 of the Medicaid program in connection with the United States Department of Health and
218 Human Services pursuant to Title XIX of the Social Security Act.

219 (2) (a) The department shall implement the Medicaid program through administrative
220 rules in conformity with this chapter, Title 63G, Chapter 3, Utah Administrative Rulemaking
221 Act, the requirements of Title XIX, and applicable federal regulations.

222 (b) The rules adopted under Subsection (2)(a) shall include, in addition to other rules
223 necessary to implement the program:

224 (i) the standards used by the department for determining eligibility for Medicaid
225 services;

226 (ii) the services and benefits to be covered by the Medicaid program; and
227 (iii) reimbursement methodologies for providers under the Medicaid program.
228 (3) (a) The department shall, in accordance with Subsection (3)(b), report to either the
229 Legislative Executive Appropriations Committee or the Legislative Health and Human
230 Services Appropriations Subcommittee when the department:
231 (i) implements a change in the Medicaid State Plan;
232 (ii) initiates a new Medicaid waiver;
233 (iii) initiates an amendment to an existing Medicaid waiver; or
234 (iv) initiates a rate change that requires public notice under state or federal law.
235 (b) The report required by Subsection (3)(a) shall:
236 (i) be submitted to the Legislature's Executive Appropriations Committee or the
237 legislative Health and Human Services Appropriations Subcommittee prior to the department
238 implementing the proposed change; and
239 (ii) shall include:
240 (A) a description of the department's current practice or policy that the department is
241 proposing to change;
242 (B) an explanation of why the department is proposing the change;
243 (C) the proposed change in services or reimbursement, including a description of the
244 effect of the change;
245 (D) the effect of an increase or decrease in services or benefits on individuals and
246 families;
247 (E) the degree to which any proposed cut may result in cost-shifting to more expensive
248 services in health or human service programs; and
249 (F) the fiscal impact of the proposed change, including:
250 (I) the effect of the proposed change on current or future appropriations from the
251 Legislature to the department;
252 (II) the effect the proposed change may have on federal matching dollars received by
253 the state Medicaid program;

254 (III) any cost shifting or cost savings within the department's budget that may result
255 from the proposed change; and

256 (IV) identification of the funds that will be used for the proposed change, including
257 any transfer of funds within the department's budget.

258 (4) (a) The Department of Human Services shall report to the Legislative Health and
259 Human Services Appropriations Subcommittee no later than December 31, 2010 in
260 accordance with Subsection (4)(b).

261 (b) The report required by Subsection (4)(a) shall include:

262 (i) changes made by the division or the department beginning July 1, 2010 that effect
263 the Medicaid program, a waiver under the Medicaid program, or an interpretation of Medicaid
264 services or funding, that relate to care for children and youth in the custody of the Division of
265 Child and Family Services or the Division of Juvenile Justice Services;

266 (ii) the history and impact of the changes under Subsection (4)(b)(i);

267 (iii) the Department of Human Service's plans for addressing the impact of the
268 changes under Subsection (4)(b)(i); and

269 (iv) ways to consolidate administrative functions within the Department of Human
270 Services, the Department of Health, the Division of Child and Family Services, and the
271 Division of Juvenile Justice Services to more efficiently meet the needs of children and youth
272 with mental health and substance disorder treatment needs.

273 [~~4~~] (5) Any rules adopted by the department under Subsection (2) are subject to
274 review and reauthorization by the Legislature in accordance with Section 63G-3-502.

275 [~~5~~] (6) The department may, in its discretion, contract with the Department of
276 Human Services or other qualified agencies for services in connection with the administration
277 of the Medicaid program, including:

278 (a) the determination of the eligibility of individuals for the program;

279 (b) recovery of overpayments; and

280 (c) consistent with Section 26-20-13, and to the extent permitted by law and quality
281 control services, enforcement of fraud and abuse laws.

282 ~~[(6)]~~ (7) The department shall provide, by rule, disciplinary measures and sanctions
283 for Medicaid providers who fail to comply with the rules and procedures of the program,
284 provided that sanctions imposed administratively may not extend beyond:

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

288 ~~[(7)]~~ (8) Funds collected as a result of a sanction imposed under Section 1919 of Title
289 XIX of the federal Social Security Act shall be deposited in the General Fund as nonlapsing
290 dedicated credits to be used by the division in accordance with the requirements of Section
291 1919 of Title XIX of the federal Social Security Act.

292 ~~[(8)]~~ (9) (a) In determining whether an applicant or recipient is eligible for a service or
293 benefit under this part or Chapter 40, Utah Children's Health Insurance Act, the department
294 shall, if Subsection ~~[(8)]~~ (9)(b) is satisfied, exclude from consideration one passenger vehicle
295 designated by the applicant or recipient.

296 (b) Before Subsection ~~[(8)]~~ (9)(a) may be applied:

297 (i) the federal government must:

298 (A) determine that Subsection ~~[(8)]~~ (9)(a) may be implemented within the state's
299 existing public assistance-related waivers as of January 1, 1999;

300 (B) extend a waiver to the state permitting the implementation of Subsection ~~[(8)]~~
301 (9)(a); or

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

304 (ii) the department must determine that Subsection ~~[(8)]~~ (9)(a) can be implemented
305 within existing funding.

306 ~~[(9)]~~ (10) (a) For purposes of this Subsection ~~[(9)]~~ (10):

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

308 (ii) "spend down" means an amount of income in excess of the allowable income
309 standard that must be paid in cash to the department or incurred through the medical services

310 not paid by Medicaid.

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

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

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

316 (11) The department shall conduct internal audits of the Medicaid program, in
317 proportion to at least the level of funding it receives from Medicaid to conduct internal audits.

318 (12) In order to determine the feasibility of contracting for direct Medicaid providers
319 for primary care services, the department shall:

320 (a) issue a request for information for direct contracting for primary services that shall
321 provide that a provider shall exclusively serve all Medicaid clients:

322 (i) in a geographic area;

323 (ii) for a defined range of primary care services; and

324 (iii) for a predetermined total contracted amount; and

325 (b) by February 1, 2011, report to the Health and Human Services Appropriations
326 Subcommittee on the response to the request for information under Subsection (12)(a).

327 (13) (a) By December 31, 2010, the department shall:

328 (i) determine the feasibility of implementing a three year patient-centered medical
329 home demonstration project in an area of the state using existing budget funds; and

330 (ii) report the department's findings and recommendations under Subsection (13)(a)(i)
331 to the Health and Human Services Appropriations Subcommittee.

332 (b) If the department determines that the medical home demonstration project
333 described in Subsection (13)(a) is feasible, and the Health and Human Services
334 Appropriations Subcommittee recommends that the demonstration project be implemented,
335 the department shall:

336 (i) implement the demonstration project; and

337 (ii) by December 1, 2012, make recommendations to the Health and Human Services

338 Appropriations Subcommittee regarding the:

339 (A) continuation of the demonstration project;

340 (B) expansion of the demonstration project to other areas of the state; and

341 (C) cost savings incurred by the implementation of the demonstration project.

342 (14) (a) The department may apply for and, if approved, implement a demonstration
343 program for health opportunity accounts, as provided for in 42 U.S.C. Sec. 1396u-8.

344 (b) A health opportunity account established under Subsection (14)(a) shall be an
345 alternative to the existing benefits received by an individual eligible to receive Medicaid under
346 this chapter.

347 (c) Subsection (14)(a) is not intended to expand the coverage of the Medicaid
348 program.

349 Section 7. Section **26-18-402** is amended to read:

350 **26-18-402. Medicaid Restricted Account.**

351 (1) There is created a restricted account in the General Fund known as the Medicaid
352 Restricted Account.

353 (2) (a) Except as provided in Subsection (3), the following shall be deposited into the
354 Medicaid Restricted Account:

355 (i) any general funds appropriated to the department for the state plan for medical
356 assistance or for the Division of Health Care Financing that are not expended by the
357 department in the fiscal year for which the general funds were appropriated and which are not
358 otherwise designated as nonlapsing shall lapse into the Medicaid Restricted Account; ~~and~~

359 (ii) any unused state funds that are associated with the Medicaid program, as defined
360 in Section 26-18-2, from the Department of Workforce Services and the Department of
361 Human Services; and

362 ~~(i)~~ (iii) any penalties imposed and collected under:

363 (A) Section 17B-2a-818.5;

364 (B) Section 19-1-206;

365 (C) Section 79-2-404;

366 (D) Section 63A-5-205;

367 (E) Section 63C-9-403; or

368 (F) Section 72-6-107.5.

369 (b) The account shall earn interest and all interest earned shall be deposited into the
370 account.

371 (c) The Legislature may appropriate monies in the restricted account to fund programs
372 that expand medical assistance coverage and private health insurance plans to low income
373 persons who have not traditionally been served by Medicaid, including the Utah Children's
374 Health Insurance Program created in Chapter 40.

375 (3) For fiscal years 2008-09, 2009-10, and 2010-11, the following funds are
376 nonlapsing:

377 (a) any general funds appropriated to the department for the state plan for medical
378 assistance, or for the Division of Health Care Financing that are not expended by the
379 department in the fiscal year in which the general funds were appropriated [~~are nonlapsing~~];
380 and

381 (b) funds described in Subsection (2)(a)(ii).

382 Section 8. Section **26-35a-106** is amended to read:

383 **26-35a-106. Restricted account -- Creation -- Deposits.**

384 (1) (a) There is created a restricted account in the General Fund known as the
385 "Nursing Care Facilities Account" consisting of:

386 (i) proceeds from the assessment imposed by Section 26-35a-104 which shall be
387 deposited in the restricted account to be used for the purpose described in Subsection (1)(b);

388 (ii) money appropriated or otherwise made available by the Legislature; and

389 (iii) any interest earned on the account.

390 (b) (i) Money in the account shall only be used:

391 (A) to the extent authorized by federal law, to obtain federal financial participation in
392 the Medicaid program; [~~and~~]

393 (B) to provide the increased level of hospice reimbursement resulting from the nursing

394 care facilities assessment imposed under Section 26-35a-104; and
395 ~~[(B)]~~ (C) in the manner described in Subsection (1)(b)(ii).
396 (ii) The money appropriated from the restricted account to the department:
397 (A) shall be used only to increase the rates paid prior to the effective date of this act to
398 nursing care facilities for providing services pursuant to the Medicaid program and for
399 administrative expenses as described in Subsection (1)(b)(ii)(C);
400 (B) may not be used to replace existing state expenditures paid to nursing care
401 facilities for providing services pursuant to the Medicaid program, except for increased costs
402 due to hospice reimbursement under Subsection (1)(b)(i)(B); and
403 (C) may be used for administrative expenses [~~for implementation of this act~~], if the
404 administrative expenses for the fiscal year do not exceed 3% of the money deposited into the
405 restricted account during the fiscal year.
406 (2) Money shall be appropriated from the restricted account to the department for the
407 purposes described in Subsection (1)(b) in accordance with Title 63J, Chapter 1, Budgetary
408 Procedures Act.