

**MEDICAL ASSISTANCE ACCOUNTABILITY**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: David Clark**

Senate Sponsor: Wayne L. Niederhauser

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**LONG TITLE**

**General Description:**

This bill amends provisions of the Utah Health Code relating to management and oversight of the state's Medicaid and medical assistance programs.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ provides that an inspector general of Medicaid services or the director of the Office of Internal Audit and Program Integrity shall designate and oversee the presiding officer in certain administrative appeal proceedings relating to Medicaid funds or services;
- ▶ describes other requirements relating to certain Medicaid related administrative appeal proceedings;
- ▶ describes duties and reporting requirements for the division relating to management and oversight of the state's Medicaid and medical assistance programs;
- ▶ places the Utah Office of Internal Audit and Program Integrity directly under the executive director of the Department of Health; and
- ▶ provides the Utah Office of Internal Audit and Program Integrity with full access to the records of the Division of Health Care Financing.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill takes effect on July 1, 2011.

30 **Utah Code Sections Affected:**

31 ENACTS:

32 **26-18-601**, Utah Code Annotated 1953

33 **26-18-602**, Utah Code Annotated 1953

34 **26-18-603**, Utah Code Annotated 1953

35 **26-18-604**, Utah Code Annotated 1953

36 **26-18-605**, Utah Code Annotated 1953



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

39 Section 1. Section **26-18-601** is enacted to read:

40 **Part 6. MEDICAL ASSISTANCE ACCOUNTABILITY**

41 **26-18-601. Title.**

42 This part is known as "Medical Assistance Accountability."

43 Section 2. Section **26-18-602** is enacted to read:

44 **26-18-602. Definitions.**

45 As used in this part:

46 (1) "Abuse" means:

47 (a) an action or practice that:

48 (i) is inconsistent with sound fiscal, business, or medical practices; and

49 (ii) results, or may result, in unnecessary Medicaid related costs or other medical or

50 hospital assistance costs; or

51 (b) reckless or negligent upcoding.

52 (2) "Auditor's Office" means the Office of Internal Audit and Program Integrity, within  
53 the department.

54 (3) "Fraud" means intentional or knowing:

55 (a) deception, misrepresentation, or upcoding in relation to Medicaid funds, costs,

56 claims, reimbursement, or practice; or

57 (b) deception or misrepresentation in relation to medical or hospital assistance funds,

58 costs, claims, reimbursement, or practice.

59 (4) "Medical or hospital assistance" is as defined in Section 26-18-2.

60 (5) "Upcoding" means assigning an inaccurate billing code for a service that is payable  
61 or reimbursable by Medicaid funds, if the correct billing code for the service, taking into  
62 account reasonable opinions derived from official published coding definitions, would result in  
63 a lower Medicaid payment or reimbursement.

64 (6) "Waste" means overutilization of resources or inappropriate payment.

65 Section 3. Section **26-18-603** is enacted to read:

66 **26-18-603. Adjudicative proceedings related to Medicaid funds.**

67 (1) If a proceeding of the department, under Title 63G, Chapter 4, Administrative  
68 Procedures Act, relates in any way to recovery of Medicaid funds:

69 (a) the presiding officer shall be designated by the executive director of the department  
70 and report directly to the executive director or, in the discretion of the executive director, report  
71 directly to the director of the Office of Internal Audit and Program Integrity; and

72 (b) the decision of the presiding officer is the recommended decision to the executive  
73 director of the department or a designee of the executive director who is not in the division.

74 (2) Subsection (1) does not apply to hearings conducted by the Department of  
75 Workforce Services relating to medical assistance eligibility determinations.

76 (3) If a proceeding of the department, under Title 63G, Chapter 4, Administrative  
77 Procedures Act, relates in any way to Medicaid or Medicaid funds, the following may attend  
78 and present evidence or testimony at the proceeding:

79 (a) the director of the Office of Internal Audit and Program Integrity, or the director's  
80 designee; and

81 (b) the inspector general of Medicaid services, if an Office of Inspector General of  
82 Medicaid Services is created by statute, or the inspector general's designee.

83 (4) In relation to a proceeding of the department under Title 63G, Chapter 4,  
84 Administrative Procedures Act, a person may not, outside of the actual proceeding, attempt to  
85 influence the decision of the presiding officer.

86 Section 4. Section **26-18-604** is enacted to read:

87 **26-18-604. Division duties -- Reporting.**

88 (1) The division shall:

89 (a) develop and implement procedures relating to Medicaid funds and medical or  
90 hospital assistance funds to ensure that providers do not receive:

91 (i) duplicate payments for the same goods or services;

92 (ii) payment for goods or services by resubmitting a claim for which:

93 (A) payment has been disallowed on the grounds that payment would be a violation of  
94 federal or state law, administrative rule, or the state plan; and

95 (B) the decision to disallow the payment has become final;

96 (iii) payment for goods or services provided after a recipient's death, including payment  
97 for pharmaceuticals or long-term care; or

98 (iv) payment for transporting an unborn infant;

99 (b) consult with the Centers for Medicaid and Medicare Services, other states, and the  
100 Office of Inspector General for Medicaid Services, if one is created by statute, to determine and  
101 implement best practices for discovering and eliminating fraud, waste, and abuse of Medicaid  
102 funds and medical or hospital assistance funds;

103 (c) actively seek repayment from providers for improperly used or paid:

104 (i) Medicaid funds; and

105 (ii) medical or hospital assistance funds;

106 (d) coordinate, track, and keep records of all division efforts to obtain repayment of the  
107 funds described in Subsection (1)(c), and the results of those efforts;

108 (e) keep Medicaid pharmaceutical costs as low as possible by actively seeking to obtain  
109 pharmaceuticals at the lowest price possible, including, on a quarterly basis for the  
110 pharmaceuticals that represent the highest 45% of state Medicaid expenditures for  
111 pharmaceuticals and on an annual basis for the remaining pharmaceuticals:

112 (i) tracking changes in the price of pharmaceuticals;

113 (ii) checking the availability and price of generic drugs;

114 (iii) reviewing and updating the state's maximum allowable cost list; and  
115 (iv) comparing pharmaceutical costs of the state Medicaid program to available  
116 pharmacy price lists; and  
117 (f) provide training, on an annual basis, to the employees of the division who make  
118 decisions on billing codes, or who are in the best position to observe and identify upcoding, in  
119 order to avoid and detect upcoding.

120 (2) At the October 2011 interim meeting of the Health and Human Services Interim  
121 Committee, the division shall report on the measures taken by the division to correct the  
122 problems identified in, and to implement the recommendations made in, the December 2010  
123 Performance Audit of Utah Medicaid Provider Cost Control published by the Office of  
124 Legislative Auditor General.

125 (3) Beginning in 2012, the division shall annually, before September 1, report to and  
126 provide the Health and Human Services Interim Committee with information, including  
127 statistical information, for the preceding fiscal year, regarding:

128 (a) incidents of improperly used or paid Medicaid funds and medical or hospital  
129 assistance funds;

130 (b) division efforts to obtain repayment from providers of the funds described in  
131 Subsection (3)(a);

132 (c) all repayments made of funds described in Subsection (3)(a), including the total  
133 amount recovered; and

134 (d) the division's compliance with the recommendations made in the December 2010  
135 Performance Audit of Utah Medicaid Provider Cost Control published by the Office of  
136 Legislative Auditor General.

137 Section 5. Section **26-18-605** is enacted to read:

138 **26-18-605. Utah Office of Internal Audit and Program Integrity.**

139 The Utah Office of Internal Audit and Program Integrity:

140 (1) may not be placed within the division;

141 (2) shall be placed directly under, and report directly to, the executive director of the

142 Department of Health; and

143 (3) shall have full access to all records of the division.

144 Section 6. **Effective date.**

145 This bill takes effect on July 1, 2011.