

Representative David Clark proposes the following substitute bill:

MEDICAL ASSISTANCE ACCOUNTABILITY

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: David Clark

Senate Sponsor: _____

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 is the presiding officer in certain administrative appeal proceedings relating to Medicaid funds or services;
- ▶ 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:



26 This bill takes effect on July 1, 2011.

27 **Utah Code Sections Affected:**

28 ENACTS:

29 **26-18-601**, Utah Code Annotated 1953

30 **26-18-602**, Utah Code Annotated 1953

31 **26-18-603**, Utah Code Annotated 1953

32 **26-18-604**, Utah Code Annotated 1953

33 **26-18-605**, Utah Code Annotated 1953

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

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

37 **Part 6. MEDICAL ASSISTANCE ACCOUNTABILITY**

38 **26-18-601. Title.**

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

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

41 **26-18-602. Definitions.**

42 As used in this part:

43 (1) "Abuse" means:

44 (a) an action or practice that:

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

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

47 hospital assistance costs; or

48 (b) reckless or negligent upcoding.

49 (2) "Auditor's Office" means the Office of Internal Audit and Program Integrity, within

50 the department.

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

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

53 claim, reimbursement, or practice; or

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

55 costs, a claim, reimbursement, or practice.

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

57 (5) "Upcoding" means assigning an inaccurate billing code for a service that is payable
58 or reimbursable by Medicaid funds, if the correct billing code for the service would result in a
59 lower Medicaid payment or reimbursement.

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

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

62 **26-18-603. Adjudicative proceedings related to Medicaid funds.**

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

65 (a) the presiding officer shall be:

66 (i) if an Office of Inspector General of Medicaid Services is created by statute:

67 (A) the inspector general of Medicaid Services; or

68 (B) a designee of the inspector general of Medicaid Services who is an employee of the
69 Office of Inspector General of Medicaid Services; or

70 (ii) if an Office of Inspector General of Medicaid Services is not created by statute:

71 (A) the director of the Office of Internal Audit and Program Integrity; or

72 (B) a designee of the director of the Office of Internal Audit and Program Integrity who
73 is an employee of the Office of Internal Audit and Program Integrity; and

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

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

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

79 **26-18-604. Division duties -- Reporting.**

80 (1) The division shall:

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

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

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

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

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

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

90 (iv) payment for transporting an unborn infant;

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

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

96 (i) Medicaid funds; and

97 (ii) medical or hospital assistance funds;

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

100 (e) keep Medicaid pharmaceutical costs as low as possible by actively seeking to obtain
101 pharmaceuticals at the lowest price possible, including, on a quarterly basis for the
102 pharmaceuticals that represent the highest 45% of state Medicaid expenditures for
103 pharmaceuticals, and on an annual basis for the remaining pharmaceuticals;

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

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

106 (iii) reviewing and updating the state's maximum allowable cost list; and

107 (iv) comparing pharmaceutical costs of the state Medicaid program to available
108 pharmacy price lists; and

109 (f) provide training, on an annual basis, to the employees of the division who make
110 decisions on billing codes, or who are in the best position to observe and identify upcoding, in
111 order to avoid and detect upcoding.

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

117 (3) Beginning in 2012, the division shall annually, before September 1, report to and
118 provide the Health and Human Services Interim Committee with information, including

119 statistical information, for the preceding fiscal year, regarding:

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

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

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

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

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

130 **26-18-605. Utah Office of Internal Audit and Program Integrity.**

131 The Utah Office of Internal Audit and Program integrity:

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

133 (2) shall be placed directly under, and report directly to, the executive director of the
134 Department of Health; and

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

136 Section 6. **Effective date.**

137 This bill takes effect on July 1, 2011.