

Representative David Clark proposes the following substitute bill:

MEDICAL ASSISTANCE ACCOUNTABILITY

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: David Clark

Senate Sponsor: Wayne L. Niederhauser

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.



26 **Money Appropriated in this Bill:**

27 None

28 **Other Special Clauses:**

29 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 would result in a
62 lower Medicaid payment or reimbursement.

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

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

65 **26-18-603. Adjudicative proceedings related to Medicaid funds.**

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

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

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

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

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

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

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

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

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

86 **26-18-604. Division duties -- Reporting.**

87 (1) The division shall:

88 (a) develop and implement procedures relating to Medicaid funds and medical or
89 hospital assistance funds to ensure that providers do not receive:
90 (i) duplicate payments for the same goods or services;
91 (ii) payment for goods or services by resubmitting a claim for which:
92 (A) payment has been disallowed on the grounds that payment would be a violation of
93 federal or state law, administrative rule, or the state plan; and
94 (B) the decision to disallow the payment has become final;
95 (iii) payment for goods or services provided after a recipient's death, including payment
96 for pharmaceuticals or long-term care; or
97 (iv) payment for transporting an unborn infant;
98 (b) consult with the Centers for Medicaid and Medicare Services, other states, and the
99 Office of Inspector General for Medicaid Services, if one is created by statute, to determine and
100 implement best practices for discovering and eliminating fraud, waste, and abuse of Medicaid
101 funds and medical or hospital assistance funds;
102 (c) actively seek repayment from providers for improperly used or paid:
103 (i) Medicaid funds; and
104 (ii) medical or hospital assistance funds;
105 (d) coordinate, track, and keep records of all division efforts to obtain repayment of the
106 funds described in Subsection (1)(c), and the results of those efforts;
107 (e) keep Medicaid pharmaceutical costs as low as possible by actively seeking to obtain
108 pharmaceuticals at the lowest price possible, including, on a quarterly basis for the
109 pharmaceuticals that represent the highest 45% of state Medicaid expenditures for
110 pharmaceuticals and on an annual basis for the remaining pharmaceuticals:
111 (i) tracking changes in the price of pharmaceuticals;
112 (ii) checking the availability and price of generic drugs;
113 (iii) reviewing and updating the state's maximum allowable cost list; and
114 (iv) comparing pharmaceutical costs of the state Medicaid program to available
115 pharmacy price lists; and
116 (f) provide training, on an annual basis, to the employees of the division who make
117 decisions on billing codes, or who are in the best position to observe and identify upcoding, in
118 order to avoid and detect upcoding.

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

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

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

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

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

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

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

137 **26-18-605. Utah Office of Internal Audit and Program Integrity.**

138 The Utah Office of Internal Audit and Program integrity:

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

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

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

143 Section 6. **Effective date.**

144 This bill takes effect on July 1, 2011.