

Representative Ronda Rudd Menlove proposes the following substitute bill:

ELECTRONIC PERSONAL MEDICAL RECORDS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ronda Rudd Menlove

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill facilitates the enrollment of Medicaid beneficiaries,

H→ [~~Children~~] Children's **←H** Health Insurance **H→** Program **←H**
enrollees, and **H→** [~~public~~] state **←H** employees **H→** and their dependents **←H** into the
electronic exchange of clinical health records.

Highlighted Provisions:

This bill:

▶ amends the duties of the state Medicaid plan to enroll Medicaid beneficiaries in the
electronic exchange of clinical health records unless the individual opts out;

▶ amends the duties of the Children's Health Insurance Program to enroll the members
of the Children's Health Insurance Program in the electronic exchange of clinical
health records unless the individual opts out; **H→** [~~and~~] **←H**

▶ amends the duties of the Public Employees Health Program to enroll

H→ [~~members~~] state employees and their dependents **←H** in

the electronic exchange of clinical health records unless the individual opts out. **H→** and

▶ provides notice to individuals regarding the enrollment in the electronic exchange
of clinical health records and the option to opt out of enrollment at any time; **←H**

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



26 **26-18-3**, as last amended by Laws of Utah 2011, Chapters 151, 297, and 366
 27 **26-40-103**, as last amended by Laws of Utah 2008, Chapters 62 and 382
 28 **49-20-401**, as last amended by Laws of Utah 2008, Chapter 176

29

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

31 Section 1. Section **26-18-3** is amended to read:

32 **26-18-3. Administration of Medicaid program by department -- Reporting to the**
 33 **Legislature -- Disciplinary measures and sanctions -- Funds collected -- Eligibility**
 34 **standards -- Internal audits -- Studies -- Health opportunity accounts.**

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

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

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

43 (i) the standards used by the department for determining eligibility for Medicaid
 44 services;

45 (ii) the services and benefits to be covered by the Medicaid program; ~~and~~

46 (iii) reimbursement methodologies for providers under the Medicaid program~~[-]; and~~

47 (iv) a requirement that ~~H→~~ :

47a **(A) ←H a person receiving Medicaid services shall participate in the**
 48 **electronic exchange of clinical health records established in accordance with Section 26-1-37**
 49 **unless the individual opts out of participation H→ ;**

49a **(B) prior to enrollment in the electronic exchange of clinical health records the enrollee**
 49b **shall receive notice of enrollment in the electronic exchange of clinical health records and the**
 49c **right to opt out of participation at any time; and**

49d **(C) beginning July 1, 2012, S→ [each time] when ←S the program sends S→ [a written**
 49e **document] enrollment or renewal information ←S to the**
 49f **enrollee and S→ [each time] when ←S the enrollee logs onto the program's website, the**
 49g **enrollee shall receive**
 49h **notice of the right to opt out of the electronic exchange of clinical health records ←H .**

50 (3) (a) The department shall, in accordance with Subsection (3)(b), report to the Health
 51 and Human Services Appropriations Subcommittee when the department:

52 (i) implements a change in the Medicaid State Plan;

53 (ii) initiates a new Medicaid waiver;

- 54 (iii) initiates an amendment to an existing Medicaid waiver;
- 55 (iv) applies for an extension of an application for a waiver or an existing Medicaid
- 56 waiver; or

- 57 (v) initiates a rate change that requires public notice under state or federal law.
- 58 (b) The report required by Subsection (3)(a) shall:
- 59 (i) be submitted to the Health and Human Services Appropriations Subcommittee prior
60 to the department implementing the proposed change; and
- 61 (ii) include:
- 62 (A) a description of the department's current practice or policy that the department is
63 proposing to change;
- 64 (B) an explanation of why the department is proposing the change;
- 65 (C) the proposed change in services or reimbursement, including a description of the
66 effect of the change;
- 67 (D) the effect of an increase or decrease in services or benefits on individuals and
68 families;
- 69 (E) the degree to which any proposed cut may result in cost-shifting to more expensive
70 services in health or human service programs; and
- 71 (F) the fiscal impact of the proposed change, including:
- 72 (I) the effect of the proposed change on current or future appropriations from the
73 Legislature to the department;
- 74 (II) the effect the proposed change may have on federal matching dollars received by
75 the state Medicaid program;
- 76 (III) any cost shifting or cost savings within the department's budget that may result
77 from the proposed change; and
- 78 (IV) identification of the funds that will be used for the proposed change, including any
79 transfer of funds within the department's budget.
- 80 (4) (a) The Department of Human Services shall report to the Legislative Health and
81 Human Services Appropriations Subcommittee no later than December 31, 2010 in accordance
82 with Subsection (4)(b).
- 83 (b) The report required by Subsection (4)(a) shall include:
- 84 (i) changes made by the division or the department beginning July 1, 2010, that effect
85 the Medicaid program, a waiver under the Medicaid program, or an interpretation of Medicaid
86 services or funding, that relate to care for children and youth in the custody of the Division of
87 Child and Family Services or the Division of Juvenile Justice Services;

88 (ii) the history and impact of the changes under Subsection (4)(b)(i);
89 (iii) the Department of Human Service's plans for addressing the impact of the changes
90 under Subsection (4)(b)(i); and

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

95 (5) Any rules adopted by the department under Subsection (2) are subject to review and
96 reauthorization by the Legislature in accordance with Section 63G-3-502.

97 (6) The department may, in its discretion, contract with the Department of Human
98 Services or other qualified agencies for services in connection with the administration of the
99 Medicaid program, including:

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

101 (b) recovery of overpayments; and

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

104 (7) The department shall provide, by rule, disciplinary measures and sanctions for
105 Medicaid providers who fail to comply with the rules and procedures of the program, provided
106 that sanctions imposed administratively may not extend beyond:

107 (a) termination from the program;

108 (b) recovery of claim reimbursements incorrectly paid; and

109 (c) those specified in Section 1919 of Title XIX of the federal Social Security Act.

110 (8) Funds collected as a result of a sanction imposed under Section 1919 of Title XIX
111 of the federal Social Security Act shall be deposited in the General Fund as dedicated credits to
112 be used by the division in accordance with the requirements of Section 1919 of Title XIX of
113 the federal Social Security Act.

114 (9) (a) In determining whether an applicant or recipient is eligible for a service or
115 benefit under this part or Chapter 40, Utah Children's Health Insurance Act, the department
116 shall, if Subsection (9)(b) is satisfied, exclude from consideration one passenger vehicle
117 designated by the applicant or recipient.

118 (b) Before Subsection (9)(a) may be applied:

- 119 (i) the federal government shall:
- 120 (A) determine that Subsection (9)(a) may be implemented within the state's existing
- 121 public assistance-related waivers as of January 1, 1999;
- 122 (B) extend a waiver to the state permitting the implementation of Subsection (9)(a); or
- 123 (C) determine that the state's waivers that permit dual eligibility determinations for
- 124 cash assistance and Medicaid are no longer valid; and
- 125 (ii) the department shall determine that Subsection (9)(a) can be implemented within
- 126 existing funding.
- 127 (10) (a) For purposes of this Subsection (10):
- 128 (i) "aged, blind, or has a disability" means an aged, blind, or disabled individual, as
- 129 defined in 42 U.S.C. 1382c(a)(1); and
- 130 (ii) "spend down" means an amount of income in excess of the allowable income
- 131 standard that shall be paid in cash to the department or incurred through the medical services
- 132 not paid by Medicaid.
- 133 (b) In determining whether an applicant or recipient who is aged, blind, or has a
- 134 disability is eligible for a service or benefit under this chapter, the department shall use 100%
- 135 of the federal poverty level as:
- 136 (i) the allowable income standard for eligibility for services or benefits; and
- 137 (ii) the allowable income standard for eligibility as a result of spend down.
- 138 (11) The department shall conduct internal audits of the Medicaid program.
- 139 (12) In order to determine the feasibility of contracting for direct Medicaid providers
- 140 for primary care services, the department shall:
- 141 (a) issue a request for information for direct contracting for primary services that shall
- 142 provide that a provider shall exclusively serve all Medicaid clients:
- 143 (i) in a geographic area;
- 144 (ii) for a defined range of primary care services; and
- 145 (iii) for a predetermined total contracted amount; and
- 146 (b) by February 1, 2011, report to the Health and Human Services Appropriations
- 147 Subcommittee on the response to the request for information under Subsection (12)(a).
- 148 (13) (a) By December 31, 2010, the department shall:
- 149 (i) determine the feasibility of implementing a three year patient-centered medical

150 home demonstration project in an area of the state using existing budget funds; and
151 (ii) report the department's findings and recommendations under Subsection (13)(a)(i)
152 to the Health and Human Services Appropriations Subcommittee.

153 (b) If the department determines that the medical home demonstration project
154 described in Subsection (13)(a) is feasible, and the Health and Human Services Appropriations
155 Subcommittee recommends that the demonstration project be implemented, the department
156 shall:

157 (i) implement the demonstration project; and
158 (ii) by December 1, 2012, make recommendations to the Health and Human Services
159 Appropriations Subcommittee regarding the:

- 160 (A) continuation of the demonstration project;
- 161 (B) expansion of the demonstration project to other areas of the state; and
- 162 (C) cost savings incurred by the implementation of the demonstration project.

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

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

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

169 Section 2. Section **26-40-103** is amended to read:

170 **26-40-103. Creation and administration of the Utah Children's Health Insurance**
171 **Program.**

172 (1) There is created the Utah Children's Health Insurance Program to be administered
173 by the department in accordance with the provisions of:

- 174 (a) this chapter; and
- 175 (b) the State Children's Health Insurance Program, 42 U.S.C. Sec. 1397aa et seq.

176 (2) The department shall:

177 (a) prepare and submit the state's children's health insurance plan before May 1, 1998,
178 and any amendments to the federal Department of Health and Human Services in accordance
179 with 42 U.S.C. Sec. 1397ff; and

180 (b) make rules in accordance with Title 63G, Chapter 3, Utah Administrative

181 Rulemaking Act regarding:

182 (i) eligibility requirements consistent with Subsection 26-18-3~~(8)~~(9);

183 (ii) program benefits;

184 (iii) the level of coverage for each program benefit;

185 (iv) cost-sharing requirements for enrollees, which may not:

186 (A) exceed the guidelines set forth in 42 U.S.C. Sec. 1397ee; or

187 (B) impose deductible, copayment, or coinsurance requirements on an enrollee for

188 well-child, well-baby, and immunizations; ~~and~~

189 (v) the administration of the program~~[-]; and~~

190 (vi) a requirement that ~~H→~~ :

190a (A) ~~←H→~~ enrollees in the program shall participate in the electronic

191 exchange of clinical health records established in accordance with Section 26-1-37 unless the

192 enrollee opts out of participation ~~H→~~ ;

192a (B) **prior to enrollment in the electronic exchange of clinical health records the enrollee**

192b **shall receive notice of the enrollment in the electronic exchange of clinical health records and**

192c **the right to opt out of participation at any time; and**

192d (C) **beginning July 1, 2012, S→ [each time] when ←S→ the program sends S→ [a written**

192e **document] enrollment or renewal information ←S→ to the**

192f **enrollee and S→ [each time] when ←S→ the enrollee logs onto the program's website, the**

192g **enrollee shall receive**

192h **notice of the right to opt out of the electronic exchange of clinical health records ←H→ .**

193 Section 3. Section 49-20-401 is amended to read:

194 **49-20-401. Program -- Powers and duties.**

195 (1) The program shall:

196 (a) act as a self-insurer of employee benefit plans and administer those plans;

197 (b) enter into contracts with private insurers or carriers to underwrite employee benefit

198 plans as considered appropriate by the program;

199 (c) indemnify employee benefit plans or purchase commercial reinsurance as

200 considered appropriate by the program;

201 (d) provide descriptions of all employee benefit plans under this chapter in cooperation

202 with covered employers;

203 (e) process claims for all employee benefit plans under this chapter or enter into

204 contracts, after competitive bids are taken, with other benefit administrators to provide for the

205 administration of the claims process;

206 (f) obtain an annual actuarial review of all health and dental benefit plans and a

207 periodic review of all other employee benefit plans;

208 (g) consult with the covered employers to evaluate employee benefit plans and develop

- 209 recommendations for benefit changes;
- 210 (h) annually submit a budget and audited financial statements to the governor and
- 211 Legislature which includes total projected benefit costs and administrative costs;

- 212 (i) maintain reserves sufficient to liquidate the unrevealed claims liability and other
 213 liabilities of the employee benefit plans as certified by the program's consulting actuary;
- 214 (j) submit, in advance, its recommended benefit adjustments for state employees to:
 215 (i) the Legislature; and
 216 (ii) the executive director of the state Department of Human Resource Management;
- 217 (k) determine benefits and rates, upon approval of the board, for multiemployer risk
 218 pools, retiree coverage, and conversion coverage;
- 219 (l) determine benefits and rates based on the total estimated costs and the employee
 220 premium share established by the Legislature, upon approval of the board, for state employees;
- 221 (m) administer benefits and rates, upon ratification of the board, for single employer
 222 risk pools;
- 223 (n) request proposals for provider networks or health and dental benefit plans
 224 administered by third party carriers at least once every three years for the purposes of:
 225 (i) stimulating competition for the benefit of covered individuals;
 226 (ii) establishing better geographical distribution of medical care services; and
 227 (iii) providing coverage for both active and retired covered individuals;
- 228 (o) offer proposals which meet the criteria specified in a request for proposals and
 229 accepted by the program to active and retired state covered individuals and which may be
 230 offered to active and retired covered individuals of other covered employers at the option of the
 231 covered employer;
- 232 (p) perform the same functions established in Subsections (1)(a), (b), (e), and (h) for
 233 the Department of Health if the program provides program benefits to children enrolled in the
 234 Utah Children's Health Insurance Program created in Title 26, Chapter 40, Utah Children's
 235 Health Insurance Act;
- 236 (q) establish rules and procedures governing the admission of political subdivisions or
 237 educational institutions and their employees to the program;
- 238 (r) contract directly with medical providers to provide services for covered individuals;
 239 [~~and~~]
- 240 (s) take additional actions necessary or appropriate to carry out the purposes of this
 241 chapter[-]; and
- 242 (t) ~~H→~~ **(i)** ~~←H~~ require H→ [a member] state employees and their dependents ←H
 242a1 to participate in
 242a the electronic exchange of clinical health records

243 in accordance with Section 26-1-37 unless the enrollee opts out of participation ~~it~~ ; and
243a **(ii) prior to enrolling the state employee, each time the state employee logs onto the**
243b **program's website, and each time the enrollee receives written enrollment information from**
243c **the program, provide notice to the enrollee of the enrollee's participation in the electronic**
243d **exchange of clinical health records and the option to opt out of participation at any time.** ~~it~~ .

244 (2) (a) Funds budgeted and expended shall accrue from rates paid by the covered
245 employers and covered individuals.

246 (b) Administrative costs shall be approved by the board and reported to the governor
247 and the Legislature.

248 (3) The Department of Human Resource Management shall include the benefit
249 adjustments described in Subsection (1)(j) in the total compensation plan recommended to the
250 governor required under Subsection 67-19-12(6)(a).