

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, Children's Health Insurance Program enrollees, and state employees and their dependents 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;
- ▶ amends the duties of the Public Employees Health Program to enroll state employees and their dependents in the electronic exchange of clinical health records unless the individual opts out; 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.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

30 26-18-3, as last amended by Laws of Utah 2011, Chapters 151, 297, and 366

31 26-40-103, as last amended by Laws of Utah 2008, Chapters 62 and 382

32 49-20-401, as last amended by Laws of Utah 2008, Chapter 176

33

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

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

36 **26-18-3. Administration of Medicaid program by department -- Reporting to the**
37 **Legislature -- Disciplinary measures and sanctions -- Funds collected -- Eligibility**
38 **standards -- Internal audits -- Studies -- Health opportunity accounts.**

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

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

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

47 (i) the standards used by the department for determining eligibility for Medicaid
48 services;

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

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

51 (iv) a requirement that:

52 (A) a person receiving Medicaid services shall participate in the electronic exchange of
53 clinical health records established in accordance with Section 26-1-37 unless the individual
54 opts out of participation;

55 (B) prior to enrollment in the electronic exchange of clinical health records the enrollee
56 shall receive notice of enrollment in the electronic exchange of clinical health records and the
57 right to opt out of participation at any time; and

58 (C) beginning July 1, 2012, when the program sends enrollment or renewal information
59 to the enrollee and when the enrollee logs onto the program's website, the enrollee shall receive
60 notice of the right to opt out of the electronic exchange of clinical health records.

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

- 63 (i) implements a change in the Medicaid State Plan;
- 64 (ii) initiates a new Medicaid waiver;
- 65 (iii) initiates an amendment to an existing Medicaid waiver;
- 66 (iv) applies for an extension of an application for a waiver or an existing Medicaid
67 waiver; or
- 68 (v) initiates a rate change that requires public notice under state or federal law.

69 (b) The report required by Subsection (3)(a) shall:

70 (i) be submitted to the Health and Human Services Appropriations Subcommittee prior
71 to the department implementing the proposed change; and

72 (ii) include:

73 (A) a description of the department's current practice or policy that the department is
74 proposing to change;

75 (B) an explanation of why the department is proposing the change;

76 (C) the proposed change in services or reimbursement, including a description of the
77 effect of the change;

78 (D) the effect of an increase or decrease in services or benefits on individuals and
79 families;

80 (E) the degree to which any proposed cut may result in cost-shifting to more expensive
81 services in health or human service programs; and

82 (F) the fiscal impact of the proposed change, including:

83 (I) the effect of the proposed change on current or future appropriations from the
84 Legislature to the department;

85 (II) the effect the proposed change may have on federal matching dollars received by

86 the state Medicaid program;

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

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

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

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

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

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

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

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

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

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

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

112 (b) recovery of overpayments; and

113 (c) consistent with Section 26-20-13, and to the extent permitted by law and quality

114 control services, enforcement of fraud and abuse laws.

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

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

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

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

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

130 (i) the federal government shall:

131 (A) determine that Subsection (9)(a) may be implemented within the state's existing
132 public assistance-related waivers as of January 1, 1999;

133 (B) extend a waiver to the state permitting the implementation of Subsection (9)(a); or

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

136 (ii) the department shall determine that Subsection (9)(a) can be implemented within
137 existing funding.

138 (10) (a) For purposes of this Subsection (10):

139 (i) "aged, blind, or has a disability" means an aged, blind, or disabled individual, as
140 defined in 42 U.S.C. 1382c(a)(1); and

141 (ii) "spend down" means an amount of income in excess of the allowable income

142 standard that shall be paid in cash to the department or incurred through the medical services
143 not paid by Medicaid.

144 (b) In determining whether an applicant or recipient who is aged, blind, or has a
145 disability is eligible for a service or benefit under this chapter, the department shall use 100%
146 of the federal poverty level as:

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

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

149 (11) The department shall conduct internal audits of the Medicaid program.

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

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

154 (i) in a geographic area;

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

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

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

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

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

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

164 (b) If the department determines that the medical home demonstration project
165 described in Subsection (13)(a) is feasible, and the Health and Human Services Appropriations
166 Subcommittee recommends that the demonstration project be implemented, the department
167 shall:

168 (i) implement the demonstration project; and

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

170 Appropriations Subcommittee regarding the:

171 (A) continuation of the demonstration project;

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

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

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

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

179 (c) Subsection (14)(a) is not intended to expand the coverage of the Medicaid program.
180 Section 2. Section **26-40-103** is amended to read:

181 **26-40-103. Creation and administration of the Utah Children's Health Insurance**
182 **Program.**

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

185 (a) this chapter; and

186 (b) the State Children's Health Insurance Program, 42 U.S.C. Sec. 1397aa et seq.

187 (2) The department shall:

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

191 (b) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
192 Rulemaking Act regarding:

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

194 (ii) program benefits;

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

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

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

198 (B) impose deductible, copayment, or coinsurance requirements on an enrollee for
199 well-child, well-baby, and immunizations; [~~and~~]

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

201 (vi) a requirement that:

202 (A) enrollees in the program shall participate in the electronic exchange of clinical
203 health records established in accordance with Section 26-1-37 unless the enrollee opts out of
204 participation;

205 (B) prior to enrollment in the electronic exchange of clinical health records the enrollee
206 shall receive notice of the enrollment in the electronic exchange of clinical health records and
207 the right to opt out of participation at any time; and

208 (C) beginning July 1, 2012, when the program sends enrollment or renewal information
209 to the enrollee and when the enrollee logs onto the program's website, the enrollee shall receive
210 notice of the right to opt out of the electronic exchange of clinical health records.

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

212 **49-20-401. Program -- Powers and duties.**

213 (1) The program shall:

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

215 (b) enter into contracts with private insurers or carriers to underwrite employee benefit
216 plans as considered appropriate by the program;

217 (c) indemnify employee benefit plans or purchase commercial reinsurance as
218 considered appropriate by the program;

219 (d) provide descriptions of all employee benefit plans under this chapter in cooperation
220 with covered employers;

221 (e) process claims for all employee benefit plans under this chapter or enter into
222 contracts, after competitive bids are taken, with other benefit administrators to provide for the
223 administration of the claims process;

224 (f) obtain an annual actuarial review of all health and dental benefit plans and a
225 periodic review of all other employee benefit plans;

226 (g) consult with the covered employers to evaluate employee benefit plans and develop
227 recommendations for benefit changes;

228 (h) annually submit a budget and audited financial statements to the governor and
229 Legislature which includes total projected benefit costs and administrative costs;

230 (i) maintain reserves sufficient to liquidate the unrevealed claims liability and other
231 liabilities of the employee benefit plans as certified by the program's consulting actuary;

232 (j) submit, in advance, its recommended benefit adjustments for state employees to:

233 (i) the Legislature; and

234 (ii) the executive director of the state Department of Human Resource Management;

235 (k) determine benefits and rates, upon approval of the board, for multiemployer risk
236 pools, retiree coverage, and conversion coverage;

237 (l) determine benefits and rates based on the total estimated costs and the employee
238 premium share established by the Legislature, upon approval of the board, for state employees;

239 (m) administer benefits and rates, upon ratification of the board, for single employer
240 risk pools;

241 (n) request proposals for provider networks or health and dental benefit plans
242 administered by third party carriers at least once every three years for the purposes of:

243 (i) stimulating competition for the benefit of covered individuals;

244 (ii) establishing better geographical distribution of medical care services; and

245 (iii) providing coverage for both active and retired covered individuals;

246 (o) offer proposals which meet the criteria specified in a request for proposals and
247 accepted by the program to active and retired state covered individuals and which may be
248 offered to active and retired covered individuals of other covered employers at the option of the
249 covered employer;

250 (p) perform the same functions established in Subsections (1)(a), (b), (e), and (h) for
251 the Department of Health if the program provides program benefits to children enrolled in the
252 Utah Children's Health Insurance Program created in Title 26, Chapter 40, Utah Children's
253 Health Insurance Act;

254 (q) establish rules and procedures governing the admission of political subdivisions or
255 educational institutions and their employees to the program;

256 (r) contract directly with medical providers to provide services for covered individuals;
257 [~~and~~]

258 (s) take additional actions necessary or appropriate to carry out the purposes of this
259 chapter[-]; and

260 (t) (i) require state employees and their dependents to participate in the electronic
261 exchange of clinical health records in accordance with Section 26-1-37 unless the enrollee opts
262 out of participation; and

263 (ii) prior to enrolling the state employee, each time the state employee logs onto the
264 program's website, and each time the enrollee receives written enrollment information from the
265 program, provide notice to the enrollee of the enrollee's participation in the electronic exchange
266 of clinical health records and the option to opt out of participation at any time.

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

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

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