

**ELECTRONIC PERSONAL MEDICAL RECORDS**

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Ronda Rudd Menlove**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**Committee Note:**

The Health and Human Services Interim Committee recommended this bill.

**General Description:**

This bill facilitates the enrollment of Medicaid beneficiaries, Children Health Insurance enrollees, and public employees 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;
- ▶ requires the Department of Health to submit a waiver for the state Medicaid plan and Children's Health Insurance Program to require beneficiaries to enroll in the electronic exchange of clinical health records;
- ▶ 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; and
- ▶ amends the duties of the Public Employees Health Program to require the program to enroll members in the electronic exchange of clinical health records.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

H.B. 46



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **26-18-3**, as last amended by Laws of Utah 2011, Chapters 151, 297, and 366

32 **26-40-103**, as last amended by Laws of Utah 2008, Chapters 62 and 382

33 **49-20-401**, as last amended by Laws of Utah 2008, Chapter 176



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

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

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

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

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

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

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

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

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

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

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

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

58 (ii) initiates a new Medicaid waiver;

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

90 the Medicaid program, a waiver under the Medicaid program, or an interpretation of Medicaid  
91 services or funding, that relate to care for children and youth in the custody of the Division of  
92 Child and Family Services or the Division of Juvenile Justice Services;

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

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

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

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

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

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

106 (b) recovery of overpayments; and

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

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

112 (a) termination from the program;

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

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

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

119 (9) (a) In determining whether an applicant or recipient is eligible for a service or  
120 benefit under this part or Chapter 40, Utah Children's Health Insurance Act, the department

121 shall, if Subsection (9)(b) is satisfied, exclude from consideration one passenger vehicle  
122 designated by the applicant or recipient.

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

124 (i) the federal government shall:

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

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

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

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

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

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

135 (ii) "spend down" means an amount of income in excess of the allowable income  
136 standard that shall be paid in cash to the department or incurred through the medical services  
137 not paid by Medicaid.

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

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

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

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

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

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

148 (i) in a geographic area;

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

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

151 (b) by February 1, 2011, report to the Health and Human Services Appropriations

152 Subcommittee on the response to the request for information under Subsection (12)(a).

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

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

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

158 (b) If the department determines that the medical home demonstration project  
159 described in Subsection (13)(a) is feasible, and the Health and Human Services Appropriations  
160 Subcommittee recommends that the demonstration project be implemented, the department  
161 shall:

162 (i) implement the demonstration project; and

163 (ii) by December 1, 2012, make recommendations to the Health and Human Services  
164 Appropriations Subcommittee regarding the:

165 (A) continuation of the demonstration project;

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

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

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

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

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

174 (15) (a) The department shall determine if a waiver to the state Medicaid plan or the  
175 Children's Health Insurance Program is necessary to implement a requirement that all  
176 beneficiaries of the Medicaid program and the Children's Health Insurance Program participate  
177 in the electronic exchange of clinical health records established in accordance with Section  
178 26-1-37. If the department determines a waiver is necessary, the department shall apply for a  
179 waiver.

180 (b) Notwithstanding the provisions of Subsection (2)(b)(iv) and Subsection  
181 26-40-103(2)(b)(vi), the department shall require a beneficiary of the state Medicaid program  
182 or the Children's Health Insurance Program to participate in the electronic exchange of clinical

183 health records if:

184 (i) the department determines the requirement for participation under Subsection  
185 (15)(a) does not require a waiver to the state Medicaid plan or the Children's Health Insurance  
186 Program; or

187 (ii) the department receives an approval of a waiver to the state Medicaid plan or the  
188 Children's Health Insurance Program that permits the department to require participation in the  
189 electronic exchange of clinical health records.

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

191 **26-40-103. Creation and administration of the Utah Children's Health Insurance**  
192 **Program.**

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

195 (a) this chapter; and

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

197 (2) The department shall:

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

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

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

204 (ii) program benefits;

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

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

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

208 (B) impose deductible, copayment, or coinsurance requirements on an enrollee for  
209 well-child, well-baby, and immunizations; ~~and~~

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

211 (vi) a requirement that enrollees in the program shall participate in the electronic  
212 exchange of clinical health records established in accordance with Section 26-18-3 unless the  
213 enrollee opts out of participation.

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

215 **49-20-401. Program -- Powers and duties.**

216 (1) The program shall:

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

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

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

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

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

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

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

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

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

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

236 (i) the Legislature; and

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

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

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

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

244 (n) request proposals for provider networks or health and dental benefit plans



245 administered by third party carriers at least once every three years for the purposes of:

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

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

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

249 (o) offer proposals which meet the criteria specified in a request for proposals and

250 accepted by the program to active and retired state covered individuals and which may be

251 offered to active and retired covered individuals of other covered employers at the option of the

252 covered employer;

253 (p) perform the same functions established in Subsections (1)(a), (b), (e), and (h) for

254 the Department of Health if the program provides program benefits to children enrolled in the

255 Utah Children's Health Insurance Program created in Title 26, Chapter 40, Utah Children's

256 Health Insurance Act;

257 (q) establish rules and procedures governing the admission of political subdivisions or

258 educational institutions and their employees to the program;

259 (r) contract directly with medical providers to provide services for covered individuals;

260 [~~and~~]

261 (s) take additional actions necessary or appropriate to carry out the purposes of this

262 chapter[-]; and

263 (t) require a member to participate in the electronic exchange of clinical health records

264 in accordance with Section 26-1-37.

265 (2) (a) Funds budgeted and expended shall accrue from rates paid by the covered

266 employers and covered individuals.

267 (b) Administrative costs shall be approved by the board and reported to the governor

268 and the Legislature.

269 (3) The Department of Human Resource Management shall include the benefit

270 adjustments described in Subsection (1)(j) in the total compensation plan recommended to the

271 governor required under Subsection 67-19-12(6)(a).

**Legislative Review Note**  
**as of 11-30-11 7:08 AM**

**Office of Legislative Research and General Counsel**