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H.B. 463
1st Sub. (Buff)

Representative Bill Wright proposes the following substitute bill:

MEDICAID INSPECTOR GENERAL

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Bill Wright

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to the state Medicaid plan and enforcement of the plan by the Office of Inspector General of Medicaid Services.

Highlighted Provisions:

This bill:

- clarifies that the state Medicaid plan shall publish a provider manual with policies and procedures;
- limits the period of time in which the Office of the Inspector General may investigate a Medicaid claim to 36 months, unless the claim is fraudulent;
- clarifies the application of the Utah Administrative Procedures Act to an administrative proceeding with the Office of the Medicaid Inspector General;
- establishes the state Medicaid plan as the governing law for the state Medicaid program; and
- beginning July 1, 2014, establishes that a provider may rely on the Medicaid provider manual and Medicaid Information Bulletins for Medicaid enforcement purposes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

63J-4a-202, as enacted by Laws of Utah 2011, Chapter 151

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

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

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

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

(2) (a) The department shall implement the Medicaid program [~~through~~] in accordance with Title XIX and applicable federal regulations and shall adopt:

(i) administrative rules in conformity with this chapter, Title 63G, Chapter 3, Utah Administrative Rulemaking Act, [~~the requirements of Title XIX, and applicable federal regulations.~~] as appropriate to administer the program; and

(ii) provider policies and procedures which shall be published in a provider manual and updated through periodic Medicaid Information Bulletins, which shall be published by the department and posted on the department's website.

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

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

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

(iii) reimbursement methodologies for providers under the Medicaid program.

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

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

(ii) initiates a new Medicaid waiver;

(iii) initiates an amendment to an existing Medicaid waiver;

(iv) applies for an extension of an application for a waiver or an existing Medicaid waiver; or

(v) initiates a rate change that requires public notice under state or federal law.

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

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

(ii) include:

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

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

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

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

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

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

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

(II) the effect the proposed change may have on federal matching dollars received by the state Medicaid program;

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

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

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

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

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

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

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

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

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

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

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

(b) recovery of overpayments; and

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

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

(a) termination from the program;

(b) recovery of claim reimbursements incorrectly paid; and

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

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

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

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

(i) the federal government shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) in a geographic area;

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

(iii) for a predetermined total contracted amount; and

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

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

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

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

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

(i) implement the demonstration project; and

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

(A) continuation of the demonstration project;

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

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

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

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

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

Section 2. Section **63J-4a-202** is amended to read:

63J-4a-202. Duties and powers of inspector general and office.

(1) The inspector general shall:

(a) administer, direct, and manage the office;

(b) inspect and monitor the following in relation to the state Medicaid program:

(i) the use and expenditure of federal and state funds;

(ii) the provision of health benefits and other services;

(iii) implementation of, and compliance with, state and federal requirements; and

(iv) records and recordkeeping procedures;

(c) receive reports of potential fraud, waste, or abuse in the state Medicaid program;

(d) investigate and identify potential or actual fraud, waste, or abuse in the state Medicaid program[~~;~~]:

(i) for a claim within the period of time that is within 36 months of the date the inspector general initiated the investigation and the later of:

(A) the date the claim was paid to the provider; or

(B) the date of the final disposition or final adjustment of the claim; or

(ii) for an indefinite period of time if the claim is being reviewed for fraud.

(e) consult with the Centers for Medicaid and Medicare Services and other states to determine and implement best practices for discovering and eliminating fraud, waste, and abuse of Medicaid funds;

(f) obtain, develop, and utilize computer algorithms to identify fraud, waste, or abuse in the state Medicaid program;

(g) work closely with the fraud unit to identify and recover improperly or fraudulently expended Medicaid funds;

(h) audit, inspect, and evaluate the functioning of the division to ensure that the state Medicaid program is managed in the most efficient and cost-effective manner possible;

(i) regularly advise the department and the division of an action that should be taken to ensure that the state Medicaid program is managed in the most efficient and cost-effective manner possible;

(j) refer potential criminal conduct, relating to Medicaid funds or the state Medicaid program, to the fraud unit;

(k) determine ways to:

(i) identify, prevent, and reduce fraud, waste, and abuse in the state Medicaid program; and

(ii) recoup costs, reduce costs, and avoid or minimize increased costs of the state Medicaid program;

(l) seek recovery of improperly paid Medicaid funds on behalf of the state Medicaid program;

(m) track recovery of Medicaid funds by the state;

(n) in accordance with Section 63J-4a-501:

(i) report on the actions and findings of the inspector general; and

(ii) make recommendations to the Legislature and the governor;

(o) provide training to agencies and employees on identifying potential fraud, waste, or abuse of Medicaid funds; [~~and~~]

(p) develop and implement principles and standards for the fulfillment of the duties of the inspector general, based on principles and standards used by:

(i) the Federal Offices of Inspector General;

(ii) the Association of Inspectors General; and

(iii) the United States Government Accountability Office[~~.~~]; and

(q) in accordance with Subsection (1)(l) and Section 63J-4a-205, develop and implement procedures for administrative appeals in accordance with Title 63G, Chapter 4, Administrative Procedures Act, in which:

(i) the Governor's Office of Planning and Budget created in Section 63J-4-202, is the agency for purposes of the Administrative Procedures Act;

(ii) the presiding officer shall be designated by the director of the Governor's Office of Planning and Budget and report directly to the director;

(iii) the decision of the presiding officer is the recommended decision to the director of the Governor's Office of Planning and Budget; and

(iv) the director of the Governor's Office of Planning and Budget shall consult with the executive director of the Department of Health regarding the recommendations of the presiding officer, but is not bound by the recommendation of the executive director of the Department of Health.

(2) The Utah State Plan under Title XIX of the Social Security Act Medical Assistance Program shall be supreme and the governing authority for the state. In the event the Utah State Plan does not address a specific issue, administrative rule shall be the authority. In the event neither the Utah State Plan nor administrative rule address a specific issue, published provider manuals and Medicaid Information Bulletins shall be the authority. Until July 1, 2014, in the event of a conflict or inconstancy between authorities, the order of priority shall be the Utah State Plan, administrative rule, and published provider manuals and Medicaid Information

Bulletins. Other communications in any form with department personnel shall not alter the outlined hierarchy of authority in this Subsection (2).

(3) Beginning July 1, 2014, a provider for the state Medicaid program is expected to be aware of, comply with, and may rely upon the provider manual of policies and procedures for the state Medicaid plan and the Medicaid Information Bulletin updates to the manual which are published by the Department of Health and posted on the department's website in accordance with Section 26-18-3.

[~~(2)~~] (4) The office may conduct a performance or financial audit of:

(a) a state executive branch entity or a local government entity, including an entity described in Subsection 63J-4a-301(3), that:

(i) manages or oversees a state Medicaid program; or

(ii) manages or oversees the use or expenditure of state or federal Medicaid funds; or

(b) Medicaid funds received by a person by a grant from, or under contract with, a state executive branch entity or a local government entity.

[~~(3)~~] (5) The inspector general, or a designee of the inspector general within the office, may take a sworn statement or administer an oath.