

1                   **MEDICAID EMERGENCY ROOM AND PRIMARY CARE**

2                                   **AMENDMENTS**

3   2013 GENERAL SESSION

4   STATE OF UTAH

5                                   **Chief Sponsor: Michael S. Kennedy**

6   Senate Sponsor: Margaret Dayton

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8                   **LONG TITLE**

9                   **General Description:**

10                   This bill amends the state Medicaid program and the state Children's Health Insurance  
11 Program to establish incentives for the appropriate use of emergency room services.

12                   **Highlighted Provisions:**

13                   This bill:

- 14                   ▶ defines terms;
- 15                   ▶ clarifies the authority of an accountable care organization that administers a plan for  
16 Medicaid or the Children's Health Insurance Program to audit a provider for  
17 delivering nonemergent care in an emergency room;
- 18                   ▶ permits an accountable care organization to establish a differential payment for  
19 nonemergent care delivered in an emergency room;
- 20                   ▶ requires the accountable care organization to use savings from reductions of  
21 inappropriate emergency room use to improve enrollee's access to primary care and  
22 urgent care;
- 23                   ▶ requires the Department of Health to develop quality measures for the appropriate  
24 use of emergency rooms and access to primary care, and to compare the accountable  
25 care organizations based on the quality measures; and
- 26                   ▶ directs the Department of Health to apply for waivers to the Medicaid program and  
27 the Children's Health Insurance Program to:
  - 28                   • impose higher copayments on a recipient who seeks nonemergent care in an  
29 emergency room; and

- 30 • allow the Medicaid program and the Children's Health Insurance Program to
- 31 development an algorithm to determine assignment of new recipients to the
- 32 accountable care organization plans that have the better quality measure ratings.

33 **Money Appropriated in this Bill:**

34 None

35 **Other Special Clauses:**

36 None

37 **Utah Code Sections Affected:**

38 AMENDS:

39 **26-40-110 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapter 347

40 ENACTS:

41 **26-18-408**, Utah Code Annotated 1953

42 **26-40-116**, Utah Code Annotated 1953



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

45 Section 1. Section **26-18-408** is enacted to read:

46 **26-18-408. Incentives to appropriately use emergency room services.**

47 (1) (a) This section applies to the Medicaid program and to the Utah Children's Health  
48 Insurance Program created in Chapter 40, Utah Children's Health Insurance Act.

49 (b) For purposes of this section:

50 (i) "Accountable care organization" means a Medicaid or Children's Health Insurance  
51 Program administrator that contracts with the Medicaid program or the Children's Health  
52 Insurance Program to deliver health care through an accountable care plan.

53 (ii) "Accountable care plan" means a risk based delivery service model authorized by  
54 Section 26-18-405 and administered by an accountable care organization.

55 (iii) "Nonemergent care":

56 (A) means use of the emergency room to receive health care that is nonemergent as  
57 defined by the department by administrative rule adopted in accordance with Title 63G,

58 Chapter 3, Utah Administrative Rulemaking Act and the Emergency Medical Treatment and  
59 Active Labor Act; and

60 (B) does not mean the medical services provided to a recipient to conduct a medical  
61 screening examination to determine if the recipient has an emergent or nonemergent condition.

62 (2) (a) An accountable care organization may, in accordance with Subsection (2)(b):

63 (i) audit emergency room services provided to a recipient enrolled in the accountable  
64 care plan to determine if nonemergent care was provided to the recipient; and

65 (ii) establish differential payment for emergent and nonemergent care provided in an  
66 emergency room.

67 (b) (i) The audits and differential payments under Subsections (2)(a) and (b) apply to  
68 services provided to a recipient on or after July 1, 2015.

69 (ii) Except in cases of suspected fraud, waste, and abuse, an accountable care  
70 organization's audit of payment under Subsections (2)(a) and (b) is limited to the 18-month  
71 period of time after the date on which the medical services were provided to the recipient. If  
72 fraud, waste, or abuse is alleged, the accountable care organization's audit of payment under  
73 Subsections (2)(a) and (b) is limited to three years after the date on which the medical services  
74 were provided to the recipient.

75 (3) An accountable care organization shall:

76 (a) use the savings under Subsection (2) to maintain and improve access to primary  
77 care and urgent care services for all of the recipients enrolled in the accountable care plan; and

78 (b) report to the department on how the accountable care organization complied with  
79 Subsection (3)(a).

80 (4) (a) The department shall, through administrative rule adopted by the department,  
81 develop quality measurements that evaluate an accountable care organization's delivery of:

82 (i) appropriate emergency room services to recipients enrolled in the accountable care  
83 plan;

84 (ii) expanded primary care and urgent care for recipients enrolled in the accountable  
85 care plan, with consideration of the accountable care organization's:

- 86 (A) emergency room diversion plans;
- 87 (B) recipient access to primary care providers and community health centers including
- 88 evening and weekend access; and
- 89 (C) other innovations for expanding access to primary care; and
- 90 (iii) quality of care for the accountable care plan members.

91 (b) The department shall:

- 92 (i) compare the quality measures developed under Subsection (4)(a) for each
- 93 accountable care organization; and
- 94 (ii) share the data and quality measures developed under Subsection (4)(a) with the
- 95 Health Data Committee created in Chapter 33a, Utah Health Data Authority Act.

96 (c) The Health Data Committee may publish data in accordance with Chapter 33a,

97 Utah Health Data Authority Act which compares the quality measures for the accountable care

98 plans.

99 (5) The department shall apply for a Medicaid waiver and a Children's Health

100 Insurance Program waiver with the Centers for Medicare and Medicaid Services within the

101 United States Department of Health and Human Services, to:

- 102 (a) allow the program to charge recipients who are enrolled in an accountable care plan
- 103 a higher copayment for emergency room services; and
- 104 (b) develop, by administrative rule, an algorithm to determine assignment of new,
- 105 unassigned recipients to specific accountable care plans based on the plan's performance in
- 106 relation to the quality measures developed pursuant to Subsection (4)(a).

107 (6) The department shall report to the Legislature's Health and Human Services Interim

108 Committee on or before October 1, 2016, regarding implementation of this section.

109 Section 2. Section **26-40-110 (Effective 05/01/13)** is amended to read:

110 **26-40-110 (Effective 05/01/13). Managed care -- Contracting for services.**

111 (1) Program benefits provided to enrollees under the program, as described in Section

112 26-40-106, shall be delivered in a managed care system if the department determines that

113 adequate services are available where the enrollee lives or resides.

114 (2) (a) The department shall use the following criteria to evaluate bids from health  
115 plans:

- 116 (i) ability to manage medical expenses, including mental health costs;
- 117 (ii) proven ability to handle accident and health insurance;
- 118 (iii) efficiency of claim paying procedures;
- 119 (iv) proven ability for managed care and quality assurance;
- 120 (v) provider contracting and discounts;
- 121 (vi) pharmacy benefit management;
- 122 (vii) an estimate of total charges for administering the pool;
- 123 (viii) ability to administer the pool in a cost-efficient manner;
- 124 (ix) the ability to provide adequate providers and services in the state; [~~and~~]
- 125 (x) for contracts entered into or renewed on or after January 1, 2014, the ability to meet  
126 quality measures for emergency room use and access to primary care established by the  
127 department under Subsection 26-18-408(4); and  
128 [~~(x)~~] (xi) other criteria established by the department.

129 (b) The dental benefits required by Section 26-40-106 may be bid out separately from  
130 other program benefits.

131 (c) Except for dental benefits, the department shall request bids for the program's  
132 benefits in 2008. The department shall request bids for the program's dental benefits in 2009.  
133 The department shall request bids for the program's benefits at least once every five years  
134 thereafter.

135 (d) The department's contract with health plans for the program's benefits shall include  
136 risk sharing provisions in which the health plan shall accept at least 75% of the risk for any  
137 difference between the department's premium payments per client and actual medical  
138 expenditures.

139 (3) The executive director shall report to and seek recommendations from the Health  
140 Advisory Council created in Section 26-1-7.5:

141 (a) if the division receives less than two bids or proposals under this section that are

142 acceptable to the division or responsive to the bid; and

143 (b) before awarding a contract to a managed care system.

144 (4) (a) The department shall award contracts to responsive bidders if the department  
145 determines that a bid is acceptable and meets the criteria of Subsections (2)(a) and (d).

146 (b) The department may contract with the Group Insurance Division within the Utah  
147 State Retirement Office to provide services under Subsection (1) if:

148 (i) the executive director seeks the recommendation of the Health Advisory Council  
149 under Subsection (3); and

150 (ii) the executive director determines that the bids were not acceptable to the  
151 department.

152 (c) In accordance with Section 49-20-201, a contract awarded under Subsection (4)(b)  
153 is not subject to the risk sharing required by Subsection (2)(d).

154 (5) Title 63G, Chapter 6a, Utah Procurement Code, shall apply to this section.

155 Section 3. Section **26-40-116** is enacted to read:

156 **26-40-116. Program to encourage appropriate emergency room use -- Application**  
157 **for waivers.**

158 The program is subject to the provisions of Section 26-18-408 and shall apply for  
159 waivers in accordance with Subsection 26-18-408(5).