

UTAH MEDICAID AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Raymond P. Ward

Senate Sponsor: _____

LONG TITLE

General Description:

This bill expands the Medicaid program to individuals who are below 138% of the federal poverty level and provides funding mechanisms for the Medicaid expansion.

Highlighted Provisions:

This bill:

- ▶ requires the Department of Health to apply to the federal government for waivers from federal law necessary to implement Medicaid expansion;
- ▶ defines terms;
- ▶ describes the terms of the Medicaid waiver, which:
 - establishes an alternative health benefit package for Medicaid enrollees using premium subsidies to purchase commercial health insurance policies;
 - seeks waivers for certain cost sharing requirements;
 - enrolls individuals into employer sponsored insurance, if available, and with cost sharing protections for the individual when required by the federal Medicaid program;
 - prohibits reimbursement for emergency room facility charges if the visit is not an emergency;
 - prohibits reimbursement for non-emergency transportation;
 - keeps families together in one policy in most circumstances;
 - requires an enrollee to be offered work assistance;



- 28 • requires the division to apply for waivers from CMS after January 1, 2017, to
- 29 cover up to 100% of the federal poverty level at the full match rate; and
- 30 • rolls back expansion to 100% of the federal poverty level if the cost of
- 31 providing full expansion coverage equals or exceeds the cost of providing
- 32 coverage up to 100% of the federal poverty level;
- 33 ▶ establishes an inpatient hospital assessment, the proceeds of which shall be
- 34 deposited into the Medicaid Expansion Fund; and
- 35 ▶ establishes an electronic cigarette tax:
- 36 • defines terms;
- 37 • addresses licensing issues;
- 38 • deposits the proceeds into the Medicaid Expansion Fund; and
- 39 • makes technical changes.

40 **Money Appropriated in this Bill:**

41 None

42 **Other Special Clauses:**

43 This bill provides a special effective date.

44 **Utah Code Sections Affected:**

45 AMENDS:

- 46 **26-18-18**, as last amended by Laws of Utah 2015, Chapter 283
- 47 **59-14-102**, as last amended by Laws of Utah 2013, Chapter 148
- 48 **59-14-403**, as renumbered and amended by Laws of Utah 1987, Chapters 2 and 3
- 49 **59-14-802**, as enacted by Laws of Utah 2015, Chapter 132
- 50 **59-14-803**, as enacted by Laws of Utah 2015, Chapter 132

51 ENACTS:

- 52 **26-18c-101**, Utah Code Annotated 1953
- 53 **26-18c-102**, Utah Code Annotated 1953
- 54 **26-18c-201**, Utah Code Annotated 1953
- 55 **26-18c-202**, Utah Code Annotated 1953
- 56 **26-18c-301**, Utah Code Annotated 1953
- 57 **26-18c-302**, Utah Code Annotated 1953
- 58 **26-18c-303**, Utah Code Annotated 1953

- 59 [26-18c-304](#), Utah Code Annotated 1953
- 60 [26-18c-305](#), Utah Code Annotated 1953
- 61 [26-18c-306](#), Utah Code Annotated 1953
- 62 [26-18c-307](#), Utah Code Annotated 1953
- 63 [26-18c-401](#), Utah Code Annotated 1953
- 64 [26-18c-402](#), Utah Code Annotated 1953
- 65 [26-18c-403](#), Utah Code Annotated 1953
- 66 [26-18c-404](#), Utah Code Annotated 1953
- 67 [26-18c-405](#), Utah Code Annotated 1953
- 68 [26-18c-406](#), Utah Code Annotated 1953
- 69 [26-18c-407](#), Utah Code Annotated 1953
- 70 [26-18c-408](#), Utah Code Annotated 1953
- 71 [26-18c-409](#), Utah Code Annotated 1953
- 72 [59-14-804](#), Utah Code Annotated 1953



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

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

76 **26-18-18. Optional Medicaid expansion.**

77 (1) For purposes of this section, "PPACA" ~~[is as]~~ means the same as that term is
78 defined in Section [31A-1-301](#).

79 (2) The department and the governor shall not expand the state's Medicaid program to
80 the optional population under PPACA unless:

81 ~~[(a) the Health Reform Task Force has completed a thorough analysis of a statewide~~
82 ~~charity care system;]~~

83 ~~[(b) the department and its contractors have:]~~

84 ~~[(i) completed a thorough analysis of the impact to the state of expanding the state's~~
85 ~~Medicaid program to optional populations under PPACA; and]~~

86 ~~[(ii) made the analysis conducted under Subsection (2)(b)(i) available to the public;]~~

87 ~~[(c)]~~ (a) the governor or the governor's designee has reported the intention to expand
88 the state Medicaid program under PPACA to the Legislature in compliance with the legislative
89 review process in Sections [63N-11-106](#) and [26-18-3](#); and

121 the medically exempt criteria of 42 C.F.R. 440.315:

122 (a) as determined by the department; and

123 (b) based on methodology administered by the department or another entity selected by
124 the department.

125 (8) "PPACA" means the same as that term is defined in Section [31A-1-301](#).

126 (9) "Silver level plan" means a health insurance plan for which an individual may
127 receive federal premium and cost sharing subsidies in the federal health insurance marketplace
128 established under PPACA.

129 (10) "Utah Medicaid Expansion " means the Medicaid expansion program described in
130 Part 3, Description of Utah Medicaid Expansion, and the funding of Utah Medicaid Expansion
131 as described in Part 4, Inpatient Hospital Services Assessment.

132 Section 4. Section **26-18c-201** is enacted to read:

133 **Part 2. Duties and Authority of Department**

134 **26-18c-201. Duty to request and implement Medicaid waivers.**

135 No later than July 1, 2016, the department shall submit to CMS a request for waivers
136 from federal statutory and regulatory law necessary to implement and fund a state Medicaid
137 plan to cover the adult expansion population in accordance with this chapter. The request for
138 wavers shall include a request to amend the state's existing Medicaid waivers for the purpose
139 of carrying forward credits the state has accumulated under the state's existing spending
140 authority for work on health care quality improvements.

141 Section 5. Section **26-18c-202** is enacted to read:

142 **26-18c-202. Facilitating enrollment in the Utah Medicaid Expansion.**

143 The department shall facilitate enrollment in Utah Medicaid Expansion and facilitate
144 the selection of a commercial health insurance plan by certain individuals enrolled in Utah
145 Medicaid Expansion by coordinating with the Medicaid eligibility system administered by the
146 Department of Workforce Services, and with the Avenue H web portal created by Section
147 [63N-11-104](#) and administered by the Office of Consumer Health Services within the
148 Governor's Office of Economic Development.

149 Section 6. Section **26-18c-301** is enacted to read:

150 **Part 3. Description of Utah Medicaid Expansion**

151 **26-18c-301. Medically frail individuals.**

152 (1) An individual in the adult expansion population who is medically frail shall receive
153 Medicaid benefits and services in the state's traditional Medicaid program.

154 (2) The department shall implement a pilot program that integrates medical and
155 behavioral health care services for the medically frail in selected geographic areas in the state.

156 Section 7. Section **26-18c-302** is enacted to read:

157 **26-18c-302. Individuals with employer sponsored insurance.**

158 (1) An individual in the adult expansion population who is not medically frail and who
159 is offered employer sponsored insurance shall enroll in the employer sponsored insurance.

160 (2) An individual enrolled in employer sponsored insurance under Subsection (1) shall
161 receive wrap-around coverage through Utah Medicaid Expansion in accordance with
162 Subsection (3).

163 (3) (a) If an individual is under 100% of the federal poverty level, the individual shall
164 receive Medicaid wrap-around coverage that provides cost sharing and benefits as required by
165 CMS.

166 (b) If an individual is at or above 100% of the federal poverty level, the individual shall
167 receive Medicaid wrap-around coverage that provides cost sharing and benefits substantially
168 equivalent to the cost sharing and benefits provided to an individual who is enrolled in a silver
169 level plan under Section [26-18c-303](#).

170 (4) If the department determines that the differences between the Medicaid
171 wrap-around coverages described in Subsections (3)(a) and (b) are administratively
172 burdensome, the department:

173 (a) shall report the department's determination to the Legislature in accordance with
174 Section [26-18-3](#); and

175 (b) may provide Medicaid wrap-around coverage with more uniform levels of cost
176 sharing and benefits.

177 Section 8. Section **26-18c-303** is enacted to read:

178 **26-18c-303. Individuals without employer sponsored insurance who are above the**
179 **federal poverty level.**

180 (1) (a) If an individual in the adult expansion population is not medically frail, does not
181 have an offer of employer sponsored insurance, and is at or above the federal poverty level, the
182 individual shall, upon application to participate in Utah Medicaid Expansion, receive:

183 (i) premium subsidies to enroll in a commercial health insurance plan that is actuarially
184 equivalent to a silver level plan; and

185 (ii) cost sharing subsidies equivalent to the cost sharing subsidies that would be
186 available to the individual on the federal marketplace.

187 (b) Premium and cost sharing subsidies under Subsection (1)(a) shall be sufficient to
188 ensure that:

189 (i) the individual pays at least, but no more than, 2% of the individual's household
190 income toward premiums; and

191 (ii) total cost sharing by the individual, including deductibles, copayments, and
192 coinsurance, but excluding premiums, does not exceed 6% of medical expenses covered by the
193 plan.

194 (2) Coverage under Subsection (1):

195 (a) begins on the first day of the month in which the individual is approved for the
196 program and makes an initial premium payment; and

197 (b) may not be applied retroactively from the first day of the month in which the first
198 premium payment was made.

199 (3) If an individual fails to make a monthly premium payment after the initial premium
200 payment, the individual shall receive a 60-day grace period during which to make the premium
201 payment before coverage under the commercial health insurance plan terminates.

202 (4) A commercial health insurance plan offered under this section may not:

203 (a) make a facility payment for non-emergent use of an emergency department; or

204 (b) provide non-emergent transportation.

205 Section 9. Section **26-18c-304** is enacted to read:

206 **26-18c-304. Individuals without employer sponsored insurance who are below the**
207 **federal poverty level.**

208 (1) (a) If an individual in the adult expansion population does not have an offer of
209 employer sponsored insurance, is not medically frail, and is below the federal poverty level, the
210 individual shall, upon application to participate in Utah Medicaid Expansion, receive:

211 (i) premium subsidies to enroll in a commercial health insurance plan that is actuarially
212 equivalent to a silver level plan; and

213 (ii) cost sharing subsidies described in Subsection (1)(b).

214 (b) Premium and cost sharing subsidies shall be sufficient to ensure that the individual
215 pays at least, but no more than, the maximum amount in premiums, deductibles, copayments,
216 coinsurance, and other cost sharing permitted by CMS for an individual below the federal
217 poverty level.

218 (2) Coverage under Subsection (1) may not be applied retroactively from the date of
219 enrollment.

220 (3) A commercial health insurance plan offered under this section may not:

221 (a) make a facility payment for non-emergent use of an emergency department; or

222 (b) provide non-emergent transportation.

223 Section 10. Section **26-18c-305** is enacted to read:

224 **26-18c-305. Keeping families together.**

225 (1) (a) If an individual in the adult expansion population is not medically frail, is above
226 100% of the federal poverty level, and has one or more children who qualify for the Medicaid
227 program or the Children's Health Insurance Program, the individual shall, upon application to
228 participate in Utah Medicaid Expansion:

229 (i) enroll the individual's children in the same commercial health insurance plan as the
230 plan selected by the individual; and

231 (ii) receive premium and cost sharing subsidies in accordance with Subsection (2) for
232 the individual and the individual's children.

233 (b) If an individual in the adult expansion population is not medically frail, is below
234 100% of the federal poverty level, and has one or more children who qualify for the Medicaid
235 program or the Children's Health Insurance Program, the individual may, at the individual's
236 option:

237 (i) enroll the individual's children in the same commercial health insurance plan as the
238 plan selected by the individual; and

239 (ii) receive premium and cost sharing subsidies in accordance with Subsection (2) for
240 the individual and the individual's children.

241 (2) Premium and cost sharing subsidies shall be sufficient to:

242 (a) enable the individual to purchase coverage in accordance with Section [26-18c-303](#)
243 or [26-18c-304](#); and

244 (b) ensure that the children receive any additional Medicaid benefits or cost sharing

245 subsidies that are required by CMS.

246 Section 11. Section **26-18c-306** is enacted to read:

247 **26-18c-306. Work assistance.**

248 An enrollee in Utah Medicaid Expansion shall be offered employment services at the
249 time of enrollment.

250 Section 12. Section **26-18c-307** is enacted to read:

251 **26-18c-307. Modification of Medicaid expansion.**

252 (1) The division shall:

253 (a) on or before October 1 of each year, report to the Legislature's Social Services
254 Appropriations Subcommittee the number of enrollees in the expansion population and the cost
255 of providing Medicaid to the expansion population; and

256 (b) after January 1, 2017, seek approval from CMS for waivers from federal regulation
257 necessary to:

258 (i) provide Medicaid to enrollees who are in the expansion population and are below
259 100% of the federal poverty level; and

260 (ii) receive the full federal match rate under PPACA.

261 (2) The division shall amend the state Medicaid plan to cover the expansion population
262 up to 100% of the federal poverty level, and enroll individuals who are above 100% of the
263 federal poverty level into the federal marketplace if:

264 (a) the division obtains a waiver under Subsection (1)(b); or

265 (b) the cost of providing Medicaid services to the full expansion population equals or
266 exceeds the cost of providing Medicaid services only to individuals who are below 100% of the
267 federal poverty level at the state's regular federal match rate.

268 Section 13. Section **26-18c-401** is enacted to read:

269 **Part 4. Inpatient Hospital Services Assessment**

270 **26-18c-401. Title.**

271 This part is known as "Inpatient Hospital Services Assessment."

272 Section 14. Section **26-18c-402** is enacted to read:

273 **26-18c-402. Application.**

274 (1) Other than for the imposition of the assessment described in this part, nothing in
275 this part shall affect the nonprofit or tax exempt status of any nonprofit charitable, religious, or

276 educational health care provider under:

277 (a) Section 501(c), as amended, of the Internal Revenue Code;

278 (b) other applicable federal law;

279 (c) any state law;

280 (d) any ad valorem property taxes;

281 (e) any sales or use taxes; or

282 (f) any other taxes, fees, or assessments, whether imposed or sought to be imposed by

283 the state or any political subdivision, county, municipality, district, authority, or any agency or

284 department thereof.

285 (2) All assessments paid under this part may be included as an allowable cost of a

286 hospital for purposes of any applicable Medicaid reimbursement formula.

287 (3) This part does not authorize a political subdivision of the state to:

288 (a) license a hospital for revenue;

289 (b) impose a tax or assessment upon a hospital; or

290 (c) impose a tax or assessment measured by the income or earnings of a hospital.

291 Section 15. Section **26-18c-403** is enacted to read:

292 **26-18c-403. Definitions.**

293 As used in this part:

294 (1) "Assessment" means the hospital inpatient provider assessment established by this
295 part.

296 (2) "Discharges" means the number of total hospital discharges reported on:

297 (a) worksheet S-3 Part I, column 15, lines 12, 14, and 14.01 of the 2552-96 Medicare

298 cost report, or on Worksheet S-3 Part I, column 15, lines 14, 16, and 17 of the 2552-10

299 Medicare cost report, for the applicable assessment year; or

300 (b) a similar report adopted by the department by administrative rule, if the report
301 under Subsection (2)(a) is no longer available.

302 (3) "Division" means the Division of Health Care Financing of the department.

303 (4) "Hospital":

304 (a) means a privately owned:

305 (i) general acute hospital operating in the state as defined in Section [26-21-2](#); and

306 (ii) specialty hospital operating in the state, which shall include a privately owned

307 hospital whose inpatient admissions are predominantly:

308 (A) rehabilitation;

309 (B) psychiatric;

310 (C) chemical dependency; or

311 (D) long-term acute care services; and

312 (b) does not include:

313 (i) a residential treatment facility as defined in Section [62A-2-101](#);

314 (ii) a hospital owned by the federal government, including the Veterans Administration

315 Hospital; or

316 (iii) a hospital that is owned by the state government, a state agency, or a political

317 subdivision of the state, including:

318 (A) a state-owned teaching hospital; and

319 (B) the Utah State Hospital.

320 (5) "Medicare cost report" means CMS-2552-96 or CMS-2552-10, the cost report for

321 electronic filing of hospitals.

322 Section 16. Section **26-18c-404** is enacted to read:

323 **26-18c-404. Assessment.**

324 (1) A uniform, broad based, assessment is imposed on each hospital:

325 (a) in the amount designated in Section [26-18c-407](#); and

326 (b) in accordance with Section [26-18c-406](#).

327 (2) Subject to Section [26-18c-405](#), the assessment imposed by this part is due and

328 payable on a quarterly basis.

329 Section 17. Section **26-18c-405** is enacted to read:

330 **26-18c-405. Collection of assessment -- Deposit of revenue -- Rulemaking.**

331 (1) The collecting agent for assessment imposed under Section [26-18c-404](#) is the

332 department. The department is vested with the administration and enforcement of this part,

333 including the right to adopt administrative rules in accordance with Title 63G, Chapter 3, Utah

334 Administrative Rulemaking Act, necessary to:

335 (a) implement and enforce the provisions of this part;

336 (b) audit records of a facility;

337 (i) that is subject to the assessment imposed by this part; and

338 (ii) does not file a Medicare cost report; and
339 (c) select a report similar to the Medicare cost report if Medicare no longer uses a
340 Medicare cost report.

341 (2) The department shall deposit assessments collected under this part in the
342 expendable special revenue fund created in Section [26-18c-409](#).

343 (3) The department may, by rule, extend the time for paying the assessment.

344 Section 18. Section **26-18c-406** is enacted to read:

345 **26-18c-406. Quarterly notice.**

346 Quarterly assessments imposed by this chapter shall be paid to the division within 15
347 business days after the original invoice date that appears on the invoice issued by the division.

348 Section 19. Section **26-18c-407** is enacted to read:

349 **26-18c-407. Calculation of assessment.**

350 (1) (a) An annual assessment is payable on a quarterly basis for each hospital in an
351 amount calculated at a uniform assessment rate for each hospital discharge, in accordance with
352 this section.

353 (b) The uniform assessment rate for fiscal years beginning on or after July 1, 2016,
354 shall be \$17.04 per discharge.

355 (2) (a) For each state fiscal year, discharges shall be determined using the data from
356 each hospital's Medicare cost report contained in the Centers for Medicare and Medicaid
357 Services' Healthcare Cost Report Information System file, or the report's equivalent if the
358 report is replaced in the future by CMS. The hospital's discharge data will be derived as
359 follows:

360 (i) for state fiscal year 2017, the hospital's cost report data for the hospital's fiscal year
361 ending between July 1, 2014, and June 30, 2015;

362 (ii) for state fiscal year 2018, the hospital's cost report data for the hospital's fiscal year
363 ending between July 1, 2015, and June 30, 2016; and

364 (iii) for each subsequent state fiscal year, the hospital's cost report data for the
365 hospital's fiscal year that ended in the state fiscal year two years prior to the assessment fiscal
366 year.

367 (b) If a hospital's fiscal year Medicare cost report is not contained in the Centers for
368 Medicare and Medicaid Services' Healthcare Cost Report Information System file:

369 (i) the hospital shall submit to the division a copy of the hospital's Medicare cost report
370 applicable to the assessment year; and

371 (ii) the division shall determine the hospital's discharges.

372 (c) If a hospital is not certified by the Medicare program and is not required to file a
373 Medicare cost report:

374 (i) the hospital shall submit to the division its applicable fiscal year discharges with
375 supporting documentation;

376 (ii) the division shall determine the hospital's discharges from the information
377 submitted under Subsection (2)(c)(i); and

378 (iii) the failure to submit discharge information shall result in an audit of the hospital's
379 records and a penalty equal to 5% of the calculated assessment.

380 (3) Except as provided in Subsection (4), if a hospital is owned by an organization that
381 owns more than one hospital in the state:

382 (a) the assessment for each hospital shall be separately calculated by the department;
383 and

384 (b) each separate hospital shall pay the assessment imposed by this chapter.

385 (4) Notwithstanding the requirement of Subsection (3), if multiple hospitals use the
386 same Medicaid provider number:

387 (a) the department shall calculate the assessment in the aggregate for the hospitals
388 using the same Medicaid provider number; and

389 (b) the hospitals may pay the assessment in the aggregate.

390 Section 20. Section **26-18c-408** is enacted to read:

391 **26-18c-408. Penalties and interest.**

392 (1) A facility that fails to pay any assessment or file a return as required under this part,
393 within the time required by this part, shall pay, in addition to the assessment, penalties and
394 interest established by the department.

395 (2) (a) Consistent with Subsection (2)(b), the department shall adopt rules in
396 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, which establish
397 reasonable penalties and interest for the violations described in Subsection (1).

398 (b) If a hospital fails to timely pay the full amount of a quarterly assessment, the
399 department shall add to the assessment:

- 400 (i) a penalty equal to 5% of the quarterly amount not paid on or before the due date;
401 and
402 (ii) on the last day of each quarter after the due date until the assessed amount and the
403 penalty imposed under Subsection (2)(b)(i) are paid in full, an additional 5% penalty on:
404 (A) any unpaid quarterly assessment; and
405 (B) any unpaid penalty assessment.
406 (c) Upon making a record of its actions, and upon reasonable cause shown, the division
407 may waive, reduce, or compromise any of the penalties imposed under this part.

408 Section 21. Section **26-18c-409** is enacted to read:

409 **26-18c-409. Medicaid Expansion Fund.**

- 410 (1) There is created an expendable special revenue fund known as the Medicaid
411 Expansion Fund.
412 (2) The fund consists of:
413 (a) taxes collected under this part;
414 (b) taxes collected from the taxation of an electronic smoking device under Section
415 [59-14-804](#);
416 (c) savings attributable to Utah Medicaid Expansion;
417 (d) preferred drug list savings appropriated to the fund under Subsection [26-18-2.4\(4\)](#);
418 (e) gifts, grants, donations, or any other conveyance of money that may be made to the
419 fund from private sources; and
420 (f) additional amounts as appropriated by the Legislature.
421 (3) (a) The fund shall earn interest.
422 (b) All interest earned on fund money shall be deposited into the fund.
423 (4) (a) A state agency administering the provisions of this chapter may use money from
424 the fund to pay the costs of administering Utah Medicaid Expansion not otherwise paid for
425 with federal funds or other revenue sources.
426 (b) Money in the fund may not be used for any other purpose.

427 Section 22. Section **59-14-102** is amended to read:

428 **59-14-102. Definitions.**

429 As used in this chapter:

- 430 (1) "Cigarette" means a roll for smoking made wholly or in part of tobacco:

- 431 (a) regardless of:
- 432 (i) the size of the roll;
- 433 (ii) the shape of the roll; or
- 434 (iii) whether the tobacco is:
- 435 (A) flavored;
- 436 (B) adulterated; or
- 437 (C) mixed with any other ingredient; and
- 438 (b) if the wrapper or cover of the roll is made of paper or any other substance or
- 439 material except tobacco.
- 440 (2) "Cigarette rolling machine" means a device or machine that has the capability to
- 441 produce at least 150 cigarettes in less than 30 minutes.
- 442 (3) "Cigarette rolling machine operator" means a person who:
- 443 (a) (i) controls, leases, owns, possesses, or otherwise has available for use a cigarette
- 444 rolling machine; and
- 445 (ii) makes the cigarette rolling machine available for use by another person to produce
- 446 a cigarette; or
- 447 (b) offers for sale, at retail, a cigarette produced from the cigarette rolling machine.
- 448 (4) "Consumer" means a person that is not required:
- 449 (a) under Section [59-14-201](#) to obtain a license under Section [59-14-202](#); or
- 450 (b) under Section [59-14-301](#) to obtain a license under Section [59-14-202](#).
- 451 (5) "Counterfeit cigarette" means:
- 452 (a) a cigarette that has a false manufacturing label; or
- 453 (b) a package of cigarettes bearing a counterfeit tax stamp.
- 454 (6) "Importer" means a person who imports into the United States, either directly or
- 455 indirectly, a finished cigarette for sale or distribution.
- 456 (7) "Indian tribal entity" means a federally recognized Indian tribe, tribal entity, or any
- 457 other person doing business as a distributor or retailer of cigarettes on tribal lands located in the
- 458 state.
- 459 (8) "Little cigar" means a roll for smoking:
- 460 (a) made wholly or in part of tobacco;
- 461 (b) that uses an integrated cellulose acetate filter or other similar filter; and

462 (c) that is wrapped in a substance:

463 (i) containing tobacco; and

464 (ii) that is not exclusively natural leaf tobacco.

465 (9) (a) Except as provided in Subsection (9)(b), "manufacturer" means a person who
466 manufactures, fabricates, assembles, processes, or labels a finished cigarette.

467 (b) "Manufacturer" does not include a cigarette rolling machine operator.

468 (10) "Moist snuff" means tobacco that:

469 (a) is finely:

470 (i) cut;

471 (ii) ground; or

472 (iii) powdered;

473 (b) has at least 45% moisture content, as determined by the commission by rule made
474 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

475 (c) is not intended to be:

476 (i) smoked; or

477 (ii) placed in the nasal cavity; and

478 (d) except for single-use pouches of loose tobacco, is not packaged, produced, sold, or
479 distributed in single-use units, including:

480 (i) tablets;

481 (ii) lozenges;

482 (iii) strips;

483 (iv) sticks; or

484 (v) packages containing multiple single-use units.

485 (11) "Nicotine" means a poisonous volatile alkaloid derived from tobacco.

486 (12) "Nontherapeutic nicotine inhaler" means a nicotine inhaler that is not approved for
487 nicotine replacement therapy by the United States Federal Drug Administration.

488 [~~(11)~~] (13) "Retailer" means a person that:

489 (a) sells or distributes a cigarette to a consumer in the state; or

490 (b) intends to sell or distribute a cigarette to a consumer in the state.

491 [~~(12)~~] (14) "Stamp" means the indicia required to be placed on a cigarette package that
492 evidences payment of the tax on cigarettes required by Section [59-14-205](#).

493 ~~[(13)]~~ (15) (a) "Tobacco product" means a product made of, or containing, tobacco.

494 (b) "Tobacco product" includes:

495 (i) a cigarette produced from a cigarette rolling machine;

496 (ii) a little cigar; or

497 (iii) moist snuff.

498 (c) "Tobacco product" does not include a cigarette.

499 ~~[(14)]~~ (16) "Tribal lands" means land held by the United States in trust for a federally
500 recognized Indian tribe.

501 Section 23. Section **59-14-403** is amended to read:

502 **59-14-403. Duplicate invoice requirements -- Failure to comply -- Penalties.**

503 ~~[All persons]~~ A person dealing in taxable cigarettes ~~[or]~~, tobacco products, electronic
504 cigarette products, as defined in Section 59-14-802, or non-therapeutic nicotine inhalers who
505 ~~[purchase or receive]~~ purchases or receives these commodities from outside the state, whether
506 the product is delivered through a wholesaler or distributor in this state, or by drop shipment or
507 otherwise, shall mail or deliver a duplicate invoice of all those purchases or receipts to the
508 commission within 10 days after receipt of the commodities if requested by the commission.
509 Failure to furnish duplicate invoices or receipts as requested is subject to the penalties provided
510 under Section 59-1-401.

511 Section 24. Section **59-14-802** is amended to read:

512 **59-14-802. Definitions.**

513 As used in this part:

514 (1) "Cigarette" means the same as that term is defined in Section 59-14-102.

515 (2) (a) "Electronic cigarette" means:

516 (i) an electronic device used to deliver or capable of delivering vapor containing
517 nicotine to an individual's respiratory system;

518 (ii) a component of the device described in Subsection (2)(a)(i); or

519 (iii) an accessory sold in the same package as the device described in Subsection
520 (2)(a)(i).

521 (b) "Electronic cigarette" includes an e-cigarette as defined in Section 26-38-2.

522 (c) "Electronic cigarette" does not include a battery or battery charger that is sold
523 separately from the electronic cigarette.

524 (3) "Electronic cigarette product" means an electronic cigarette or an electronic
525 cigarette substance.

526 (4) "Electronic cigarette substance" means any substance, including liquid containing
527 nicotine, used or intended for use in an electronic cigarette.

528 (5) "Enforcing agency" means the Department of Health, a county health department,
529 or a local health department, when enforcing:

530 (a) Title 26, Chapter 42, Civil Penalties for Tobacco Sales to Underage Persons; or

531 (b) Title 26, Chapter 57, Electronic Cigarette Regulation Act.

532 (6) "Licensee" means a person that holds a valid license to sell electronic cigarette
533 products.

534 (7) "License to sell an electronic cigarette product" means a license issued by the
535 commission under [~~Subsection 59-14-803(3)~~] Section 59-14-803.

536 Section 25. Section **59-14-803** is amended to read:

537 **59-14-803. License to sell an electronic cigarette product or nicotine inhaler.**

538 [~~(1) Except as provided in Subsection (2), a person may not sell, offer to sell, or~~
539 ~~distribute an electronic cigarette product in Utah without first obtaining a license to sell an~~
540 ~~electronic cigarette product from the commission under this section.]~~

541 [~~(2) A person that holds a valid license to sell cigarettes under Section 59-14-201, or a~~
542 ~~person that holds a valid license to sell tobacco products under Section 59-14-301, may,~~
543 ~~without obtaining a separate license to sell an electronic cigarette product under this part, sell,~~
544 ~~offer to sell, or distribute an electronic cigarette product in Utah in accordance with this part.]~~

545 [~~(3) Except as provided in Subsection (6), the commission shall issue a license to sell~~
546 ~~an electronic cigarette product to a person that:]~~

547 [~~(a) submits an application, on a form created by the commission, that includes:]~~

548 [~~(i) the person's name;]~~

549 [~~(ii) the address of the facility where the person will sell an electronic cigarette~~
550 ~~product; and]~~

551 [~~(iii) any other information the commission requires to implement this chapter; and]~~

552 [~~(b) pays a fee:]~~

553 [~~(i) in the amount of \$30; or]~~

554 [~~(ii) if renewing the person's license, in the amount of \$20.]~~

555 ~~[(4) A license described in Subsection (3) is:]~~
556 ~~[(a) valid only at one fixed business address;]~~
557 ~~[(b) valid for three years;]~~
558 ~~[(c) valid only for a physical location; and]~~
559 ~~[(d) renewable if a licensee meets the criteria for licensing described in Subsection (3).]~~

560 (1) A manufacturer or distributor of an electronic cigarette product or nontherapeutic
561 inhaler, who is responsible for the collection of tax on an electronic cigarette product or
562 nontherapeutic inhaler under this chapter, and a retailer of an electronic cigarette product or
563 nontherapeutic inhaler:

564 (a) shall register with the commission;
565 (b) shall be licensed by the commission under Part 2, Cigarettes; and
566 (c) is subject to the requirements, procedures, and penalties described in Part 2,
567 Cigarettes.

568 (2) A fee may not be charged for registration and licensing of a manufacturer, jobber,
569 distributor, or retailer of an electronic cigarette product or nontherapeutic inhaler in addition to
570 the cigarette license if such a license is required.

571 (3) The commission shall require any manufacturer, wholesaler, retailer, or any other
572 person subject to this section, and who is responsible for the collection of tax on an electronic
573 cigarette product or nontherapeutic inhaler under this chapter, to post a bond as a prerequisite to
574 registering. The bond shall be in a form and an amount determined by the commission. If the
575 bond is required under Section 59-14-201, the bond may be a combination, the minimum
576 amount of which shall be \$1,000.

577 ~~[(5)] (4) The commission shall, after notifying a licensee, revoke a license described in~~
578 ~~Subsection [(3)] (1) if an enforcing agency determines the licensee has violated a provision of:~~

579 ~~(a) Title 26, Chapter 42, Civil Penalties for Tobacco Sales to Underage Persons; or~~
580 ~~(b) Title 26, Chapter 57, Electronic Cigarette Regulation Act.~~

581 ~~[(6)] (5) If the commission revokes a person's license to sell an electronic cigarette~~
582 ~~product or nontherapeutic nicotine inhaler under Subsection [(5)] (4), the commission may not~~
583 ~~issue a license to sell an electronic cigarette product or nontherapeutic nicotine inhaler, a license~~
584 ~~to sell cigarettes under Section 59-14-201, or a license to sell tobacco under Section 59-14-301~~
585 ~~to the person until one year after:~~

586 (a) the day on which the time for filing an appeal of the revocation ends, as determined
587 by the enforcing agency; or

588 (b) if the person appeals the enforcing agency's decision to revoke the license to sell an
589 electronic cigarette product, the day on which the enforcing agency's decision to uphold the
590 revocation is final.

591 ~~[(7)]~~ (6) If the commission revokes a person's license under Subsection ~~[(5)]~~ (4), the
592 commission shall also revoke the person's license to sell cigarettes under Section 59-14-201, if
593 any, and the person's license to sell tobacco under Section 59-14-301, if any.

594 ~~[(8) The commission may make rules in accordance with Title 63G, Chapter 3, Utah~~
595 ~~Administrative Rulemaking Act, to establish the additional information described in~~
596 ~~Subsection (3)(a)(iii) that a person must provide in the application described in Subsection~~
597 ~~(3)(a).]~~

598 ~~[(9)]~~ (7) It is a class B misdemeanor for a person to violate Subsection (1).
599 Section 26. Section 59-14-804 is enacted to read:

600 **59-14-804. Taxation of electronic cigarette product and nicotine inhalers.**

601 (1) As used in this section:

602 (a) "Manufacturer's sales price" means the amount the manufacturer of an electronic
603 cigarette product or nontherapeutic nicotine inhaler charges after subtracting a discount.

604 (b) "Manufacturer's sales price" includes an original Utah destination freight charge,
605 regardless of:

606 (i) whether the electronic cigarette product or nontherapeutic nicotine inhaler is shipped
607 f.o.b. origin or f.o.b. destination; or

608 (ii) who pays the original Utah destination freight charge.

609 (2) There is levied a tax upon the sale, use, or storage of an electronic cigarette product
610 or nontherapeutic nicotine inhaler in the state.

611 (3) The tax levied under Subsection (2) shall be paid by the manufacturer, jobber,
612 distributor, wholesaler, retailer, user, or consumer.

613 (4) For an electronic cigarette product or nontherapeutic nicotine inhaler, the rate of the
614 tax under this section is .86 multiplied by the manufacturer's sales price.

615 (5) The proceeds from the tax imposed by this section shall be deposited into the
616 Medicaid Expansion Fund created in Section 26-18c-409.

- 617 Section 27. **Effective date.**
- 618 (1) Except as provided in Subsection (2), this bill takes effect on May 10, 2016.
- 619 (2) The actions affecting the following sections take effect on July 1, 2016:
- 620 (a) Title 26, Chapter 18c, Part 4, Inpatient Hospital Services Assessment;
- 621 (b) Section [59-14-102](#);
- 622 (c) Section [59-14-403](#);
- 623 (d) Section [59-14-802](#);
- 624 (e) Section [59-14-803](#); and
- 625 (f) Section [59-14-804](#).
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Legislative Review Note
Office of Legislative Research and General Counsel