

MEDICAID SANCTIONS AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Raymond P. Ward

Senate Sponsor: Brian Zehnder

LONG TITLE

General Description:

This bill adds Medicaid sanctions to the list of programs with nonlapsing authority.

Highlighted Provisions:

This bill:

- ▶ adds Medicaid sanctions to the list of programs with nonlapsing authority.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

26-18-3, as last amended by Laws of Utah 2017, Chapter 74

63J-1-602.1 (Effective 09/30/18), as last amended by Laws of Utah 2017, Chapters 88, 107, 194, and 383

63J-1-602.1 (Superseded 09/30/18), as last amended by Laws of Utah 2017, Chapters 88, 194, and 383

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



28 **Legislature -- Disciplinary measures and sanctions -- Funds collected -- Eligibility**
29 **standards -- Internal audits -- Health opportunity accounts.**

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

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

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

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

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

41 (iii) reimbursement methodologies for providers under the Medicaid program; and

42 (iv) a requirement that:

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

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

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

52 (3) (a) The department shall, in accordance with Subsection (3)(b), report to the Social
53 Services Appropriations Subcommittee when the department:

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

55 (ii) initiates a new Medicaid waiver;

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

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

- 59 (v) initiates a rate change that requires public notice under state or federal law.
- 60 (b) The report required by Subsection (3)(a) shall:
- 61 (i) be submitted to the Social Services Appropriations Subcommittee prior to the
- 62 department implementing the proposed change; and
- 63 (ii) include:
- 64 (A) a description of the department's current practice or policy that the department is
- 65 proposing to change;
- 66 (B) an explanation of why the department is proposing the change;
- 67 (C) the proposed change in services or reimbursement, including a description of the
- 68 effect of the change;
- 69 (D) the effect of an increase or decrease in services or benefits on individuals and
- 70 families;
- 71 (E) the degree to which any proposed cut may result in cost-shifting to more expensive
- 72 services in health or human service programs; and
- 73 (F) the fiscal impact of the proposed change, including:
- 74 (I) the effect of the proposed change on current or future appropriations from the
- 75 Legislature to the department;
- 76 (II) the effect the proposed change may have on federal matching dollars received by
- 77 the state Medicaid program;
- 78 (III) any cost shifting or cost savings within the department's budget that may result
- 79 from the proposed change; and
- 80 (IV) identification of the funds that will be used for the proposed change, including any
- 81 transfer of funds within the department's budget.
- 82 (4) Any rules adopted by the department under Subsection (2) are subject to review and
- 83 reauthorization by the Legislature in accordance with Section [63G-3-502](#).
- 84 (5) The department may, in its discretion, contract with the Department of Human
- 85 Services or other qualified agencies for services in connection with the administration of the
- 86 Medicaid program, including:
- 87 (a) the determination of the eligibility of individuals for the program;
- 88 (b) recovery of overpayments; and
- 89 (c) consistent with Section [26-20-13](#), and to the extent permitted by law and quality

90 control services, enforcement of fraud and abuse laws.

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

94 (a) termination from the program;

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

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

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

101 (b) In accordance with Section [63J-1-602.1](#), sanctions collected under this Subsection
102 (7) are nonlapsing.

103 (8) (a) In determining whether an applicant or recipient is eligible for a service or
104 benefit under this part or Chapter 40, Utah Children's Health Insurance Act, the department
105 shall, if Subsection (8)(b) is satisfied, exclude from consideration one passenger vehicle
106 designated by the applicant or recipient.

107 (b) Before Subsection (8)(a) may be applied:

108 (i) the federal government shall:

109 (A) determine that Subsection (8)(a) may be implemented within the state's existing
110 public assistance-related waivers as of January 1, 1999;

111 (B) extend a waiver to the state permitting the implementation of Subsection (8)(a); or

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

114 (ii) the department shall determine that Subsection (8)(a) can be implemented within
115 existing funding.

116 (9) (a) For purposes of this Subsection (9):

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

119 (ii) "spend down" means an amount of income in excess of the allowable income
120 standard that shall be paid in cash to the department or incurred through the medical services

121 not paid by Medicaid.

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

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

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

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

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

130 (b) A health opportunity account established under Subsection (11)(a) shall be an
131 alternative to the existing benefits received by an individual eligible to receive Medicaid under
132 this chapter.

133 (c) Subsection (11)(a) is not intended to expand the coverage of the Medicaid program.

134 (12) (a) (i) The department shall apply for, and if approved, implement an amendment
135 to the state plan under this Subsection (12) for benefits for:

136 (A) medically needy pregnant women;

137 (B) medically needy children; and

138 (C) medically needy parents and caretaker relatives.

139 (ii) The department may implement the eligibility standards of Subsection (12)(b) for
140 eligibility determinations made on or after the date of the approval of the amendment to the
141 state plan.

142 (b) In determining whether an applicant is eligible for benefits described in Subsection
143 (12)(a)(i), the department shall:

144 (i) disregard resources held in an account in the savings plan created under Title 53B,
145 Chapter 8a, Utah Educational Savings Plan, if the beneficiary of the account is:

146 (A) under the age of 26; and

147 (B) living with the account owner, as that term is defined in Section [53B-8a-102](#), or
148 temporarily absent from the residence of the account owner; and

149 (ii) include the withdrawals from an account in the Utah Educational Savings Plan as
150 resources for a benefit determination, if the withdrawal was not used for qualified higher
151 education costs as that term is defined in Section [\[53B-8a-102\]](#) [53B-8a-102.5](#).

152 Section 2. Section **63J-1-602.1 (Superseded 09/30/18)** is amended to read:
153 **63J-1-602.1 (Superseded 09/30/18). List of nonlapsing accounts and funds --**
154 **General authority and Title 1 through Title 30.**
155 (1) Appropriations made to the Legislature and its committees.
156 (2) The Utah Intracurricular Student Organization Support for Agricultural Education
157 and Leadership Restricted Account created in Section [4-42-102](#).
158 (3) The Percent-for-Art Program created in Section [9-6-404](#).
159 (4) The Native American Repatriation Restricted Account created in Section [9-9-407](#).
160 (5) The Martin Luther King, Jr. Civil Rights Support Restricted Account created in
161 Section [9-18-102](#).
162 (6) The National Professional Men's Soccer Team Support of Building Communities
163 Restricted Account created in Section [9-19-102](#).
164 (7) The LeRay McAllister Critical Land Conservation Program created in Section
165 [11-38-301](#).
166 (8) The Support for State-Owned Shooting Ranges Restricted Account created in
167 Section [23-14-13.5](#).
168 (9) An appropriation made to the Division of Wildlife Resources for the appraisal and
169 purchase of lands under the Pelican Management Act, as provided in Section [23-21a-6](#).
170 (10) Award money under the State Asset Forfeiture Grant Program, as provided under
171 Section [24-4-117](#).
172 (11) Funds collected from the program fund for local health department expenses
173 incurred in responding to a local health emergency under Section [26-1-38](#).
174 (12) Funds collected from the emergency medical services grant program, as provided
175 in Section [26-8a-207](#).
176 (13) The primary care grant program created in Section [26-10b-102](#).
177 (14) Sanctions collected from Medicaid providers under Subsection [26-18-3\(7\)](#).
178 [~~(14)~~] (15) The Prostate Cancer Support Restricted Account created in Section
179 [26-21a-303](#).
180 [~~(15)~~] (16) The Children with Cancer Support Restricted Account created in Section
181 [26-21a-304](#).
182 [~~(16)~~] (17) State funds appropriated for matching federal funds in the Children's Health

183 Insurance Program as provided in Section 26-40-108.

184 ~~[(17)]~~ (18) The Utah Health Care Workforce Financial Assistance Program created in
185 Section 26-46-102.

186 ~~[(18)]~~ (19) The Rural Physician Loan Repayment Program created in Section
187 26-46a-103.

188 ~~[(19)]~~ (20) The Opiate Overdose Outreach Pilot Program created in Section 26-55-107.

189 ~~[(20)]~~ (21) The Children with Heart Disease Support Restricted Account created in
190 Section 26-58-102.

191 Section 3. Section 63J-1-602.1 (Effective 09/30/18) is amended to read:

192 **63J-1-602.1 (Effective 09/30/18). List of nonlapsing accounts and funds -- General**
193 **authority and Title 1 through Title 30.**

194 (1) Appropriations made to the Legislature and its committees.

195 (2) The Utah Intracurricular Student Organization Support for Agricultural Education
196 and Leadership Restricted Account created in Section 4-42-102.

197 (3) The Percent-for-Art Program created in Section 9-6-404.

198 (4) The Native American Repatriation Restricted Account created in Section 9-9-407.

199 (5) The Martin Luther King, Jr. Civil Rights Support Restricted Account created in
200 Section 9-18-102.

201 (6) The National Professional Men's Soccer Team Support of Building Communities
202 Restricted Account created in Section 9-19-102.

203 (7) The LeRay McAllister Critical Land Conservation Program created in Section
204 11-38-301.

205 (8) The Support for State-Owned Shooting Ranges Restricted Account created in
206 Section 23-14-13.5.

207 (9) An appropriation made to the Division of Wildlife Resources for the appraisal and
208 purchase of lands under the Pelican Management Act, as provided in Section 23-21a-6.

209 (10) Award money under the State Asset Forfeiture Grant Program, as provided under
210 Section 24-4-117.

211 (11) Funds collected from the program fund for local health department expenses
212 incurred in responding to a local health emergency under Section 26-1-38.

213 (12) Funds collected from the emergency medical services grant program, as provided

214 in Section [26-8a-207](#).
215 (13) The primary care grant program created in Section [26-10b-102](#).
216 (14) Sanctions collected from Medicaid providers under Subsection [26-18-3\(7\)](#).
217 [~~(14)~~] (15) The Children with Cancer Support Restricted Account created in Section
218 [26-21a-304](#).
219 [~~(15)~~] (16) State funds appropriated for matching federal funds in the Children's Health
220 Insurance Program as provided in Section [26-40-108](#).
221 [~~(16)~~] (17) The Utah Health Care Workforce Financial Assistance Program created in
222 Section [26-46-102](#).
223 [~~(17)~~] (18) The Rural Physician Loan Repayment Program created in Section
224 [26-46a-103](#).
225 [~~(18)~~] (19) The Opiate Overdose Outreach Pilot Program created in Section [26-55-107](#).
226 [~~(19)~~] (20) The Children with Heart Disease Support Restricted Account created in
227 Section [26-58-102](#).
228 Section 4. **Effective date.**
229 This bill takes effect on May 8, 2018, except that the amendments to Section
230 [63J-1-602.1](#) (Effective 09/30/18) take effect on September 30, 2018.

Legislative Review Note
Office of Legislative Research and General Counsel