

Senator Kirk A. Cullimore proposes the following substitute bill:

MEDICAL PAYMENT RATES AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Raymond P. Ward

Senate Sponsor: Kirk A. Cullimore

LONG TITLE

General Description:

This bill creates certain requirements regarding Medicaid funding.

Highlighted Provisions:

This bill:

- ▶ requires the Department of Health to report to the Legislature when the department applies, or receives approval, for a change in any Medicaid capitated payment rates;

and

- ▶ amends provisions relating to funding for the provision of services by the Division of Services for People with Disabilities.

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 2018, Chapters 114 and 281

62A-5-102, as last amended by Laws of Utah 2013, Chapter 172



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

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

28 **26-18-3. Administration of Medicaid program by department -- Reporting to the**
29 **Legislature -- Disciplinary measures and sanctions -- Funds collected -- Eligibility**
30 **standards -- Internal audits -- Health opportunity accounts.**

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

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

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

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

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

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

43 (iv) a requirement that:

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

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

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

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

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

56 (ii) initiates a new Medicaid waiver;

- 57 (iii) initiates an amendment to an existing Medicaid waiver;
- 58 (iv) applies for an extension of an application for a waiver or an existing Medicaid
- 59 waiver; [~~or~~]
- 60 (v) applies for or receives approval for a change in any capitation rate within the
- 61 Medicaid program; or
- 62 [~~(v)~~] (vi) 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 Social Services Appropriations Subcommittee prior to the
- 65 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) Any rules adopted by the department under Subsection (2) are subject to review and
- 86 reauthorization by the Legislature in accordance with Section [63G-3-502](#).
- 87 (5) The department may, in its discretion, contract with the Department of Human

88 Services or other qualified agencies for services in connection with the administration of the
89 Medicaid program, including:

- 90 (a) the determination of the eligibility of individuals for the program;
- 91 (b) recovery of overpayments; and
- 92 (c) consistent with Section 26-20-13, and to the extent permitted by law and quality
93 control services, enforcement of fraud and abuse laws.

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

- 97 (a) termination from the program;
- 98 (b) recovery of claim reimbursements incorrectly paid; and
- 99 (c) those specified in Section 1919 of Title XIX of the federal Social Security Act.

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

104 (b) In accordance with Section 63J-1-602.2, sanctions collected under this Subsection
105 (7) are nonlapsing.

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

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

111 (i) the federal government shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

139 (A) medically needy pregnant women;

140 (B) medically needy children; and

141 (C) medically needy parents and caretaker relatives.

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

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

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

149 (A) under the age of 26; and

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

152 (ii) include the withdrawals from an account in the Utah Educational Savings Plan as
153 resources for a benefit determination, if the withdrawal was not used for qualified higher
154 education costs as that term is defined in Section 53B-8a-102.5.

155 Section 2. Section 62A-5-102 is amended to read:

156 **62A-5-102. Division of Services for People with Disabilities -- Creation --**
157 **Authority -- Direction -- Provision of services.**

158 (1) There is created within the department the Division of Services for People with
159 Disabilities, under the administrative direction of the executive director of the department.

160 (2) In accordance with this chapter, the division has the responsibility to plan and
161 deliver an appropriate array of services and supports to persons with disabilities and their
162 families in this state.

163 (3) Within appropriations from the Legislature, the division shall provide services to
164 any person with a disability who is eligible to receive division services.

165 (4) (a) Starting on July 1, 2013, any new appropriations designated to serve eligible
166 persons waiting for services from the division shall be allocated as set forth in this section.

167 (b) Eighty-five percent of the money appropriated in Subsection (4)(a) shall be
168 allocated, as determined by the division by rule based on the:

169 (i) severity of the disability;

170 (ii) urgency of the need for services;

171 (iii) ability of a parent or guardian to provide the person with appropriate care and
172 supervision; and

173 (iv) length of time during which the person has not received services from the division.

174 (c) Fifteen percent of the money appropriated in Subsection (4)(a) shall be allocated for
175 respite services, and the division shall:

176 (i) establish rules to identify a person whose only need is respite services;

177 (ii) allocate money under this Subsection (4)(c) to the people described in Subsection
178 (4)(c)(i) based on random selection; and

179 (iii) if all persons described in Subsection (4)(c)(i) have been served and there is
180 money remaining for respite care under this Subsection (4)(c), the division shall use the

181 remaining money as described in Subsection (4)(b).

182 (d) Funds from Subsection (4)(b) that are not spent by the division at the end of the
183 fiscal year may be used as set forth in Subsection (7).

184 (5) The division:

185 (a) has the functions, powers, duties, rights, and responsibilities described in Section
186 [62A-5-103](#); and

187 (b) is authorized to work in cooperation with other state, governmental, and private
188 agencies to carry out the responsibilities described in Subsection (5)(a).

189 (6) Within appropriations authorized by the Legislature, and to the extent allowed
190 under Title XIX of the Social Security Act, the division shall ensure that the services and
191 support that the division provides to any person with a disability:

192 (a) are provided in the least restrictive and most enabling environment;

193 (b) ensure opportunities to access employment; and

194 (c) enable reasonable personal choice in selecting services and support that:

195 (i) best meet individual needs; and

196 (ii) promote:

197 (A) independence;

198 (B) productivity; and

199 (C) integration in community life.

200 (7) (a) Appropriations to the division are nonlapsing.

201 (b) After an individual stops receiving services under this section, the division shall use
202 the funds that paid for the individual's services to provide services under this section to another
203 eligible individual in an intermediate care facility transitioning to division services, if the funds
204 were allocated under a program established under Section [26-18-3](#) to transition individuals
205 with intellectual disabilities from an intermediate care facility.

206 [~~(b)~~] (c) [~~H~~] Except as provided in Subsection (7)(b), an individual receiving services
207 under Subsection (4)(b) or (c) ceases to receive those services, the division shall use the funds
208 that were allocated to that individual to provide services to another eligible individual waiting
209 for services as described in Subsection (4)(b).

210 [~~(c)~~] (d) Funds unexpended by the division at the end of the fiscal year may be used
211 only for one-time expenditures unless otherwise authorized by the Legislature.

- 212 [~~(d)~~] (e) A one-time expenditure under this section:
- 213 (i) is not an entitlement;
- 214 (ii) may be withdrawn at any time; and
- 215 (iii) may provide short-term, limited services, including:
- 216 (A) respite care;
- 217 (B) service brokering;
- 218 (C) family skill building and preservation classes;
- 219 (D) after school group services; and
- 220 (E) other professional services.