

Representative James A. Dunnigan proposes the following substitute bill:

HEALTH AND HUMAN SERVICES AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: Allen M. Christensen

LONG TITLE

General Description:

This bill amends provisions related to health and human services.

Highlighted Provisions:

This bill:

- ▶ amends provisions relating to Medicaid;
- ▶ amends provisions for the financing of the Utah Premium Partnership for Health Insurance program;
- ▶ updates the Drug Utilization Review reporting requirements;
- ▶ updates certain background check requirements for individuals who have direct access to children or vulnerable adults;
- ▶ allows for transportation during a temporary commitment to occur via a nonemergency secured behavioral transport in certain circumstances; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a coordination clause.

Utah Code Sections Affected:



26 AMENDS:

- 27 **26-18-2.3**, as last amended by Laws of Utah 2019, Chapter 393
- 28 **26-18-2.6**, as last amended by Laws of Utah 2017, Chapter 22
- 29 **26-18-3.1**, as last amended by Laws of Utah 2019, Chapter 1
- 30 **26-18-3.8**, as last amended by Laws of Utah 2013, Chapter 137
- 31 **26-18-3.9**, as last amended by Laws of Utah 2019, Chapter 1
- 32 **26-18-5**, as last amended by Laws of Utah 2019, Chapter 393
- 33 **26-18-8**, as last amended by Laws of Utah 2003, Chapter 90
- 34 **26-18-103**, as last amended by Laws of Utah 2013, Chapter 167
- 35 **26-18-408**, as last amended by Laws of Utah 2019, Chapter 393
- 36 **26-18-411**, as last amended by Laws of Utah 2019, Chapter 393
- 37 **26-18-413**, as last amended by Laws of Utah 2019, Chapters 60 and 393
- 38 **26-36b-204**, as last amended by Laws of Utah 2018, Chapters 384 and 468
- 39 **26-36b-205**, as last amended by Laws of Utah 2018, Chapters 384 and 468
- 40 **26-36c-204**, as last amended by Laws of Utah 2019, Chapter 1
- 41 **26-40-106**, as last amended by Laws of Utah 2019, Chapter 393
- 42 **62A-2-120**, as last amended by Laws of Utah 2019, Chapter 335
- 43 **62A-15-629**, as last amended by Laws of Utah 2018, Chapter 322

44 REPEALS:

- 45 **26-18-404**, as last amended by Laws of Utah 2019, Chapter 393
- 46 **26-40-116**, as last amended by Laws of Utah 2019, Chapter 393

47 **Utah Code Sections Affected by Coordination Clause:**

- 48 **62A-2-120**, as last amended by Laws of Utah 2019, Chapter 335



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

51 Section 1. Section **26-18-2.3** is amended to read:

52 **26-18-2.3. Division responsibilities -- Emphasis -- Periodic assessment.**

53 (1) In accordance with the requirements of Title XIX of the Social Security Act and
54 applicable federal regulations, the division is responsible for the effective and impartial
55 administration of this chapter in an efficient, economical manner. The division shall:

- 56 (a) establish, on a statewide basis, a program to safeguard against unnecessary or

57 inappropriate use of Medicaid services, excessive payments, and unnecessary or inappropriate
58 hospital admissions or lengths of stay;

59 (b) deny any provider claim for services that fail to meet criteria established by the
60 division concerning medical necessity or appropriateness; and

61 (c) place its emphasis on high quality care to recipients in the most economical and
62 cost-effective manner possible, with regard to both publicly and privately provided services.

63 (2) The division shall implement and utilize cost-containment methods, where
64 possible, which may include:

65 (a) prepayment and postpayment review systems to determine if utilization is
66 reasonable and necessary;

67 (b) preadmission certification of nonemergency admissions;

68 (c) mandatory outpatient, rather than inpatient, surgery in appropriate cases;

69 (d) second surgical opinions;

70 (e) procedures for encouraging the use of outpatient services;

71 (f) consistent with Sections 26-18-2.4 and 58-17b-606, a Medicaid drug program;

72 (g) coordination of benefits; and

73 (h) review and exclusion of providers who are not cost effective or who have abused
74 the Medicaid program, in accordance with the procedures and provisions of federal law and
75 regulation.

76 (3) The state [~~medicaid~~] Medicaid director shall periodically assess the cost
77 effectiveness and health implications of the existing Medicaid program, and consider
78 alternative approaches to the provision of covered health and medical services through the
79 Medicaid program, in order to reduce unnecessary or unreasonable utilization.

80 (4) (a) The department shall ensure Medicaid program integrity by conducting internal
81 audits of the Medicaid program for efficiencies, best practices, and cost [~~recovery~~] avoidance.

82 (b) The department shall coordinate with the Office of the Inspector General for
83 Medicaid Services created in Section 63A-13-201 to implement Subsection (2) and to address
84 Medicaid fraud, waste, or abuse as described in Section 63A-13-202.

85 Section 2. Section 26-18-2.6 is amended to read:

86 **26-18-2.6. Dental benefits.**

87 (1) (a) Except as provided in Subsection (8), the division [~~shall~~] may establish a

88 competitive bid process to bid out Medicaid dental benefits under this chapter.

89 (b) The division may bid out the Medicaid dental benefits separately from other
90 program benefits.

91 (2) The division shall use the following criteria to evaluate dental bids:

92 (a) ability to manage dental expenses;

93 (b) proven ability to handle dental insurance;

94 (c) efficiency of claim paying procedures;

95 (d) provider contracting, discounts, and adequacy of network; and

96 (e) other criteria established by the department.

97 (3) The division shall request bids for the program's benefits[?] at least once every five
98 years.

99 [~~(a) in 2011; and~~]

100 [~~(b) at least once every five years thereafter.~~]

101 (4) The division's contract with dental plans for the program's benefits shall include
102 risk sharing provisions in which the dental plan must accept 100% of the risk for any difference
103 between the division's premium payments per client and actual dental expenditures.

104 (5) The division may not award contracts to:

105 (a) more than three responsive bidders under this section; or

106 (b) an insurer that does not have a current license in the state.

107 (6) (a) The division may cancel the request for proposals if:

108 (i) there are no responsive bidders; or

109 (ii) the division determines that accepting the bids would increase the program's costs.

110 (b) If the division cancels [~~the request for proposals under~~] a request for proposal or a
111 contract that results from a request for proposal described in Subsection (6)(a), the division
112 shall report to the Health and Human Services Interim Committee regarding the reasons for the
113 decision.

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

115 (8) (a) The division may:

116 (i) establish a dental health care delivery system and payment reform pilot program for
117 Medicaid dental benefits to increase access to cost effective and quality dental health care by
118 increasing the number of dentists available for Medicaid dental services; and

- 119 (ii) target specific Medicaid populations or geographic areas in the state.
- 120 (b) The pilot program shall establish compensation models for dentists and dental
121 hygienists that:
 - 122 (i) increase access to quality, cost effective dental care; and
 - 123 (ii) use funds from the Division of Family Health and Preparedness that are available to
124 reimburse dentists for educational loans in exchange for the dentist agreeing to serve Medicaid
125 and under-served populations.
- 126 (c) The division may amend the state plan and apply to the Secretary of Health and
127 Human Services for waivers or pilot programs if necessary to establish the new dental care
128 delivery and payment reform model.
- 129 (d) The division shall evaluate the pilot program's effect on the cost of dental care and
130 access to dental care for the targeted Medicaid populations.

131 Section 3. Section **26-18-3.1** is amended to read:

132 **26-18-3.1. Medicaid expansion.**

- 133 (1) The purpose of this section is to expand the coverage of the Medicaid program to
134 persons who are in categories traditionally not served by that program.
- 135 (2) Within appropriations from the Legislature, the department may amend the state
136 plan for medical assistance to provide for eligibility for Medicaid:
 - 137 (a) on or after July 1, 1994, for children 12 to 17 years old who live in households
138 below the federal poverty income guideline; and
 - 139 (b) on or after July 1, 1995, for persons who have incomes below the federal poverty
140 income guideline and who are aged, blind, or have a disability.
- 141 (3) (a) Within appropriations from the Legislature, on or after July 1, 1996, the
142 Medicaid program may provide for eligibility for persons who have incomes below the federal
143 poverty income guideline.
 - 144 (b) In order to meet the provisions of this subsection, the department may seek
145 approval for a demonstration project under 42 U.S.C. Sec. 1315 from the secretary of the
146 United States Department of Health and Human Services. [~~This demonstration project may~~
147 ~~also provide for the voluntary participation of private firms that:~~
 - 148 [~~(i) are newly established or marginally profitable;~~
 - 149 [~~(ii) do not provide health insurance to their employees;~~

150 ~~[(iii) employ predominantly low wage workers; and]~~
151 ~~[(iv) are unable to obtain adequate and affordable health care insurance in the private~~
152 ~~market.]~~

153 (4) The Medicaid program shall provide for eligibility for persons as required by
154 Subsection [26-18-3.9\(2\)](#).

155 (5) Services available for persons described in this section shall include required
156 Medicaid services and may include one or more optional Medicaid services if those services
157 are funded by the Legislature. The department may also require persons described in
158 Subsections (1) through (3) to meet an asset test.

159 Section 4. Section [26-18-3.8](#) is amended to read:

160 **26-18-3.8. Maximizing use of premium assistance programs -- Utah's Premium**
161 **Partnership for Health Insurance.**

162 (1) (a) The department shall seek to maximize the use of Medicaid and Children's
163 Health Insurance Program funds for assistance in the purchase of private health insurance
164 coverage for Medicaid-eligible and non-Medicaid-eligible individuals.

165 (b) The department's efforts to expand the use of premium assistance shall:

166 (i) include, as necessary, seeking federal approval under all Medicaid and Children's
167 Health Insurance Program premium assistance provisions of federal law, including provisions
168 of the Patient Protection and Affordable Care Act, Public Law 111-148;

169 (ii) give priority to, but not be limited to, expanding the state's Utah Premium
170 Partnership for Health Insurance Program, including as required under Subsection (2); and

171 (iii) encourage the enrollment of all individuals within a household in the same plan,
172 where possible, including enrollment in a plan that allows individuals within the household
173 transitioning out of Medicaid to retain the same network and benefits they had while enrolled
174 in Medicaid.

175 ~~[(c) Any increase in state costs resulting from an expansion of premium assistance may~~
176 ~~not exceed offsetting reductions in Medicaid and Children's Health Insurance Program state~~
177 ~~costs attributable to the expansion.]~~

178 (2) The department shall seek federal approval of an amendment to the state's Utah
179 Premium Partnership for Health Insurance program to adjust the eligibility determination for
180 single adults and parents who have an offer of employer sponsored insurance. The amendment

181 shall:

182 (a) be within existing appropriations for the Utah Premium Partnership for Health
183 Insurance program; and

184 (b) provide that adults who are up to 200% of the federal poverty level are eligible for
185 premium subsidies in the Utah Premium Partnership for Health Insurance program.

186 (3) For fiscal year 2021-22, the department shall seek authority to increase the
187 maximum premium subsidy per month for adults under the Utah Premium Partnership for
188 Health Insurance program to \$300.

189 (4) Beginning with fiscal year 2021-22, and in each subsequent year, the department
190 may increase premium subsidies for single adults and parents who have an offer of
191 employer-sponsored insurance to keep pace with the increase in insurance premium costs
192 subject to appropriation of additional funding.

193 Section 5. Section **26-18-3.9** is amended to read:

194 **26-18-3.9. Expanding the Medicaid program.**

195 (1) As used in this section:

196 (a) "CMS" means the Centers for Medicare and Medicaid Services in the United States
197 Department of Health and Human Services.

198 (b) "Federal poverty level" means the same as that term is defined in Section
199 [26-18-411](#).

200 (c) "Medicaid expansion" means an expansion of the Medicaid program in accordance
201 with this section.

202 (d) "Medicaid Expansion Fund" means the Medicaid Expansion Fund created in
203 Section [26-36b-208](#).

204 (2) (a) As set forth in Subsections (2) through (5), eligibility criteria for the Medicaid
205 program shall be expanded to cover additional low-income individuals.

206 (b) The department shall continue to seek approval from CMS to implement the
207 Medicaid waiver expansion as defined in Section [26-18-415](#).

208 (c) The department may implement any provision described in Subsections
209 [26-18-415\(2\)\(b\)\(iii\)](#) through (viii) in a Medicaid expansion if the department receives approval
210 from CMS to implement that provision.

211 (3) The department shall expand the Medicaid program in accordance with this

212 Subsection (3) if the department:

213 (a) receives approval from CMS to:

214 (i) expand Medicaid coverage to eligible individuals whose income is below 95% of
215 the federal poverty level;

216 (ii) obtain maximum federal financial participation under 42 U.S.C. Sec. 1396d(b) for
217 enrolling an individual in the Medicaid expansion under this Subsection (3); and

218 (iii) permit the state to close enrollment in the Medicaid expansion under this
219 Subsection (3) if the department has insufficient funds to provide services to new enrollment
220 under the Medicaid expansion under this Subsection (3);

221 (b) pays the state portion of costs for the Medicaid expansion under this Subsection (3)
222 with funds from:

223 (i) the Medicaid Expansion Fund;

224 (ii) county contributions to the nonfederal share of Medicaid expenditures; or

225 (iii) any other contributions, funds, or transfers from a nonstate agency for Medicaid
226 expenditures; and

227 (c) closes the Medicaid program to new enrollment under the Medicaid expansion
228 under this Subsection (3) if the department projects that the cost of the Medicaid expansion
229 under this Subsection (3) will exceed the appropriations for the fiscal year that are authorized
230 by the Legislature through an appropriations act adopted in accordance with Title 63J, Chapter
231 1, Budgetary Procedures Act.

232 (4) (a) The department shall expand the Medicaid program in accordance with this
233 Subsection (4) if the department:

234 (i) receives approval from CMS to:

235 (A) expand Medicaid coverage to eligible individuals whose income is below 95% of
236 the federal poverty level;

237 (B) obtain maximum federal financial participation under 42 U.S.C. Sec. 1396d(y) for
238 enrolling an individual in the Medicaid expansion under this Subsection (4); and

239 (C) permit the state to close enrollment in the Medicaid expansion under this
240 Subsection (4) if the department has insufficient funds to provide services to new enrollment
241 under the Medicaid expansion under this Subsection (4);

242 (ii) pays the state portion of costs for the Medicaid expansion under this Subsection (4)

243 with funds from:

244 (A) the Medicaid Expansion Fund;

245 (B) county contributions to the nonfederal share of Medicaid expenditures; or

246 (C) any other contributions, funds, or transfers from a nonstate agency for Medicaid

247 expenditures; and

248 (iii) closes the Medicaid program to new enrollment under the Medicaid expansion
249 under this Subsection (4) if the department projects that the cost of the Medicaid expansion
250 under this Subsection (4) will exceed the appropriations for the fiscal year that are authorized
251 by the Legislature through an appropriations act adopted in accordance with Title 63J, Chapter
252 1, Budgetary Procedures Act.

253 (b) The department shall submit a waiver, an amendment to an existing waiver, or a
254 state plan amendment to CMS to:

255 (i) administer federal funds for the Medicaid expansion under this Subsection (4)
256 according to a per capita cap developed by the department that includes an annual inflationary
257 adjustment, accounts for differences in cost among categories of Medicaid expansion enrollees,
258 and provides greater flexibility to the state than the current Medicaid payment model;

259 (ii) limit, in certain circumstances as defined by the department, the ability of a
260 qualified entity to determine presumptive eligibility for Medicaid coverage for an individual
261 enrolled in a Medicaid expansion under this Subsection (4);

262 (iii) impose a lock-out period if an individual enrolled in a Medicaid expansion under
263 this Subsection (4) violates certain program requirements as defined by the department;

264 (iv) allow an individual enrolled in a Medicaid expansion under this Subsection (4) to
265 remain in the Medicaid program for up to a 12-month certification period as defined by the
266 department; and

267 (v) allow federal Medicaid funds to be used for housing support for eligible enrollees
268 in the Medicaid expansion under this Subsection (4).

269 (5) (a) (i) If CMS does not approve a waiver to expand the Medicaid program in
270 accordance with Subsection (4)(a) on or before January 1, 2020, the department shall develop
271 proposals to implement additional flexibilities and cost controls, including cost sharing tools,
272 within a Medicaid expansion under this Subsection (5) through a request to CMS for a waiver
273 or state plan amendment.

274 (ii) The request for a waiver or state plan amendment described in Subsection (5)(a)(i)
275 shall include:

276 (A) a path to self-sufficiency for qualified adults in the Medicaid expansion that
277 includes employment and training as defined in 7 U.S.C. Sec. 2015(d)(4); and

278 (B) a requirement that an individual who is offered a private health benefit plan by an
279 employer to enroll in the employer's health plan.

280 (iii) The department shall submit the request for a waiver or state plan amendment
281 developed under Subsection (5)(a)(i) on or before March 15, 2020.

282 (b) Notwithstanding Sections 26-18-18 and 63J-5-204, and in accordance with this
283 Subsection (5), eligibility for the Medicaid program shall be expanded to include all persons in
284 the optional Medicaid expansion population under the Patient Protection and Affordable Care
285 Act, Pub. L. No. 111-148 and the Health Care Education Reconciliation Act of 2010, Pub. L.
286 No. 111-152, and related federal regulations and guidance, on the earlier of:

287 (i) the day on which CMS approves a waiver to implement the provisions described in
288 Subsections (5)(a)(ii)(A) and (B); or

289 (ii) July 1, 2020.

290 (c) The department shall seek a waiver, or an amendment to an existing waiver, from
291 federal law to:

292 (i) implement each provision described in Subsections 26-18-415(2)(b)(iii) through
293 (viii) in a Medicaid expansion under this Subsection (5);

294 (ii) limit, in certain circumstances as defined by the department, the ability of a
295 qualified entity to determine presumptive eligibility for Medicaid coverage for an individual
296 enrolled in a Medicaid expansion under this Subsection (5); and

297 (iii) impose a lock-out period if an individual enrolled in a Medicaid expansion under
298 this Subsection (5) violates certain program requirements as defined by the department.

299 (d) The eligibility criteria in this Subsection (5) shall be construed to include all
300 individuals eligible for the health coverage improvement program under Section 26-18-411.

301 (e) The department shall pay the state portion of costs for a Medicaid expansion under
302 this Subsection (5) entirely from:

303 (i) the Medicaid Expansion Fund;

304 (ii) county contributions to the nonfederal share of Medicaid expenditures; or

305 (iii) any other contributions, funds, or transfers from a nonstate agency for Medicaid
306 expenditures.

307 (f) If the costs of the Medicaid expansion under this Subsection (5) exceed the funds
308 available under Subsection (5)(e):

309 (i) the department may reduce or eliminate optional Medicaid services under this
310 chapter; and

311 (ii) savings, as determined by the department, from the reduction or elimination of
312 optional Medicaid services under Subsection (5)(f)(i) shall be deposited into the Medicaid
313 Expansion Fund; and

314 (iii) the department may submit to CMS a request for waivers, or an amendment of
315 existing waivers, from federal law necessary to implement budget controls within the Medicaid
316 program to address the deficiency.

317 (g) If the costs of the Medicaid expansion under this Subsection (5) are projected by
318 the department to exceed the funds available in the current fiscal year under Subsection (5)(e),
319 including savings resulting from any action taken under Subsection (5)(f):

320 (i) the governor shall direct the Department of Health, Department of Human Services,
321 and Department of Workforce Services to reduce commitments and expenditures by an amount
322 sufficient to offset the deficiency:

323 (A) proportionate to the share of total current fiscal year General Fund appropriations
324 for each of those agencies; and

325 (B) up to 10% of each agency's total current fiscal year General Fund appropriations;
326 [and]

327 (ii) the Division of Finance shall reduce allotments to the Department of Health,
328 Department of Human Services, and Department of Workforce Services by a percentage:

329 (A) proportionate to the amount of the deficiency; and

330 (B) up to 10% of each agency's total current fiscal year General Fund appropriations;
331 [and]

332 (iii) the Division of Finance shall deposit the total amount from the reduced allotments
333 described in Subsection (5)(g)(ii) into the Medicaid Expansion Fund.

334 (6) The department shall maximize federal financial participation in implementing this
335 section, including by seeking to obtain any necessary federal approvals or waivers.

336 (7) Notwithstanding Sections 17-43-201 and 17-43-301, a county does not have to
337 provide matching funds to the state for the cost of providing Medicaid services to newly
338 enrolled individuals who qualify for Medicaid coverage under a Medicaid expansion.

339 (8) The department shall report to the Social Services Appropriations Subcommittee on
340 or before November 1 of each year that a Medicaid expansion is operational:

341 (a) the number of individuals who enrolled in the Medicaid expansion;

342 (b) costs to the state for the Medicaid expansion;

343 (c) estimated costs to the state for the Medicaid expansion for the current and
344 following fiscal years; ~~and~~

345 (d) recommendations to control costs of the Medicaid expansion~~[-]; and~~

346 (e) as calculated in accordance with Subsections 26-36b-204(4) and 26-36c-204(2), the
347 state's net cost of the qualified Medicaid expansion.

348 Section 6. Section 26-18-5 is amended to read:

349 **26-18-5. Contracts for provision of medical services -- Federal provisions**
350 **modifying department rules -- Compliance with Social Security Act.**

351 (1) The department may contract with other public or private agencies to purchase or
352 provide medical services in connection with the programs of the division. Where these
353 programs are used by other ~~[state agencies]~~ government entities, contracts shall provide that
354 other ~~[state agencies]~~ government entities, in compliance with state and federal law regarding
355 intergovernmental transfers, transfer the state matching funds to the department in amounts
356 sufficient to satisfy needs of the specified program.

357 (2) Contract terms shall include provisions for maintenance, administration, and
358 service costs.

359 (3) If a federal legislative or executive provision requires modifications or revisions in
360 an eligibility factor established under this chapter as a condition for participation in medical
361 assistance, the department may modify or change its rules as necessary to qualify for
362 participation.

363 (4) The provisions of this section do not apply to department rules governing abortion.

364 (5) The department shall comply with all pertinent requirements of the Social Security
365 Act and all orders, rules, and regulations adopted thereunder when required as a condition of
366 participation in benefits under the Social Security Act.

367 Section 7. Section **26-18-8** is amended to read:

368 **26-18-8. Enforcement of public assistance statutes.**

369 (1) The department shall enforce or contract for the enforcement of Sections
370 [35A-1-503](#), [35A-3-108](#), [35A-3-110](#), [35A-3-111](#), [35A-3-112](#), and [35A-3-603](#) [~~insofar as~~] to the
371 extent that these sections pertain to benefits conferred or administered by the division under
372 this chapter, to the extent allowed under federal law or regulation.

373 (2) The department may contract for services covered in Section [35A-3-111](#) insofar as
374 that section pertains to benefits conferred or administered by the division under this chapter.

375 Section 8. Section **26-18-103** is amended to read:

376 **26-18-103. DUR Board -- Responsibilities.**

377 The board shall:

378 (1) develop rules necessary to carry out its responsibilities as defined in this part;

379 (2) oversee the implementation of a Medicaid retrospective and prospective DUR
380 program in accordance with this part, including responsibility for approving provisions of
381 contractual agreements between the Medicaid program and any other entity that will process
382 and review Medicaid drug claims and profiles for the DUR program in accordance with this
383 part;

384 (3) develop and apply predetermined criteria and standards to be used in retrospective
385 and prospective DUR, ensuring that the criteria and standards are based on the compendia, and
386 that they are developed with professional input, in a consensus fashion, with provisions for
387 timely revision and assessment as necessary. The DUR standards developed by the board shall
388 reflect the local practices of physicians in order to monitor:

389 (a) therapeutic appropriateness;

390 (b) overutilization or underutilization;

391 (c) therapeutic duplication;

392 (d) drug-disease contraindications;

393 (e) drug-drug interactions;

394 (f) incorrect drug dosage or duration of drug treatment; and

395 (g) clinical abuse and misuse;

396 (4) develop, select, apply, and assess interventions and remedial strategies for

397 physicians, pharmacists, and recipients that are educational and not punitive in nature, in order

398 to improve the quality of care;

399 (5) disseminate information to physicians and pharmacists to ensure that they are aware
400 of the board's duties and powers;

401 (6) provide written, oral, or electronic reminders of patient-specific or drug-specific
402 information, designed to ensure recipient, physician, and pharmacist confidentiality, and
403 suggest changes in prescribing or dispensing practices designed to improve the quality of care;

404 (7) utilize face-to-face discussions between experts in drug therapy and the prescriber
405 or pharmacist who has been targeted for educational intervention;

406 (8) conduct intensified reviews or monitoring of selected prescribers or pharmacists;

407 (9) create an educational program using data provided through DUR to provide active
408 and ongoing educational outreach programs to improve prescribing and dispensing practices,
409 either directly or by contract with other governmental or private entities;

410 (10) provide a timely evaluation of intervention to determine if those interventions
411 have improved the quality of care;

412 ~~[(11) publish an annual report, subject to public comment prior to its issuance, and~~
413 ~~submit that report to the United States Department of Health and Human Services by~~
414 ~~December 1 of each year. That report shall also be submitted to the executive director, the~~
415 ~~president of the Utah Pharmaceutical Association, and the president of the Utah Medical~~
416 ~~Association by December 1 of each year. The report shall include:]~~

417 ~~[(a) an overview of the activities of the board and the DUR program;]~~

418 ~~[(b) a description of interventions used and their effectiveness, specifying whether the~~
419 ~~intervention was a result of underutilization or overutilization of drugs, without disclosing the~~
420 ~~identities of individual physicians, pharmacists, or recipients;]~~

421 ~~[(c) the costs of administering the DUR program;]~~

422 ~~[(d) any fiscal savings resulting from the DUR program;]~~

423 ~~[(e) an overview of the fiscal impact of the DUR program to other areas of the~~
424 ~~Medicaid program such as hospitalization or long-term care costs;]~~

425 ~~[(f) a quantifiable assessment of whether DUR has improved the recipient's quality of~~
426 ~~care;]~~

427 ~~[(g) a review of the total number of prescriptions, by drug therapeutic class;]~~

428 ~~[(h) an assessment of the impact of educational programs or interventions on~~

429 ~~prescribing or dispensing practices; and]~~

430 ~~[(i) recommendations for DUR program improvement;]~~

431 (11) publish the annual Drug Utilization Review report required under 42 C.F.R. Sec.
432 712;

433 (12) develop a working agreement with related boards or agencies, including the State
434 Board of Pharmacy, Physicians' Licensing Board, and SURS staff within the division, in order
435 to clarify areas of responsibility for each, where those areas may overlap;

436 (13) establish a grievance process for physicians and pharmacists under this part, in
437 accordance with Title 63G, Chapter 4, Administrative Procedures Act;

438 (14) publish and disseminate educational information to physicians and pharmacists
439 concerning the board and the DUR program, including information regarding:

440 (a) identification and reduction of the frequency of patterns of fraud, abuse, gross
441 overuse, inappropriate, or medically unnecessary care among physicians, pharmacists, and
442 recipients;

443 (b) potential or actual severe or adverse reactions to drugs;

444 (c) therapeutic appropriateness;

445 (d) overutilization or underutilization;

446 (e) appropriate use of generics;

447 (f) therapeutic duplication;

448 (g) drug-disease contraindications;

449 (h) drug-drug interactions;

450 (i) incorrect drug dosage and duration of drug treatment;

451 (j) drug allergy interactions; and

452 (k) clinical abuse and misuse;

453 (15) develop and publish, with the input of the State Board of Pharmacy, guidelines
454 and standards to be used by pharmacists in counseling Medicaid recipients in accordance with
455 this part. The guidelines shall ensure that the recipient may refuse counseling and that the
456 refusal is to be documented by the pharmacist. Items to be discussed as part of that counseling
457 include:

458 (a) the name and description of the medication;

459 (b) administration, form, and duration of therapy;

- 460 (c) special directions and precautions for use;
- 461 (d) common severe side effects or interactions, and therapeutic interactions, and how to
- 462 avoid those occurrences;
- 463 (e) techniques for self-monitoring drug therapy;
- 464 (f) proper storage;
- 465 (g) prescription refill information; and
- 466 (h) action to be taken in the event of a missed dose; and

467 (16) establish procedures in cooperation with the State Board of Pharmacy for

468 pharmacists to record information to be collected under this part. The recorded information

469 shall include:

- 470 (a) the name, address, age, and gender of the recipient;
- 471 (b) individual history of the recipient where significant, including disease state, known
- 472 allergies and drug reactions, and a comprehensive list of medications and relevant devices;
- 473 (c) the pharmacist's comments on the individual's drug therapy;
- 474 (d) name of prescriber; and
- 475 (e) name of drug, dose, duration of therapy, and directions for use.

476 Section 9. Section **26-18-408** is amended to read:

477 **26-18-408. Incentives to appropriately use emergency department services.**

478 (1) (a) This section applies to the Medicaid program and to the Utah Children's Health

479 Insurance Program created in Chapter 40, Utah Children's Health Insurance Act.

480 (b) ~~[For purposes of]~~ As used in this section:

481 (i) ~~["Accountable"]~~ "Managed care organization" means a ~~[Medicaid or Children's~~

482 ~~Health Insurance Program administrator]~~ comprehensive full risk managed care delivery

483 system that contracts with the Medicaid program or the Children's Health Insurance Program to

484 deliver health care through ~~[an accountable]~~ a managed care plan.

485 (ii) ~~["Accountable"]~~ "Managed care plan" means a ~~[risk-based]~~ risk-based delivery

486 service model authorized by Section [26-18-405](#) and administered by ~~[an accountable]~~ a

487 managed care organization.

488 (iii) ~~["Nonemergent"]~~ "Non-emergent care":

489 (A) means use of the emergency department to receive health care that is

490 ~~[nonemergent]~~ non-emergent as defined by the department by administrative rule adopted in

491 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and the
492 Emergency Medical Treatment and Active Labor Act; and

493 (B) does not mean the medical services provided to [~~a recipient~~] an individual required
494 by the Emergency Medical Treatment and Active Labor Act, including services to conduct a
495 medical screening examination to determine if the recipient has an emergent or [~~nonemergent~~]
496 non-emergent condition.

497 (iv) "Professional compensation" means payment made for services rendered to a
498 Medicaid recipient by an individual licensed to provide health care services.

499 (v) "Super-utilizer" means a Medicaid recipient who has been identified by the
500 recipient's [~~accountable~~] managed care organization as a person who uses the emergency
501 department excessively, as defined by the [~~accountable~~] managed care organization.

502 (2) (a) [~~An accountable~~] A managed care organization may, in accordance with
503 Subsections (2)(b) and (c):

504 (i) audit emergency department services provided to a recipient enrolled in the
505 [~~accountable~~] managed care plan to determine if [~~nonemergent~~] non-emergent care was
506 provided to the recipient; and

507 (ii) establish differential payment for emergent and [~~nonemergent~~] non-emergent care
508 provided in an emergency department.

509 (b) (i) The differential payments under Subsection (2)(a)(ii) do not apply to
510 professional compensation for services rendered in an emergency department.

511 (ii) Except in cases of suspected fraud, waste, and abuse, [~~an accountable~~] managed
512 care organization's audit of payment under Subsection (2)(a)(i) is limited to the 18-month
513 period of time after the date on which the medical services were provided to the recipient. If
514 fraud, waste, or abuse is alleged, the [~~accountable~~] managed care organization's audit of
515 payment under Subsection (2)(a)(i) is limited to three years after the date on which the medical
516 services were provided to the recipient.

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

519 (3) [~~An accountable~~] A managed care organization shall:

520 (a) use the savings under Subsection (2) to maintain and improve access to primary
521 care and urgent care services for all [~~of the~~] Medicaid or CHIP recipients enrolled in the

522 ~~[accountable]~~ managed care plan;

523 (b) provide viable alternatives for increasing primary care provider reimbursement
524 rates to incentivize after hours primary care access for recipients; and

525 (c) report to the department on how the ~~[accountable]~~ managed care organization
526 complied with this Subsection (3).

527 (4) The department ~~[shall]~~ may:

528 (a) through administrative rule adopted by the department, develop quality
529 measurements that evaluate ~~[an accountable]~~ a managed care organization's delivery of:

530 (i) appropriate emergency department services to recipients enrolled in the
531 ~~[accountable]~~ managed care plan;

532 (ii) expanded primary care and urgent care for recipients enrolled in the ~~[accountable]~~
533 managed care plan, with consideration of the ~~[accountable]~~ managed care organization's:

534 (A) delivery of primary care, urgent care, and after hours care through means other than
535 the emergency department;

536 (B) recipient access to primary care providers and community health centers including
537 evening and weekend access; and

538 (C) other innovations for expanding access to primary care; and

539 (iii) quality of care for the ~~[accountable]~~ managed care plan members;

540 (b) compare the quality measures developed under Subsection (4)(a) for each
541 ~~[accountable care organization and share the data and quality measures developed under~~
542 ~~Subsection (4)(a) with the Health Data Committee created in Chapter 33a, Utah Health Data~~
543 ~~Authority Act;]~~ managed care organization; and

544 ~~[(c) apply for a Medicaid waiver and a Children's Health Insurance Program waiver~~
545 ~~with CMS, to:]~~

546 ~~[(i) allow the program to charge recipients who are enrolled in an accountable care plan~~
547 ~~a higher copayment for emergency department services; and]~~

548 ~~[(ii)]~~ (c) develop, by administrative rule, an algorithm to determine assignment of new,
549 unassigned recipients to specific ~~[accountable]~~ managed care plans based on the plan's
550 performance in relation to the quality measures developed pursuant to Subsection (4)(a)~~]; and].~~

551 ~~[(d) before July 1, 2015, convene representatives from the accountable care~~
552 ~~organizations, pre-paid mental health plans, an organization representing hospitals, an~~

553 organization representing physicians, and a county mental health and substance abuse authority
 554 to discuss alternatives to emergency department care, including:]

555 [(i) creating increased access to primary care services;]

556 [(ii) alternative care settings for super-utilizers and individuals with behavioral health
 557 or substance abuse issues;]

558 [(iii) primary care medical and health homes that can be created and supported through
 559 enhanced federal match rates, a state plan amendment for integrated care models, or other
 560 Medicaid waivers;]

561 [(iv) case management programs that can:]

562 [(A) schedule prompt visits with primary care providers within 72 to 96 hours of an
 563 emergency department visit;]

564 [(B) help super-utilizers with behavioral health or substance abuse issues to obtain care
 565 in appropriate care settings; and]

566 [(C) assist with transportation to primary care visits if transportation is a barrier to
 567 appropriate care for the recipient; and]

568 [(v) sharing of medical records between health care providers and emergency
 569 departments for Medicaid recipients.]

570 [(5) The Health Data Committee may publish data in accordance with Chapter 33a,
 571 Utah Health Data Authority Act, which compares the quality measures for the accountable care
 572 plans.]

573 Section 10. Section **26-18-411** is amended to read:

574 **26-18-411. Health coverage improvement program -- Eligibility -- Annual report**
 575 **-- Expansion of eligibility for adults with dependent children.**

576 (1) For purposes of this section:

577 (a) "Adult in the expansion population" means an individual who:

578 (i) is described in 42 U.S.C. Sec. 1396a(a)(10)(A)(i)(VIII); and

579 (ii) is not otherwise eligible for Medicaid as a mandatory categorically needy
 580 individual.

581 (b) "Enhancement waiver program" means the Primary Care Network enhancement
 582 waiver program described in Section [26-18-416](#).

583 (c) "Federal poverty level" means the poverty guidelines established by the Secretary of

584 the United States Department of Health and Human Services under 42 U.S.C. Sec. 9909(2).

585 (d) "Health coverage improvement program" means the health coverage improvement
586 program described in Subsections (3) through (10).

587 (e) "Homeless":

588 (i) means an individual who is chronically homeless, as determined by the department;
589 and

590 (ii) includes someone who was chronically homeless and is currently living in
591 supported housing for the chronically homeless.

592 (f) "Income eligibility ceiling" means the percent of federal poverty level:

593 (i) established by the state in an appropriations act adopted pursuant to Title 63J,
594 Chapter 1, Budgetary Procedures Act; and

595 (ii) under which an individual may qualify for Medicaid coverage in accordance with
596 this section.

597 (2) Beginning July 1, 2016, the department shall amend the state Medicaid plan to
598 allow temporary residential treatment for substance abuse, for the traditional Medicaid
599 population, in a short term, non-institutional, 24-hour facility, without a bed capacity limit that
600 provides rehabilitation services that are medically necessary and in accordance with an
601 individualized treatment plan, as approved by CMS and as long as the county makes the
602 required match under Section 17-43-201.

603 (3) Beginning July 1, 2016, the department shall amend the state Medicaid plan to
604 increase the income eligibility ceiling to a percentage of the federal poverty level designated by
605 the department, based on appropriations for the program, for an individual with a dependent
606 child.

607 (4) Before July 1, 2016, the division shall submit to CMS a request for waivers, or an
608 amendment of existing waivers, from federal statutory and regulatory law necessary for the
609 state to implement the health coverage improvement program in the Medicaid program in
610 accordance with this section.

611 (5) (a) An adult in the expansion population is eligible for Medicaid if the adult meets
612 the income eligibility and other criteria established under Subsection (6).

613 (b) An adult who qualifies under Subsection (6) shall receive Medicaid coverage:

614 (i) through the traditional fee for service Medicaid model in counties without Medicaid

615 accountable care organizations or the state's Medicaid accountable care organization delivery
616 system, where implemented;

617 (ii) except as provided in Subsection (5)(b)(iii), for behavioral health, through the
618 counties in accordance with Sections 17-43-201 and 17-43-301;

619 (iii) that integrates behavioral health services and physical health services with
620 Medicaid accountable care organizations in select geographic areas of the state that choose an
621 integrated model; and

622 (iv) that permits temporary residential treatment for substance abuse in a short term,
623 non-institutional, 24-hour facility, without a bed capacity limit, as approved by CMS, that
624 provides rehabilitation services that are medically necessary and in accordance with an
625 individualized treatment plan.

626 (c) Medicaid accountable care organizations and counties that elect to integrate care
627 under Subsection (5)(b)(iii) shall collaborate on enrollment, engagement of patients, and
628 coordination of services.

629 (6) (a) An individual is eligible for the health coverage improvement program under
630 Subsection (5) if:

631 (i) at the time of enrollment, the individual's annual income is below the income
632 eligibility ceiling established by the state under Subsection (1)(f); and

633 (ii) the individual meets the eligibility criteria established by the department under
634 Subsection (6)(b).

635 (b) Based on available funding and approval from CMS, the department shall select the
636 criteria for an individual to qualify for the Medicaid program under Subsection (6)(a)(ii), based
637 on the following priority:

638 (i) a chronically homeless individual;

639 (ii) if funding is available, an individual:

640 (A) involved in the justice system through probation, parole, or court ordered
641 treatment; and

642 (B) in need of substance abuse treatment or mental health treatment, as determined by
643 the department; or

644 (iii) if funding is available, an individual in need of substance abuse treatment or
645 mental health treatment, as determined by the department.

646 (c) An individual who qualifies for Medicaid coverage under Subsections (6)(a) and (b)
647 may remain on the Medicaid program for a 12-month certification period as defined by the
648 department. Eligibility changes made by the department under Subsection (1)(f) or (6)(b) shall
649 not apply to an individual during the 12-month certification period.

650 (7) The state may request a modification of the income eligibility ceiling and other
651 eligibility criteria under Subsection (6) each fiscal year based on [~~enrollment in the health
652 coverage improvement program,~~] projected enrollment, costs to the state, and the state budget.

653 (8) Before September 30 of each year, the department shall report to the Health and
654 Human Services Interim Committee and to the Executive Appropriations Committee:

- 655 (a) the number of individuals who enrolled in Medicaid under Subsection (6);
 - 656 (b) the state cost of providing Medicaid to individuals enrolled under Subsection (6);
- 657 and

658 (c) recommendations for adjusting the income eligibility ceiling under Subsection (7),
659 and other eligibility criteria under Subsection (6), for the upcoming fiscal year.

660 (9) The current Medicaid program and the health coverage improvement program,
661 when implemented, shall coordinate with a state prison or county jail to expedite Medicaid
662 enrollment for an individual who is released from custody and was eligible for or enrolled in
663 Medicaid before incarceration.

664 (10) Notwithstanding Sections [17-43-201](#) and [17-43-301](#), a county does not have to
665 provide matching funds to the state for the cost of providing Medicaid services to newly
666 enrolled individuals who qualify for Medicaid coverage under the health coverage
667 improvement program under Subsection (6).

668 (11) If the enhancement waiver program is implemented, the department:

- 669 (a) may not accept any new enrollees into the health coverage improvement program
670 after the day on which the enhancement waiver program is implemented;
- 671 (b) shall transition all individuals who are enrolled in the health coverage improvement
672 program into the enhancement waiver program;
- 673 (c) shall suspend the health coverage improvement program within one year after the
674 day on which the enhancement waiver program is implemented;
- 675 (d) shall, within one year after the day on which the enhancement waiver program is
676 implemented, use all appropriations for the health coverage improvement program to

677 implement the enhancement waiver program; and

678 (e) shall work with CMS to maintain any waiver for the health coverage improvement
679 program while the health coverage improvement program is suspended under Subsection
680 (11)(c).

681 (12) If, after the enhancement waiver program takes effect, the enhancement waiver
682 program is repealed or suspended by either the state or federal government, the department
683 shall reinstate the health coverage improvement program and continue to accept new enrollees
684 into the health coverage improvement program in accordance with the provisions of this
685 section.

686 Section 11. Section **26-18-413** is amended to read:

687 **26-18-413. Medicaid waiver for delivery of adult dental services.**

688 (1) (a) Before June 30, 2016, the department shall ask CMS to grant waivers from
689 federal statutory and regulatory law necessary for the Medicaid program to provide dental
690 services in the manner described in Subsection (2)(a).

691 (b) Before June 30, 2018, the department shall submit to CMS a request for waivers, or
692 an amendment of existing waivers, from federal law necessary for the state to provide dental
693 services, in accordance with Subsections (2)(b)(i) and (d) through (g), to an individual
694 described in Subsection (2)(b)(i).

695 (c) Before June 30, 2019, the department shall submit to the Centers for Medicare and
696 Medicaid Services a request for waivers, or an amendment to existing waivers, from federal
697 law necessary for the state to:

698 (i) provide dental services, in accordance with Subsections (2)(b)(ii) and (d) through
699 (g) to an individual described in Subsection (2)(b)(ii); and

700 (ii) provide the services described in Subsection (2)(h).

701 (2) (a) To the extent funded, the department shall provide services to only blind or
702 disabled individuals, as defined in 42 U.S.C. Sec. 1382c(a)(1), who are 18 years old or older
703 and eligible for the program.

704 (b) Notwithstanding Subsection (2)(a):

705 (i) if a waiver is approved under Subsection (1)(b), the department shall provide dental
706 services to an individual who:

707 (A) qualifies for the health coverage improvement program described in Section

708 26-18-411; and

709 (B) is receiving treatment in a substance abuse treatment program, as defined in
710 Section 62A-2-101, licensed under Title 62A, Chapter 2, Licensure of Programs and Facilities;
711 and

712 (ii) if a waiver is approved under Subsection (1)(c)(i), the department shall provide
713 dental services to an individual who is an aged individual as defined in 42 U.S.C. Sec.
714 1382c(a)(1).

715 (c) To the extent possible, services to individuals described in Subsection (2)(a) shall
716 be provided through the University of Utah School of Dentistry and the University of Utah
717 School of Dentistry's associated statewide network.

718 (d) The department shall provide the services to individuals described in Subsection
719 (2)(b):

720 (i) by contracting with an entity that:

721 (A) has demonstrated experience working with individuals who are being treated for
722 both a substance use disorder and a major oral health disease;

723 (B) operates a program, targeted at the individuals described in Subsection (2)(b), that
724 has demonstrated, through a peer-reviewed evaluation, the effectiveness of providing dental
725 treatment to those individuals described in Subsection (2)(b);

726 (C) is willing to pay for an amount equal to the program's non-federal share of the cost
727 of providing dental services to the population described in Subsection (2)(b); and

728 (D) is willing to pay all state costs associated with applying for the waiver described in
729 Subsection (1)(b) and administering the program described in Subsection (2)(b); and

730 (ii) through a fee-for-service payment model.

731 (e) The entity that receives the contract under Subsection (2)(d)(i) shall cover all state
732 costs of the program described in Subsection (2)(b).

733 (f) Each fiscal year, the University of Utah School of Dentistry shall [~~transfer money~~],
734 in compliance with state and federal regulations regarding intergovernmental transfers, transfer
735 funds to the program in an amount equal to the program's non-federal share of the cost of
736 providing services under this section through the school during the fiscal year.

737 [~~(g) During each general session of the Legislature, the department shall report to the~~
738 ~~Social Services Appropriations Subcommittee whether the University of Utah School of~~

739 Dentistry will have sufficient funds to make the transfer required by Subsection (2)(f) for the
740 current fiscal year.]

741 ~~[(h)]~~ (g) If a waiver is approved under Subsection (1)(c)(ii), the department shall
742 provide coverage for porcelain and porcelain-to-metal crowns if the services are provided:

743 (i) to an individual who qualifies for dental services under Subsection (2)(b); and

744 (ii) by an entity that covers all state costs of:

745 (A) providing the coverage described in this Subsection (2)(h); and

746 (B) applying for the waiver described in Subsection (1)(c)~~[(h)]~~.

747 ~~[(i)]~~ (h) Where possible, the department shall ensure that services described in
748 Subsection (2)(a) that are not provided by the University of Utah School of Dentistry or the
749 University of Utah School of Dentistry's associated network are provided:

750 (i) through fee for service reimbursement until July 1, 2018; and

751 (ii) after July 1, 2018, through the method of reimbursement used by the division for
752 Medicaid dental benefits.

753 ~~[(j)]~~ (i) Subject to appropriations by the Legislature, and as determined by the
754 department, the scope, amount, duration, and frequency of services may be limited.

755 ~~[(3)]~~ The reporting requirements of Section ~~26-18-3~~ apply to the waivers requested
756 ~~under Subsection (1):]~~

757 ~~[(4)]~~ (3) (a) If the waivers requested under Subsection (1)(a) are granted, the Medicaid
758 program shall begin providing dental services in the manner described in Subsection (2) no
759 later than July 1, 2017.

760 (b) If the waivers requested under Subsection (1)(b) are granted, the Medicaid program
761 shall begin providing dental services to the population described in Subsection (2)(b) within 90
762 days from the day on which the waivers are granted.

763 (c) If the waivers requested under Subsection (1)(c)(i) are granted, the Medicaid
764 program shall begin providing dental services to the population described in Subsection
765 (2)(b)(ii) within 90 days after the day on which the waivers are granted.

766 ~~[(5)]~~ (4) If the federal share of the cost of providing dental services under this section
767 will be less than 65% during any portion of the next fiscal year, the Medicaid program shall
768 cease providing dental services under this section no later than the end of the current fiscal
769 year.

770 Section 12. Section **26-36b-204** is amended to read:

771 **26-36b-204. Hospital financing of health coverage improvement program**

772 **Medicaid waiver expansion -- Hospital share.**

773 (1) The hospital share is:

774 (a) 45% of the state's net cost of the health coverage improvement program, including
775 Medicaid coverage for individuals with dependent children up to the federal poverty level
776 designated under Section [26-18-411](#);

777 (b) 45% of the state's net cost of the enhancement waiver program;

778 (c) if the waiver for the Medicaid waiver expansion is approved, \$11,900,000; and

779 (d) 45% of the state's net cost of the upper payment limit gap.

780 (2) (a) The hospital share is capped at no more than \$13,600,000 annually, consisting
781 of:

782 (i) an \$11,900,000 cap for the programs specified in Subsections (1)(a) through (c);

783 and

784 (ii) a \$1,700,000 cap for the program specified in Subsection (1)(d).

785 (b) The department shall prorate the cap described in Subsection (2)(a) in any year in
786 which the programs specified in Subsections (1)(a) and (d) are not in effect for the full fiscal
787 year.

788 (3) Private hospitals shall be assessed under this chapter for:

789 (a) 69% of the portion of the hospital share for the programs specified in Subsections
790 (1)(a) through (c); and

791 (b) 100% of the portion of the hospital share specified in Subsection (1)(d).

792 (4) (a) [~~The department shall, on or before October 15, 2017, and on or before October~~
793 ~~15 of each subsequent year, produce a report that calculates~~] In the report described in
794 Subsection [26-18-3.9\(8\)](#), the department shall calculate the state's net cost of each of the
795 programs described in Subsections (1)(a) through (c) that are in effect for that year.

796 (b) If the assessment collected in the previous fiscal year is above or below the hospital
797 share for private hospitals for the previous fiscal year, the underpayment or overpayment of the
798 assessment by the private hospitals shall be applied to the fiscal year in which the report is
799 issued.

800 (5) A Medicaid accountable care organization shall, on or before October 15 of each

801 year, report to the department the following data from the prior state fiscal year for each private
802 hospital, state teaching hospital, and non-state government hospital provider that the Medicaid
803 accountable care organization contracts with:

804 (a) for the traditional Medicaid population:

805 (i) hospital inpatient payments;

806 (ii) hospital inpatient discharges;

807 (iii) hospital inpatient days; and

808 (iv) hospital outpatient payments; and

809 (b) if the Medicaid accountable care organization enrolls any individuals in the health
810 coverage improvement program, the enhancement waiver program, or the Medicaid waiver
811 expansion, for the population newly eligible for any of those programs:

812 (i) hospital inpatient payments;

813 (ii) hospital inpatient discharges;

814 (iii) hospital inpatient days; and

815 (iv) hospital outpatient payments.

816 (6) The department shall, by rule made in accordance with Title 63G, Chapter 3, Utah
817 Administrative Rulemaking Act, provide details surrounding specific content and format for
818 the reporting by the Medicaid accountable care organization.

819 Section 13. Section **26-36b-205** is amended to read:

820 **26-36b-205. Calculation of assessment.**

821 (1) (a) Except as provided in Subsection (1)(b), an annual assessment is payable on a
822 quarterly basis for each private hospital in an amount calculated by the division at a uniform
823 assessment rate for each hospital discharge, in accordance with this section.

824 (b) A private teaching hospital with more than 425 beds and 60 residents shall pay an
825 assessment rate 2.5 times the uniform rate established under Subsection (1)(c).

826 (c) The division shall calculate the uniform assessment rate described in Subsection
827 (1)(a) by dividing the hospital share for assessed private hospitals, described in [~~Subsection~~
828 ~~26-36b-204(1)~~] Subsections 26-36b-204(1) and 26-36b-204(3), by the sum of:

829 (i) the total number of discharges for assessed private hospitals that are not a private
830 teaching hospital; and

831 (ii) 2.5 times the number of discharges for a private teaching hospital, described in

832 Subsection (1)(b).

833 (d) The division may, by rule made in accordance with Title 63G, Chapter 3, Utah
834 Administrative Rulemaking Act, adjust the formula described in Subsection (1)(c) to address
835 unforeseen circumstances in the administration of the assessment under this chapter.

836 (e) Any quarterly changes to the uniform assessment rate shall be applied uniformly to
837 all assessed private hospitals.

838 (2) Except as provided in Subsection (3), for each state fiscal year, the division shall
839 determine a hospital's discharges as follows:

840 (a) for state fiscal year 2017, the hospital's cost report data for the hospital's fiscal year
841 ending between July 1, 2013, and June 30, 2014; and

842 (b) for each subsequent state fiscal year, the hospital's cost report data for the hospital's
843 fiscal year that ended in the state fiscal year two years before the assessment fiscal year.

844 (3) (a) If a hospital's fiscal year Medicare cost report is not contained in the CMS
845 Healthcare Cost Report Information System file:

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

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

849 (b) If a hospital is not certified by the Medicare program and is not required to file a
850 Medicare cost report:

851 (i) the hospital shall submit to the division the hospital's applicable fiscal year
852 discharges with supporting documentation;

853 (ii) the division shall determine the hospital's discharges from the information
854 submitted under Subsection (3)(b)(i); and

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

857 (4) Except as provided in Subsection (5), if a hospital is owned by an organization that
858 owns more than one hospital in the state:

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

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

862 (5) If multiple hospitals use the same Medicaid provider number:

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

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

866 Section 14. Section **26-36c-204** is amended to read:

867 **26-36c-204. Hospital financing.**

868 (1) Private hospitals shall be assessed under this chapter for the portion of the hospital
869 share described in Section [26-36c-209](#).

870 (2) [~~The department shall, on or before October 15, 2020, and on or before October 15~~
871 ~~of each subsequent year, produce a report that calculates~~] In the report described in Subsection
872 [26-18-3.9\(8\)](#), the department shall calculate the state's net cost of the qualified Medicaid
873 expansion.

874 (3) If the assessment collected in the previous fiscal year is above or below the hospital
875 share for private hospitals for the previous fiscal year, the division shall apply the
876 underpayment or overpayment of the assessment by the private hospitals to the fiscal year in
877 which the report is issued.

878 Section 15. Section **26-40-106** is amended to read:

879 **26-40-106. Program benefits.**

880 (1) Except as provided in Subsection (3), medical and dental program benefits shall be
881 benchmarked, in accordance with 42 U.S.C. Sec. 1397cc, as follows:

882 (a) medical program benefits, including behavioral health care benefits, shall be
883 benchmarked [~~on~~] effective July 1, 2019, and on July 1 every third year thereafter, to:

884 (i) be substantially equal to a health benefit plan with the largest insured commercial
885 enrollment offered by a health maintenance organization in the state; and

886 (ii) comply with the Mental Health Parity and Addiction Equity Act, Pub. L. No.
887 110-343; and

888 (b) dental program benefits shall be benchmarked [~~on~~] effective July 1, 2019, and on
889 July 1 every third year thereafter in accordance with the Children's Health Insurance Program
890 Reauthorization Act of 2009, to be substantially equal to a dental benefit plan that has the
891 largest insured, commercial, non-Medicaid enrollment of covered lives that is offered in the
892 state, except that the utilization review mechanism for orthodontia shall be based on medical
893 necessity.

894 (2) On or before [~~January 31~~] July 1 of each year, the department shall publish the
895 benchmark for dental program benefits established under Subsection (1)(b).

896 (3) The program benefits for enrollees who are at or below 100% of the federal poverty
897 level are exempt from the benchmark requirements of Subsections (1) and (2).

898 Section 16. Section **62A-2-120** is amended to read:

899 **62A-2-120. Background check -- Direct access to children or vulnerable adults.**

900 (1) As used in this section:

901 (a) (i) "Applicant" means:

902 (A) the same as that term is defined in Section [62A-2-101](#);

903 (B) an individual who is associated with a licensee and has or will likely have direct
904 access to a child or a vulnerable adult;

905 (C) an individual who provides respite care to a foster parent or an adoptive parent on
906 more than one occasion;

907 (D) a department contractor;

908 (E) a guardian submitting an application on behalf of an individual, other than the child
909 or vulnerable adult who is receiving the service, if the individual is 12 years of age or older and
910 resides in a home, that is licensed or certified by the office, with the child or vulnerable adult
911 who is receiving services; or

912 (F) a guardian submitting an application on behalf of an individual, other than the child
913 or vulnerable adult who is receiving the service, if the individual is 12 years of age or older and
914 is a person described in Subsection (1)(a)(i)(A), (B), (C), or (D).

915 (ii) "Applicant" does not mean an individual, including an adult, who is in the custody
916 of the Division of Child and Family Services or the Division of Juvenile Justice Services.

917 (b) "Application" means a background screening application to the office.

918 (c) "Bureau" means the Bureau of Criminal Identification within the Department of
919 Public Safety, created in Section [53-10-201](#).

920 (d) "Incidental care" means occasional care, not in excess of five hours per week and
921 never overnight, for a foster child.

922 (e) "Personal identifying information" means:

923 (i) current name, former names, nicknames, and aliases;

924 (ii) date of birth;

- 925 (iii) physical address and email address;
- 926 (iv) telephone number;
- 927 (v) driver license or other government-issued identification;
- 928 (vi) social security number;
- 929 (vii) only for applicants who are 18 years of age or older, fingerprints, in a form
930 specified by the office; and
- 931 (viii) other information specified by the office by rule made in accordance with Title
932 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 933 (2) (a) Except as provided in Subsection (13), an applicant or a representative shall
934 submit the following to the office:
- 935 (i) personal identifying information;
- 936 (ii) a fee established by the office under Section 63J-1-504; and
- 937 (iii) a disclosure form, specified by the office, for consent for:
- 938 (A) an initial background check upon submission of the information described under
939 this Subsection (2)(a);
- 940 ~~[(B) a background check at the applicant's annual renewal;]~~
- 941 (B) ongoing monitoring of fingerprints and registries until no longer associated with a
942 licensee for 90 days;
- 943 (C) a background check when the office determines that reasonable cause exists; and
- 944 (D) retention of personal identifying information, including fingerprints, for
945 monitoring and notification as described in Subsections (3)(d) and (4).
- 946 (b) In addition to the requirements described in Subsection (2)(a), if an applicant [~~spent~~
947 ~~time~~] resided outside of the United States and its territories during the five years immediately
948 preceding the day on which the information described in Subsection (2)(a) is submitted to the
949 office, the office may require the applicant to submit documentation establishing whether the
950 applicant was convicted of a crime during the time that the applicant [~~spent~~] resided outside of
951 the United States or its territories.
- 952 (3) The office:
- 953 (a) shall perform the following duties as part of a background check of an applicant:
- 954 (i) check state and regional criminal background databases for the applicant's criminal
955 history by:

- 956 (A) submitting personal identifying information to the bureau for a search; or
- 957 (B) using the applicant's personal identifying information to search state and regional
- 958 criminal background databases as authorized under Section 53-10-108;
- 959 (ii) submit the applicant's personal identifying information and fingerprints to the
- 960 bureau for a criminal history search of applicable national criminal background databases;
- 961 (iii) search the Department of Human Services, Division of Child and Family Services'
- 962 Licensing Information System described in Section 62A-4a-1006;
- 963 (iv) search the Department of Human Services, Division of Aging and Adult Services'
- 964 vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1;
- 965 (v) search the juvenile court records for substantiated findings of severe child abuse or
- 966 neglect described in Section 78A-6-323; and
- 967 (vi) search the juvenile court arrest, adjudication, and disposition records, as provided
- 968 under Section 78A-6-209;
- 969 (b) shall conduct a background check of an applicant for an initial background check
- 970 upon submission of the information described under Subsection (2)(a);
- 971 (c) may conduct all or portions of a background check of an applicant, as provided by
- 972 rule, made by the office in accordance with Title 63G, Chapter 3, Utah Administrative
- 973 Rulemaking Act:
- 974 (i) for an annual renewal; or
- 975 (ii) when the office determines that reasonable cause exists;
- 976 (d) may submit an applicant's personal identifying information, including fingerprints,
- 977 to the bureau for checking, retaining, and monitoring of state and national criminal background
- 978 databases and for notifying the office of new criminal activity associated with the applicant;
- 979 (e) shall track the status of an approved applicant under this section to ensure that an
- 980 approved applicant is not required to duplicate the submission of the applicant's fingerprints if
- 981 the applicant applies for:
- 982 (i) more than one license;
- 983 (ii) direct access to a child or a vulnerable adult in more than one human services
- 984 program; or
- 985 (iii) direct access to a child or a vulnerable adult under a contract with the department;
- 986 (f) shall track the status of each license and each individual with direct access to a child

987 or a vulnerable adult and notify the bureau [~~when the license has expired~~] within 90 days after
988 the day on which the license expires or the individual's direct access to a child or a vulnerable
989 adult [~~has ceased~~] ceases;

990 (g) shall adopt measures to strictly limit access to personal identifying information
991 solely to the [~~office employees~~] individuals responsible for processing and entering the
992 applications for background checks and to protect the security of the personal identifying
993 information the office reviews under this Subsection (3);

994 (h) as necessary to comply with the federal requirement to check a state's child abuse
995 and neglect registry regarding any individual working in a program under this section that
996 serves children, shall:

997 (i) search the Department of Human Services, Division of Child and Family Services'
998 Licensing Information System described in Section [62A-4a-1006](#); and

999 (ii) require the child abuse and neglect registry be checked in each state where an
1000 applicant resided at any time during the five years immediately preceding the day on which the
1001 applicant submits the information described in Subsection (2)(a) to the office; and

1002 (i) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative
1003 Rulemaking Act, to implement the provisions of this Subsection (3) relating to background
1004 checks.

1005 (4) (a) With the personal identifying information the office submits to the bureau under
1006 Subsection (3), the bureau shall check against state and regional criminal background databases
1007 for the applicant's criminal history.

1008 (b) With the personal identifying information and fingerprints the office submits to the
1009 bureau under Subsection (3), the bureau shall check against national criminal background
1010 databases for the applicant's criminal history.

1011 (c) Upon direction from the office, and with the personal identifying information and
1012 fingerprints the office submits to the bureau under Subsection (3)(d), the bureau shall:

1013 (i) maintain a separate file of the fingerprints for search by future submissions to the
1014 local and regional criminal records databases, including latent prints; and

1015 (ii) monitor state and regional criminal background databases and identify criminal
1016 activity associated with the applicant.

1017 (d) The bureau is authorized to submit the fingerprints to the Federal Bureau of

1018 Investigation Next Generation Identification System, to be retained in the Federal Bureau of
1019 Investigation Next Generation Identification System for the purpose of:

1020 (i) being searched by future submissions to the national criminal records databases,
1021 including the Federal Bureau of Investigation Next Generation Identification System and latent
1022 prints; and

1023 (ii) monitoring national criminal background databases and identifying criminal
1024 activity associated with the applicant.

1025 (e) The Bureau shall notify and release to the office all information of criminal activity
1026 associated with the applicant.

1027 (f) Upon notice from the office that a license has expired or an individual's direct
1028 access to a child or a vulnerable adult has ceased for 90 days, the bureau shall:

1029 (i) discard and destroy any retained fingerprints; and

1030 (ii) notify the Federal Bureau of Investigation when the license has expired or an
1031 individual's direct access to a child or a vulnerable adult has ceased, so that the Federal Bureau
1032 of Investigation will discard and destroy the retained fingerprints from the Federal Bureau of
1033 Investigation Next Generation Identification System.

1034 (5) (a) After conducting the background check described in Subsections (3) and (4), the
1035 office shall deny an application to an applicant who, within three years before the day on which
1036 the applicant submits information to the office under Subsection (2) for a background check,
1037 has been convicted of any of the following, regardless of whether the offense is a felony, a
1038 misdemeanor, or an infraction:

1039 (i) an offense identified as domestic violence, lewdness, voyeurism, battery, cruelty to
1040 animals, or bestiality;

1041 (ii) a violation of any pornography law, including sexual exploitation of a minor;

1042 (iii) prostitution;

1043 (iv) an offense included in:

1044 (A) Title 76, Chapter 5, Offenses Against the Person;

1045 (B) Section 76-5b-201, Sexual Exploitation of a Minor; or

1046 (C) Title 76, Chapter 7, Offenses Against the Family;

1047 (v) aggravated arson, as described in Section 76-6-103;

1048 (vi) aggravated burglary, as described in Section 76-6-203;

- 1049 (vii) aggravated robbery, as described in Section 76-6-302;
- 1050 (viii) identity fraud crime, as described in Section 76-6-1102; or
- 1051 (ix) ~~[a conviction for]~~ a felony or misdemeanor offense committed outside of the state
- 1052 that, if committed in the state, would constitute a violation of an offense described in
- 1053 Subsections (5)(a)(i) through (viii).
- 1054 (b) If the office denies an application to an applicant based on a conviction described in
- 1055 Subsection (5)(a), the applicant is not entitled to a comprehensive review described in
- 1056 Subsection (6).
- 1057 (c) If the applicant will be working in a program serving only adults whose only
- 1058 impairment is a mental health diagnosis, including that of a serious mental health disorder,
- 1059 with or without co-occurring substance use disorder, the denial provisions of Subsection (5)(a)
- 1060 do not apply, and the office shall conduct a comprehensive review as described in Subsection
- 1061 (6).
- 1062 (6) (a) The office shall conduct a comprehensive review of an applicant's background
- 1063 check if the applicant:
- 1064 (i) has an open court case or a conviction for any felony offense, not described in
- 1065 Subsection (5)(a), ~~regardless of the date of the conviction]~~ with a date of conviction that is no
- 1066 more than 10 years before the date on which the applicant submits the application;
- 1067 (ii) has an open court case or a conviction for a misdemeanor offense, not described in
- 1068 Subsection (5)(a), and designated by the office, by rule, in accordance with Title 63G, Chapter
- 1069 3, Utah Administrative Rulemaking Act, if the conviction is within ~~[five]~~ three years before the
- 1070 day on which the applicant submits information to the office under Subsection (2) for a
- 1071 background check;
- 1072 (iii) has a conviction for any offense described in Subsection (5)(a) that occurred more
- 1073 than three years before the day on which the applicant submitted information under Subsection
- 1074 (2)(a);
- 1075 (iv) is currently subject to a plea in abeyance or diversion agreement for any offense
- 1076 described in Subsection (5)(a);
- 1077 (v) has a listing in the Department of Human Services, Division of Child and Family
- 1078 Services' Licensing Information System described in Section 62A-4a-1006;
- 1079 (vi) has a listing in the Department of Human Services, Division of Aging and Adult

1080 Services' vulnerable adult abuse, neglect, or exploitation database described in Section
1081 [62A-3-311.1](#);

1082 (vii) has a record in the juvenile court of a substantiated finding of severe child abuse
1083 or neglect described in Section [78A-6-323](#);

1084 (viii) has a record of an adjudication in juvenile court for an act that, if committed by
1085 an adult, would be a felony or misdemeanor, if the applicant is:

1086 (A) under 28 years of age; or

1087 (B) 28 years of age or older and has been convicted of, has pleaded no contest to, or is
1088 currently subject to a plea in abeyance or diversion agreement for a felony or a misdemeanor
1089 offense described in Subsection (5)(a); ~~or~~

1090 (ix) has a pending charge for an offense described in Subsection (5)(a)~~[-];~~ or
1091 (x) is an applicant described in Subsection (5)(c).

1092 (b) The comprehensive review described in Subsection (6)(a) shall include an
1093 examination of:

1094 (i) the date of the offense or incident;

1095 (ii) the nature and seriousness of the offense or incident;

1096 (iii) the circumstances under which the offense or incident occurred;

1097 (iv) the age of the perpetrator when the offense or incident occurred;

1098 (v) whether the offense or incident was an isolated or repeated incident;

1099 (vi) whether the offense or incident directly relates to abuse of a child or vulnerable
1100 adult, including:

1101 (A) actual or threatened, nonaccidental physical ~~or~~, mental, or financial harm;

1102 (B) sexual abuse;

1103 (C) sexual exploitation; or

1104 (D) negligent treatment;

1105 (vii) any evidence provided by the applicant of rehabilitation, counseling, psychiatric
1106 treatment received, or additional academic or vocational schooling completed; ~~and~~

1107 (viii) the applicant's risk of harm to clientele in the program or in the capacity for
1108 which the applicant is applying; and

1109 ~~(viii)~~ (ix) any other pertinent information presented to or publicly available to the
1110 committee members.

1111 (c) At the conclusion of the comprehensive review described in Subsection (6)(a), the
1112 office shall deny an application to an applicant if the office finds that approval would likely
1113 create a risk of harm to a child or a vulnerable adult.

1114 (d) At the conclusion of the comprehensive review described in Subsection (6)(a), the
1115 office may not deny an application to an applicant solely because the applicant was convicted
1116 of an offense that occurred 10 or more years before the day on which the applicant submitted
1117 the information required under Subsection (2)(a) if:

1118 (i) the applicant has not committed another misdemeanor or felony offense after the
1119 day on which the conviction occurred; and

1120 (ii) the applicant has never been convicted of an offense described in Subsection
1121 (14)(c).

1122 [~~(d)~~] (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
1123 Act, the office may make rules, consistent with this chapter, to establish procedures for the
1124 comprehensive review described in this Subsection (6).

1125 (7) Subject to Subsection (10), the office shall approve an application to an applicant
1126 who is not denied under Subsection (5), (6), or (13).

1127 (8) (a) The office may conditionally approve an application of an applicant, for a
1128 maximum of 60 days after the day on which the office sends written notice to the applicant
1129 under Subsection (12), without requiring that the applicant be directly supervised, if the office:

1130 (i) is awaiting the results of the criminal history search of national criminal background
1131 databases; and

1132 (ii) would otherwise approve an application of the applicant under Subsection (7).

1133 (b) The office may conditionally approve an application of an applicant, for a
1134 maximum of one year after the day on which the office sends written notice to the applicant
1135 under Subsection (12), without requiring that the applicant be directly supervised if the office:

1136 (i) is awaiting the results of an out-of-state registry for providers other than foster and
1137 adoptive parents; and

1138 (ii) would otherwise approve an application of the applicant under Subsection (7).

1139 [~~(b)~~] (c) Upon receiving the results of the criminal history search of a national criminal
1140 background [~~databases~~] database, the office shall approve or deny the application of the
1141 applicant in accordance with Subsections (5) through (7).

1142 (9) A licensee or department contractor may not permit an individual to have direct
1143 access to a child or a vulnerable adult unless, subject to Subsection (10):
1144 (a) the individual is associated with the licensee or department contractor and:
1145 (i) the individual's application is approved by the office under this section;
1146 (ii) the individual's application is conditionally approved by the office under
1147 Subsection (8); or
1148 (iii) (A) the individual has submitted the background check information described in
1149 Subsection (2) to the office;
1150 (B) the office has not determined whether to approve the applicant's application; and
1151 (C) the individual is directly supervised by an individual who has a current background
1152 screening approval issued by the office under this section and is associated with the licensee or
1153 department contractor;
1154 (b) (i) the individual is associated with the licensee or department contractor;
1155 (ii) the individual has a current background screening approval issued by the office
1156 under this section;
1157 (iii) one of the following circumstances, that the office has not yet reviewed under
1158 Subsection (6), applies to the individual:
1159 (A) the individual was charged with an offense described in Subsection (5)(a);
1160 (B) the individual is listed in the Licensing Information System, described in Section
1161 [62A-4a-1006](#);
1162 (C) the individual is listed in the vulnerable adult abuse, neglect, or exploitation
1163 database, described in Section [62A-3-311.1](#);
1164 (D) the individual has a record in the juvenile court of a substantiated finding of severe
1165 child abuse or neglect, described in Section [78A-6-323](#); or
1166 (E) the individual has a record of an adjudication in juvenile court for an act that, if
1167 committed by an adult, would be a felony or a misdemeanor as described in Subsection (5)(a)
1168 or (6); and
1169 (iv) the individual is directly supervised by an individual who:
1170 (A) has a current background screening approval issued by the office under this
1171 section; and
1172 (B) is associated with the licensee or department contractor;

- 1173 (c) the individual:
- 1174 (i) is not associated with the licensee or department contractor; and
- 1175 (ii) is directly supervised by an individual who:
- 1176 (A) has a current background screening approval issued by the office under this
- 1177 section; and
- 1178 (B) is associated with the licensee or department contractor;
- 1179 (d) the individual is the parent or guardian of the child, or the guardian of the
- 1180 vulnerable adult;
- 1181 (e) the individual is approved by the parent or guardian of the child, or the guardian of
- 1182 the vulnerable adult, to have direct access to the child or the vulnerable adult;
- 1183 (f) the individual is only permitted to have direct access to a vulnerable adult who
- 1184 voluntarily invites the individual to visit; or
- 1185 (g) the individual only provides incidental care for a foster child on behalf of a foster
- 1186 parent who has used reasonable and prudent judgment to select the individual to provide the
- 1187 incidental care for the foster child.
- 1188 (10) An individual may not have direct access to a child or a vulnerable adult if the
- 1189 individual is prohibited by court order from having that access.
- 1190 (11) Notwithstanding any other provision of this section, an individual for whom the
- 1191 office denies an application may not have [~~supervised or unsupervised~~] direct access to a child
- 1192 or vulnerable adult unless the office approves a subsequent application by the individual.
- 1193 (12) (a) Within 30 days after the day on which the office receives the background
- 1194 check information for an applicant, the office shall give [~~written~~] notice of the clearance status
- 1195 to:
- 1196 (i) the applicant, and the licensee or department contractor, of the office's decision
- 1197 regarding the background check and findings; and
- 1198 (ii) the applicant of any convictions and potentially disqualifying charges and
- 1199 adjudications found in the search.
- 1200 (b) With the notice described in Subsection (12)(a), the office shall also give the
- 1201 applicant the details of any comprehensive review conducted under Subsection (6).
- 1202 (c) If the notice under Subsection (12)(a) states that the applicant's application is
- 1203 denied, the notice shall further advise the applicant that the applicant may, under Subsection

1204 62A-2-111(2), request a hearing in the department's Office of Administrative Hearings, to
1205 challenge the office's decision.

1206 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1207 office shall make rules, consistent with this chapter:

1208 (i) defining procedures for the challenge of ~~[its]~~ the office's background check decision
1209 described in Subsection (12)(c); and

1210 (ii) expediting the process for renewal of a license under the requirements of this
1211 section and other applicable sections.

1212 (13) An individual or a department contractor who provides services in an adults only
1213 substance use disorder program, as defined by rule, is exempt from this section. This
1214 exemption does not extend to a program director or a member, as defined by Section
1215 62A-2-108, of the program.

1216 (14) (a) Except as provided in Subsection (14)(b), in addition to the other requirements
1217 of this section, if the background check of an applicant is being conducted for the purpose of
1218 ~~[licensing a]~~ giving clearance status to an applicant seeking a position in a congregate care
1219 facility, an applicant for a one-time adoption, an applicant seeking to provide a prospective
1220 foster home [or approving], or an applicant seeking to provide a prospective adoptive
1221 [placement of a child in state custody] home, the office shall:

1222 (i) check the child abuse and neglect registry in each state where each applicant resided
1223 in the five years immediately preceding the day on which the applicant applied to be a foster
1224 parent or adoptive parent, to determine whether the prospective foster parent or prospective
1225 adoptive parent is listed in the registry as having a substantiated or supported finding of child
1226 abuse or neglect; and

1227 (ii) check the child abuse and neglect registry in each state where each adult living in
1228 the home of the applicant described in Subsection (14)(a)(i) resided in the five years
1229 immediately preceding the day on which the applicant applied to be a foster parent or adoptive
1230 parent, to determine whether the adult is listed in the registry as having a substantiated or
1231 supported finding of child abuse or neglect.

1232 (b) The requirements described in Subsection (14)(a) do not apply to the extent that:

1233 (i) federal law or rule permits otherwise; or

1234 (ii) the requirements would prohibit the Division of Child and Family Services or a

1235 court from placing a child with:

1236 (A) a noncustodial parent under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5; or

1237 (B) a relative, other than a noncustodial parent, under Section 62A-4a-209, 78A-6-307,
1238 or 78A-6-307.5, pending completion of the background check described in Subsection (5).

1239 (c) Notwithstanding Subsections (5) through (9), the office shall deny a [~~license or a~~
1240 ~~license renewal to a~~] clearance to an applicant seeking a position in a congregate care facility,
1241 an applicant for a one-time adoption, an applicant to become a prospective foster parent [or a],
1242 or an applicant to become a prospective adoptive parent if the applicant has been convicted of:

1243 (i) a felony involving conduct that constitutes any of the following:

1244 (A) child abuse, as described in Section 76-5-109;

1245 (B) commission of domestic violence in the presence of a child, as described in Section
1246 76-5-109.1;

1247 (C) abuse or neglect of a child with a disability, as described in Section 76-5-110;

1248 (D) endangerment of a child or vulnerable adult, as described in Section 76-5-112.5;

1249 (E) aggravated murder, as described in Section 76-5-202;

1250 (F) murder, as described in Section 76-5-203;

1251 (G) manslaughter, as described in Section 76-5-205;

1252 (H) child abuse homicide, as described in Section 76-5-208;

1253 (I) homicide by assault, as described in Section 76-5-209;

1254 (J) kidnapping, as described in Section 76-5-301;

1255 (K) child kidnapping, as described in Section 76-5-301.1;

1256 (L) aggravated kidnapping, as described in Section 76-5-302;

1257 (M) human trafficking of a child, as described in Section 76-5-308.5;

1258 (N) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;

1259 (O) sexual exploitation of a minor, as described in Section 76-5b-201;

1260 (P) aggravated arson, as described in Section 76-6-103;

1261 (Q) aggravated burglary, as described in Section 76-6-203;

1262 (R) aggravated robbery, as described in Section 76-6-302; or

1263 (S) domestic violence, as described in Section 77-36-1; or

1264 (ii) an offense committed outside the state that, if committed in the state, would

1265 constitute a violation of an offense described in Subsection (14)(c)(i).

1266 (d) Notwithstanding Subsections (5) through (9), the office shall deny a license or
1267 license renewal to a prospective foster parent or a prospective adoptive parent if, within the five
1268 years immediately preceding the day on which the individual's application or license would
1269 otherwise be approved, the applicant was convicted of a felony involving conduct that
1270 constitutes a violation of any of the following:

- 1271 (i) aggravated assault, as described in Section 76-5-103;
- 1272 (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;
- 1273 (iii) mayhem, as described in Section 76-5-105;
- 1274 (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;
- 1275 (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
- 1276 (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances
1277 Act;

1278 (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance
1279 Precursor Act; or

1280 (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.

1281 (e) In addition to the circumstances described in Subsection (6)(a), the office shall
1282 conduct the comprehensive review of an applicant's background check pursuant to this section
1283 if the registry check described in Subsection (14)(a) indicates that the individual is listed in a
1284 child abuse and neglect registry of another state as having a substantiated or supported finding
1285 of a severe type of child abuse or neglect as defined in Section 62A-4a-1002.

1286 Section 17. Section 62A-15-629 is amended to read:

1287 **62A-15-629. Temporary commitment -- Requirements and procedures.**

1288 (1) An adult shall be temporarily, involuntarily committed to a local mental health
1289 authority upon:

1290 (a) a written application that:

1291 (i) is completed by a responsible individual who has reason to know, stating a belief
1292 that the adult, due to mental illness, is likely to pose substantial danger to self or others if not
1293 restrained and stating the personal knowledge of the adult's condition or circumstances that
1294 lead to the individual's belief; and

1295 (ii) includes a certification by a licensed physician or designated examiner stating that
1296 the physician or designated examiner has examined the adult within a three-day period

1297 immediately preceding that certification, and that the physician or designated examiner is of the
1298 opinion that, due to mental illness, the adult poses a substantial danger to self or others; or

1299 (b) a peace officer or a mental health officer:

1300 (i) observing an adult's conduct that gives the peace officer or mental health officer
1301 probable cause to believe that:

1302 (A) the adult has a mental illness; and

1303 (B) because of the adult's mental illness and conduct, the adult poses a substantial
1304 danger to self or others; and

1305 (ii) completing a temporary commitment application that:

1306 (A) is on a form prescribed by the division;

1307 (B) states the peace officer's or mental health officer's belief that the adult poses a
1308 substantial danger to self or others;

1309 (C) states the specific nature of the danger;

1310 (D) provides a summary of the observations upon which the statement of danger is
1311 based; and

1312 (E) provides a statement of the facts that called the adult to the peace officer's or
1313 mental health officer's attention.

1314 (2) If at any time a patient committed under this section no longer meets the
1315 commitment criteria described in Subsection (1), the local mental health authority or the local
1316 mental health authority's designee shall document the change and release the patient.

1317 (3) A patient committed under this section may be held for a maximum of 24 hours
1318 after commitment, excluding Saturdays, Sundays, and legal holidays, unless:

1319 (a) as described in Section [62A-15-631](#), an application for involuntary commitment is
1320 commenced, which may be accompanied by an order of detention described in Subsection
1321 [62A-15-631](#)(4); or

1322 (b) the patient makes a voluntary application for admission.

1323 (4) Upon a written application described in Subsection (1)(a) or the observation and
1324 belief described in Subsection (1)(b)(i), the adult shall be:

1325 (a) taken into a peace officer's protective custody, by reasonable means, if necessary for
1326 public safety; and

1327 (b) transported for temporary commitment to a facility designated by the local mental

1328 health authority, by means of:

1329 (i) an ambulance, if the adult meets any of the criteria described in Section [26-8a-305](#);

1330 (ii) an ambulance, if a peace officer is not necessary for public safety, and

1331 transportation arrangements are made by a physician, designated examiner, or mental health

1332 officer;

1333 (iii) the city, town, or municipal law enforcement authority with jurisdiction over the

1334 location where the individual to be committed is present, if the individual is not transported by

1335 ambulance; ~~or~~

1336 (iv) the county sheriff, if the designated facility is outside of the jurisdiction of the law

1337 enforcement authority described in Subsection (4)(b)(iii) and the individual is not transported

1338 by ambulance~~[-]; or~~

1339 (v) nonemergency secured behavioral health transport as that term is defined in Section

1340 [26-8a-102](#).

1341 (5) Notwithstanding Subsection (4):

1342 (a) an individual shall be transported by ambulance to an appropriate medical facility

1343 for treatment if the individual requires physical medical attention;

1344 (b) if an officer has probable cause to believe, based on the officer's experience and

1345 de-escalation training that taking an individual into protective custody or transporting an

1346 individual for temporary commitment would increase the risk of substantial danger to the

1347 individual or others, a peace officer may exercise discretion to not take the individual into

1348 custody or transport the individual, as permitted by policies and procedures established by the

1349 officer's law enforcement agency and any applicable federal or state statute, or case law; and

1350 (c) if an officer exercises discretion under Subsection (4)(b) to not take an individual

1351 into protective custody or transport an individual, the officer shall document in the officer's

1352 report the details and circumstances that led to the officer's decision.

1353 (6) Title 63G, Chapter 7, Governmental Immunity Act of Utah, applies to this section.

1354 This section does not create a special duty of care.

1355 Section 18. **Repealer.**

1356 This bill repeals:

1357 Section [26-18-404](#), **Home and community-based long-term care -- Room and board**

1358 **assistance.**

1359 Section [26-40-116](#), Program to encourage appropriate emergency room use --
1360 Application for waivers.

1361 Section 19. Coordinating H.B. 436 with H.B. 137 -- Superseding technical and
1362 substantive amendments.

1363 If this H.B. 436 and H.B. 137, Child Placement Background Check Limits, both pass
1364 and become law, it is the intent of the Legislature that the amendments to Section [62A-2-120](#) in
1365 this H.B. 436 supersede the amendments to Section [62A-2-120](#) in H.B. 137 when the Office of
1366 Legislative Research and General Counsel prepares the Utah Code database for publication.