

**MEDICAID RECOVERY AMENDMENTS**

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Kera Birkeland**

Senate Sponsor: Ann Millner

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**LONG TITLE**

**General Description:**

This bill addresses recovery of Medicaid funds from a parent whose child is injured in foster care.

**Highlighted Provisions:**

This bill:

- ▶ prohibits the Department of Health from recovering Medicaid funds from a parent whose child suffers certain injuries in foster care if the foster parent is obligated to pay for the injuries; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**26-19-201**, as renumbered and amended by Laws of Utah 2018, Chapter 443

**26-19-401**, as renumbered and amended by Laws of Utah 2018, Chapter 443

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

Section 1. Section **26-19-201** is amended to read:



28 **26-19-201. Assignment of rights to benefits.**

29 (1) (a) [~~For~~] Except as provided in Subsection 26-19-401(1), to the extent that medical  
 30 assistance is actually provided to a recipient, all benefits for medical services or payments from  
 31 a third party otherwise payable to or on behalf of a recipient are assigned by operation of law to  
 32 the department if the department provides, or becomes obligated to provide, medical  
 33 assistance, regardless of who made application for the benefits on behalf of the recipient.

34 (b) The assignment:

35 (i) authorizes the department to submit its claim to the third party and authorizes  
 36 payment of benefits directly to the department; and

37 (ii) is effective for all medical assistance.

38 (2) The department may recover the assigned benefits or payments in accordance with  
 39 Section 26-19-401 and as otherwise provided by law.

40 (3) (a) The assignment of benefits includes medical support and third party payments  
 41 ordered, decreed, or adjudged by any court of this state or any other state or territory of the  
 42 United States. [~~That~~]

43 (b) The assignment is not in lieu of, and does not supersede or alter any other court  
 44 order, decree, or judgment.

45 (4) When an assignment takes effect, the recipient is entitled to receive medical  
 46 assistance, and the benefits paid to the department are a reimbursement to the department.

47 Section 2. Section 26-19-401 is amended to read:

48 **26-19-401. Recovery of medical assistance from third party -- Lien -- Notice --**  
 49 **Action -- Compromise or waiver -- Recipient's right to action protected.**

50 (1) (a) [~~When~~] Except as provided in Subsection (1)(c), if the department provides or  
 51 becomes obligated to provide medical assistance to a recipient that a third party is obligated to  
 52 pay for, the department may recover the medical assistance directly from [~~that~~] the third party.

53 (b) (i) [~~Any~~] A claim [~~arising~~] under Subsection (1)(a) or Section 26-19-201 to recover  
 54 medical assistance provided to a recipient is a lien against any proceeds payable to or on behalf  
 55 of the recipient by [~~that~~] the third party. [~~This~~]

56 (ii) The lien described in Subsection (1)(b)(i) has priority over all other claims to the  
 57 proceeds, except claims for attorney fees and costs authorized under Subsection  
 58 26-19-403(2)(c)(ii).

- 59           (c) The department may not recover medical assistance under Subsection (1)(a) if:  
60           (i) the third party is a foster parent who is obligated to pay the recipient for an injury to  
61 the recipient's child that occurred while the child was in the legal custody of the foster parent;  
62 and  
63           (ii) the child's injury is a physical or mental impairment that requires ongoing medical  
64 attention, or limits activities of daily living, for at least one year.
- 65           (2) (a) The department shall mail or deliver written notice of [~~its~~] the department's  
66 claim or lien to the third party at [~~its~~] the third party's principal place of business or last-known  
67 address.
- 68           (b) The notice shall include:  
69           (i) the recipient's name;  
70           (ii) the approximate date of illness or injury;  
71           (iii) a general description of the type of illness or injury; and  
72           (iv) if applicable, the general location where the injury is alleged to have occurred.
- 73           (3) The department may commence an action on [~~its~~] the department's claim or lien in  
74 [~~its own~~] the department's name, but [~~that~~] the claim or lien is not enforceable as to a third  
75 party unless:  
76           (a) the third party receives written notice of the department's claim or lien before [~~it~~]  
77 the third party settles with the recipient; or  
78           (b) the department has evidence that the third party had knowledge that the department  
79 provided or was obligated to provide medical assistance.
- 80           (4) The department may:  
81           (a) waive a claim or lien against a third party in whole or in part; or  
82           (b) compromise, settle, or release a claim or lien.
- 83           (5) An action commenced under this section does not bar an action by a recipient or a  
84 dependent of a recipient for loss or damage not included in the department's action.
- 85           (6) The department's claim or lien on proceeds under this section is not affected by the  
86 transfer of the proceeds to a trust, annuity, financial account, or other financial instrument.