

# HB0389S01 compared with HB0389

~~text~~ shows text that was in HB0389 but was deleted in HB0389S01.

text shows text that was not in HB0389 but was inserted into HB0389S01.

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Senator Ann Millner proposes the following substitute bill:

## MEDICAID RECOVERY AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Kera Birkeland**

Senate Sponsor: \_\_\_\_\_

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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~~certain third-party obligors.

#### Highlighted Provisions:

This bill:

- ▶ prohibits the Department of Health (department) from recovering Medicaid funds from a ~~parent whose child suffers certain~~third-party obligor that is required to pay for injuries to a child in foster care if certain conditions are met;
- ▶ provides that the ~~foster parent~~department is ~~obligated to pay for the injuries~~responsible for repayment to the federal government for the Medicaid funds the department is prohibited from recovering; and
- ▶ makes technical and conforming changes.

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### 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:

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

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

(b) The assignment:

(i) authorizes the department to submit its claim to the {third party} [third-party] third-party and authorizes payment of benefits directly to the department; and

(ii) is effective for all medical assistance.

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

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

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

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

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

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

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

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

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

(c) (i) The department may not recover medical assistance under Subsection (1)(a) if:

(~~ii~~) A) the ~~third party is a foster parent who~~ third-party is obligated to pay the recipient for an injury to the recipient's child that occurred while the child was in the ~~legal~~ physical custody of the child's foster parent; ~~and~~

(~~ii~~) B) the child's injury is a physical or mental impairment that requires ongoing medical attention, or limits activities of daily living, for at least one year ~~;~~

(C) the third-party's payment to the recipient is placed in a trust, annuity, financial account, or other financial instrument for the benefit of the child; and

(D) the recipient makes reasonable efforts to mitigate any other medical assistance costs for the recipient to the state.

(ii) The department is responsible for any repayment to the federal government related to the medical assistance the department is prohibited from recovering under Subsection (1)(c)(i).

(2) (a) The department shall mail or deliver written notice of [~~its~~] the department's claim or lien to the third party at [~~its~~] the third party's principal place of business or last-known address.

(b) The notice shall include:

(i) the recipient's name;

(ii) the approximate date of illness or injury;

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(iii) a general description of the type of illness or injury; and

(iv) if applicable, the general location where the injury is alleged to have occurred.

(3) The department may commence an action on ~~[its]~~ the department's claim or lien in ~~[its own]~~ the department's name, but ~~[that]~~ the claim or lien is not enforceable as to a third party unless:

(a) the third party receives written notice of the department's claim or lien before ~~[it]~~ the third party settles with the recipient; or

(b) the department has evidence that the third party had knowledge that the department provided or was obligated to provide medical assistance.

(4) The department may:

(a) waive a claim or lien against a third party in whole or in part; or

(b) compromise, settle, or release a claim or lien.

(5) An action commenced under this section does not bar an action by a recipient or a dependent of a recipient for loss or damage not included in the department's action.

(6) ~~[The]~~ Except as provided in Subsection (1)(c), the department's claim or lien on proceeds under this section is not affected by the transfer of the proceeds to a trust, annuity, financial account, or other financial instrument.