

Senator Ann Millner proposes the following substitute bill:

**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 certain third-party obligors.

**Highlighted Provisions:**

This bill:

- ▶ prohibits the Department of Health (department) from recovering Medicaid funds from a third-party obligor that is required to pay for injuries to a child in foster care if certain conditions are met;

- ▶ provides that the department is responsible for repayment to the federal government for the Medicaid funds the department is prohibited from recovering; 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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27 *Be it enacted by the Legislature of the state of Utah:*

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

29 **26-19-201. Assignment of rights to benefits.**

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

36 (b) The assignment:

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

39 (ii) is effective for all medical assistance.

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

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

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

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

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

50 **26-19-401. Recovery of medical assistance from third party -- Lien -- Notice --**  
51 **Action -- Compromise or waiver -- Recipient's right to action protected.**

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

55 (b) (i) [~~Any~~] A claim [~~arising~~] under Subsection (1)(a) or Section 26-19-201 to recover  
56 medical assistance provided to a recipient is a lien against any proceeds payable to or on behalf

57 of the recipient by ~~[that]~~ the third party. ~~[This]~~

58 (ii) The lien described in Subsection (1)(b)(i) has priority over all other claims to the  
59 proceeds, except claims for attorney fees and costs authorized under Subsection  
60 26-19-403(2)(c)(ii).

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

62 (A) the third-party is obligated to pay the recipient for an injury to the recipient's child  
63 that occurred while the child was in the physical custody of the child's foster parent;

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

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

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

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

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

76 (b) The notice shall include:

77 (i) the recipient's name;

78 (ii) the approximate date of illness or injury;

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

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

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

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

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

88 (4) The department may:

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

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

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

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