

**CONTROLLED SUBSTANCE DATABASE MODIFICATIONS**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Steve Eliason**

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

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**LONG TITLE**

**General Description:**

This bill modifies provisions of the Controlled Substance Database and requires the Department of Health to use information in the database to determine whether Medicaid billing and prescribing are done correctly.

**Highlighted Provisions:**

This bill:

- ▶ authorizes certain individuals to access the controlled substance database for the purpose of reviewing a patient's request for workers' compensation benefits;
- ▶ requires that the Department of Health conduct audits, using information in the Controlled Substance Database, to ensure that Medicaid billing is done correctly and that Medicaid prescriptions are appropriate for frequency and dosage; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**26-18-3**, as last amended by Laws of Utah 2010, Chapters 149, 323, 340, and 391

**58-37f-301**, as enacted by Laws of Utah 2010, Chapter 287 and last amended by



28 Coordination Clause, Laws of Utah 2010, Chapter 312

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

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

32 **26-18-3. Administration of Medicaid program by department -- Reporting to the**  
33 **Legislature -- Disciplinary measures and sanctions -- Funds collected -- Eligibility**  
34 **standards -- Internal audits -- Studies -- Health opportunity accounts.**

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

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

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

43 (i) the standards used by the department for determining eligibility for Medicaid  
44 services;

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

46 (iii) reimbursement methodologies for providers under the Medicaid program.

47 (3) (a) The department shall, in accordance with Subsection (3)(b), report to the Health  
48 and Human Services Appropriations Subcommittee when the department:

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

50 (ii) initiates a new Medicaid waiver;

51 (iii) initiates an amendment to an existing Medicaid waiver;

52 (iv) applies for an extension of an application for a waiver or an existing Medicaid  
53 waiver; or

54 (v) initiates a rate change that requires public notice under state or federal law.

55 (b) The report required by Subsection (3)(a) shall:

56 (i) be submitted to the Health and Human Services Appropriations Subcommittee prior  
57 to the department implementing the proposed change; and

58 (ii) include:

59 (A) a description of the department's current practice or policy that the department is  
60 proposing to change;

61 (B) an explanation of why the department is proposing the change;

62 (C) the proposed change in services or reimbursement, including a description of the  
63 effect of the change;

64 (D) the effect of an increase or decrease in services or benefits on individuals and  
65 families;

66 (E) the degree to which any proposed cut may result in cost-shifting to more expensive  
67 services in health or human service programs; and

68 (F) the fiscal impact of the proposed change, including:

69 (I) the effect of the proposed change on current or future appropriations from the  
70 Legislature to the department;

71 (II) the effect the proposed change may have on federal matching dollars received by  
72 the state Medicaid program;

73 (III) any cost shifting or cost savings within the department's budget that may result  
74 from the proposed change; and

75 (IV) identification of the funds that will be used for the proposed change, including any  
76 transfer of funds within the department's budget.

77 (4) (a) The Department of Human Services shall report to the Legislative Health and  
78 Human Services Appropriations Subcommittee no later than December 31, 2010, in  
79 accordance with Subsection (4)(b).

80 (b) The report required by Subsection (4)(a) shall include:

81 (i) changes made by the division or the department beginning July 1, 2010, that effect  
82 the Medicaid program, a waiver under the Medicaid program, or an interpretation of Medicaid  
83 services or funding, that relate to care for children and youth in the custody of the Division of  
84 Child and Family Services or the Division of Juvenile Justice Services;

85 (ii) the history and impact of the changes under Subsection (4)(b)(i);

86 (iii) the Department of Human Service's plans for addressing the impact of the changes  
87 under Subsection (4)(b)(i); and

88 (iv) ways to consolidate administrative functions within the Department of Human  
89 Services, the Department of Health, the Division of Child and Family Services, and the

90 Division of Juvenile Justice Services to more efficiently meet the needs of children and youth  
91 with mental health and substance disorder treatment needs.

92 (5) Any rules adopted by the department under Subsection (2) are subject to review and  
93 reauthorization by the Legislature in accordance with Section 63G-3-502.

94 (6) The department may, in its discretion, contract with the Department of Human  
95 Services or other qualified agencies for services in connection with the administration of the  
96 Medicaid program, including:

97 (a) the determination of the eligibility of individuals for the program;

98 (b) recovery of overpayments; and

99 (c) consistent with Section 26-20-13, and to the extent permitted by law and quality  
100 control services, enforcement of fraud and abuse laws.

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

104 (a) termination from the program;

105 (b) recovery of claim reimbursements incorrectly paid; and

106 (c) those specified in Section 1919 of Title XIX of the federal Social Security Act.

107 (8) Funds collected as a result of a sanction imposed under Section 1919 of Title XIX  
108 of the federal Social Security Act shall be deposited in the General Fund as dedicated credits to  
109 be used by the division in accordance with the requirements of Section 1919 of Title XIX of  
110 the federal Social Security Act.

111 (9) (a) In determining whether an applicant or recipient is eligible for a service or  
112 benefit under this part or Chapter 40, Utah Children's Health Insurance Act, the department  
113 shall, if Subsection (9)(b) is satisfied, exclude from consideration one passenger vehicle  
114 designated by the applicant or recipient.

115 (b) Before Subsection (9)(a) may be applied:

116 (i) the federal government must:

117 (A) determine that Subsection (9)(a) may be implemented within the state's existing  
118 public assistance-related waivers as of January 1, 1999;

119 (B) extend a waiver to the state permitting the implementation of Subsection (9)(a); or

120 (C) determine that the state's waivers that permit dual eligibility determinations for

121 cash assistance and Medicaid are no longer valid; and

122 (ii) the department must determine that Subsection (9)(a) can be implemented within  
123 existing funding.

124 (10) (a) For purposes of this Subsection (10):

125 (i) "aged, blind, or disabled" shall be defined by administrative rule; and

126 (ii) "spend down" means an amount of income in excess of the allowable income  
127 standard that must be paid in cash to the department or incurred through the medical services  
128 not paid by Medicaid.

129 (b) In determining whether an applicant or recipient who is aged, blind, or disabled is  
130 eligible for a service or benefit under this chapter, the department shall use 100% of the federal  
131 poverty level as:

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

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

134 (11) The department shall conduct internal audits of the Medicaid program, in  
135 proportion to at least the level of funding it receives from Medicaid to conduct internal audits.

136 (12) The department shall conduct audits, using information in the Controlled  
137 Substance Database, to ensure that:

138 (a) healthcare providers are billing Medicaid correctly; and

139 (b) Medicaid prescriptions are appropriate for frequency and dosage.

140 [~~12~~] (13) In order to determine the feasibility of contracting for direct Medicaid  
141 providers for primary care services, the department shall:

142 (a) issue a request for information for direct contracting for primary services that shall  
143 provide that a provider shall exclusively serve all Medicaid clients:

144 (i) in a geographic area;

145 (ii) for a defined range of primary care services; and

146 (iii) for a predetermined total contracted amount; and

147 (b) by February 1, 2011, report to the Health and Human Services Appropriations  
148 Subcommittee on the response to the request for information under Subsection [~~12~~] (13)(a).

149 [~~13~~] (14) (a) By December 31, 2010, the department shall:

150 (i) determine the feasibility of implementing a three year patient-centered medical  
151 home demonstration project in an area of the state using existing budget funds; and

152 (ii) report the department's findings and recommendations under Subsection [~~(13)~~  
153 (14)(a)(i) to the Health and Human Services Appropriations Subcommittee.

154 (b) If the department determines that the medical home demonstration project  
155 described in Subsection [~~(13)~~] (14)(a) is feasible, and the Health and Human Services  
156 Appropriations Subcommittee recommends that the demonstration project be implemented, the  
157 department shall:

158 (i) implement the demonstration project; and

159 (ii) by December 1, 2012, make recommendations to the Health and Human Services  
160 Appropriations Subcommittee regarding the:

161 (A) continuation of the demonstration project;

162 (B) expansion of the demonstration project to other areas of the state; and

163 (C) cost savings incurred by the implementation of the demonstration project.

164 [~~(14)~~] (15) (a) The department may apply for and, if approved, implement a  
165 demonstration program for health opportunity accounts, as provided for in 42 U.S.C. Sec.  
166 1396u-8.

167 (b) A health opportunity account established under Subsection [~~(14)~~] (15)(a) shall be  
168 an alternative to the existing benefits received by an individual eligible to receive Medicaid  
169 under this chapter.

170 (c) Subsection [~~(14)~~] (15)(a) is not intended to expand the coverage of the Medicaid  
171 program.

172 Section 2. Section **58-37f-301** is amended to read:

173 **58-37f-301. Access to database.**

174 (1) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah  
175 Administrative Rulemaking Act, to:

176 (a) effectively enforce the limitations on access to the database as described in this  
177 part; and

178 (b) establish standards and procedures to ensure accurate identification of individuals  
179 requesting information or receiving information without request from the database.

180 (2) The division shall make information in the database available only to the following  
181 individuals, in accordance with the requirements of this chapter and division rules:

182 (a) personnel of the division specifically assigned to conduct investigations related to

183 controlled substance laws under the jurisdiction of the division;

184 (b) authorized division personnel engaged in analysis of controlled substance  
185 prescription information as a part of the assigned duties and responsibilities of their  
186 employment;

187 (c) in accordance with a written agreement entered into with the department,  
188 employees of the Department of Health:

189 (i) whom the director of the Department of Health assigns to conduct scientific studies  
190 regarding the use or abuse of controlled substances, provided that the identity of the individuals  
191 and pharmacies in the database are confidential and are not disclosed in any manner to any  
192 individual who is not directly involved in the scientific studies; or

193 (ii) when the information is requested by the Department of Health in relation to a  
194 person whom the Department of Health suspects may be improperly obtaining or providing a  
195 controlled substance;

196 (d) a licensed practitioner having authority to prescribe controlled substances, to the  
197 extent the information:

198 (i) (A) relates specifically to a current or prospective patient of the practitioner; and

199 (B) is sought by the practitioner for the purpose of:

200 (I) prescribing or considering prescribing any controlled substance to the current or  
201 prospective patient;

202 (II) diagnosing the current or prospective patient;

203 (III) providing medical treatment or medical advice to the current or prospective  
204 patient; or

205 (IV) determining whether the current or prospective patient:

206 (Aa) is attempting to fraudulently obtain a controlled substance from the practitioner;

207 or

208 (Bb) has fraudulently obtained, or attempted to fraudulently obtain, a controlled  
209 substance from the practitioner;

210 (ii) (A) relates specifically to a former patient of the practitioner; and

211 (B) is sought by the practitioner for the purpose of determining whether the former  
212 patient has fraudulently obtained, or has attempted to fraudulently obtain, a controlled  
213 substance from the practitioner;

214 (iii) relates specifically to an individual who has access to the practitioner's Drug  
215 Enforcement Administration identification number, and the practitioner suspects that the  
216 individual may have used the practitioner's Drug Enforcement Administration identification  
217 number to fraudulently acquire or prescribe a controlled substance;

218 (iv) relates to the practitioner's own prescribing practices, except when specifically  
219 prohibited by the division by administrative rule;

220 (v) relates to the use of the controlled substance database by an employee of the  
221 practitioner, described in Subsection (2)(e); or

222 (vi) relates to any use of the practitioner's Drug Enforcement Administration  
223 identification number to obtain, attempt to obtain, prescribe, or attempt to prescribe, a  
224 controlled substance;

225 (e) in accordance with Subsection (3)(a), an employee of a practitioner described in  
226 Subsection (2)(d), for a purpose described in Subsection (2)(d)(i) or (ii), if:

227 (i) the employee is designated by the practitioner as an individual authorized to access  
228 the information on behalf of the practitioner;

229 (ii) the practitioner provides written notice to the division of the identity of the  
230 employee; and

231 (iii) the division:

232 (A) grants the employee access to the database; and

233 (B) provides the employee with a password that is unique to that employee to access  
234 the database in order to permit the division to comply with the requirements of Subsection  
235 58-37f-203(3)(b) with respect to the employee;

236 (f) a licensed pharmacist having authority to dispense a controlled substance to the  
237 extent the information is sought for the purpose of:

238 (i) dispensing or considering dispensing any controlled substance; or

239 (ii) determining whether a person:

240 (A) is attempting to fraudulently obtain a controlled substance from the pharmacist; or

241 (B) has fraudulently obtained, or attempted to fraudulently obtain, a controlled  
242 substance from the pharmacist;

243 (g) federal, state, and local law enforcement authorities, and state and local  
244 prosecutors, engaged as a specified duty of their employment in enforcing laws:



- 245 (i) regulating controlled substances; or  
246 (ii) investigating insurance fraud, Medicaid fraud, or Medicare fraud;  
247 (h) a mental health therapist, if:  
248 (i) the information relates to a patient who is:  
249 (A) enrolled in a licensed substance abuse treatment program; and  
250 (B) receiving treatment from, or under the direction of, the mental health therapist as  
251 part of the patient's participation in the licensed substance abuse treatment program described  
252 in Subsection (2)(h)(i)(A);  
253 (ii) the information is sought for the purpose of determining whether the patient is  
254 using a controlled substance while the patient is enrolled in the licensed substance abuse  
255 treatment program described in Subsection (2)(h)(i)(A); and  
256 (iii) the licensed substance abuse treatment program described in Subsection  
257 (2)(h)(i)(A) is associated with a practitioner who:  
258 (A) is a physician, a physician assistant, an advance practice registered nurse, or a  
259 pharmacist; and  
260 (B) is available to consult with the mental health therapist regarding the information  
261 obtained by the mental health therapist, under this Subsection (2)(h), from the database; ~~and~~  
262 (i) an individual who is the recipient of a controlled substance prescription entered into  
263 the database, upon providing evidence satisfactory to the division that the individual requesting  
264 the information is in fact the individual about whom the data entry was made[-]; and  
265 (j) an auditor from the Department of Health Division of Healthcare Financing, Bureau  
266 of Program Integrity, for the purpose of ensuring that:  
267 (i) a health care provider is billing Medicaid correctly; and  
268 (ii) a prescription is appropriate for frequency and dosage.  
269 (3) (a) A practitioner described in Subsection (2)(d) may designate up to three  
270 employees to access information from the database under Subsection (2)(e).  
271 (b) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah  
272 Administrative Rulemaking Act, to establish background check procedures to determine  
273 whether an employee designated under Subsection (2)(e)(i) should be granted access to the  
274 database.  
275 (c) The division shall grant an employee designated under Subsection (2)(e)(i) access

276 to the database, unless the division determines, based on a background check, that the  
277 employee poses a security risk to the information contained in the database.

278 (d) The division may impose a fee, in accordance with Section 63J-1-504, on a  
279 practitioner who designates an employee under Subsection (2)(e)(i), to pay for the costs  
280 incurred by the division to conduct the background check and make the determination  
281 described in Subsection (3)(b).

282 (4) (a) An individual who is granted access to the database based on the fact that the  
283 individual is a licensed practitioner or a mental health therapist shall be denied access to the  
284 database when the individual is no longer licensed.

285 (b) An individual who is granted access to the database based on the fact that the  
286 individual is a designated employee of a licensed practitioner shall be denied access to the  
287 database when the practitioner is no longer licensed.

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**Legislative Review Note**

**as of 2-15-11 11:45 AM**

**Office of Legislative Research and General Counsel**