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MEDICAID PROGRAM AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: John Dougall

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends Medicaid provisions of the Utah Code.

Highlighted Provisions:

This bill:

- ▶ requires the Department of Health to conduct a certain level of internal audits of the Medicaid program;
- ▶ requires the Department of Health to study and report:
 - direct contracting for primary care services; and
 - the feasibility of establishing a medical homes model;
- ▶ requires the Department of Health to apply for and, if approved, implement a program for health opportunity accounts;
- ▶ requires the division to set the same reimbursement rates for an outpatient medical procedure for a health care facility, regardless of the type, location, or size of the health care facility;
- ▶ requires certain funds to be deposited in the Medicaid Restricted Account; and
- ▶ expands the use of the Nursing Care Facilities Account, which was established to assist nursing care facilities providing services under the Medicaid program.

Monies Appropriated in this Bill:

None

Other Special Clauses:



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **26-18-3**, as last amended by Laws of Utah 2008, Chapters 62 and 382

32 **26-18-402**, as last amended by Laws of Utah 2009, Chapters 13 and 199

33 **26-35a-106**, as last amended by Laws of Utah 2008, Chapter 382

34 ENACTS:

35 **26-18-3.8**, Utah Code Annotated 1953

36 RENUMBERS AND AMENDS:

37 **26-10-101**, (Renumbered from 26-18-301, as last amended by Laws of Utah 2008,
38 Chapter 159)

39 **26-10-102**, (Renumbered from 26-18-302, as last amended by Laws of Utah 2008,
40 Chapter 159)

41 **26-10-103**, (Renumbered from 26-18-303, as enacted by Laws of Utah 1993, Chapter
42 255)

43 **26-10-104**, (Renumbered from 26-18-304, as last amended by Laws of Utah 2008,
44 Chapters 159 and 382)

45 **26-10-105**, (Renumbered from 26-18-305, as last amended by Laws of Utah 2006,
46 Chapter 116)



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

49 Section 1. Section **26-10-101**, which is renumbered from Section 26-18-301 is
50 renumbered and amended to read:

51 ~~[26-18-301].~~ **26-10-101. Definitions.**

52 As used in this part:

53 (1) "Community based organization":

54 (a) means a private entity; and

55 (b) includes for profit and not for profit entities.

56 (2) "Cultural competence" means a set of congruent behaviors, attitudes, and policies
57 that come together in a system, agency, or profession and enables that system, agency, or
58 profession to work effectively in cross-cultural situations.

59 (3) "Health literacy" means the degree to which an individual has the capacity to
 60 obtain, process, and understand health information and services needed to make appropriate
 61 health decisions.

62 (4) "Institutional capacity" means the ability of a community based organization to
 63 implement public and private contracts.

64 (5) "Medically underserved population" means the population of an urban or rural area
 65 or a population group designated by the department as having a shortage of primary health care
 66 services.

67 (6) "Primary health care" means:

68 (a) basic and general health care services given when a person seeks assistance to
 69 screen for or to prevent illness and disease, or for simple and common illnesses and injuries;
 70 and

71 (b) care given for the management of chronic diseases.

72 (7) "Primary health care services" include~~[-, but are not limited to]~~:

73 (a) services of physicians, nurses, physician's assistants, and dentists licensed to
 74 practice in this state under Title 58, Occupations and Professions;

75 (b) diagnostic and radiologic services;

76 (c) preventive health services including, ~~[but not limited to,]~~ perinatal services,
 77 well-child services, and other services that seek to prevent disease or its consequences;

78 (d) emergency medical services;

79 (e) preventive dental services; and

80 (f) pharmaceutical services.

81 Section 2. Section **26-10-102**, which is renumbered from Section 26-18-302 is
 82 renumbered and amended to read:

83 ~~[26-18-302].~~ **26-10-102. Department to award grants and contracts --**
 84 **Applications.**

85 (1) (a) Within appropriations specified by the Legislature for this purpose, the
 86 department may make grants to public and nonprofit entities for the cost of operation of
 87 providing primary health care services to medically underserved populations.

88 (b) The department may, as funding permits, contract with community based
 89 organizations for the purpose of developing culturally and linguistically appropriate programs

90 and services for low income and medically underserved populations through a pilot program to
91 accomplish one or more of the following:

92 (i) to educate individuals:

93 (A) to use private and public health care coverage programs, products, services, and
94 resources in a timely, effective, and responsible manner;

95 (B) to make prudent use of private and public health care resources;

96 (C) to pursue preventive health care, health screenings, and disease management; and

97 (D) to locate health care programs and services;

98 (ii) to assist individuals to develop:

99 (A) personal health management;

100 (B) self-sufficiency in daily care; and

101 (C) life and disease management skills;

102 (iii) to support translation of health materials and information;

103 (iv) to facilitate an individual's access to primary care services and providers, including
104 mental health services; and

105 (v) to measure and report empirical results of the pilot project.

106 (2) (a) Grants by the department shall be awarded based on:

107 (i) applications submitted to the department in the manner and form prescribed by the
108 department; and

109 (ii) the criteria established in Section [~~26-18-303~~] 26-10-103.

110 (b) The application for a grant under Subsection (2)(a) shall contain:

111 (i) a requested award amount;

112 (ii) a budget; and

113 (iii) a narrative plan of the manner in which the applicant intends to provide the
114 primary health care services described in Subsection [~~26-18-301~~] 26-10-101(7).

115 (c) A contract bid for a service under Subsection (1)(b):

116 (i) shall be awarded in accordance with Title 63G, Chapter 6, Utah Procurement Code;

117 (ii) must include the information described in Section [~~26-18-303~~] 26-10-103; and

118 (iii) is subject to Subsection (3) of this section.

119 (3) (a) An applicant under this chapter must demonstrate to the department that the
120 applicant will not deny services to a person because of the person's inability to pay for the

121 services.

122 (b) Subsection (3)(a) does not preclude an applicant from seeking payment from the
123 person receiving services, a third party, or a government agency if:

124 (i) the applicant is authorized to charge for the services; and

125 (ii) the person, third party, or government agency is under legal obligation to pay the
126 charges.

127 (4) The department shall maximize the use of federal matching funds received for
128 services under Subsection (1)(b) to fund additional contracts under Subsection (1)(b).

129 Section 3. Section **26-10-103**, which is renumbered from Section 26-18-303 is
130 renumbered and amended to read:

131 ~~[26-18-303].~~ **26-10-103. Content of applications.**

132 Applications for grants under this chapter shall include:

133 (1) a statement of specific, measurable objectives, and the methods to be used to assess
134 the achievement of those objectives;

135 (2) the precise boundaries of the area to be served by the entity making the application,
136 including a description of the medically underserved population to be served by the grant;

137 (3) the results of an assessment of need demonstrating that the population to be served
138 has a need for the services provided by the applicant;

139 (4) a description of the personnel responsible for carrying out the activities of the grant
140 along with a statement justifying the use of any grant funds for the personnel;

141 (5) letters and other forms of evidence showing that efforts have been made to secure
142 financial and professional assistance and support for the services to be provided under the
143 grant;

144 (6) a list of services to be provided by the applicant;

145 (7) the schedule of fees to be charged by the applicant;

146 (8) the estimated number of medically underserved persons to be served with the grant
147 award; and

148 (9) other provisions as determined by the department.

149 Section 4. Section **26-10-104**, which is renumbered from Section 26-18-304 is
150 renumbered and amended to read:

151 ~~[26-18-304].~~ **26-10-104. Process and criteria for awarding grants and**

152 **contracts.**

153 (1) The department shall establish rules in accordance with Title 63G, Chapter 3, Utah
154 Administrative Rulemaking Act, governing the application form, process, and criteria it will
155 use in awarding grants and contracts under this chapter.

156 (2) When awarding a primary care grant under Subsection [~~26-18-302~~]
157 26-10-102(1)(a), the department shall consider the extent to which the applicant:

158 (a) demonstrates that the area or a population group to be served under the application
159 has a shortage of primary health care and that the services will be located so that they will
160 provide assistance to the greatest number of persons residing in the area or included in the
161 population group;

162 (b) utilizes other sources of funding, including private funding, to provide primary
163 health care;

164 (c) demonstrates the ability and expertise to serve traditionally medically underserved
165 populations including persons of limited English-speaking ability, single heads of households,
166 the elderly, persons with low incomes, and persons with chronic diseases;

167 (d) demonstrates that it will assume financial risk for a specified number of medically
168 underserved persons within its catchment area for a predetermined level of care on a prepaid
169 capitation basis; and

170 (e) meets other criteria determined by the department.

171 (3) When awarding a contract for community based services under Subsection
172 [~~26-18-302~~] 26-10-102(1)(b), the department shall:

173 (a) consider the extent to which the applicant:

174 (i) demonstrates that the area or a population group to be served under the application
175 is a medically underserved area or population and that the services will be located so that they
176 will provide assistance to the greatest number of persons residing in the area or included in the
177 population group;

178 (ii) utilizes other sources of funding, including private funding, to provide the services
179 described in Subsection [~~26-18-302~~] 26-10-102(1)(b);

180 (iii) demonstrates the ability and expertise to serve traditionally medically underserved
181 populations including persons of limited English-speaking ability, single heads of households,
182 the elderly, persons with low incomes, and persons with chronic diseases;

183 (iv) meets other criteria determined by the department; and
184 (v) demonstrates the ability to empirically measure and report the results of all contract
185 supported activities;

186 (b) consider the extent to which the contract increases the applicant's institutional
187 capacity;

188 (c) consult with the state's:

189 (i) Medicaid program;

190 (ii) Children's Health Insurance Program; and

191 (iii) other assistance programs within the Department of Workforce Services and the
192 Department of Human Services; and

193 (d) as funding permits, implement the community based service contract as a pilot
194 program for which the department shall enter into contracts for services as follows:

195 (i) two contracts in the amount of \$50,000 each to be awarded to experienced and
196 established applicants; and

197 (ii) three contracts in the amount of \$30,000 each to be awarded to applicants that:

198 (A) are not as established or experienced as the applicants under Subsection (3)(d)(i);

199 or

200 (B) represent smaller community based approaches than the applicants described in
201 Subsection (3)(d)(i).

202 (4) Once a contract has been awarded under Subsection (3), the department shall
203 provide technical assistance to the contractee to familiarize the contractee with public and
204 private resources available to support wellness, health promotion, and disease management.

205 Section 5. Section **26-10-105**, which is renumbered from Section 26-18-305 is
206 renumbered and amended to read:

207 **~~[26-18-305]~~. 26-10-105. Report on implementation.**

208 The department shall report to the Health and Human Services Interim Committee by
209 November 1, 1994, and every year thereafter on the implementation of the grant program for
210 primary care services. The report shall include a description of the scope and level of coverage
211 provided to low-income persons by primary care grant programs.

212 Section 6. Section **26-18-3** is amended to read:

213 **26-18-3. Administration of Medicaid program by department -- Reporting to the**

214 **Legislature -- Disciplinary measures and sanctions -- Funds collected -- Eligibility**
215 **standards -- Internal audits -- Studies -- Health opportunity accounts.**

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

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

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

224 (i) the standards used by the department for determining eligibility for Medicaid
225 services;

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

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

228 (3) (a) The department shall, in accordance with Subsection (3)(b), report to either the
229 Legislative Executive Appropriations Committee or the Legislative Health and Human
230 Services Appropriations Subcommittee when the department:

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

232 (ii) initiates a new Medicaid waiver;

233 (iii) initiates an amendment to an existing Medicaid waiver; or

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

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

236 (i) be submitted to the Legislature's Executive Appropriations Committee or the
237 legislative Health and Human Services Appropriations Subcommittee prior to the department
238 implementing the proposed change; and

239 (ii) shall include:

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

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

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

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

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

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

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

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

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

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

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

260 (5) The department may, in its discretion, contract with the Department of Human
261 Services or other qualified agencies for services in connection with the administration of the
262 Medicaid program, including:

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

264 (b) recovery of overpayments; and

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

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

270 (a) termination from the program;

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

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

273 (7) Funds collected as a result of a sanction imposed under Section 1919 of Title XIX
274 of the federal Social Security Act shall be deposited in the General Fund as nonlapsing
275 dedicated credits to be used by the division in accordance with the requirements of Section

276 1919 of Title XIX of the federal Social Security Act.

277 (8) (a) In determining whether an applicant or recipient is eligible for a service or
278 benefit under this part or Chapter 40, Utah Children's Health Insurance Act, the department
279 shall, if Subsection (8)(b) is satisfied, exclude from consideration one passenger vehicle
280 designated by the applicant or recipient.

281 (b) Before Subsection (8)(a) may be applied:

282 (i) the federal government must:

283 (A) determine that Subsection (8)(a) may be implemented within the state's existing
284 public assistance-related waivers as of January 1, 1999;

285 (B) extend a waiver to the state permitting the implementation of Subsection (8)(a); or

286 (C) determine that the state's waivers that permit dual eligibility determinations for
287 cash assistance and Medicaid are no longer valid; and

288 (ii) the department must determine that Subsection (8)(a) can be implemented within
289 existing funding.

290 (9) (a) For purposes of this Subsection (9):

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

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

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

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

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

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

302 (11) In order to determine the feasibility of contracting for direct Medicaid providers
303 for primary care services, the department shall:

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

306 (i) in a geographic area;

307 (ii) for a predetermined contracted amount; and
308 (iii) for a defined range of primary care services; and
309 (b) by February 1, 2011, report to the Office of the Legislative Fiscal Analyst on the
310 response to the request for information under Subsection (11)(a).

311 (12) (a) The department shall conduct a three year study to determine the feasibility of
312 conducting a patient-centered medical homes model in an area of the state using existing
313 budget funds.

314 (b) If the department determines that the model described in Subsection (12)(a) is
315 feasible, the department shall make recommendations as to the implementation of the model to
316 the Office of the Legislative Fiscal Analyst by July 1, 2013.

317 (13) (a) The department shall apply for and, if approved, implement a demonstration
318 program for health opportunity accounts, as provided for in 42 U.S.C. Sec. 1396u-8.

319 (b) A health opportunity account established under Subsection (13)(a) shall be an
320 alternative to the existing benefits received by an individual eligible to receive Medicaid under
321 this chapter.

322 (c) Subsection (13)(a) is not intended to expand the coverage of the Medicaid program.

323 Section 7. Section **26-18-3.8** is enacted to read:

324 **26-18-3.8. Medicaid reimbursement for outpatient medical procedures.**

325 (1) The division shall:

326 (a) set a fee schedule under the Medicaid program for an outpatient medical procedure
327 to be the same for each health care facility, as defined in Section 26-21-2, regardless of the
328 type, location, or size of the health care facility; and

329 (b) establish an outpatient fee schedule consistent with Subsection (1) no later than
330 September 1, 2010.

331 (2) This section does not apply to reimbursements to a health care facility based on:

332 (a) a health facility's status as a graduate medical education program;

333 (b) disproportional share hospital payments under 42 U.S.C. Sec. 1396r-4; or

334 (c) other supplemental payments to a state-owned teaching hospital.

335 Section 8. Section **26-18-402** is amended to read:

336 **26-18-402. Medicaid Restricted Account.**

337 (1) There is created a restricted account in the General Fund known as the Medicaid

338 Restricted Account.

339 (2) (a) Except as provided in Subsection (3), the following shall be deposited into the
340 Medicaid Restricted Account:

341 (i) any general funds appropriated to the department for the state plan for medical
342 assistance or for the Division of Health Care Financing that are not expended by the
343 department in the fiscal year for which the general funds were appropriated and which are not
344 otherwise designated as nonlapsing shall lapse into the Medicaid Restricted Account; ~~and~~

345 (ii) any unused state funds that are associated with the Medicaid program, as defined in
346 Section 26-18-2, from the Department of Workforce Services and the Department of Human
347 Services; and

348 [~~it~~] (iii) any penalties imposed and collected under:

349 (A) Section 17B-2a-818.5;

350 (B) Section 19-1-206;

351 (C) Section 79-2-404;

352 (D) Section 63A-5-205;

353 (E) Section 63C-9-403; or

354 (F) Section 72-6-107.5.

355 (b) The account shall earn interest and all interest earned shall be deposited into the
356 account.

357 (c) The Legislature may appropriate monies in the restricted account to fund programs
358 that expand medical assistance coverage and private health insurance plans to low income
359 persons who have not traditionally been served by Medicaid, including the Utah Children's
360 Health Insurance Program created in Chapter 40.

361 (3) For fiscal years 2008-09, 2009-10, and 2010-11, any general funds appropriated to
362 the department for the state plan for medical assistance, or for the Division of Health Care
363 Financing that are not expended by the department in the fiscal year in which the general funds
364 were appropriated are nonlapsing.

365 Section 9. Section **26-35a-106** is amended to read:

366 **26-35a-106. Restricted account -- Creation -- Deposits.**

367 (1) (a) There is created a restricted account in the General Fund known as the "Nursing
368 Care Facilities Account" consisting of:

369 (i) proceeds from the assessment imposed by Section 26-35a-104 which shall be
370 deposited in the restricted account to be used for the purpose described in Subsection (1)(b);

371 (ii) money appropriated or otherwise made available by the Legislature; and

372 (iii) any interest earned on the account.

373 (b) (i) Money in the account shall only be used:

374 (A) to the extent authorized by federal law, to obtain federal financial participation in
375 the Medicaid program; [~~and~~]

376 (B) to provide the increased level of hospice reimbursement resulting from the nursing
377 care facilities assessment imposed under Section 26-35a-104; and

378 [~~(B)~~] (C) in the manner described in Subsection (1)(b)(ii).

379 (ii) The money appropriated from the restricted account to the department:

380 (A) shall be used only to increase the rates paid prior to the effective date of this act to
381 nursing care facilities for providing services pursuant to the Medicaid program and for
382 administrative expenses as described in Subsection (1)(b)(ii)(C);

383 (B) may not be used to replace existing state expenditures paid to nursing care facilities
384 for providing services pursuant to the Medicaid program, except for increased costs due to
385 hospice reimbursement under Subsection (1)(b)(i)(B); and

386 (C) may be used for administrative expenses [~~for implementation of this act~~], if the
387 administrative expenses for the fiscal year do not exceed 3% of the money deposited into the
388 restricted account during the fiscal year.

389 (2) Money shall be appropriated from the restricted account to the department for the
390 purposes described in Subsection (1)(b) in accordance with Title 63J, Chapter 1, Budgetary
391 Procedures Act.

Legislative Review Note
as of 3-1-10 12:51 PM

Office of Legislative Research and General Counsel

H.B. 397 - Medicaid Program Amendments

Fiscal Note

2010 General Session

State of Utah

State Impact

This legislation results in savings to the Department of Health of (\$706,200) General Fund and (\$2,788,200) federal funds in FY 2010, (\$3,660,200) General Fund and (\$11,255,100) federal funds in FY 2011, and (\$4,394,600) General Fund and (\$10,827,400) federal funds FY 2012.

	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2011</u> <u>Approp.</u>	<u>FY 2012</u> <u>Approp.</u>	<u>FY 2010</u> <u>Revenue</u>	<u>FY 2011</u> <u>Revenue</u>	<u>FY 2012</u> <u>Revenue</u>
General Fund	\$0	(\$3,660,200)	(\$4,394,600)	\$0	\$0	\$0
General Fund, One-Time	(\$706,200)	\$0	\$0	\$0	\$0	\$0
Federal Funds	(\$2,788,200)	(\$11,255,100)	(\$10,827,400)	\$0	\$0	\$0
Total	(\$3,494,400)	(\$14,915,300)	(\$15,222,000)	\$0	\$0	\$0

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals. Local governments and businesses that operate hospitals and/or ambulatory surgical centers may see a change in their revenue from Medicaid.
