

1 **MEDICAID MANAGEMENT OF EMERGENCY DEPARTMENT**

2 **UTILIZATION**

3 2015 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Michael S. Kennedy**

6 Senate Sponsor: Brian E. Shiozawa

8 **LONG TITLE**

9 **General Description:**

10 This bill amends the Medical Assistance Act related to Medicaid Accountable Care
11 Organizations and Medicaid recipient emergency department utilization.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ defines terms;
- 15 ▶ prohibits a Medicaid Accountable Care Organization from imposing differential
16 payments for professional services rendered in an emergency department;
- 17 ▶ requires the Department of Health, before July 1, 2015, to convene a group of
18 stakeholders to discuss ways to create and support increased access to primary and
19 urgent care services for Medicaid recipients; and
- 20 ▶ makes technical amendments.

21 **Money Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **26-18-408**, as enacted by Laws of Utah 2013, Chapter 103

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

30 Section 1. Section **26-18-408** is amended to read:

31 **26-18-408. Incentives to appropriately use emergency department services.**

32 (1) (a) This section applies to the Medicaid program and to the Utah Children's Health
33 Insurance Program created in Chapter 40, Utah Children's Health Insurance Act.

34 (b) For purposes of this section:

35 (i) "Accountable care organization" means a Medicaid or Children's Health Insurance
36 Program administrator that contracts with the Medicaid program or the Children's Health
37 Insurance Program to deliver health care through an accountable care plan.

38 (ii) "Accountable care plan" means a risk based delivery service model authorized by
39 Section **26-18-405** and administered by an accountable care organization.

40 (iii) "Nonemergent care":

41 (A) means use of the emergency [~~room~~] department to receive health care that is
42 nonemergent as defined by the department by administrative rule adopted in accordance with
43 Title 63G, Chapter 3, Utah Administrative Rulemaking Act and the Emergency Medical
44 Treatment and Active Labor Act; and

45 (B) does not mean the medical services provided to a recipient required by the
46 Emergency Medical Treatment and Active Labor Act, including services to conduct a medical
47 screening examination to determine if the recipient has an emergent or nonemergent condition.

48 (iv) "Professional compensation" means payment made for services rendered to a
49 Medicaid recipient by an individual licensed to provide health care services.

50 (v) "Super-utilizer" means a Medicaid recipient who has been identified by the
51 recipient's accountable care organization as a person who uses the emergency department
52 excessively, as defined by the accountable care organization.

53 (2) (a) An accountable care organization may, in accordance with [~~Subsection (2)(b)]~~
54 Subsections (2)(b) and (c):

55 (i) audit emergency [~~room~~] department services provided to a recipient enrolled in the
56 accountable care plan to determine if nonemergent care was provided to the recipient; and

57 (ii) establish differential payment for emergent and nonemergent care provided in an

58 emergency [~~room~~] department.

59 (b) (i) The [~~audits and~~] differential payments under [~~Subsections (2)(a) and (b)~~] apply to
60 services provided to a recipient on or after July 1, 2015] Subsection (2)(a)(ii) do not apply to
61 professional compensation for services rendered in an emergency department.

62 (ii) Except in cases of suspected fraud, waste, and abuse, an accountable care
63 organization's audit of payment under [~~Subsections (2)(a) and (b)~~] Subsection (2)(a)(i) is
64 limited to the 18-month period of time after the date on which the medical services were
65 provided to the recipient. If fraud, waste, or abuse is alleged, the accountable care
66 organization's audit of payment under [~~Subsections (2)(a) and (b)~~] Subsection (2)(a)(i) is
67 limited to three years after the date on which the medical services were provided to the
68 recipient.

69 (c) The audits and differential payments under Subsections (2)(a) and (b) apply to
70 services provided to a recipient on or after July 1, 2015.

71 (3) An accountable care organization shall:

72 (a) use the savings under Subsection (2) to maintain and improve access to primary
73 care and urgent care services for all of the recipients enrolled in the accountable care plan;
74 [~~and~~]

75 (b) provide viable alternatives for increasing primary care provider reimbursement
76 rates to incentivize after hours primary care access for recipients; and

77 [~~(b)~~] (c) report to the department on how the accountable care organization complied
78 with this Subsection (3)[~~(a)~~].

79 (4) [~~(a)~~] The department shall[~~;~~]:

80 (a) through administrative rule adopted by the department, develop quality
81 measurements that evaluate an accountable care organization's delivery of:

82 (i) appropriate emergency [~~room~~] department services to recipients enrolled in the
83 accountable care plan;

84 (ii) expanded primary care and urgent care for recipients enrolled in the accountable
85 care plan, with consideration of the accountable care organization's:

86 ~~[(A) emergency room diversion plans;]~~

87 (A) delivery of primary care, urgent care, and after hours care through means other than
88 the emergency department;

89 (B) recipient access to primary care providers and community health centers including
90 evening and weekend access; and

91 (C) other innovations for expanding access to primary care; and

92 (iii) quality of care for the accountable care plan members[-];

93 ~~[(b) The department shall:]~~

94 ~~[(i)]~~ (b) compare the quality measures developed under Subsection (4)(a) for each
95 accountable care organization[;] and ~~[(ii)]~~ share the data and quality measures developed under
96 Subsection (4)(a) with the Health Data Committee created in Chapter 33a, Utah Health Data
97 Authority Act[-];

98 ~~[(c) The Health Data Committee may publish data in accordance with Chapter 33a,~~
99 ~~Utah Health Data Authority Act which compares the quality measures for the accountable care~~
100 ~~plans.]~~

101 ~~[(5)]~~ (c) ~~[The department shall]~~ apply for a Medicaid waiver and a Children's Health
102 Insurance Program waiver with the Centers for Medicare and Medicaid Services within the
103 United States Department of Health and Human Services, to:

104 ~~[(a)]~~ (i) allow the program to charge recipients who are enrolled in an accountable care
105 plan a higher copayment for emergency ~~[room]~~ department services; and

106 ~~[(b)]~~ (ii) develop, by administrative rule, an algorithm to determine assignment of new,
107 unassigned recipients to specific accountable care plans based on the plan's performance in
108 relation to the quality measures developed pursuant to Subsection (4)(a)[-]; and

109 (d) before July 1, 2015, convene representatives from the accountable care
110 organizations, pre-paid mental health plans, an organization representing hospitals, an
111 organization representing physicians, and a county mental health and substance abuse authority
112 to discuss alternatives to emergency department care, including:

113 (i) creating increased access to primary care services;

114 (ii) alternative care settings for super-utilizers and individuals with behavioral health or
115 substance abuse issues;

116 (iii) primary care medical and health homes that can be created and supported through
117 enhanced federal match rates, a state plan amendment for integrated care models, or other
118 Medicaid waivers;

119 (iv) case management programs that can:

120 (A) schedule prompt visits with primary care providers within 72 to 96 hours of an
121 emergency department visit;

122 (B) help super-utilizers with behavioral health or substance abuse issues to obtain care
123 in appropriate care settings; and

124 (C) assist with transportation to primary care visits if transportation is a barrier to
125 appropriate care for the recipient; and

126 (v) sharing of medical records between health care providers and emergency
127 departments for Medicaid recipients.

128 (5) The Health Data Committee may publish data in accordance with Chapter 33a,
129 Utah Health Data Authority Act, which compares the quality measures for the accountable care
130 plans.

131 (6) The department shall report to the Legislature's Health and Human Services Interim
132 Committee on or before October 1, 2016, regarding implementation of this section.