

**Representative John Dougall** proposes the following substitute bill:

**MEDICAID PROGRAM AMENDMENTS**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: John Dougall**

Senate Sponsor: Daniel R. Liljenquist

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**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 Human Services to report to the Legislature when changes to the state Medicaid plan, or a Medicaid waiver effect the care of children and youth in custody of the Division of Child and Family Services or the Division of Juvenile Justice Services; ↔**

▶ allows the Department of Health to apply for and, if approved, implement a program for health opportunity accounts;

▶ 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:**

None



26 **Utah Code Sections Affected:**

27 AMENDS:

28 **26-18-3**, as last amended by Laws of Utah 2008, Chapters 62 and 382

29 **26-18-402**, as last amended by Laws of Utah 2009, Chapters 13 and 199

30 **26-35a-106**, as last amended by Laws of Utah 2008, Chapter 382

31 RENUMBERS AND AMENDS:

32 **26-10-101**, (Renumbered from 26-18-301, as last amended by Laws of Utah 2008,  
33 Chapter 159)

34 **26-10-102**, (Renumbered from 26-18-302, as last amended by Laws of Utah 2008,  
35 Chapter 159)

36 **26-10-103**, (Renumbered from 26-18-303, as enacted by Laws of Utah 1993, Chapter  
37 255)

38 **26-10-104**, (Renumbered from 26-18-304, as last amended by Laws of Utah 2008,  
39 Chapters 159 and 382)

40 **26-10-105**, (Renumbered from 26-18-305, as last amended by Laws of Utah 2006,  
41 Chapter 116)



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

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

46 ~~**[26-18-301].**~~ **26-10-101. Definitions.**

47 As used in this part:

48 (1) "Community based organization":

49 (a) means a private entity; and

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

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

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

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

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

62 (6) "Primary health care" means:

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

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

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

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

70 (b) diagnostic and radiologic services;

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

73 (d) emergency medical services;

74 (e) preventive dental services; and

75 (f) pharmaceutical services.

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

78 ~~**[26-18-302].**~~ **26-10-102. Department to award grants and contracts --**

79 **Applications.**

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

83 (b) The department may, as funding permits, contract with community based  
84 organizations for the purpose of developing culturally and linguistically appropriate programs  
85 and services for low income and medically underserved populations through a pilot program to  
86 accomplish one or more of the following:

87 (i) to educate individuals:

- 88 (A) to use private and public health care coverage programs, products, services, and
- 89 resources in a timely, effective, and responsible manner;
- 90 (B) to make prudent use of private and public health care resources;
- 91 (C) to pursue preventive health care, health screenings, and disease management; and
- 92 (D) to locate health care programs and services;
- 93 (ii) to assist individuals to develop:
- 94 (A) personal health management;
- 95 (B) self-sufficiency in daily care; and
- 96 (C) life and disease management skills;
- 97 (iii) to support translation of health materials and information;
- 98 (iv) to facilitate an individual's access to primary care services and providers, including
- 99 mental health services; and
- 100 (v) to measure and report empirical results of the pilot project.
- 101 (2) (a) Grants by the department shall be awarded based on:
- 102 (i) applications submitted to the department in the manner and form prescribed by the
- 103 department; and
- 104 (ii) the criteria established in Section [~~26-18-303~~] 26-10-103.
- 105 (b) The application for a grant under Subsection (2)(a) shall contain:
- 106 (i) a requested award amount;
- 107 (ii) a budget; and
- 108 (iii) a narrative plan of the manner in which the applicant intends to provide the
- 109 primary health care services described in Subsection [~~26-18-301~~] 26-10-101(7).
- 110 (c) A contract bid for a service under Subsection (1)(b):
- 111 (i) shall be awarded in accordance with Title 63G, Chapter 6, Utah Procurement Code;
- 112 (ii) must include the information described in Section [~~26-18-303~~] 26-10-103; and
- 113 (iii) is subject to Subsection (3) of this section.
- 114 (3) (a) An applicant under this chapter must demonstrate to the department that the
- 115 applicant will not deny services to a person because of the person's inability to pay for the
- 116 services.
- 117 (b) Subsection (3)(a) does not preclude an applicant from seeking payment from the
- 118 person receiving services, a third party, or a government agency if:

- 119 (i) the applicant is authorized to charge for the services; and
- 120 (ii) the person, third party, or government agency is under legal obligation to pay the
- 121 charges.

122 (4) The department shall maximize the use of federal matching funds received for

123 services under Subsection (1)(b) to fund additional contracts under Subsection (1)(b).

124 Section 3. Section **26-10-103**, which is renumbered from Section 26-18-303 is

125 renumbered and amended to read:

126 ~~[26-18-303].~~ **26-10-103. Content of applications.**

127 Applications for grants under this chapter shall include:

128 (1) a statement of specific, measurable objectives, and the methods to be used to assess

129 the achievement of those objectives;

130 (2) the precise boundaries of the area to be served by the entity making the application,

131 including a description of the medically underserved population to be served by the grant;

132 (3) the results of an assessment of need demonstrating that the population to be served

133 has a need for the services provided by the applicant;

134 (4) a description of the personnel responsible for carrying out the activities of the grant

135 along with a statement justifying the use of any grant funds for the personnel;

136 (5) letters and other forms of evidence showing that efforts have been made to secure

137 financial and professional assistance and support for the services to be provided under the

138 grant;

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

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

141 (8) the estimated number of medically underserved persons to be served with the grant

142 award; and

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

144 Section 4. Section **26-10-104**, which is renumbered from Section 26-18-304 is

145 renumbered and amended to read:

146 ~~[26-18-304].~~ **26-10-104. Process and criteria for awarding grants and**

147 **contracts.**

148 (1) The department shall establish rules in accordance with Title 63G, Chapter 3, Utah

149 Administrative Rulemaking Act, governing the application form, process, and criteria it will

150 use in awarding grants and contracts under this chapter.

151 (2) When awarding a primary care grant under Subsection [~~26-18-302~~

152 26-10-102(1)(a), the department shall consider the extent to which the applicant:

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

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

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

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

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

166 (3) When awarding a contract for community based services under Subsection  
167 [~~26-18-302~~] 26-10-102(1)(b), the department shall:

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

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

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

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

178 (iv) meets other criteria determined by the department; and

179 (v) demonstrates the ability to empirically measure and report the results of all contract  
180 supported activities;

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

183 (c) consult with the state's:

184 (i) Medicaid program;

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

186 (iii) other assistance programs within the Department of Workforce Services and the  
187 Department of Human Services; and

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

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

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

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

194 or

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

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

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

202 ~~[26-18-305]~~. **26-10-105. Report on implementation.**

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

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

208 **26-18-3. Administration of Medicaid program by department -- Reporting to the**  
209 **Legislature -- Disciplinary measures and sanctions -- Funds collected -- Eligibility**  
210 **standards -- Internal audits -- Studies -- Health opportunity accounts.**

211 (1) The department shall be the single state agency responsible for the administration

212 of the Medicaid program in connection with the United States Department of Health and  
213 Human Services pursuant to Title XIX of the Social Security Act.

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

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

219 (i) the standards used by the department for determining eligibility for Medicaid  
220 services;

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

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

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

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

227 (ii) initiates a new Medicaid waiver;

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

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

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

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

234 (ii) shall include:

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

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

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

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

242 (E) the degree to which any proposed cut may result in cost-shifting to more expensive

243 services in health or human service programs; and

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

245 (I) the effect of the proposed change on current or future appropriations from the

246 Legislature to the department;

247 (II) the effect the proposed change may have on federal matching dollars received by

248 the state Medicaid program;

249 (III) any cost shifting or cost savings within the department's budget that may result

250 from the proposed change; and

251 (IV) identification of the funds that will be used for the proposed change, including any

252 transfer of funds within the department's budget.

252a **Ĥ→ (4)(a) The Department of Human Services shall report to the Legislative Health**

252b **and Human Services Appropriations Subcommittee no later than December 31, ~~Ĥ→ [2012]~~**

252c **2010 ←~~Ĥ~~ in**

252c **accordance with Subsection (b).**

252d **(b) The report required by Subsection (a) shall include:**

252e **(i) changes made by the division or the department beginning July 1, 2010 that effect**

252f **the Medicaid program, a waiver under the Medicaid program, or an interpretation of**

252g **Medicaid services or funding, that relate to care for children and youth in the custody of the**

252h **Division of Child and Family Services or the Division of Juvenile Justice Services;**

252i **(ii) the history and impact of the changes under Subsection (b)(i);**

252j **(iii) the Department of Human Service's plans for addressing the impact of the changes**

252k **under Subsection (b)(i); and**

252l **(iv) ways to consolidate administrative functions within the Department of Human**

252m **Services, the Department of Health, the Division of Child and Family Services, and the**

252n **Division of Juvenile Justice Services to more efficiently meet the needs of children and youth**

252o **with mental health and substance disorder treatment needs.**

253 **[~~(4)~~] 5 ←~~Ĥ~~** Any rules adopted by the department under Subsection (2) are subject to

253a review and

254 reauthorization by the Legislature in accordance with Section 63G-3-502.

255 **Ĥ→ [~~(5)~~] 6 ←~~Ĥ~~** The department may, in its discretion, contract with the Department of

255a Human

256 Services or other qualified agencies for services in connection with the administration of the

257 Medicaid program, including:

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

259 (b) recovery of overpayments; and

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

262 ~~H~~→ [(6)] 7 ←~~H~~ The department shall provide, by rule, disciplinary measures and sanctions  
262a for  
263 Medicaid providers who fail to comply with the rules and procedures of the program, provided  
264 that sanctions imposed administratively may not extend beyond:

- 265 (a) termination from the program;
- 266 (b) recovery of claim reimbursements incorrectly paid; and
- 267 (c) those specified in Section 1919 of Title XIX of the federal Social Security Act.

268 ~~H~~→ [(7)] 8 ←~~H~~ Funds collected as a result of a sanction imposed under Section 1919 of  
268a Title XIX  
269 of the federal Social Security Act shall be deposited in the General Fund as nonlapsing  
270 dedicated credits to be used by the division in accordance with the requirements of Section  
271 1919 of Title XIX of the federal Social Security Act.

272 ~~H~~→ [(8)] 9 ←~~H~~ (a) In determining whether an applicant or recipient is eligible for a service  
272a or  
273 benefit under this part or Chapter 40, Utah Children's Health Insurance Act, the department

274 shall, if Subsection (8)(b) is satisfied, exclude from consideration one passenger vehicle  
 275 designated by the applicant or recipient.

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

277 (i) the federal government must:

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

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

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

283 (ii) the department must determine that Subsection ~~H→ [(8)] 9 ←H~~ (a) can be implemented  
 283a within  
 284 existing funding.

285 ~~H→ [(9)] 10 ←H~~ (a) For purposes of this Subsection ~~H→ [(9)] 10 ←H~~ :

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

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

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

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

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

295 ~~H→ [(10)] 11 ←H~~ The department shall conduct internal audits of the Medicaid program, in  
 296 proportion to at least the level of funding it receives from Medicaid to conduct internal audits.

297 ~~H→ [(11)] 12 ←H~~ In order to determine the feasibility of contracting for direct Medicaid  
 297a providers

298 for primary care services, the department shall:

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

301 (i) in a geographic area;

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

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

304 (b) by February 1, 2011, report to the Health and Human Services Appropriations

305 Subcommittee on the response to the request for information under Subsection (11)(a).  
 306 Ĥ→ [(12)] 13 ←Ĥ (a) By December 31, 2010, the department shall:  
 307 (i) determine the feasibility of implementing a three year patient-centered medical  
 308 home demonstration project in an area of the state using existing budget funds; and  
 309 (ii) report the department's findings and recommendations under  
 309a Subsection Ĥ→ [(12)] 13 ←Ĥ (a)(i)  
 310 to the Health and Human Services Appropriations Subcommittee.  
 311 (b) If the department determines that the medical home demonstration project  
 312 described in Subsection Ĥ→ [(12)] 13 ←Ĥ (a) is feasible, and the Health and Human Services  
 312a Appropriations  
 313 Subcommittee recommends that the demonstration project be implemented, the department  
 314 shall:  
 315 (i) implement the demonstration project; and  
 316 (ii) by December 1, 2012, make recommendations to the Health and Human Services  
 317 Appropriations Subcommittee regarding the:  
 318 (A) continuation of the demonstration project;  
 319 (B) expansion of the demonstration project to other areas of the state; and  
 320 (C) cost savings incurred by the implementation of the demonstration project.  
 321 Ĥ→ [(13)] 14 ←Ĥ (a) The department may apply for and, if approved, implement a  
 321a demonstration  
 322 program for health opportunity accounts, as provided for in 42 U.S.C. Sec. 1396u-8.  
 323 (b) A health opportunity account established under Subsection Ĥ→ [(13)] 14 ←Ĥ (a) shall  
 323a be an  
 324 alternative to the existing benefits received by an individual eligible to receive Medicaid under  
 325 this chapter.  
 326 (c) Subsection Ĥ→ [(13)] 14 ←Ĥ (a) is not intended to expand the coverage of the Medicaid  
 326a program.  
 327 Section 7. Section **26-18-402** is amended to read:  
 328 **26-18-402. Medicaid Restricted Account.**  
 329 (1) There is created a restricted account in the General Fund known as the Medicaid  
 330 Restricted Account.  
 331 (2) (a) Except as provided in Subsection (3), the following shall be deposited into the  
 332 Medicaid Restricted Account:  
 333 (i) any general funds appropriated to the department for the state plan for medical  
 334 assistance or for the Division of Health Care Financing that are not expended by the  
 335 department in the fiscal year for which the general funds were appropriated and which are not

336 otherwise designated as nonlapsing shall lapse into the Medicaid Restricted Account; ~~and~~

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

340 ~~[(ii)]~~ (iii) any penalties imposed and collected under:

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

342 (B) Section 19-1-206;

343 (C) Section 79-2-404;

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

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

346 (F) Section 72-6-107.5.

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

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

353 (3) For fiscal years 2008-09, 2009-10, and 2010-11, the following funds are  
 354 nonlapsing:

355 (a) any general funds appropriated to the department for the state plan for medical  
 356 assistance, or for the Division of Health Care Financing that are not expended by the  
 357 department in the fiscal year in which the general funds were appropriated ~~[are nonlapsing-];~~  
 358 and

359 (b) funds described in Subsection (2)(a)(ii).

360 Section 8. Section **26-35a-106** is amended to read:

361 **26-35a-106. Restricted account -- Creation -- Deposits.**

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

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

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

367 (iii) any interest earned on the account.  
368 (b) (i) Money in the account shall only be used:  
369 (A) to the extent authorized by federal law, to obtain federal financial participation in  
370 the Medicaid program; ~~[and]~~  
371 (B) to provide the increased level of hospice reimbursement resulting from the nursing  
372 care facilities assessment imposed under Section 26-35a-104; and  
373 ~~[(B)]~~ (C) in the manner described in Subsection (1)(b)(ii).  
374 (ii) The money appropriated from the restricted account to the department:  
375 (A) shall be used only to increase the rates paid prior to the effective date of this act to  
376 nursing care facilities for providing services pursuant to the Medicaid program and for  
377 administrative expenses as described in Subsection (1)(b)(ii)(C);  
378 (B) may not be used to replace existing state expenditures paid to nursing care facilities  
379 for providing services pursuant to the Medicaid program, except for increased costs due to  
380 hospice reimbursement under Subsection (1)(b)(i)(B); and  
381 (C) may be used for administrative expenses ~~[for implementation of this act]~~, if the  
382 administrative expenses for the fiscal year do not exceed 3% of the money deposited into the  
383 restricted account during the fiscal year.  
384 (2) Money shall be appropriated from the restricted account to the department for the  
385 purposes described in Subsection (1)(b) in accordance with Title 63J, Chapter 1, Budgetary  
386 Procedures Act.

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**H.B. 397 2nd Sub. (Gray) - Medicaid Program Amendments**

**Fiscal Note**

2010 General Session

State of Utah

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**State Impact**

This bill gives Non-lapsing status to General Funds appropriated for medical assistance and Medicaid for FY 2009, FY 2010, and FY 2011 to the Departments of Workforce Services, Health, and Human Services.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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