

**Representative Francis D. Gibson** proposes the following substitute bill:

**FEDERAL GRANTS MANAGEMENT AMENDMENTS**

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Francis D. Gibson**

Senate Sponsor: Evan J. Vickers

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**LONG TITLE**

**General Description:**

This bill makes changes relating to the review and approval of certain intergovernmental transfer programs under the Federal Funds Procedures Act.

**Highlighted Provisions:**

This bill:

- ▶ amends definitions;
- ▶ specifies that restrictions on certain hospitals and nursing care facilities only apply to certain cities or towns;
- ▶ amends the federal funds requests that are subject to the review and approval procedures under the Federal Funds Procedures Act;
- ▶ amends provisions related to the Medicaid Growth Reduction and Stabilization Account; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides a special effective date.

**Utah Code Sections Affected:**



26 AMENDS:

27 **10-8-90**, as last amended by Laws of Utah 2017, Chapter 247

28 **26-18-21**, as enacted by Laws of Utah 2017, Chapter 247

29 **63J-1-315**, as last amended by Laws of Utah 2016, Chapter 183

30 **63J-5-102**, as last amended by Laws of Utah 2017, Chapter 247

31 **63J-5-206**, as enacted by Laws of Utah 2017, Chapter 247



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

34 Section 1. Section **10-8-90** is amended to read:

35 **10-8-90. Ownership and operation of hospitals.**

36 (1) Each city of the third, fourth, or fifth class and each town of the state is authorized  
37 to construct, own, and operate hospitals and to join with other cities, towns, and counties in the  
38 construction, ownership, and operation of hospitals.

39 (2) (a) Beginning July 1, 2017, a hospital under Subsection (1) that owns a nursing care  
40 facility regulated under Title 26, Chapter 21, Health Care Facility Licensing and Inspection  
41 Act, and uses an intergovernmental transfer as that term is defined in Section **26-18-21** may not  
42 enter into a new agreement or arrangement to operate a nursing care facility in another city,  
43 town, or county without first entering into an agreement under Title 11, Chapter 13, Interlocal  
44 Cooperation Act, or other contract with the other city, town, or county to operate the nursing  
45 care facility.

46 (b) Subsection (2)(a) only applies to a city or town described in Subsection (1).

47 Section 2. Section **26-18-21** is amended to read:

48 **26-18-21. Medicaid intergovernmental transfer report -- Approval requirements.**

49 (1) As used in this section:

50 (a) (i) "Intergovernmental transfer" means the transfer of public funds from:

51 (A) a local government entity to another nonfederal governmental entity; or

52 (B) from a nonfederal, government owned health care facility regulated under Chapter  
53 21, Health Care Facility Licensing and Inspection Act, to another nonfederal governmental  
54 entity.

55 (ii) "Intergovernmental transfer" does not include:

56 (A) the transfer of public funds from one state agency to another state agency[-]; or

57 (B) a transfer of funds from the University of Utah Hospitals and Clinics.

58 (b) (i) "Intergovernmental transfer program" means a federally approved  
59 reimbursement program or category that is authorized by the Medicaid state plan or waiver  
60 authority for intergovernmental transfers.

61 (ii) "Intergovernmental transfer program" does not include the addition of a provider to  
62 an existing intergovernmental transfer program.

63 (c) "Local government entity" means a county, city, town, special service district, local  
64 district, or local education agency as that term is defined in Section [63J-5-102](#).

65 (d) "Non-state government entity" means a hospital authority, hospital district, health  
66 care district, special services district, county, or city.

67 (2) (a) An entity that receives federal Medicaid dollars from the department as a result  
68 of an intergovernmental transfer shall, on or before August 1, 2017, and on or before August 1  
69 each year thereafter, provide the department with:

70 (i) information regarding the payments funded with the intergovernmental transfer as  
71 authorized by and consistent with state and federal law;

72 (ii) ~~[the entity's analysis of]~~ information regarding the entity's ability to repay federal  
73 funds, to the extent required by the department in the contract for the intergovernmental  
74 transfer~~[-if there is a federal disallowance of the intergovernmental transfer];~~ and

75 (iii) other information reasonably related to the intergovernmental transfer that may be  
76 required by the department in the contract for the intergovernmental transfer.

77 (b) On or before October 15, 2017, and on or before October 15 each subsequent year  
78 ~~[thereafter]~~, the department shall prepare a report for the Executive Appropriations Committee  
79 that includes:

80 (i) the amount of each intergovernmental transfer under Subsection (2)(a);

81 ~~[(ii) the department's analysis of the risk of a federal disallowance for the state; and]~~

82 (ii) a summary of changes to the Centers for Medicare and Medicaid Services  
83 regulations and practices that are known by the department regarding federal funds related to  
84 an intergovernmental transfer program; and

85 (iii) other information the department gathers about the intergovernmental transfer  
86 under Subsection (2)(a).

87 (3) The department shall not create a new intergovernmental transfer program after

88 July 1, 2017, unless the department reports to the Executive Appropriations Committee, in  
89 accordance with Section [63J-5-206](#), before submitting the new intergovernmental transfer  
90 program for federal approval. The report shall include information required by Subsection  
91 [63J-5-102\(1\)\(d\)](#) and the analysis required in Subsections (2)(a) and (b).

92 (4) (a) The department shall enter into new Nursing Care Facility Non-State  
93 Government-Owned Upper Payment Limit program contracts and contract amendments adding  
94 new nursing care facilities and new non-state government entity operators in accordance with  
95 this Subsection (4).

96 (b) (i) If the nursing care facility expects to receive less than \$1,000,000 in federal  
97 funds each year from the Nursing Care Facility Non-State Government-Owned Upper Payment  
98 Limit program, excluding seed funding and administrative fees paid by the non-state  
99 government entity, the department shall enter into a Nursing Care Facility Non-State  
100 Government-Owned Upper Payment Limit program contract with the non-state government  
101 entity operator of the nursing care facility.

102 (ii) If the nursing care facility expects to receive between \$1,000,000 and \$10,000,000  
103 in federal funds each year from the Nursing Care Facility Non-State Government-Owned  
104 Upper Payment Limit program, excluding seed funding and administrative fees paid by the  
105 non-state government entity, the department shall enter into a Nursing Care Facility Non-State  
106 Government-Owned Upper Payment Limit program contract with the non-state government  
107 entity operator of the nursing care facility after receiving the approval of the Executive  
108 Appropriations Committee.

109 (iii) If the nursing care facility expects to receive more than \$10,000,000 in federal  
110 funds each year from the Nursing Care Facility Non-State Government-Owned Upper Payment  
111 Limit program, excluding seed funding and administrative fees paid by the non-state  
112 government entity, the department may not approve the application without obtaining approval  
113 from the Legislature and the governor.

114 (c) A non-state government entity may not participate in the Nursing Care Facility  
115 Non-State Government-Owned Upper Payment Limit program unless the non-state government  
116 entity is a special service district, county, or city that operates a hospital or holds a license  
117 under Chapter 21, Health Care Facility Licensing and Inspection Act.

118 (d) Each non-state government entity that participates in the Nursing Care Facility

119 Non-State Government-Owned Upper Payment Limit program shall certify to the department  
120 that:

121 (i) the non-state government entity is a local government entity that is able to make an  
122 intergovernmental transfer under applicable state and federal law;

123 (ii) the non-state government entity has sufficient public funds or other permissible  
124 sources of seed funding that comply with the requirements in 42 C.F.R. Part 433, Subpart B;

125 (iii) the funds received from the Nursing Care Facility Non-State Government-Owned  
126 Upper Payment Limit program are:

127 (A) for each nursing care facility, available for patient care until the end of the  
128 non-state government entity's fiscal year; and

129 (B) used exclusively for operating expenses for nursing care facility operations, patient  
130 care, capital expenses, rent, royalties, and other operating expenses; and

131 (iv) the non-state government entity has completed all licensing, enrollment, and other  
132 forms and documents required by federal and state law to register a change of ownership with  
133 the department and with the Centers for Medicare and Medicaid Services.

134 (5) The department shall add a nursing care facility to an existing Nursing Care Facility  
135 Non-State Government-Owned Upper Payment Limit program contract if:

136 (a) the nursing care facility is managed by or affiliated with the same non-state  
137 government entity that also manages one or more nursing care facilities that are included in an  
138 existing Nursing Care Facility Non-State Government-Owned Upper Payment Limit program  
139 contract; and

140 (b) the non-state government entity makes the certification described in Subsection  
141 (4)(d)(ii).

142 (6) The department may not increase the percentage of the administrative fee paid by a  
143 non-state government entity to the department under the Nursing Care Facility Non-State  
144 Government-Owned Upper Payment Limit program.

145 (7) The department may not condition participation in the Nursing Care Facility  
146 Non-State Government-Owned Upper Payment Limit program on:

147 (a) a requirement that the department be allowed to direct or determine the types of  
148 patients that a non-state government entity will treat or the course of treatment for a patient in a  
149 non-state government nursing care facility; or

150           **(b) a requirement that a non-state government entity or nursing care facility post a**  
151 **bond, purchase insurance, or create a reserve account of any kind.**

152           **(8) The department may not audit a non-state governmental entity's compliance with**  
153 **Subsection (4)(d)(ii).**

154           **(9) (a) The department may not enter into a new Nursing Care Facility Non-State**  
155 **Government-Owned Upper Payment Limit program contract before January 1, 2019.**

156           **(b) Subsection (9)(a) does not apply to a new Nursing Care Facility Non-State**  
157 **Government-Owned Upper Payment Limit program contract that was included in the federal**  
158 **funds request summary under Section [63J-5-201](#) for fiscal year 2018.**

159           Section 3. Section **63J-1-315** is amended to read:

160           **63J-1-315. Medicaid Growth Reduction and Budget Stabilization Account --**  
161 **Transfers of Medicaid growth savings -- Base budget adjustments.**

162           (1) As used in this section:

163           (a) "Department" means the Department of Health created in Section [26-1-4](#).

164           (b) "Division" means the Division of Health Care Financing created within the  
165 department under Section [26-18-2.1](#).

166           (c) "General Fund revenue surplus" means a situation where actual General Fund  
167 revenues collected in a completed fiscal year exceed the estimated revenues for the General  
168 Fund for that fiscal year that were adopted by the Executive Appropriations Committee of the  
169 Legislature.

170           (d) "Medicaid growth savings" means the Medicaid growth target minus Medicaid  
171 program expenditures, if Medicaid program expenditures are less than the Medicaid growth  
172 target.

173           (e) "Medicaid growth target" means Medicaid program expenditures for the previous  
174 year multiplied by 1.08.

175           (f) "Medicaid program" is as defined in Section [26-18-2](#).

176           (g) "Medicaid program expenditures" means total state revenue expended for the  
177 Medicaid program from the General Fund, including restricted accounts within the General  
178 Fund, during a fiscal year.

179           (h) "Medicaid program expenditures for the previous year" means total state revenue  
180 expended for the Medicaid program from the General Fund, including restricted accounts

181 within the General Fund, during the fiscal year immediately preceding a fiscal year for which  
182 Medicaid program expenditures are calculated.

183 (i) "Operating deficit" means that, at the end of the fiscal year, the unassigned fund  
184 balance in the General Fund is less than zero.

185 (j) "State revenue" means revenue other than federal revenue.

186 (k) "State revenue expended for the Medicaid program" includes money transferred or  
187 appropriated to the Medicaid Growth Reduction and Budget Stabilization Account only to the  
188 extent the money is appropriated for the Medicaid program by the Legislature.

189 (2) There is created within the General Fund a restricted account to be known as the  
190 Medicaid Growth Reduction and Budget Stabilization Account.

191 (3) (a) (i) Except as provided in Subsection (6), if, at the end of a fiscal year, there is a  
192 General Fund revenue surplus, the Division of Finance shall transfer an amount equal to  
193 Medicaid growth savings from the General Fund to the Medicaid Growth Reduction and  
194 Budget Stabilization Account.

195 (ii) If the amount transferred is reduced to prevent an operating deficit, as provided in  
196 Subsection (6), the Legislature shall include, to the extent revenue is available, an amount  
197 equal to the reduction as an appropriation from the General Fund to the account in the base  
198 budget for the second fiscal year following the fiscal year for which the reduction was made.

199 (b) If, at the end of a fiscal year, there is not a General Fund revenue surplus, the  
200 Legislature shall include, to the extent revenue is available, an amount equal to Medicaid  
201 growth savings as an appropriation from the General Fund to the account in the base budget for  
202 the second fiscal year following the fiscal year for which the reduction was made.

203 (c) Subsections (3)(a) and (3)(b) apply only to the fiscal year in which the department  
204 implements the proposal developed under Section 26-18-405 to reduce the long-term growth in  
205 state expenditures for the Medicaid program, and to each fiscal year after that year.

206 (4) The Division of Finance shall calculate the amount to be transferred under  
207 Subsection (3):

208 (a) before transferring revenue from the General Fund revenue surplus to:

209 (i) the General Fund Budget Reserve Account under Section 63J-1-312;

210 (ii) the Wildland Fire Suppression Fund created in Section 65A-8-204, as described in  
211 Section 63J-1-314; and

212 (iii) the State Disaster Recovery Restricted Account under Section 63J-1-314;  
213 (b) before earmarking revenue from the General Fund revenue surplus to the Industrial  
214 Assistance Account under Section 63N-3-106; and

215 (c) before making any other year-end contingency appropriations, year-end set-asides,  
216 or other year-end transfers required by law.

217 (5) (a) If, at the close of any fiscal year, there appears to be insufficient money to pay  
218 additional debt service for any bonded debt authorized by the Legislature, the Division of  
219 Finance may hold back from any General Fund revenue surplus money sufficient to pay the  
220 additional debt service requirements resulting from issuance of bonded debt that was  
221 authorized by the Legislature.

222 (b) The Division of Finance may not spend the hold back amount for debt service  
223 under Subsection (5)(a) unless and until it is appropriated by the Legislature.

224 (c) If, after calculating the amount for transfer under Subsection (3), the remaining  
225 General Fund revenue surplus is insufficient to cover the hold back for debt service required by  
226 Subsection (5)(a), the Division of Finance shall reduce the transfer to the Medicaid Growth  
227 Reduction and Budget Stabilization Account by the amount necessary to cover the debt service  
228 hold back.

229 (d) Notwithstanding Subsections (3) and (4), the Division of Finance shall hold back  
230 the General Fund balance for debt service authorized by this Subsection (5) before making any  
231 transfers to the Medicaid Growth Reduction and Budget Stabilization Account or any other  
232 designation or allocation of General Fund revenue surplus.

233 (6) Notwithstanding Subsections (3) and (4), if, at the end of a fiscal year, the Division  
234 of Finance determines that an operating deficit exists and that holding back earmarks to the  
235 Industrial Assistance Account under Section 63N-3-106, transfers to the Wildland Fire  
236 Suppression Fund and State Disaster Recovery Restricted Account under Section 63J-1-314,  
237 transfers to the General Fund Budget Reserve Account under Section 63J-1-312, or earmarks  
238 and transfers to more than one of those accounts, in that order, does not eliminate the operating  
239 deficit, the Division of Finance may reduce the transfer to the Medicaid Growth Reduction and  
240 Budget Stabilization Account by the amount necessary to eliminate the operating deficit.

241 (7) The Legislature may appropriate money from the Medicaid Growth Reduction and  
242 Budget Stabilization Account only:

243 (a) if Medicaid program expenditures for the fiscal year for which the appropriation is  
244 made are estimated to be 108% or more of Medicaid program expenditures for the previous  
245 year; [~~and~~]

246 (b) for the Medicaid program[~~;~~]; and

247 (c) if non-state government entities are unable to repay federal funds relating to the  
248 Nursing Care Facility Non-State Government-Owned Upper Payment Limit program.

249 (8) The Division of Finance shall deposit interest or other earnings derived from  
250 investment of Medicaid Growth Reduction and Budget Stabilization Account money into the  
251 General Fund.

252 Section 4. Section **63J-5-102** is amended to read:

253 **63J-5-102. Definitions.**

254 (1) As used in this chapter:

255 (a) (i) "Agency" means a department, division, committee, commission, council, court,  
256 or other administrative subunit of the state.

257 (ii) "Agency" includes:

258 (A) executive branch entities;

259 (B) judicial branch entities; and

260 (C) the State Board of Education.

261 (iii) "Agency" does not mean higher education institutions or political subdivisions.

262 (b) (i) "Federal funds" means cash or other money received from the United States  
263 government or from other individuals or entities for or on behalf of the United States and  
264 deposited with the state treasurer or any agency of the state.

265 (ii) "Federal funds" includes federal assistance and federal assistance programs,  
266 however described.

267 (iii) "Federal funds" does not include money received from the United States  
268 government to reimburse the state or local government entity for money expended by the state  
269 or local government entity.

270 (c) "Federal funds reauthorization" means:

271 (i) the formal submission from an agency to the federal government applying for or  
272 seeking reauthorization of federal funds which the state is currently receiving;

273 (ii) the formal submission from an agency to the federal government applying for or

274 seeking reauthorization to participate in a federal program in which the state is currently  
275 participating that will result in federal funds being transferred to an agency; or

276 (iii) that period after the first year of a previously authorized and awarded grant or  
277 funding award, during which federal funds are disbursed or are scheduled to be disbursed after  
278 the first year because the term of the grant or financial award extends for more than one year.

279 (d) (i) "Federal funds request summary" means a document detailing:

280 (A) the amount of money that is being requested or is available to be received by the  
281 state from the federal government for each federal funds reauthorization or new federal funds  
282 request;

283 (B) those federal funds reauthorizations and new federal funds requests that are  
284 included as part of the agency's proposed budget for the fiscal year, and the amount of those  
285 requests;

286 (C) the amount of new state money, if any, that will be required to receive the federal  
287 funds or participate in the federal program;

288 (D) the number of additional permanent full-time employees, additional permanent  
289 part-time employees, or combination of additional permanent full-time employees and  
290 additional permanent part-time employees, if any, that the state estimates are needed in order to  
291 receive the federal funds or participate in the federal program; and

292 (E) any requirements that the state must meet as a condition for receiving the federal  
293 funds or participating in the federal program.

294 (ii) "Federal funds request summary" includes, if available:

295 (A) the letter awarding an agency a grant of federal funds or other official  
296 documentation awarding an agency a grant of federal funds; and

297 (B) a document detailing federal maintenance of effort requirements.

298 (e) "Federal maintenance of effort requirements" means any matching, level of effort,  
299 or earmarking requirements, as defined in Office of Management and Budget requirements,  
300 that are imposed on an agency as a condition of receiving federal funds.

301 (f) (i) "Intergovernmental transfer program" means an existing reimbursement program  
302 or category that is authorized by the Medicaid state plan or waiver authority for  
303 intergovernmental transfers.

304 (ii) "Intergovernmental transfer program" does not include the addition of a provider to

305 an existing intergovernmental transfer program.

306 [~~(f)~~] (g) "Local education agency" or "LEA" means:

307 (i) a school district;

308 (ii) a charter school; or

309 (iii) the Utah Schools for the Deaf and the Blind.

310 [~~(g)~~] (h) "New federal funds" means:

311 (i) federal assistance or other federal funds that are available from the federal  
312 government that:

313 (A) the state is not currently receiving; or

314 (B) exceed the federal funds amount most recently approved by the Legislature by  
315 more than 25% for a federal grant or program in which the state is currently participating;

316 (ii) a federal assistance program or other federal program in which the state is not  
317 currently participating; or

318 (iii) a one-time TANF request.

319 [~~(h)~~] (i) "New federal funds request" means:

320 (i) the formal submission from an agency to the federal government:

321 (A) applying for or otherwise seeking to obtain new federal funds; or

322 (B) applying for or seeking to participate in a new federal program that will result in  
323 federal funds being transferred to an agency; or

324 (ii) a one-time TANF request.

325 [~~(i)~~] (j) (i) "New state money" means money, whether specifically appropriated by the  
326 Legislature or not, that the federal government requires Utah to expend as a condition for  
327 receiving the federal funds or participating in the federal program.

328 (ii) "New state money" includes money expended to meet federal maintenance of effort  
329 requirements.

330 [~~(j)~~] (k) "One-time TANF request" means a proposed expenditure by the Department of  
331 Workforce Services from its reserves of federal Temporary Assistance for Needy Families  
332 funds:

333 (i) for a project or program that will last for a fixed amount of time and is not an  
334 ongoing project or program of the Department of Workforce Services; and

335 (ii) that is greater than \$1,000,000 over the amount most recently approved by the

336 Legislature.

337 ~~[(k)]~~ (l) (i) "Pass-through federal funds" means federal funds provided to an agency  
338 that are distributed to local governments or private entities without being used by the agency.

339 (ii) "Pass-through federal funds" does not include federal funds provided to the State  
340 Board of Education that are distributed to a local education agency or other subrecipient  
341 without being used by the State Board of Education.

342 ~~[(h)]~~ (m) "State" means the state of Utah and all of its agencies, and any administrative  
343 subunits of those agencies.

344 (2) When this chapter describes an employee as a "permanent full-time employee" or a  
345 "permanent part-time employee," it is not intended to, and may not be construed to, affect the  
346 employee's status as an at-will employee.

347 Section 5. Section **63J-5-206** is amended to read:

348 **63J-5-206. Intergovernmental transfers for Medicaid.**

349 (1) Subject to Subsections (2) and (3), an intergovernmental transfer program under  
350 Section **26-18-21** is subject to the same review provisions as a federal funds request under this  
351 chapter.

352 (2) Notwithstanding Subsection (1), if ~~[an]~~ a new intergovernmental transfer program  
353 created under Subsection **26-18-21**(3) will result in the state receiving total payments of  
354 ~~[\$1,000,000]~~ \$10,000,000 or more per year from the federal government, the intergovernmental  
355 transfer program is subject to the same review provisions as a high impact federal funds request  
356 in Subsections **63J-5-204**(3), (4), and (5).

357 (3) (a) Beginning on July 1, 2017, an intergovernmental transfer program created  
358 before July 1, 2017, is subject to the federal funds review process of Section **63J-5-201** for  
359 periods after July 1, 2017.

360 (b) The addition of a new participant into an existing intergovernmental transfer  
361 program, or the addition by the department of a nursing care facility or a non-state government  
362 entity to the Nursing Care Facility Non-State Government-Owned Upper Payment Limit  
363 program, is not subject to the requirements of this section.

364 Section 6. **Effective date.**

365 If approved by two-thirds of all the members elected to each house, this bill takes effect  
366 upon approval by the governor, or the day following the constitutional time limit of Utah

367 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,  
368 the date of veto override.