

HB0417S01 compared with HB0417

~~text~~ shows text that was in HB0417 but was deleted in HB0417S01.

Inserted text shows text that was not in HB0417 but was inserted into HB0417S01.

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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: _____

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 ~~text~~ procedures under the Federal Funds Procedures Act;
- ▶ amends provisions related to the Medicaid Growth Reduction and Stabilization Account; and

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- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) As used in this section:

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

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

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

(ii) "Intergovernmental transfer" does not include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The department shall not create a new intergovernmental transfer program after July 1, 2017, unless the department reports to the Executive Appropriations Committee, in accordance with Section 63J-5-206, before submitting the new intergovernmental transfer program for federal approval. The report shall include information required by Subsection 63J-5-102(1)(d) and the analysis required in Subsections (2)(a) and (b).

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

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

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

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

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from the Legislature and the governor.

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

(d) Each non-state government entity that participates in the Nursing Care Facility Non-State Government-Owned Upper Payment Limit program shall certify to the department that:

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

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

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

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

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

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

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

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

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

(6) The department may not increase the percentage of the administrative fee paid by a non-state government entity to the department under the Nursing Care Facility Non-State

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Government-Owned Upper Payment Limit program.

(7) The department may not condition participation in the Nursing Care Facility

Non-State Government-Owned Upper Payment Limit program on:

~~{ (a) the care and treatment of a resident who has a complex neurobehavioral condition;~~

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

~~{ (c) a requirement that a non-state government entity or nursing care facility post a bond or purchase insurance, or create a reserve account of any kind.~~

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

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

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

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

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

(1) As used in this section:

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

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

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

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

(e) "Medicaid growth target" means Medicaid program expenditures for the previous

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year multiplied by 1.08.

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

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

(h) "Medicaid program expenditures for the previous year" means total state revenue expended for the Medicaid program from the General Fund, including restricted accounts within the General Fund, during the fiscal year immediately preceding a fiscal year for which Medicaid program expenditures are calculated.

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

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

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

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

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

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

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

(c) Subsections (3)(a) and (3)(b) apply only to the fiscal year in which the department implements the proposal developed under Section 26-18-405 to reduce the long-term growth in

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state expenditures for the Medicaid program, and to each fiscal year after that year.

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

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

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

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

(iii) the State Disaster Recovery Restricted Account under Section 63J-1-314;

(b) before earmarking revenue from the General Fund revenue surplus to the Industrial Assistance Account under Section 63N-3-106; and

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

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

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

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

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

(6) Notwithstanding Subsections (3) and (4), if, at the end of a fiscal year, the Division of Finance determines that an operating deficit exists and that holding back earmarks to the Industrial Assistance Account under Section 63N-3-106, transfers to the Wildland Fire

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Suppression Fund and State Disaster Recovery Restricted Account under Section 63J-1-314, transfers to the General Fund Budget Reserve Account under Section 63J-1-312, or earmarks and transfers to more than one of those accounts, in that order, does not eliminate the operating deficit, the Division of Finance may reduce the transfer to the Medicaid Growth Reduction and Budget Stabilization Account by the amount necessary to eliminate the operating deficit.

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

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

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

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

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

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

63J-5-102. Definitions.

(1) As used in this chapter:

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

(ii) "Agency" includes:

(A) executive branch entities;

(B) judicial branch entities; and

(C) the State Board of Education.

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

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

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

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

(c) "Federal funds reauthorization" means:

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

(ii) the formal submission from an agency to the federal government applying for or seeking reauthorization to participate in a federal program in which the state is currently participating that will result in federal funds being transferred to an agency; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (i) a school district;
- (ii) a charter school; or
- (iii) the Utah Schools for the Deaf and the Blind.

~~(g)~~ (h) "New federal funds" means:

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

(A) the state is not currently receiving; or

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

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

(iii) a one-time TANF request.

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

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

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

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

(ii) a one-time TANF request.

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

(ii) "New state money" includes money expended to meet federal maintenance of effort

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requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 6. **Effective date.**

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

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Legislative Review Note

Office of Legislative Research and General Counsel