OFFICE OF THE
LEGISLATIVE
FISCAL
ANALYST

JONATHAN C. BALL
DIRECTOR

MEMORANDUM FOR EXECUTIVE APPROPRIATIONS COMMITTEE

FROM: Steven Allred, Deputy Director

DATE: November 7, 2017

SUBJECT: Beaver Valley Hospital Performance Audit

During your October meeting, you received a report from the Department of Health regarding Medicaid Intergovernmental Transfers (IGTs). You postponed action until November, pending release of a legislative audit on Beaver Valley Hospital's Medicaid Upper Payment Limit Program.

The Legislative Audit Subcommittee heard the audit on October 17. The subcommittee voted to assign the audit to the Executive Appropriations Committee as the lead committee, the Health and Human Services Interim Committee as the review committee, and to the Social Services Appropriations Subcommittee.

I have attached a copy of the audit. It is available on-line at https://le.utah.gov/interim/2017/pdf/00004449.pdf. Representatives from the Office of the Legislative Auditor will recap the audit in your November 14 meeting. The audit report contains a response from the Beaver Valley Hospital.

During the 2017 G.S. the Legislature passed House Bill 194 to increase legislative oversight of IGTs. The law prohibits the Department of Health from creating a new IGT program after July 1, 2017, unless the department reports to the Executive Appropriations Committee, in accordance with UCA 63J-5-206, before submitting the new IGT program for federal approval. UCA 63J-5-206 makes Medicaid IGT programs subject to the same annual review provisions as federal funds requests; however, if a new Medicaid IGT program will result in the state receiving total payments of $1 million or more per year from the federal government, the IGT is subject to the same review provisions as a "high impact" federal funds request (requires submission of the request to the Legislature for its approval or rejection in an annual general session or a special session). I have attached a copy of the bill.

UTAH STATE CAPITOL COMPLEX
HOUSE BUILDING, SUITE W310
P.O. BOX 145310
SALT LAKE CITY, UTAH

PHONE: (801) 538-1034
FAX: (801) 538-1692

WEBSITE:
WWW.LE.UTAH.GOV/LFA

This page intentionally left blank.

Performance Audit of the Beaver Valley Hospital's Medicaid Upper Payment Limit Program

Utah Legislative Auditor General

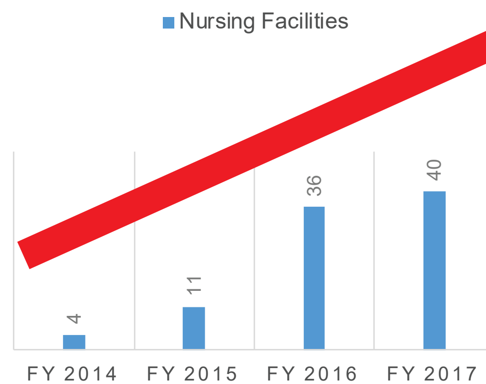
Report to the Executive Appropriations Committee

October 17, 2017

Beaver Valley Hospital Has Expanded Operations Since FY '14-'16

BVH

$10 million

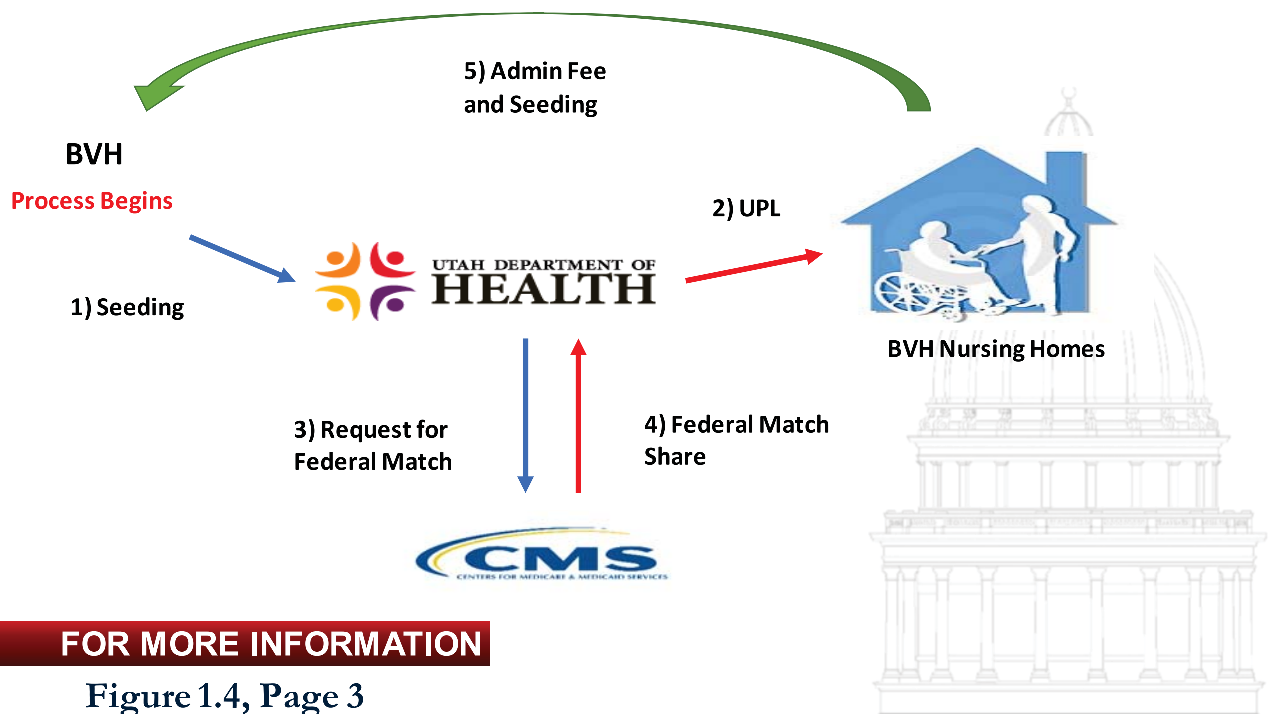


$130 million

FOR MORE INFORMATION

Pages 1-8

Process to Receive UPL Funds



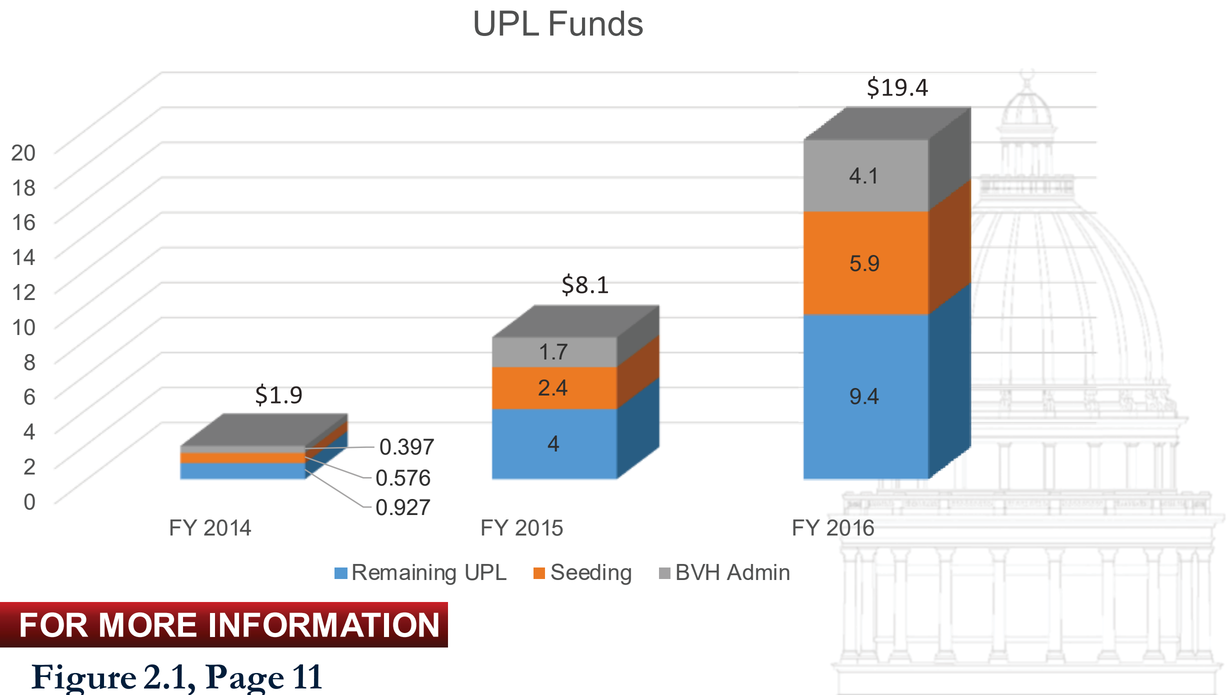
FOR MORE INFORMATION

Figure 1.4, Page 3

Chapter II

Unmanaged Risk Poses Potential Liability for the State

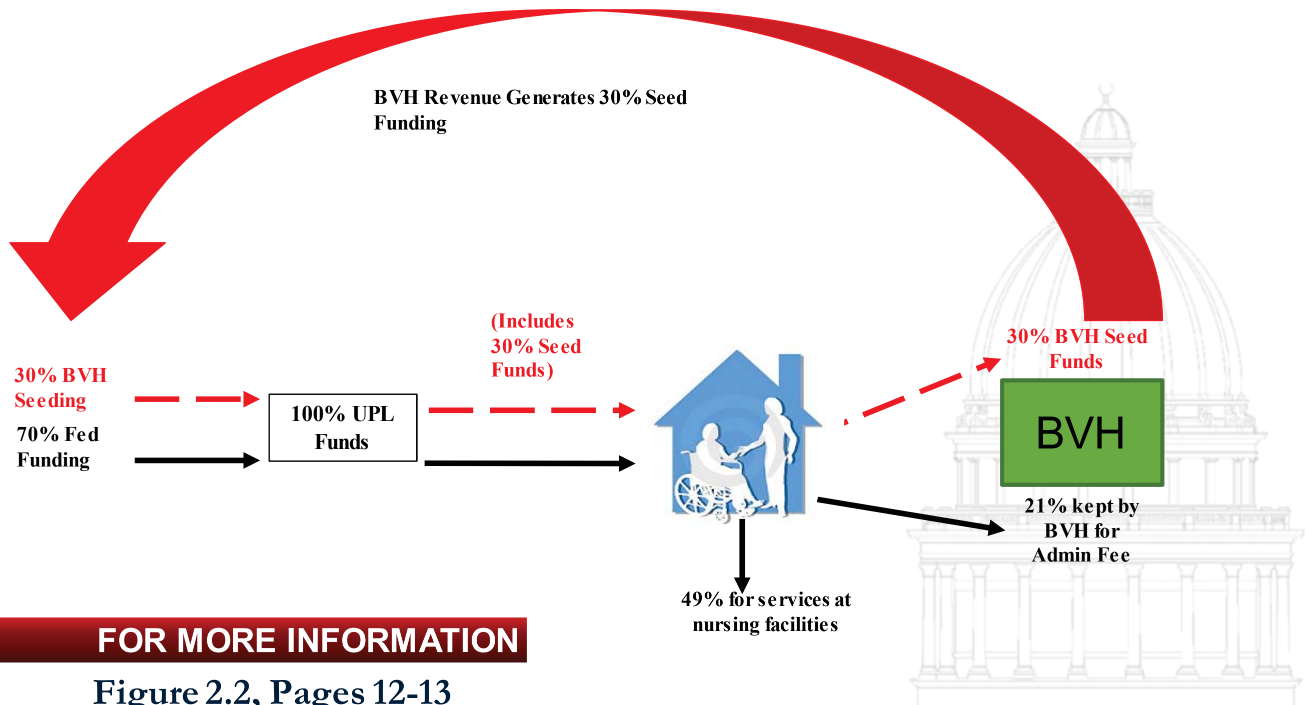
UPL Breakdown in Millions



FOR MORE INFORMATION

Figure 2.1, Page 11

UPL Flow of Funds



FOR MORE INFORMATION

Figure 2.2, Pages 12-13

Nursing Facilities Dependent on UPL Funds

- Nursing Facilities have used UPL for the following:
  - Hired more staff
  - Increased staff pay
  - Renovated buildings

FOR MORE INFORMATION

Page 13

BVH Needs To Develop Greater Oversight

- 47- Number of Nursing Facilities on the UPL Program
- 40-Number of Nursing Facilities operated by BVH
- 85%-Percentage of Nursing Facilities on UPL operated by BVH

FOR MORE INFORMATION

Pages 16-18

DOH Needs to Improve Oversight

- DOH needs to reasonably assure seeding amounts are compliant with federal rules.
- DOH should continue to seek legal advice from Medicaid experts, or CMS to assure BVH is conforming to UPL rules.

FOR MORE INFORMATION

Pages 18-19

HB 194 Puts Requirements on Future Expansion

Passed in 2017 Legislative Session, H.B. 194 states:

- Program created after July 1, 2017 subject ot federal funds review process.
- DOH shall not create new program unless they report to the Executive Appropriations Committee.
- Cannot enter into a new agreement to operate a nursing facility in another city, town, or county without entering into an agreement.

FOR MORE INFORMATION

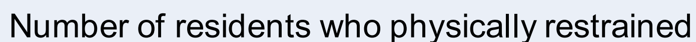
Page 19

Chapter III

BVH Should Establish Quality of Measures in Contracts

An example of metrics used in Texas:

Categories Used to Incentivize Nursing Facilities
Number of high risk residents with pressure ulcers
Percent of residents who received antipsychotic meds
Number of residents experiencing one or more falls with major injury
Number of residents who physically restrained



FOR MORE INFORMATION

Page 35, Figure 3.2

Performance Audit of the Beaver Valley Hospital's Medicaid Upper Payment Limit Program

Utah Legislative Auditor General

Report to the Executive Appropriations Committee

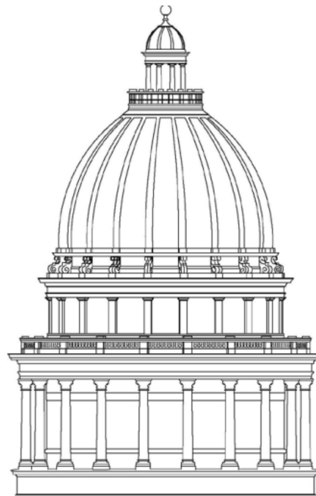
October 17, 2017

This page intentionally left blank.

REPORT TO THE

UTAH LEGISLATURE

Number 2017-10



A Performance Audit of the Beaver Valley Hospital's Medicaid Upper Payment Limit Program (For Nursing facilities)

October 2017

Office of the
LEGISLATIVE AUDITOR GENERAL
State of Utah

STATE OF UTAH

Office of the Legislative Auditor General

315 HOUSE BUILDING • PO BOX 145315 • SALT LAKE CITY, UT 84114-5315
(801) 538-1033 • FAX (801) 538-1063

JOHN M. SCHAFF, CIA
AUDITOR GENERAL

Audit Subcommittee of the Legislative Management Committee
President Wayne L. Niederhauser, Co–Chair • Speaker Gregory H. Hughes, Co–Chair
Senator Gene Davis • Senator Ralph Okerlund • Representative Brian S. King • Representative Brad R. Wilson

October 17, 2017

TO: THE UTAH STATE LEGISLATURE

Transmitted herewith is our report, **A Performance Audit of Beaver Valley Hospital's Medicaid Upper Payment Limit Program** (Report #2017-10). A digest is found on the blue pages located at the front of the report. The objectives and scope of the audit are explained in the Introduction.

We will be happy to meet with appropriate legislative committees, individual legislators, and other state officials to discuss any item contained in the report in order to facilitate the implementation of the recommendations.

Sincerely,

John M. Schaff, CIA
Auditor General

JMS/lm

Digest of A Performance Audit of Beaver Valley Hospital's Medicaid Upper Payment Limit

Beaver Valley Hospital (BVH) has become the license holder of 40 nursing facilities, initially starting with four nursing facilities in Fiscal Year 2014. As the license holder of these nursing facilities, BVH administrators states that they are responsible for the financial viability, as well as, any quality control concerns. BVH is the operator of these facilities, which means it holds the licenses for these nursing facilities but does not own the physical facilities. Prior to acquiring the nursing facilities, BVH had an operational budget of $10 million, which included only the hospital. Since acquiring these nursing facilities, BVH now oversee a $130 million budget. This report provides recommendations for BVH to provide greater control through increased oversight and stronger of contractual agreements with nursing facilities' management. We also emphasize that the Department of Health (DOH) needs to provide greater oversight of BVH's administration of the federal Upper Payment Limit (UPL) Program.

Chapter II
Unmanaged Risk Poses Potential Liability for the State

Violations of UPL Rules Could Result in Large Payback. BVH and its nursing facilities have received over $20 million in federal funds via UPL payments since Fiscal Year 2014, and could be required to pay all or a portion of it back if CMS finds violations. We want to stress that we did not find any violations that would result in a disallowance, but we have audited the control framework and found it to be inadequate.

Adequate Controls Not Yet in Place to Manage Risks. BVH has not had an adequate control structure to oversee the UPL program and manage potential risks[1], but it is currently in the process of adding controls and oversight. Furthermore, DOH should continue to provide technical assistance and oversight to adequately corroborate with BVH that the seeding process and use of administrative fees are in strict accordance with federal and state rules. BVH must accept this oversight from DOH.

[1] We did not review the other local hospitals that are involved in the UPL Program. These other programs must also ensure they have proper oversight and control.

Chapter III
Contracts with BVH's Nursing Facilities Need to Be Clarified

BVH Does Not Own Real Estate Associated with Nursing Facilities and Contract Can Be Cancelled. BVH has the license to operate the nursing facilities, but does not own any of the real estate or property associated with the nursing facilities. Further, if the management companies (previous license holders) want to end the contractual relationship with BVH they can do so with 30 to 90-day notice.

BVH Should Establish Quality of Care Measures in Contracts. The contracts between the BVH and the management companies, which own the property, do not establish measurements to assure that a reasonable level of quality is being met. We also found that contract has no procedures to measure quality of care. Thus, no remedies or sanctions can be put into place for noncompliance of quality of care metrics.

BVH Should Clarify Seed and Administration Fees, in Contract. Nursing facilities are required to send seed monies and an administration fee to BVH. In Chapter I, we discussed what the seed monies is used for, however, BVH administrators stated that they are required to hold the seed money only until the end of the fiscal year, after which the funds can be used for operational purposes. As mentioned previously, we are concerned that potential misuse of the UPL could result in a pay back from the state. Therefore, DOH should provide guidance to BVH and others in the UPL program to assure that the use of UPL funds is appropriate. BVH requires nursing facilities to pay 30-percent of the total UPL and charges an administration fee of 30-percent of the remaining UPL after the seeding is deducted. The nursing facilities have 49-percent of the UPL to use for care after the administration fee and seeding are taken from the UPL. We found that administration and seeding fees are merely agreed upon between BVH and the managing companies administering the nursing facilities, but are not documented in the contracts. We recommend that these fees be documented in the contracts going forward, and look to amend current contracts to reflect this change. This step would help protect nursing facilities from unreasonable increases in these fees.

REPORT TO THE
UTAH LEGISLATURE

Report No. 2017-10

A Performance Audit of the Beaver Valley Hospital's Medicaid Upper Payment Limit Program

October 2017

Audit Performed By:

Audit Manager	Kade Minchey, CIA, CFE
Audit Supervisor	Jesse Martinson, CIA
Audit Staff	Zackery King, CFE

Table of Contents

Chapter II Unmanaged Risk Poses Potential Liability for the State ... i
Chapter III Contracts with BVH's Nursing Facilities Need to Be Clarified ... ii

Chapter I Introduction ... 1
Upper Payment Limit Allows Greater Reimbursement for Medicaid Residents ... 1
BVH Nursing Facililty Operations ... 4
Have Increased Substantially ... 4
in Recent Years ... 4
Audit Scope and Objectives ... 8

Chapter II Unmanaged Risk Poses Potential Liability for the State ... 9
Violations of UPL Rules Could Result in Large Reimbursement ... 10
Adequate Controls Not Yet In Place to Manage Risks ... 14
Recommendations ... 20

Chapter III Contracts with BVH's Nursing Facilities Need to Be Clarified ... 21
BVH Does Not Own Nursing Facilities' Real Estate; Contracts Can Be Cancelled ... 21
BVH Should Establish Quality of Care Measures in Contracts ... 22
BVH Should Clarify Seed and Administration Fees, in Contract ... 23
Recommendations ... 24

Agency Response ... 25

This Page Left Blank Intentionally

Chapter I
Introduction

The Beaver Valley Hospital (BVH) has become the license holder of 40 nursing facilities, initially starting with four nursing facilities in Fiscal Year 2014. As the license holder, BVH states that they are responsible for financial viability, as well as any quality control concerns. BVH is the operator of these facilities, which means it holds the licenses but do not own the physical facilities. Prior to acquiring of nursing facilities, BVH had an operational budget of $10 million, which included only the hospital. Since acquiring these nursing facilities, BVH now oversee a $130 million budget. This report provides recommendations for BVH to provide greater control through more oversight and strengthening of contractual agreements with nursing facilities' management. We also emphasize that the Department of Health needs to provide greater oversight of BVH's administration of the federal Upper Payment Limit Program (UPL).

BVH Oversees a $130 million budget, which includes 40 nursing facilities.

Upper Payment Limit Allows Greater Reimbursement for Medicaid Residents

With BVH holding the licenses for the nursing facilities, it receives higher federal funding for Medicaid-covered residents; specifically, BVH receives a supplemental payment for nursing facilities to provide more care for patients and to improve facilities. The Upper Payment Limit (UPL) program pays nursing facilities with Medicaid residents a higher rate, which is the Medicare rate. The difference between Medicare and Medicaid rates is the gap amount used for additional funding for the nursing facilities.

The Upper Payment Limit program allows nursing facilities to receive the higher UPL rate.

DOH Calculates Rates Used to Determine UPL

The Department of Health's (DOH) state plan provides that BVH will receive supplemental payments for nursing facilities with Medicaid patients. The supplemental payment allows for Medicaid residents to be reimbursed at the Medicare rate, which is a much higher rate. The additional funds can be used to improve services within the nursing facilities.

The difference between the UPL and Medicaid rates is called the gap.

According to the DOH's state plan the Medicaid amount is set "[at] the average rate per patient day paid [for skilled nursing facilities] … for routine services furnished during the previous calendar year." The difference between the Medicaid and Medicare rates is called the gap amount. This calculation is performed by DOH; the average rates are shown in Figure 1.1.

Figure 1.1. UPL Calculation for an Individual Medicaid Patient in Nursing Facilities Owned by NSGEs.

Avg. Daily UPL Rate	Avg. Daily Medicaid Rate	Avg. UPL Gap Amount
$333.69	$203.04	$130.65

**UPL Rate is the average daily Medicare Rate*

The average gap amount paid to nursing facilities in 2016 was $130 per bed day. Multiplying the gap amount by the number of bed days for Medicaid inpatients results in the total gap amount. Figure 1.2 shows the calculation for 2016, which is the average amount for each nursing facility.

Figure 1.2. Average Gap Amount for Each Nursing Facility in 2016.

GAP Amount	X	Number of Bed Days	=	Avg. Total Per Nursing Facility
$131		4,390		$575,090

To receive federal funding, BVH must provide a federal match, or the seed amount.

The $573,553 total is the average amount each nursing home received in 2016. To receive the UPL funding, BVH must provide a matching portion of the federal funding, or seed amount, which we'll discuss in the next section.

BVH Must Provide Source Funding to Receive UPL

Since BVH is the non-state governmental entity (NSGE), it has the authority under *Utah Administrative Code* to do the following:

Figure 1.3. Utah Administration Code R414-505-5-(5)(a).

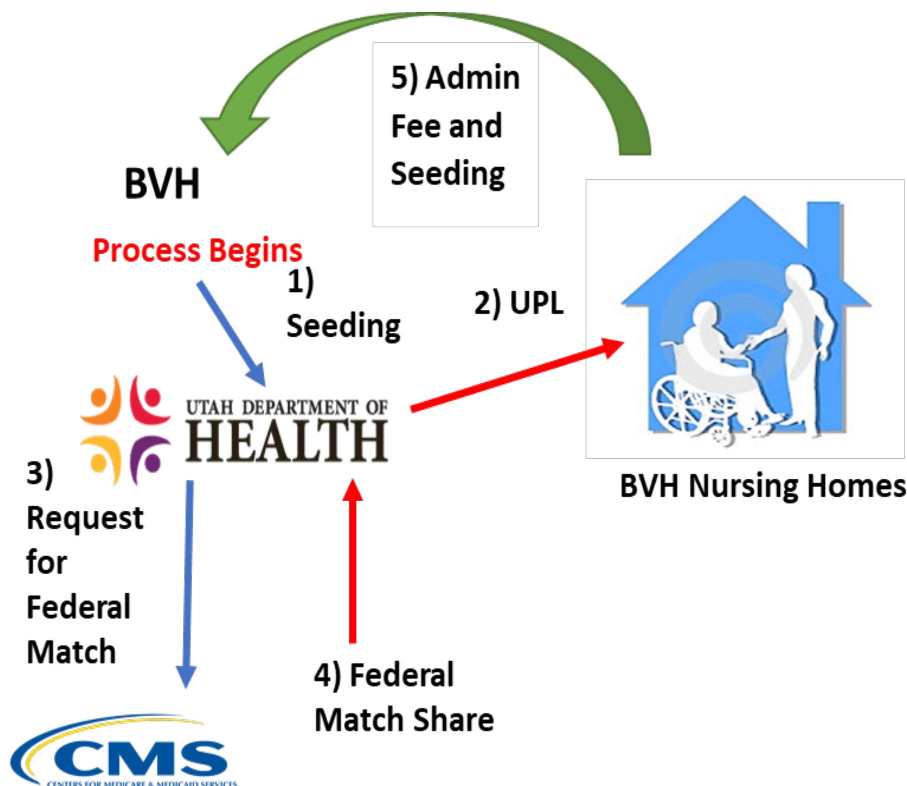
> **State funding for supplemental payments authorized in this rule is limited to and obtained through Intergovernmental Transfer Agreements of public funds or other permissible source-of-seeding funding from the NSGE that holds the license…**

In the case of BVH as an NSGE, public funds do not include state funds but do include "taxes, assessments, levies, investments, governmental operations, and revenue generated by a special services district and other public revenues within the sole and unrestricted control of an NSGE that holds the license and is party to the Medicaid contract of the eligible nursing care facility."

BVH cannot use state funding as seed funding.

BVH provides seeding for the match and then requires the nursing facilities to send that amount, which is about 30% of the UPL, back to BVH. The seeding monies sent back to BVH are from the hospital operations. Figure 1.4 shows the flow of the funds.

Figure 1.4. The Process to Receive Upper Payment Limit Funds.



The process begins with BVH sending seed money to DOH. The nursing facilities are then required by BVH to send an administration fee and seed funding to BVH, which will be discussed further in chapter II. DOH then reviews the seed monies and then sends the UPL directly to the nursing facilities. DOH then draws down federal funds from the Centers for Medicare and Medicaid Services (CMS).

BVH Nursing Facililty Operations Have Increased Substantially in Recent Years

Since 2013, BVH has become the operator of 40% of all nursing facilities in the state of Utah.

The Centers for Medicare and Medicaid Services (CMS) authorized DOH, the state Medicaid authority, to amend its state plan to allow hospitals like BVH to participate in the UPL program; BVH is eligible to receive UPL funds as an NSGE. Because of this NSGE status, now holds the licenses for nursing facilities throughout Utah. Since 2013, BVH has acquired[2] about 40 percent of all the nursing facilities in the state of Utah. These nursing facilities are eligible to receive additional federal funds because their license is held by an NSGE; these funds have enabled nursing facilities to increase staff wages and offer additional services. Since BVH has procured so many nursing facilities over the past few years, they hired management companies to run the day-to-day operations. These management companies are the former administrators of these facilities and, according to BVH, have the expertise to run the day-to-day operations but are still required to implement changes that BVH feels are necessary to improve care in the facilities.

BVH employs the previous owners of the nursing facilities they currently operate to run the daily operations.

BVH Holds the Licenses to Many Nursing facilities Throughout Utah

Beaver Valley Hospital (BVH) first started the process to acquire nursing home licenses in February 2013, when they took over four facilities. As mentioned previously, the state plan administered by the

[2] In this report, we refer to BVH as the "operator" of nursing facilities. This means they hold the license to operate the nursing facility, but they do not own any of the real-estate associated with the nursing facilities. BVH has contracted with the owners of the real-estate, and the previous license holders, to manage the day to day operations of the nursing facilities.

DOH required an amendment to allow BVH's nursing facilities to receive supplemental payments, as stated in Figure 1.5.

Figure 1.5 Department of Health State Plan, Section 4.19 Section 942

> **In addition to the uniform Medicaid rates for nursing facilities, any nursing facility that is owned by a non-state governmental entity and has an agreement with the Division of Medicaid and Health Financing to participate in the supplemental payment program shall receive a supplemental payment, which shall not exceed its upper payment limit…**

The operator of these nursing facilities, BVH is eligible to receive payments for care services.

BVH has increased the number of nursing facilities it operates by 10-times since FY 2014.

Since Fiscal Year 2014, BVH has increased the number of nursing facilities it operates by 10 times. Figure 1.6 shows the total number of nursing facilities operated by BVH each year.

Figure 1.6 Nursing Facilities BVH Operated by Fiscal Years.

Number of Nursing facilities' Licenses Held By BVH			
FY 2014	**FY 2015**	**FY 2016**	**FY 2017**
4	11	36	40

**BVH is in the process of adding 10 more nursing facilities since the writing of this audit.*

Since 2014, BVH's nursing facility has increased by 900 percent. The majority of nursing home acquisitions occurred in fiscal years 2015 and 2016, with 25 nursing facility licenses acquired during that period. These nursing facilities are spread throughout the state. Figure 1.7 shows the locations of BVH nursing facilities.

Figures 1.7. BVH Operates 40 of the 47 Nursing facilities, in FY'17 Operated by NSGEs Throughout the State of Utah.

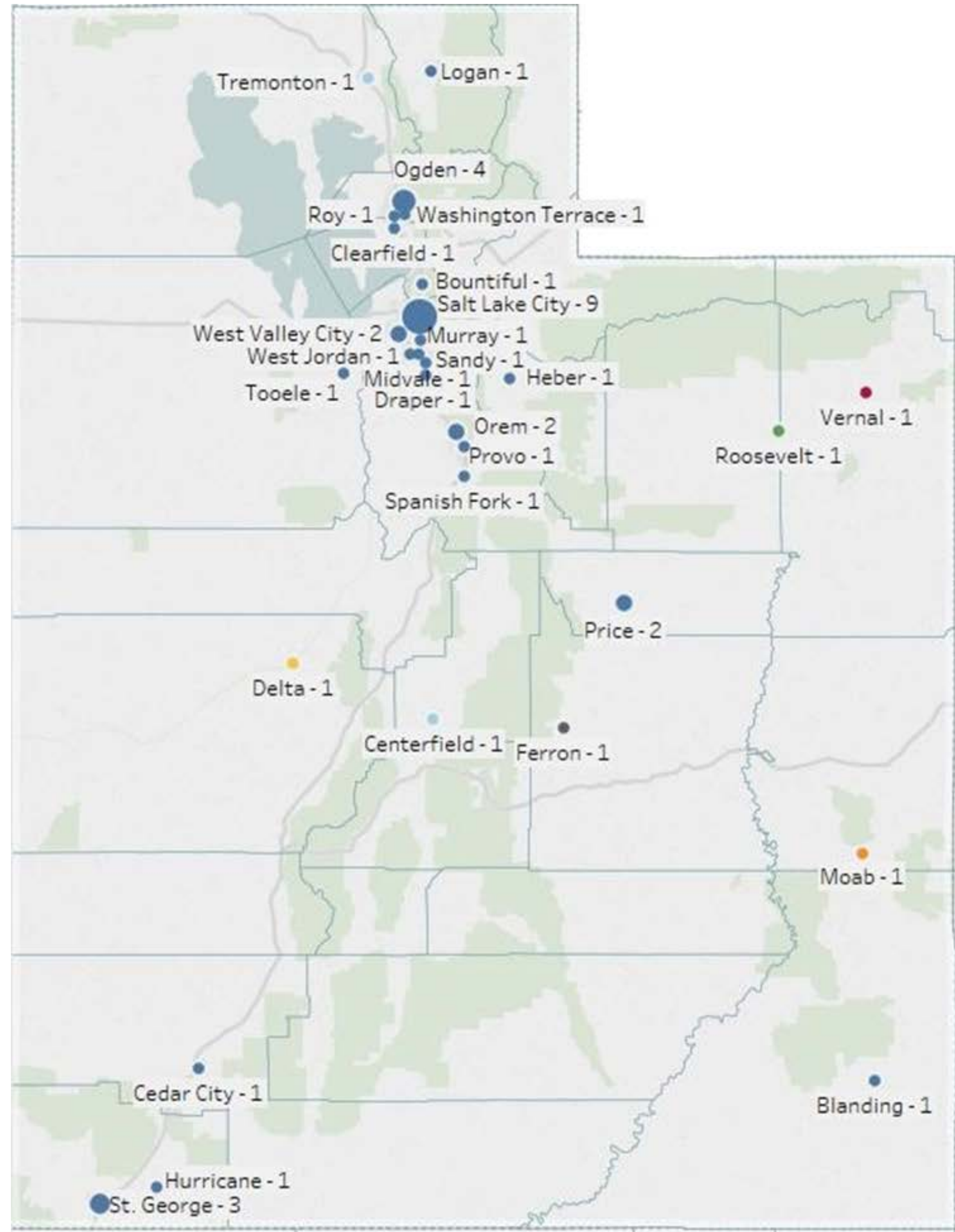


Figure 1.7 shows all the NSGE nursing facilities in the state of Utah. BVH operates the clear majority of them, approximately 85-percent. The total number of nursing facilities in the state of Utah is 98 which we'll discuss more in chapter II. The ownership of these facilities will also be discussed further in chapter II, however, BVH only holds the licenses of these facilities and not the buildings. BVH hired the previous administrators of these nursing facilities to manage the day-to-day operations.

BVH holds the licenses to the nursing facilities, they do not own the physical facilities.

Nursing Facilities on Average Were Profitable in 2016

Beaver Valley Hospital's average net profit, not including the nursing facilities, is $664,000 a year. Beaver City's total revenue was $6 million in 2017. Our analysis of the fiscal year 2016 finances for 32 nursing facilities, found that the majority of them were profitable. We were unable to determine whether this profitability was directly correlated with receiving the UPL, however, we believe it can be assumed that it contributed.

Figure 1.8. Profit Generated by Nursing Facilities Operated by Beaver Valley Hospital in Fiscal Year 2016.

Total Revenues/Expenses Fiscal Year 2016	
Revenues	$130,907,997
Expenses	125,408,820
Profit	**$ 5,499,177**

Figure 1.8's revenues of over $130 million include a UPL of over $20 million, which undoubtedly helped in aggregate to keep the majority of these nursing facilities profitable. However, it must be noted that over half of the UPL was sent to BVH for administrative funding and seeding for future UPL funding. Therefore, we could not determine how this funding affected the bottom line of each facility, which will be discussed further in chapter II.

BVH's nursing facilities received over $20 million in UPL funds in FY 2016.

BVH Hires Management Groups That Formerly Owned Its Acquired Nursing Facilities

Former administrators of these nursing facilities now manage the facilities, with a total of 7 management groups operate 41 nursing facilities. Figure 1.9 lists the facilities' management groups.

Figure 1.9. BVH Operates 40 Nursing Facilities Throughout the State of Utah.

Management Group	Number of Facilities
Ensign	14
Rocky Mountain	6
Plum	7
Cottonwood Healthcare	6
Cascade	4
Legacy	2
South Davis	1
Total	40

Management groups of the nursing facilities cannot increase beds or borrow money without consent from BVH.

These management groups handle the facilities' administration and are contractually from taking certain actions without the consent of BVH. For example, management cannot acquire property, increase the number of beds, and borrow money or incur debt on behalf of BVH, to name a few.

Audit Scope and Objectives

We were asked to look at Beaver Valley Hospital's recent acquisitions of nursing facilities to determine what current risks exist and how Beaver Valley Hospital is managing those risks. We reviewed the following:

- Chapter II: The liability posed to the state if Beaver Valley Hospital does not have adequate controls in place to mitigate unmanaged risk.
- Chapter III: The contractual relationship between Beaver Valley Hospital and the management companies employed to run the day-to-day operations.

Chapter II
Unmanaged Risk Poses Potential Liability for the State

The Beaver Valley Hospital (BVH) has become the license holder of 40 nursing facilities across Utah. However, BVH has not had an adequate control structure to oversee these nursing facilities, though they report are in the process of improving its oversight. The lack of control poses a large risk to the state if the nursing facilities are found to be out of compliance with federal rules, with the possible disallowance of over $20 million. The expansion has been enabled in part because of the Upper Payment Limit (UPL) program. The nursing facility industry and BVH requested participation in the UPL program which required an amendment of the state plan by the Department of Health (DOH), and approval from the Centers for Medicare and Medicaid Services (CMS).

BVH does not have an adequate control structure in place.

The rules created by DOH have allowed BVH's nursing facilities they hold the license to, to participate in the UPL program. Eighty-five percent of nursing facilities that participate in the UPL program, are operated by BVH. The UPL program has benefitted BVH since FY 2014, however, only since 2016, has DOH started to implement more oversight and control over this program. BVH holds the license to nursing facilities from St. George to Logan. There are more residents in nursing facilities operated by BVH than in the city of Beaver. This chapter discusses the following areas of risk that can be better managed.

- Experts expressed concern over the process by which BVH seeds federal Medicaid funds. Currently, a violation of UPL rules could result in a disallowance of over $20 million. This number could grow if expansion of the program continues. DOH is responsible for ensuring seeding process occurs correctly.

A violation of UPL rules could result in a disallowance of over $20 million.

- BVH may not have the ability to reimburse CMS over $20 million which could potentially fall to the state to pay.

- Neither BVH[3] or DOH have adequate controls in place to manage risks, although both entities are currently implementing new controls. DOH has made several requests for legal advice from CMS starting in May of 2016, which it has not yet received. DOH should continue to seek technical and legal advice from Medicaid experts, or CMS to assure that the UPL program is strictly following all CMS requirements.

- Additional assurance is needed from Medicaid experts or CMS that administrative and seed funds are used strictly according to CMS requirements.

UPL funds have been used to hire more staff, increase salaries, and renovate nursing facilities.

In addition to these risks, the nursing facilities in the program have used UPL funds to hire more staff, increase staff salaries, and renovate buildings. A disallowance of the program could disrupt the operations and patients of many nursing facilities in the state.

Violations of UPL Rules Could Result in Large Reimbursement

BVH and its nursing facilities have received over $20 million in federal funds of UPL payments since FY 2014, and could be required to pay all or a portion of it back if CMS finds that violations have occurred. We want to stress that we have not found any violations that would result in pay back, but we have audited the control framework and found it has not been adequate.

BVH collects 30 percent of the UPL for seeding, the remaining UPL is charged a 30% administration fee by BVH.

A noteworthy risk, is that 30 percent of the UPL is not used by the nursing facilities to improve services, but is collected by BVH for seeding and administration fees. The state of Georgia was found to be paying for services inappropriately and had a disallowance of over $100 million to CMS. We found no evidence that BVH or DOH have violated federal rules, but experts we spoke to expressed concerns with the process BVH is using to seeding to federal Medicaid funds. Further, with rapid expansion, DOH created a contract with stronger control language in November 2016 with BVH, and the first request

[3] As noted in Chapter 1, Gunnison Hospital has 2 nursing facilities in the program, Canyonlands, Duchesne, Emery, Millard, Uintah, and San Juan Hospital each have 1 nursing home in the program. These other NSGEs must too have proper controls in place. We have focused on BVH since it oversees the clear majority of nursing facilities.

for a programmatic review with CMS was in May 2016. DOH is continuing the process of reviewing ways to implement additional controls. It is critical that BVH and DOH have a proper control structure to ensure funds are being spent appropriately and that the exposure to the state has been minimized.

Over Half of Nursing Facilities' UPL Paid to BVH

The UPL is to be used to improve member care in the nursing facilities.

BVH is responsible to assure that the Upper Payment Limit (UPL) it receives is used "…to improve member care in the [nursing facilities] …" (DOH contract with BVH). Any misuse of these funds could result in the paying back of all federal funds spent by BVH. However, since over $20 million has been received over a three-year period, and the majority of the UPL that nursing facilities have received has been used for renovations and other expenses. With BVH's five-year average revenue of $9.7 million and net profit of $664,000 a $20 million disallowance may prove to be beyond BVH's ability to repay. Therefore, there could be an attempt to hold the state responsible for the reimbursement.

We found that the nursing facilities were using 49 percent of the UPL, while BVH collected the remaining 51 percent for seed funding and administration fees. BVH's receipt of more than half of the UPL funding has occurred since the UPL program's inception. Figure 2.1 shows the breakdown of these amounts.

Figure 2.1. UPL Breakdown by Fiscal Year in Millions. Nursing facilities receive less than half of the UPL for service activities**.**

	FY 2014	FY 2015	FY 2016	Total
UPL	$1.9	$ 8.1	$19.4	$29.4
Seed Funding	$ (.576)	$(2.4)	$ (5.9)	$ (8.9)
*BVH Admin	$ (.397)	$(1.7)	$ (4.1)	$ (6.2)
Remaining UPL for Nursing facilities	$ .927	$ 4.0	$ 9.4	$ 14.3
% Remaining UPL for Nursing facilities	49%	49%	49%	49%

Source: Beaver Valley Hospital
**Administration amount is based off of a 30% Admin Fee charged by BVH to nursing facilities.*

Seed funding cannot be recycled from Medicaid funding, but must come from operations, authorized taxes, or non-restricted donations. Therefore, the 30-percent seeding must come from these sources and BVH needs to ensure that Medicaid funds are not used.

Some Experts Expressed Concerns With BVH Seeding Process

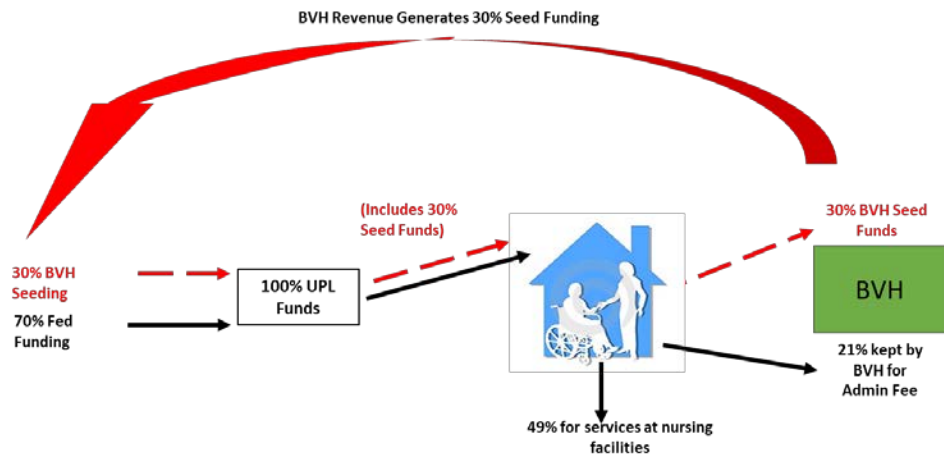
BVH must ensure that seeding process is following federal rules.

We spoke to other states and some nationally recognized experts on Medicaid and UPL programs. None of whom could assure us that BHV's process by which BVH to seed Medicaid funds is complies with CMS rules. Some expressed concerns with the process. While it is BVH's role to ensure the seeding process is being correctly applied, we encourage DOH, as the oversight entity, to provide BVH with additional technical assistance and oversight in this area. BVH must then accept that assistance from DOH.

Our concern is the process by which BVH generates and saves Medicaid funds for seeding. BVH charges nursing facilities a seeding amount and holds those funds until the end of the state fiscal year, then uses this new seeding from operating revenues. BVH must continue to ensure that it is following the rules associated with the seeding process. This issue is discussed in more detail later in the chapter.

To illustrate how UPL agreement works between BVH and the nursing facilities, the Figure 2.2 provides an example of how $100 in UPL would be handled.

Figure 2.2 Example of the Flow of the UPL Funds



As the above example shows, the UPL is made up of seeding monies and federal funds, which make up 100% of the UPL. The nursing facility receives the full amount. Once the UPL is received, the nursing facilities keeps 49% of the UPL for services, the remaining 51% goes to BVH in two categories:

- 21% is kept by BVH as administrative overhead. BVH must have adequate controls in place to ensure these funds are used in accordance with federal rules. BVH is still working to ensure this will occur.

- 30% is saved by BVH for future seeding of federal funding (BVH is required to match federal funds by 30 percent). BVH reports that these monies are from the operational budget of the hospital.

BVH has received over $6 million in administrative overhead from the UPL but it has received very little oversight.

Since 2014, BVH has received over $6 million in administrative overhead. However, we have found little oversight of these funds. Though, DOH is working with BVH to implement controls on the use of UPL and the seeding process, we were unable to find oversight for the administrative fees collected by BVH. In Indiana, for example, the Department of Health contracts with an auditor to determine if UPL funds are made available for nursing facilities. Indiana has not had to repay any UPL funds. Within the last year, DOH added contractual stipulations on the funding, though it is the agency responsible for overseeing Medicaid funds.

Nursing Facilities in the UPL Program Are Dependent on These Funds

Loss of UPL could result in nursing facilities losing staff and reducing services.

Nursing facilities operated by BVH told us that they have built their budgets dependent on the UPL funds. These nursing facilities have increased staff, given raises to staff, and renovated facilities with UPL funds. Losing the UPL would require the nursing facilities to restructure their finances and potentially cut staff or reduce services.

It is difficult to determine exactly what risk the state has of losing the program. Certainly, the risk of a disallowance or program cancellation depends in part on the successful oversight and control of the program. We found that Georgia had a disallowance of over $100 million because of program violations.

Georgia Given a $100 Million Disallowance Because of Payment Violations

Georgia violated UPL rules that resulted in a disallowance of over $100 million.

The Centers for Medicare and Medicaid Services (CMS) found Georgia's State Department of Community Health (DCH) to be in violation of UPL program rules by paying for services inappropriately. Specifically, payments were given to private facilities that were not permitted by Medicaid regulations, resulting in the disallowance of $104.5 million.

According to the federal report, a number of nursing facilities were owned privately, not by a non-state governmental agency, thus using provider-related, private monies for seeding, which is not allowed. As a result, funds totaling over $100 million received in 2010 and 2011 are required to be repaid. However, according to DCH, these private entities, which were owned by a Development Authority, were approved by CMS through its Medicaid state plan. Georgia is currently fighting this disallowance. The extent of ownership by the development authority is the point of contention between CMS and DCH.

Adequate Controls Not Yet In Place to Manage Risks

DOH needs to continue to provide technical assistance and oversight to help assure BVH's seeding process is in accordance with federal rules.

BVH has not had an adequate control structure to oversee the UPL program and manage potential risks[4], but is currently in the process of adding controls and oversight. Furthermore, DOH should continue to provide increased technical assistance and oversight to corroborate with BVH that the seeding process and use of administrative fees are in strict accordance with federal and state rules. BVH must accept this oversight from DOH.

Fortunately, recent legislation passed in the 2017 Legislative General Session (House Bill 194) subjects intergovernmental programs like the UPL program to the Federal Funds Procedures Act, requires BVH to enter into a interlocal agreements to expand into more nursing facilities, and requires DOH to provide more oversight

[4] We did not review the other local hospitals that are involved in the UPL Program. These other programs must also ensure they have proper oversight and control.

and report to the Executive Appropriations Committee on that oversight.

Greater Oversight Is Required of UPL Funds

Upper Payment Limit funds must be used "…to improve member care in the [nursing facilities] …" (DOH contract with BVH), yet, we were unable to find adequate oversight or controls in place to ensure that UPL funds are used as required. Financial summaries we reviewed for BVH nursing facilities showed what UPL revenue they received, but we could not determine specifically how the funds were spent.

Financial summaries used by BVH do not show how UPL was spent.

The lack of monitoring and oversight of UPL funds represents an unmanaged risk that must be resolved. Other organizations we reviewed told us the importance of risk management. Figure 2.3 presents risks associated with the UPL program in other organizations that participate in other federal Medicaid programs.

Figure 2.3 Importance of Controls in Medicaid Programs. A repayment required of the University of Utah several years ago, shows the need for strict controls in Medicaid programs. Also, the Texas Health and Human Services Department reported significant concerns and need for controls in UPL programs.

University of Utah	CMS required repayment of $32.9 million from the University of Utah Hospital Clinics (UUHC) based on a technical error. CMS found that DOH was not paying UUHC in strict accordance with the established quarterly payment model; five or six payments were made instead. This is an example of the extreme importance of controls and oversight over Medicaid programs.
Texas HHS	The Texas Human and Health Services Department that oversees nursing facilities' administration of federal funding, reported significant concerns with the UPL program and its future viability. Staff report significant concern with seeding programs and the need for oversight.

CMS required repayment of $32.9 million because of a technical error, which shows the importance of oversight and controls over Medicaid programs.

Figure 2.3 illustrates why improved oversight over BVH's UPL program is needed. The next section discusses this in more detail.

Beaver Valley Hospital Oversight Is Still Developing

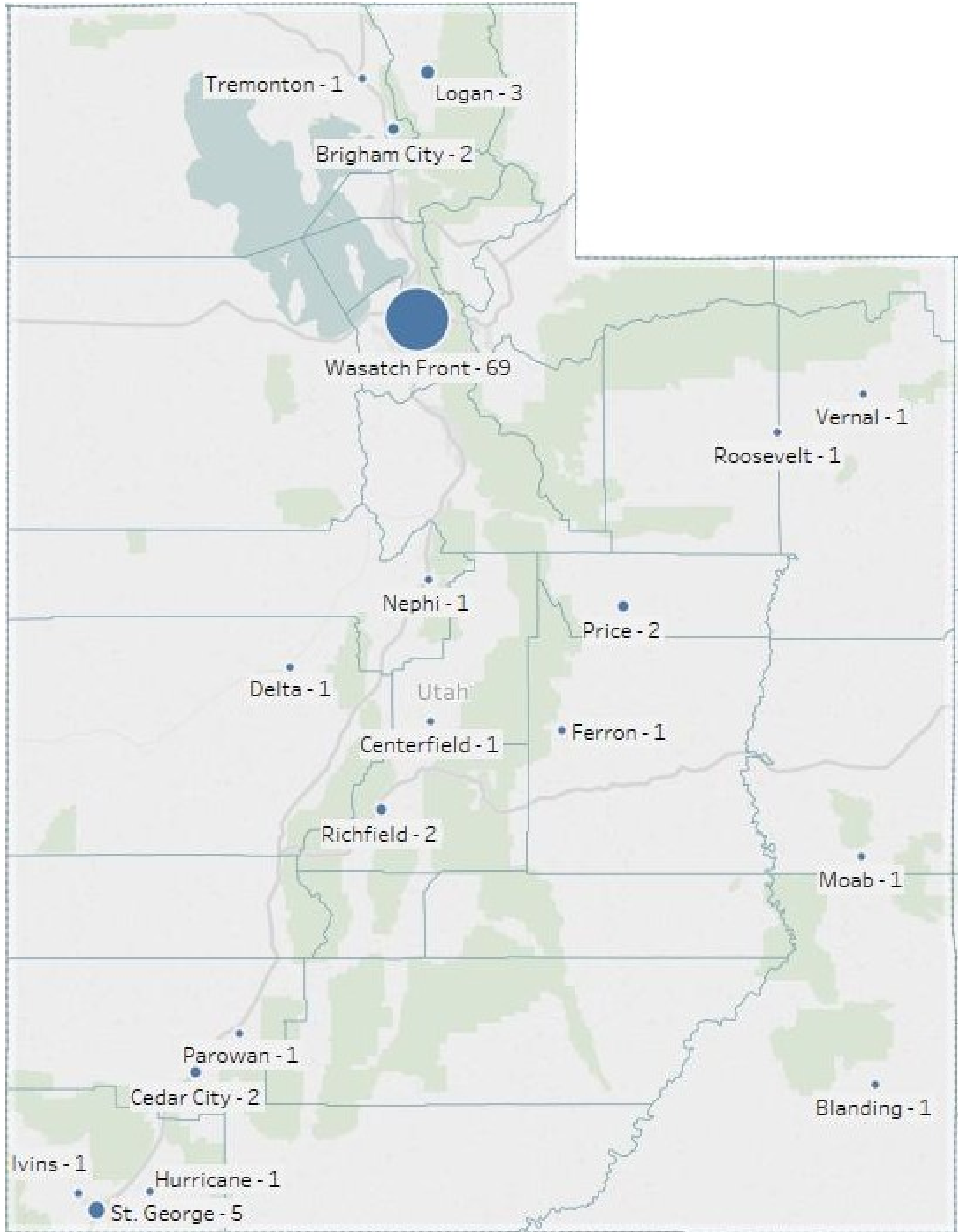
One full-time and one-half time employee are responsible for the oversight of 40 nursing facilities operated by BVH. These employees are working to implement an oversight and control program, which had not yet occurred at the time of the audit. Specifically,

BVH has not performed risk assessments to determine control weaknesses in nursing facilities.

- BVH has not conducted any risk assessments to determine what level of oversight and control exists since becoming the operator of nursing facilities in 2013.
- BVH has only visited about half of the nursing facilities in the UPL program.

According to BVH, having the management groups administer to the day-to-day operations, allows BVH to communicate their quality needs to each nursing facility. Nursing facilities span the entire state, from Logan to St. George, Figure 2.4 shows all nursing facilities that are operated by a non-state-government entity (NSGE).

Figure 2.4. BVH Operates 40 of 98 of the Total Nursing Facilities in Utah.



BVH has a large area to cover just to visit their nursing facilities. BVH operates the majority of non-state government owned nursing facilities. Figure 2.5 shows the impact of BVH's operating of nursing facilities throughout the state.

Figure 2.5 BVH Operates Majority of Nursing Facilities in the UPL Program.

47	Number of Skilled Nursing Facilities on the UPL Program
40	Number of Skilled Nursing Facilities operated by BVH
85%	Percent of UPL Nursing Facilities operated by BVH

Source: Beaver Valley Hospital

Because the program has grown so quickly in a short time, DOH needs to continue to provide guidance and oversight. BVH is desirous to improve its oversight and is actively working to ameliorate.

DOH Needs to Improve Oversight, and Is Working to Implement New Control Measures

DOH is the federally designated entity that requests approval from CMS to implement the UPL program.

DOH is the federally designated entity that requests approval from CMS to implement the UPL program. DOH should reasonably assure that seeding amounts received from BVH are compliant with CMS and DOH rules. DOH wrote a Medicaid state plan amendment and sought federal CMS approval for that amendment. After CMS approval, DOH set the rates at which nursing facilities can receive the Upper Payment Limit (UPL) funds. While BVH may have direct oversight responsibility, DOH needs to continue to provide oversight to assure that the state is properly protected against risks of the program. DOH should continue to seek legal advice from Medicaid experts, or CMS to assure that the UPL program conforms to CMS rules, and should provide guidance to BVH as needed.

Experts expressed concern with how BVH collects seeding from UPL funds to be used for reseeding after the end of the fiscal year.

We spoke to other states and experts who specialize in intergovernmental transfers; they expressed some concern with the process by which BVH charges nursing facilities a seeding fee from their UPL payments, then uses those funds to seed again after the fiscal year is closed. We feel that it is the responsibility of the state Medicaid agency to assure that the seeding is valid. DOH has stipulated by contract that the accuracy of the seeding process is BVH's responsibility, however, DOH should provide increased oversight and technical assistance of this process.

DOH charged BVH a $500,000 administrative fee in fiscal year 2016 (which can be doubled to $1 million with federal funds), to help fund the oversight of the program. DOH documented ways to

improve the oversight of the UPL with BVH in November of 2016, however, DOH should increase its technical assistance and oversight of BVH to account for program requirements and implement adequate controls.

DOH is now meeting with stakeholders in the program to develop an oversight framework. We recommend that DOH continue to work with BVH to establish an oversight structure that will reduce the potential for misuse of UPL funds. We recommend that DOH implement additional measures to assure that BVH has the funding capability to pay back any UPL funds if required to do so by a federal or state entity.

DOH is meeting with stakeholders in the UPL program to develop an oversight framework.

House Bill 194 Places Requirements On Future UPL Expansion

In the 2017 Legislative General Session, the Legislature passed H.B. 194, which places certain requirements on the current UPL program, creates a reporting requirement for DOH, and places some restrictions on future UPL expansion. Specifically, the bill says:

- "…An intergovernmental transfer program created before July 1, 2017, is subject to the federal funds review process… for periods after July 1, 2017."
- "The department (DOH) shall not create a new intergovernmental transfer program after July 1, 2017, unless the department reports to the Executive Appropriations Committee."
- "…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"

HB 194 prevents BVH from entering into a new agreement with a nursing facility in another city, town, or county without entering into an agreement.

We believe this new legislation will help improve accountability of the UPL program, but it has not stopped program expansion. BVH states that they are in the process of going through the statutory requirements to add ten more nursing facilities to the UPL program. Thus, BVH needs to create a control and governance framework to ensure all rules and requirements are being followed.

Recommendations

1. We recommend that Beaver Valley Hospital document how UPL funds received from nursing facilities are used.

2. We recommend that Beaver Valley Hospital conduct a risk assessment for all nursing facilities to determine what oversight and control deficiencies may exist.

3. We recommend that the Department of Health continue to seek legal advice from Medicaid experts, or the Centers for Medicare and Medicaid Services (CMS) to ensure that the UPL program, administrative fees, and seed funding, as currently in practice, are complying with CMS requirements.

4. We recommend that Beaver Valley Hospital create a control structure to monitor the use of the Upper Payment Limits for all nursing facilities they operate.

5. We recommend that the Department of Health continue to work with Beaver Valley Hospital and other hospitals in the UPL program to provide technical assistance and develop an oversight program that will reduce the risk of misusing UPL funds.

6. We recommend that the Department of Health implement additional measures to assure that Beaver Valley Hospital has the funding capability, such as a bond, to pay back any Upper Payment Limit funds if required to do so by a federal or state entity.

Chapter III
Contracts with BVH's Nursing Facilities Need to Be Clarified

Beaver Valley Hospital (BVH) holds the licenses for 40 nursing facilities, and is in the process to acquire 10 more nursing facilities. While BVH holds the operator licenses to the nursing facilities, it does not own real estate associated with them, contracting with previous license holders to manage and operate the facilities. A termination clause allows either party to cancel the contract, after which license reverts to the previous license holder, the current managing group that owns the physical facilities.

BVH is the license holder of the nursing facilities but does not own any real estate associated with the nursing facilities.

We found these contracts do not include adequate quality control measures. Inadequate quality control contributes to the level of unmanaged risk that exists in the current Upper Payment Limit (UPL) program. BVH requires administration fees and seed monies from each nursing facility, these fees are not documented in the contracts. These fees are paid from UPL funds, as discussed in chapter II, which could lead to loss of funds if monies they were found to have been used inappropriately. Failing to include contract provisions about UPL fund transfer and use constitutes another area of inadequate quality control, particularly because of concerns about the use of Medicaid funds discussed in chapter II.

BVH Does Not Own Nursing Facilities' Real Estate; Contracts Can Be Cancelled

BVH holds the licenses to operate the nursing facilities, but does not own any the real estate or property. Further, if the management companies (previous license holders) seek to end the contractual relationship with BVH they can do so with 30 to 90-days' notice. Figure 3.1 shows the contractually specified number of days that nursing facilities' managers have if they wish to end the contractual relationship with BVH.

Management companies can end their contractual relationship with BVH with 30-to-90-days' notice.

Figure 3.1 Required Notice for Nursing Facilities. Nursing facilities' managers must give 30-to-90-days' notice if they want to end their contractual relationship with BVH.

Days of Notice	# of Facilities	Percent of Contracts
30 days	15	40.5%
45 days	6	16.2%
60 days	3	8.1%
90 days	13	35.1%

Source: BVH Nursing Facility Contracts

An example of the contract language that allows the manager to give notice of terminating of the contract is the following: "*Upon thirty (30) days prior written notice to Operator without cause for any or no reason at Manager's sole discretion*." The language is similar for the contracts with different days of notice; also BVH has similar ability to terminate the contract with the nursing facility manager. The days of notice appears to offer some protection to BVH should something occur that could financially hurt BVH. However, contract language not protect BVH from potential misuse of the UPL funds by these nursing facilities. Our biggest concern is that the state is not protected against the potential misuse of UPL funds, as discussed in Chapter II.

Contracts do not protect BVH from the potential misuse of UPL funds by nursing facilities.

BVH Should Establish Quality of Care Measures in Contracts

The contracts between the BVH and the nursing facility management companies, do not establish quality of care requirements or procedures to assess the level of care. Thus, no remedies or sanctions can be put into place for noncompliance of quality of care metrics.

Measurements to asses of quality of care are not contractually documented between BVH and the facility management groups.

As mentioned, BVH holds the licenses to the nursing facilities relying heavily on the former owners to manage the facilities and assure that quality measures are being met, which puts BVH in more of an oversight role to assure quality standards are being met. As facility operator, BVH is responsible for what occurs in the facilities.

Rewarding management for reaching certain quality goals could be one way to get some assurance. However, we found that management was being awarded annual quality incentives and management incentive fees not based on any quality metrics. Texas uses similar incentive payments to ensure compliance that are measurement based.

Management financial incentives are not based on any quality metrics.

The method we found done in Texas to assure compliance is known as the quality incentive payment program (QIPP): "The goal of the QIPP program is to incentivize state nursing facilities to improve the quality of care for their residents. Facilities will be able to achieve this goal by showing an improvement in baselines as they relate to…quality measures." Figure 3.2 gives examples of metrics used by Texas.

Figure 3.2. QIPP Metrics Examples. Texas uses these categories to incentivize their nursing facilities to improve quality care.

Categories Used to Incentivize Nursing Facilities
Number of high risk residents with pressure ulcers
Percent of residents who received antipsychotic meds (long stay)
Number of residents experiencing one or more falls with major injury
Number of residents who were physically restrained

BVH certainly can determine quality measures that best fit their residential population, however, they must perform assessments to determine where quality risks may occur. We recommend that BVH establish quality of care metrics and update contracts to reflect these changes.

BVH needs to determine quality metrics and update contracts to reflect these changes.

BVH Should Clarify Seed and Administration Fees, in Contract

As noted, BVH's contracted nursing facilities are required to submit to BVH seed monies and administration fees. The seeding amount is 30-percent of the total UPL. BVH also charges an administration fee of 30-percent of the remaining UPL. We found that the significant administration and seeding fees are not documented in the contracts but merely agreed upon between BVH and the nursing facilities management companies. These fees need to be documented in the contracts going forward, and, further, BVH should amend current contracts to include the relevant language. This would help protect nursing facilities from unreasonable raises in these fees.

Contracts between BVH and nursing facilities do not document the administration and seeding fees.

We also found that BVH has not included provisions in the contracts with the nursing facilities stipulating how the UPL funds may be used. As indicated in Chapter II, UPL funds must be used for

services furnished by nursing facilities. Documenting allowable UPL funds use in the contracts ensure that, as signing parties, BVH and the management companies are aware of and agree to use restrictions. Further, adding such contract language enables oversight authorities to assess singing parties' compliance with the stipulation.

Recommendations

1. We recommend that Beaver Valley Hospital establish and document quality of care metrics in contracts with nursing facilities.

2. We recommend that Beaver Valley Hospital use quality of care metrics as incentives to reward nursing facilities and document this incentive in contracts with management companies.

3. We recommend that Beaver Valley Hospital document administration fees in the contracts with management companies, as well as, amend current contracts to reflect these fees.

4. We recommend that Beaver Valley Hospital document the amount of seeding in the contracts with management companies, as well as, amend current contracts to reflect these fees.

5. We recommend that Beaver Valley Hospital document how the Upper Payment Limit funding is to be used in contracts with management companies, as well as amend current contracts to reflect these fees.

Agency Response

This Page Left Blank Intentionally

State of Utah

GARY R HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Utah Department of Health
Executive Director's Office

Joseph K. Miner, M.D., M.S.P.H., F.A.C.P.M.
Executive Director

Nate Checketts
Deputy Director
Director, Medicaid and Health Financing

October 9, 2017

John Schaff, Auditor General
Office of the Legislative Auditor General
Utah State Capitol Complex
West Office Building, Suite W315
Salt Lake City, Utah 84114

Dear Mr.Schaff:

Thank you for the opportunity to respond to the audit entitled "A Performance Audit of the Beaver Valley Hospital's Medicaid Upper Payment Limit Program (for Nursing Homes)" (Report No. 2017-10). We appreciate the effort and professionalism of both you and your staff in this review. Likewise, our staff have spent time collecting information for your review, answering questions, and implementing changes to improve the program. We believe that the results of our combined efforts will make Medicaid a better, more efficient program.

We concur with the recommendations in this report and will use the recommendations to strengthen the policies, procedures, and internal controls for Utah Medicaid's non-state governmental entity nursing facility program. Our responses describe the actions the Department of Health is taking to implement the recommendations. The Department is committed to the efficient and effective use of taxpayer funds and values the insight this report provides on areas that need to be improved.

Sincerely,

Nate Checketts
Deputy Director, Department of Health
Division Director, Medicaid and Health Financing

UTAH DEPARTMENT OF HEALTH
288 North 1460 West, Box 141000 • Salt Lake City, UT 84114-1000
Telephone (801) 538-6111 • *www.health.utah.gov*

Response to Recommendations

As indicated, the Department concurs with the recommendations in this report and will use the recommendations to strengthen the policies, procedures, and internal controls for Utah Medicaid's non-state governmental entity nursing facility program.

We included additional background information in our response to help policy makers further understand what steps have been taken by the Department and what additional steps still need to occur. Our specific response to each audit recommendation directed to the Department can be found after the additional background section.

Additional Background

States have broad flexibility in setting reimbursement rates for nursing facilities. Nursing facilities are reimbursed a daily rate for all Medicaid members served in the facility. Nursing facilities' daily rates are calculated by facility and consist of three components:

1) Resource Utilization Groups (RUGs) component which is a severity-based payment system based on case-mix,
2) a flat rate component which is a fixed amount paid for all Medicaid members, and
3) a property component which is an amount based on the facility's fair rental value of its capital assets.

The Utah Medicaid State Plan (Attachment 4.19-D, Section 942) allows nursing facilities to receive a supplemental payment in addition to the daily Medicaid rate, if they qualify. Utah's Nursing Facility Upper Payment Limit (NF UPL) program is only available to nursing facilities that are owned by a non-state governmental entity and have an agreement with the Division of Medicaid and Health Financing (DMHF). The supplemental payment may not exceed the upper payment limit established in federal regulations (42 CFR 447.272). The supplemental payment made to facilities is the gap between the Medicaid daily rate and the Upper Payment Limit, which is defined in federal regulations as the Medicare rate.

A non-state governmental entity (NSGE) is defined in Utah Administrative Rule R414-505-2 as "a hospital authority, hospital district, healthcare district, special services district, county or city." A non-state government-owned (NSGO) nursing facility is defined in the same rule as "a nursing care facility where an NSGE holds the license and is party to the facility's Medicaid provider contract."

In early 2013, the Department of Health (Department) submitted a State Plan Amendment (SPA) the Centers for Medicare and Medicaid Services (CMS) that defined Utah's proposed NF UPL program. Once submitted, there was significant communication back and forth between CMS and the Department. In addition, CMS sent the Department a Request for Additional Information (RAI), which required additional documentation and information related to the proposed NF UPL program. Due to the inquiry and responses between CMS and the Department, the SPA was not approved until December 2013 and was effective retroactively to February 2013.

Initially, there were four nursing facilities that participated in the program in state fiscal year (FY) 2013 that were owned by NSGEs. Beaver Valley Hospital was not one of these original NSGEs. Beaver Valley Hospital (which is an NSGE) began participating in the program in FY 2014 with four individual facilities.

The original contract with BVH included the following contract provisions relative to the Intergovernmental Transfer (IGT) and federal disallowance:

Seed – The Special Provisions, noted:

5.A.1. "The amount of the "State Share" of the UPL Gap in accordance with 42 CFR §433.1O, as amended"

6. The CONTRACTOR shall ensure that the funds provided to the DEPARTMENT in the IGT meet the requirements of 42 CFR 433, Subpart B, and are not derived from an impermissible source including recycled Medicaid payments, Federal money precluded from use as the State Share, impermissible taxes, and non-bona fide provider-related donations.

With its IGT, the CONTRACTOR shall specify the source of the IGT funds (e.g., governmental taxes - State taxes, county taxes; governmental operations - revenue generated by a special services district or the state teaching hospital).

10. Disallowance
In the event that there is a disallowance of Federal Financial Participation, the CONTRACTOR shall pay the disallowed Federal Financial Participation, including any interest and penalty.

The growth in Beaver Valley Hospital's (BVH) NSGO facilities is documented in Figure 1.6 of the audit report. Prior to approving any of the additional facilities BVH requested in FY2016, the Department took action to modify the contract with BVH to add additional controls over the IGT process and disallowances (see Section 6 and Section 10 below, respectively). In addition to the control measures that were added to attempt to mitigate the risk of noncompliance, the Department also added several quality measures (see Section 12 and Section 13 below). These quality measures were included to require BVH to implement a quality improvement program and to ensure that the UPL payments are used to improve member care in BVH Nursing Facilities. The modified contract language is as follows:

Section 6 – Assurances of Payment Funding
A. The CONTRACTOR shall ensure that the IGT payments provided to the DEPARTMENT meet the requirements of 42 CFR 433, Subpart B, and are not derived from an impermissible source, including recycled Medicaid payments, Federal money precluded from use as the State Share, impermissible taxes, or non-bona fide provider-related donations.

B. Concurrently with its IGT payments to the DEPARTMENT, the CONTRACTOR shall certify (in compliance with UAC R414-505, as amended) as to the source of the IGT funds (e.g., governmental taxes – State taxes, county taxes; governmental operations – revenue generated by a special services district or the State teaching hospital).

C. Beginning July 1, 2016:
The CONTRACTOR shall demonstrate compliance with Section 6A of this Attachment B by following one of the processes outlined in (i) or (ii):

i. The CONTRACTOR shall deposit all UPL Gap payments received from the DEPARTMENT in each NF's account. Each NF shall have access to 100% of its UPL Gap payment to use for allowable operating expenses, including the payment of debt service and other operating expenses included in the NF's capital and operating budget, on the NF. This amount cannot be reduced by the amount of the IGT or any transfers of funds from the individual NF accounts to any other of the CONTRACTOR accounts not used exclusively for that NF. The CONTRACTOR shall hold all UPL Gap payments not used by the NF for such allowable operating expenses through the end of the CONTRACTOR's current fiscal year, at which time the CONTRACTOR may use such remaining UPL Gap Funds for any lawful purpose.

No Medicaid payments or Medicare payments may be used to fund an IGT in the same CONTRACTOR's fiscal year that the CONTRACTOR receives such payments.

ii. No later than ninety (90) days after the start of the CONTRACTOR's fiscal year, the CONTRACTOR shall send a report to the DEPARTMENT showing the total Available Funds from the CONTRACTOR's previous fiscal year. The CONTRACTOR shall also send the DEPARTMENT a copy of its audited financial statements within ten (10) days of approving and releasing the statements.

The CONTRACTOR shall only use Available Funds from a previous fiscal year or funds obtained through a line of credit to make IGT payments to the DEPARTMENT.

Section 10 – Disallowance
In the event that there is a disallowance of FFP, the CONTRACTOR shall pay the disallowed FFP, including any interest and penalty, to the DEPARTMENT as required by Federal and state laws, rules and regulations.

If the Centers for Medicare and Medicaid Services ("CMS") issue a notice of disallowance to the DEPARTMENT, the CONTRACTOR shall, within thirty (30) calendar days after notification by the DEPARTMENT, refund to the DEPARTMENT the disallowed amount The DEPARTMENT may, in its discretion, but is not required to negotiate, litigate or oppose a disallowance of FFP for any payments made pursuant to this Contract.

To the extent permitted by applicable law, the CONTRACTOR waives the right to bring any defenses, claims or causes of action against the State of Utah or the DEPARTMENT with respect to the matters involving the disallowance amount referred to in such CMS notice or involving a final determination to disallow FFP made by CMS for any payments made pursuant to the Contract. The foregoing waiver includes, but is not limited to, matters

involving a demand for payment or an offset against payments or claims made by the DEPARTMENT.

CONTRACTOR agrees to indemnify and to hold harmless the DEPARTMENT in connection with a CMS disallowance with respect to payments made pursuant to the Contract, except to the extent such disallowance is caused by the DEPARTMENT's breach of the Contract, including the Attachment B.

Section 12 – Quality Improvement Program
The CONTRACTOR shall implement a quality improvement program, which shall be set forth in the Utah Administrative Code, including any amendments. The DEPARTMENT shall seek input from the Utah HealthCare Association when developing administrative rules regarding the quality improvement program.

Section 13 – Use of UPL Gap Payments
To ensure that the UPL Gap payments made to the CONTRACTOR are used to improve member care in the NFs, beginning State Fiscal Year 2017, the DEPARTMENT shall review the Facility Cost Profile (the "FCP") for each NF covered by the Contract each year. The DEPARTMENT will calculate the NF's total percentage of expenditures in the following FCP categories:
030-000 PLANT OPERATION & MAINTENANCE
040-000 DIETARY
050-000 LAUNDRY AND LINEN
060-000 HOUSEKEEPING
070-000 NURSING
090-000 RECREATIONAL ACTIVITIES & SPECIAL SERVICES

If the DEPARTMENT determines the total percentage of expenditures in these categories for any NF covered by the Contract falls five (5) percentage points below the State Fiscal Year 2010-2015 industry average, the DEPARTMENT shall require the CONTRACTOR to provide documentation in support of the variance or difference from the industry average. If any NF fails to increase its percentage spending in these categories to within five (5) percentage points of the industry average in the next fiscal year, the DEPARTMENT may terminate the Contract for that NF, notwithstanding other basis for termination set out in this contract. This provision in no way limits the DEPARTMENT's rights otherwise stated in Attachment A, General Terms and Conditions.

During the contract negotiation process to include the above modified language in the contract, the Department performed a significant amount of due diligence. The Department reached out to CMS multiple times to discuss specific components of the agreement, including the definition of "ownership" for NSGO nursing facilities related to the NF UPL program. In relation to the ownership discussion, CMS responded that, for a nursing facility, ownership means that the entity holds the license and is party to the facility's Medicaid contract.

In addition, the Department reached out to other states with NF UPL programs, such as Indiana, Texas, and Georgia for information. The Department also spent a considerable amount of time working with the Department's legal counsel and with BVH's management and legal counsel to discuss components of the contract and NF UPL federal requirements. The Department also hired independent legal counsel (Covington & Burling Law Firm) to review aspects of the program.

During this same time frame, the Department developed more robust Administrative Rules (R414-505) related to the NF UPL program and the requirements surrounding the change of ownership (CHOW) process and the IGTs. Examples of some of the revised language are as follows:

R414-505-5. Requirements to Participate in the NFNSGO UPL Program includes:

> *(5)(a) State funding for supplemental payments authorized in this rule is limited to and obtained through Intergovernmental Transfer (IGT) Agreements of public funds or other permissible source-of-seed funding from the NSGE that holds the license and is party to the Medicaid contract of the nursing care facility.*
>
> *(b) The NSGE shall ensure that the funds provided to the Department for the non-federal share, via IGT, meet the requirements of 42 CFR 433, Subpart B.*

R414-505-6. Intergovernmental Transfer (IGT) Certification, states:

> *With its IGT, using the "IGT Certification Form" prescribed by the Medicaid agency, the NSGE shall specify the dollar amount and certify the source of the IGT funds. The NSGE shall specify, on the form, a detailed description of the IGT monies and the legal basis for the monies ability to be used to match federal funds.*

The Department also sent an independent audit firm, Carver, Florek & James CPAs, to review the seeding process that BVH was using at the time. In May 2016, the Department submitted the contract to CMS and requested that CMS review the contract in terms of the NF UPL program and the related federal regulations and provide technical assistance to the Department. CMS is working on this request and has recently requested related information and documentation from the Department.

Since the initial modification of the BVH contract, the Department continued to work on additional quality components that will be added to the contract and to administrative rules. The Department hired a staffer to create and oversee a new quality improvement program. The staffer has been working diligently to create this new program. The staffer worked with the industry to ensure the program is one that will be challenging and result in improvements to the quality of care for the residents. The Department expects a new rule outlining the new quality improvement program is expected to become effective January 1, 2018.

Utah Administrative Rule R414-27 is being repealed and replaced with guidance that will formalize processes and expectations to address responsibilities of the transferor and transferee

in relation to the provider enrollment process for nursing facility CHOWs. The guidance being formalized in the referenced rule was communicated both verbally and in writing to BVH and the nursing facility management companies. The Department also provided technical assistance to BVH's management companies for its nursing facilities on multiple CHOWs.

The Department has also begun reviewing information BVH submitted as a result of the new contract requirements described previously. BVH submitted information related to Section 6.C.ii of the contract, shown above. The Department again engaged Carver, Florek & James CPAs to resolve several questions related to BVH's submission. That review is still in process. The result of the audit will show the total *Available Funds* from June 30, 2016 fiscal year-end.

The Department also recently received the unaudited Facility Cost Profile (FCP) data for state fiscal year 2016 to comply with Section 13 of the contract regarding the percent of funds spent on direct care provided to individuals in nursing facilities. Department staff reviewed the unaudited information to determine, preliminarily, the compliance of the NSGO providers with this contract provision. As a result of this preliminary review, the Department notified BVH of facilities that are not currently in compliance with Section 13. The Department requested documentation in support of the variance from the industry average. The Department encouraged BVH to work with its management companies to ensure their spending in FY 2018 comes into compliance with this provision.

The Department continues to explore additional methods to ensure that the State's risk associated with a disallowance is mitigated and to improve the quality of care provided in nursing facilities that benefit from the State's NF UPL program. The Department is committed to providing access to quality, cost effective healthcare for eligible Utahans.

Chapter II
<u>Recommendation 3</u>
We recommend that the Department of Health continue to seek legal advice from Medicaid experts, or the Centers for Medicare and Medicaid Services (CMS) to ensure that the UPL program, administrative fees, and seed funding, as currently in practice, are complying with CMS requirements.

We concur with this recommendation. As stated in the background section above, the Department sought advice from CMS, the Attorney General's Office, and Covington & Burling Law firm. The CMS review is still in process and the Department will continue to follow-up with CMS in order to obtain additional perspective on the program's compliance with CMS's requirements. In addition, as the Department contemplates significant changes to the NF UPL program, it will continue to seek advice from these experts to help ensure compliance with CMS's requirements.

Contact: Nate Checketts, Deputy Director, Utah Department of Health, 801-538-6689
Implementation Date: Ongoing activity

Recommendation 5

We recommend that the Department of Health continue to work with Beaver Valley Hospital and other hospitals in the UPL program to provide technical assistance and develop an oversight program that will reduce the risk of misusing UPL funds.

We concur with this recommendation. The Department will continue to provide technical assistance to BVH and to other owners participating in the State's NF UPL program through the CHOW process. In addition, the Department will send auditors and Department staff to BVH to review and provide assistance with finances, seeding, and recording of seed. The Department will also continue to monitor and evaluate the requirements of the contract and will take appropriate action if BVH is determined to be in violation of any of the contract requirements.

Contact: John Curless, Director, Bureau of Coverage and Reimbursement Policy, 801-538-6149
Implementation Date: December 31, 2017

Recommendation 6

We recommend that the Department of Health implement additional measures to assure that Beaver Valley Hospital has the funding capability, such as a bond, to pay back any Upper Payment Limit funds if required to do so by a federal or state entity.

We concur with this recommendation. The Department recognizes the risks associated with a potential federal disallowance for this program. If CMS issued a federal disallowance, the Department would be required to return the federal share of the disallowed NF UPL payments in the next quarter following the written communication of the disallowance. In accordance with the contract, the Department would then seek to recover the disallowance from BVH. If BVH did not refund the amount disallowed within 30 days of notification, as required by the contract, the Department would attempt to collect the disallowance by offsetting the amount owed against future claims submitted by BVH and its nursing facilities.

To help ensure that BVH has the funding capability to repay a federal disallowance, the Department will work with BVH to identify measures they can employ to mitigate this risk. The Department's contract with BVH will be amended to include the additional risk mitigation measures.

Contact: John Curless, Director, Bureau of Coverage and Reimbursement Policy, 801-538-6149
Implementation Date: June 30, 2018

October 6, 2017

Mr. John M. Schaff, CIA
Auditor General
State of Utah – Office of the Legislative Auditor General
W315 Utah State Capitol Complex
Salt Lake City, UT 84114-5315

RE: Report No. 2017-10

Dear Mr. Schaff:

BEAVER VALLEY HOSPITAL
NF NSGO LEGISLATIVE AUDIT RESPONSE

Below, Beaver Valley Hospital provides an **Opening Statement**, an **Overview** of BVH's position in the Utah NF NSGO UPL program, and some short narratives **"Cliff Notes"** if you will, that emphasize our position and clarify our response.

OPENING STATEMENT

Beaver Valley Hospital is worried that one who is unfamiliar with the Upper Payment Limit (UPL) program might develop a negative perception of the NF NSGO UPL program. We would like to see some emphasis put on the importance of the program and the positive results the program has produced. It should be noted that Utah's Medicaid payments for skilled nursing patients is $25 to $35 dollars below the cost of providing such care. The UPL program was developed to offset the underfunding that reduces the quality of care for the elderly in nursing homes. The report could show why the negative effects of the States underfunding policies is eliminated with the participation of the NSGOs as they provide authorized IGT funding to obtain the available UPL monies.

Highlighting some of the capital improvements, new construction, and the ability to offer competitive salaries are a few of the positives that could help the reader see the great value of this program for the elderly residents of our state.

All though the Audit Report notes in several locations that there is no evidence of non-compliance or wrong doing by BVH… there seems to be an underlying theme that Beaver Valley Hospital is too small to properly administer the UPL program. BVH agrees that the rapid growth has created some challenges. However, we have added several FTE's, expended great resources

to ensure compliance, and adjusted working assignments to meet these challenges and will continue to do so as needs arise.

OVERVIEW

Beaver Valley Hospital (BVH) is a government owned and operated 25 Swing Bed Critical Access Hospital. Over the past four years, the Hospital has, as a Non-State Government Owned/Operated Facility (NSGO), acquired 40 nursing homes throughout the State. As the owner and operator of these Nursing Facilities BVH is responsible, ***as any owner/operator of a healthcare facility would be,*** for the financial and healthcare activities within each of the facilities. To meet the financial and operational challenges that the Nursing Facilities face, BVH has entered into management contracts with credible and well established Skilled Nursing Facility Operators to manage and operate the Facilities on a daily basis. These activities are monitored with daily interactions as needed, quarterly reviews of UPL funding dollars and Annual financial audits by independent outside CPA firms. It should be noted that this pattern of management is consistent with successful UPL programs nationwide.

Beaver Valley Hospital's normal operating Budget as of June 30, 2012 was 10 Million Dollars. With the acquisition of the 40 Nursing Facilities over the past 5 years, the Combined budget of BVH (Hospital and SNF) for State Fiscal Year 2018 is approximately 140 million dollars. The majority of this growth has occurred within the last 18 months. With 23 of the 40 Nursing Facilities licensed to BVH during this period.

This rapid growth and the numbers of facilities that BVH has acquired since the Utah State Plan was amended to accommodate NSGO/Nursing Facilities participation in the Federal Upper Payment Program through Inter Governmental Transfers (IGT) has raised some concern with Utah State officials…Concerns with the Department of Health's oversight and Beaver Valley Hospitals ability as a qualified NSGO to properly administer the regulations of the NF NSGO program. BVH has extended great resources to limit the risk of recoupment from CMS. IN fact, more than $1.4 million have been spent researching a very successful program in Indiana that has NEVER been required to pay back funds. BVH has hired legal teams and experts from this state to ensure that the program is fully compliant with federal regulations.

Our report will explain BVH's ownership and oversight of the operations of the Nursing Facilities, and our efforts to insure compliance with all Federal Regulations associated with the NF NSGO UPL program.

It is worthy to note at this juncture that the Utah Department of Health, over the past 18 months has been actively involved with the NSGOs in the State regarding the Federal UPL program. Although some of their directives are counterproductive for the operation of a healthcare facility, overall their efforts to assist the NSGO's compliance efforts have strengthened our position and are welcomed.

NF NSGO PARTICIPATION GUIDELINES

There are three main factors governing the participation in the NF NSGO program.

1. **Governmental Status**…The Entity Must be a qualified Non-State Governmental Owned facility.
2. **Ownership**…A qualified NSGO must own and operate the Nursing Facilities.

3. **Proper FMP funding**…Have the ability through Inter Governmental Transfers to "seed" the Federal Match Percentage requirements with qualified funding resources.

Beaver Valley Hospital meets each of these participation requirements as noted below.

Governmental Status

Beaver Valley Hospital was established in August 1966 by ordnance of Beaver City as a component unit of the City. That ordinance was amended in 1982 to further clarify the Hospital's status as a governmental unit and strengthen BVH's Governing Board's authority and governing powers. Beaver Valley Hospital has been governed and operated as a component unit of Beaver City for over 50 years. **The hospital's status as a qualified NSGO has never been questioned!**

Ownership

In 2013, Beaver Valley Hospital as a qualified NSGO filed with the appropriate State and Federal government agencies a ***Change of Ownership*** "CHOW" and ***Operating License Applications*** for 4 Skilled Nursing Facilities along the Wasatch Front. The CHOWs were approved by Medicaid and Medicare and licenses to operate the nursing facilities were obtained in the latter part of 2013. As noted earlier, BVH has since acquired an additional 36 Nursing Facilities under the same procedure…Securing the ownership and obtaining the License to Operate 40 Skilled Nursing Facilities.

For each Nursing Facility, we have secured brick and mortar with various lease agreements. We also, by contract, engaged experienced and very talented SNF management groups to **operate and oversee** the daily activities within the individual facilities and **ensure compliance** with all associated Federal and State skilled nursing participation requirements. This arrangement is nationwide and consistent with successful UPL programs.

Proper FMP-IGT (Seed) Funding

The Utah State Plan for Medicaid Services allows an NSGO to participate in **Inter Governmental Transfers** (IGT) to obtain UPL funding. Beaver Valley Hospital, an NSGO owner/operator of 40 Skilled Nursing Facilities, through IGTs presented to the Utah Department of Health, calls down

Federal UPL dollars for BVH and their NSGO owned/operated Nursing Facilities. *Figure 1.4 "The Process to Receive Upper Payment Limit $'s, of the Auditor General's report illustrates this procedure.*

***It must be emphasized at this point that only authorized funds are allowed to be used by the State to fund the Federal Match or Seed amount through the IGT. In Section 6 of the UPL contract between the Utah Department of Health and Beaver Valley Hospital, The Department details acceptable funds that may be used to fund any IGT's. These guidelines go beyond the Federal definitions of public funds. However, they do ensure compliance with the less restrictive federal guidelines, thus eliminating any risk associated with improper NSGO IGT funding*.**

"CLIFF NOTES"

General Statements:

- Beaver Valley Hospital (BVH) as Component Unit of Beaver City is a Non-State Government Owned/Operated healthcare facility.
- BVH is recognized Nationally and throughout the State as a we managed Rural Community Hospital.
- As an NSGO BVH qualifies to provide IGT funding for the ***NF NSGO UPL*** program authorized in the Federally approved Utah State Medicaid Plan.
- BVH is the owner/operator of 40 Nursing Facilities. NSGO ownership enables the NF's to receive UPL funding.
- BVH, as many business operators do, leases all of the NF's "Brick and Mortar". All leases are priced at local fair market values.
- BVH contracts with highly skilled and well respected Skilled Nursing Management groups to oversee the day to day clinical and financial operations of the NFs. All management contracts have short term termination clauses that can be enforced if a specific NF fails to meet the associated management quality and financial covenants.
- BVH provides "seed dollars" to fund IGTs. All seed dollars come from BVH's daily operating accounts. All seed dollars come from authorized funding sources. No recycled or unauthorized funds are ever used.
- All UPL dollars received by BVH fund Capital expenditures and day to day operational expenses associated with the delivery of healthcare within the Hospital and NFs.
- BVH's oversite of the NFs consists of daily interaction as needed, quarterly UPL funding reviews, and annual financial audits performed by outside accounting firms engaged by BVH.
- Beaver Valley Hospital fully understands the importance of proper administration of any and all Federal and State Programs. Non-compliance with any aspect of the NF NSGO UPL program is as unacceptable to BVH as it is to the State.

- BVH has researched other NF NSGO UPL programs throughout the nation. Great effort and expense has been paid to ensure that BVH's mode of operation is consistent with well-established and Medicare approved models.
- Significant attention was given to models where Medicare had disallowed all or portions of the NF NSGO program which resulted in the pay-back of Federal dollars. Though the audit report seems to provide correlations between BVH and these failed experiences, **there is no correlation between the BVH NF NSGO and any of the Medicare disallowed programs.**

Legislative Audit Recommendations:

- BVH welcomes all the audit recommendations. However, there are a few that may not be achievable and some will require time to fully implement.
- We accept oversite from the Department of Health as guidance to maintain a 100% compliant NF NSGO UPL operation.
- We define oversite to mean a cooperative working relationship with productive communications and recommendations. Not burdensome bureaucratic reporting requirements and/or operational dictates that do not relate to improving care for our patients and nursing home residents.
- The DOH is very capable of helping BVH understand how to comply with the Federal regulations.
- The DOH is not skilled in the operation of healthcare facilities and should not produce rules or mandates that effect the NF's operational activities without counseling with the NSGOs. (Quality Improvement (QI) guidelines that all of the NSGOs will comply with were recently developed by the DOH in this cooperative atmosphere)

Conclusion

We believe that Utah's entrance into the NF NSGO UPL program is one off the most important steps taken in years to improve the health and wellbeing of the elderly residents of the State. Beaver Valley Hospital is proud to participate with the State in this journey as it mirrors the core values we have lived by for 50 years.

The audit team that we worked with were professional and represented the Legislative Auditors Office very well. Their concern for the Long-Term Care residents and the understanding of the importance of the NF NSGO UPL program assured us that the recommendations they have put forward are well intended for all parties involved.

Finally, we thank those of you who will take the time to gain an understanding of this program. The elderly population, those who sometimes are forgotten in the healthcare debates will benefit greatly from your efforts.

Sincerely,

Craig Val Davidson

Craig Val Davidson, Director
BVH-NF

cc: Tyler Moss
Scott Langford
Craig Wright

Beaver Valley Hospital

This page intentionally left blank.

1 **FEDERAL GRANTS MANAGEMENT AMENDMENTS**

2 2017 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Justin L. Fawson**

5 Senate Sponsor: Ann Millner

6

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions relating to the review and approval procedures for certain
10 federal funds requests under the Federal Funds Procedures Act and requires the review
11 of certain intergovernmental transfers under the Federal Funds Procedures Act.

12 **Highlighted Provisions:**

13 This bill:

14 ▸ increases oversight of intergovernmental transfers by prohibiting a city owned
15 hospital or city owned nursing care facility that will participate in an
16 intergovernmental transfer program from operating in another city or county without
17 entering into an interlocal agreement;

18 ▸ amends definitions;

19 ▸ modifies the federal funds requests that are subject to the review and approval
20 procedures under the Federal Funds Procedures Act;

21 ▸ makes intergovernmental transfer programs between the Department of Health and
22 a local government entity for Medicaid federal funding subject to the Federal Funds
23 Procedures Act;

24 ▸ prohibits the creation of new Medicaid intergovernmental transfer programs after
25 July 1, 2017, unless the Department of Health submits the intergovernmental
26 transfer program for review as a new grant under the Federal Funds Procedures Act;

27 ▸ establishes a requirement for the Department of Health to submit an annual report to
28 the Executive Appropriations Committee regarding Medicaid intergovernmental
29 transfer programs; and

30 ▸ makes technical changes.

31 **Money Appropriated in this Bill:**

32 None

33 **Other Special Clauses:**

34 None

35 **Utah Code Sections Affected:**

36 AMENDS:

37 **10-8-90**, as last amended by Laws of Utah 2003, Chapter 292

38 **26-18-18**, as last amended by Laws of Utah 2016, Chapter 279

39 **63J-5-102**, as last amended by Laws of Utah 2016, Chapter 272

40 **63J-5-103**, as last amended by Laws of Utah 2015, Chapter 190

41 ENACTS:

42 **26-18-21**, Utah Code Annotated 1953

43 **63J-5-206**, Utah Code Annotated 1953

44

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

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

47 **10-8-90. Ownership and operation of hospitals.**

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

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

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

59 **26-18-18. Optional Medicaid expansion.**

60 (1) For purposes of this section, "PPACA" means the same as that term is defined in

61 Section 31A-1-301.

62 (2) The department and the governor shall not expand the state's Medicaid program to

63 the optional population under PPACA unless:

64 (a) the governor or the governor's designee has reported the intention to expand the

65 state Medicaid program under PPACA to the Legislature in compliance with the legislative

66 review process in Sections 63N-11-106 and 26-18-3; and

67 (b) [~~notwithstanding Subsection 63J-5-103(2),~~] the governor submits the request for

68 expansion of the Medicaid program for optional populations to the Legislature under the high

69 impact federal funds request process required by Section 63J-5-204, Legislative review and

70 approval of certain federal funds request.

71 (3) The department shall request approval from the Centers for Medicare and Medicaid

72 Services within the United States Department of Health and Human Services for waivers from

73 federal statutory and regulatory law necessary to implement the health coverage improvement

74 program under Section 26-18-411. The health coverage improvement program under Section

75 26-18-411 is not Medicaid expansion for purposes of this section.

76 Section 3. Section **26-18-21** is enacted to read:

77 **26-18-21. Medicaid intergovernmental transfer report.**

78 (1) As used in this section:

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

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

81 (B) from a nonfederal, government owned health care facility regulated under Chapter

82 21, Health Care Facility Licensing and Inspection Act, to another nonfederal governmental

83 entity.

84 (ii) "Intergovernmental transfer" does not include the transfer of public funds from one

85 state agency to another state agency.

86 (b) "Intergovernmental transfer program" means a reimbursement category authorized
87 by the Medicaid state plan or waiver authority for intergovernmental transfers.
88 (c) "Local government entity" means a county, city, town, special service district, or
89 local education agency as that term is defined in Section 63J-5-102.
90 (2) (a) An entity that receives federal Medicaid dollars from the department as a result
91 of an intergovernmental transfer shall, on or before August 1, 2017, and on or before August 1
92 each year thereafter, provide the department with:
93 (i) information regarding the payments funded with the intergovernmental transfer as
94 authorized by and consistent with state and federal law;
95 (ii) the entity's analysis of the entity's ability to repay federal funds, to the extent
96 required by the department in the contract for the intergovernmental transfer, if there is a
97 federal disallowance of the intergovernmental transfer; and
98 (iii) other information required by the department in the contract for the
99 intergovernmental transfer.
100 (b) On or before October 15, 2017, and on or before October 15 each year thereafter,
101 the department shall prepare a report for the Executive Appropriations Committee that
102 includes:
103 (i) the amount of each intergovernmental transfer under Subsection (2)(a);
104 (ii) the department's analysis of the risk of a federal disallowance for the state; and
105 (iii) other information the department gathers about the intergovernmental transfer
106 under Subsection (2)(a).
107 (3) The department shall not create a new intergovernmental transfer program after
108 July 1, 2017, unless the department reports to the Executive Appropriations Committee, in
109 accordance with Section 63J-5-206, before submitting the new intergovernmental transfer
110 program for federal approval. The report shall include information required by Subsection
111 63J-5-102(1)(d) and the analysis required in Subsections (2)(a) and (b).
112 Section 4. Section **63J-5-102** is amended to read:
113 **63J-5-102. Definitions.**

114 (1) As used in this chapter:
115 (a) (i) "Agency" means a department, division, committee, commission, council, court,
116 or other administrative subunit of the state.
117 (ii) "Agency" includes:
118 (A) executive branch entities;
119 (B) judicial branch entities; and
120 (C) the State Board of Education.
121 (iii) "Agency" does not mean higher education institutions or political subdivisions.
122 (b) (i) "Federal funds" means cash or other money received from the United States
123 government or from other individuals or entities for or on behalf of the United States and
124 deposited with the state treasurer or any agency of the state.
125 (ii) "Federal funds" includes federal assistance and federal assistance programs,
126 however described.
127 (iii) "Federal funds" does not include money received from the United States
128 government to reimburse the state for money expended by the state.
129 (c) "Federal funds reauthorization" means:
130 (i) the formal submission from an agency to the federal government applying for or
131 seeking reauthorization of federal funds which the state is currently receiving;
132 (ii) the formal submission from an agency to the federal government applying for or
133 seeking reauthorization to participate in a federal program in which the state is currently
134 participating that will result in federal funds being transferred to an agency; or
135 (iii) that period after the first year of a previously authorized and awarded grant or
136 funding award, during which federal funds are disbursed or are scheduled to be disbursed after
137 the first year because the term of the grant or financial award extends for more than one year.
138 (d) (i) "Federal funds request summary" means a document detailing:
139 (A) the amount of money that is being requested or is available to be received by the
140 state from the federal government for each federal funds reauthorization or new federal funds
141 request;

142 (B) those federal funds reauthorizations and new federal funds requests that are
143 included as part of the agency's proposed budget for the fiscal year, and the amount of those
144 requests;
145 (C) the amount of new state money, if any, that will be required to receive the federal
146 funds or participate in the federal program;
147 (D) the number of additional permanent full-time employees, additional permanent
148 part-time employees, or combination of additional permanent full-time employees and
149 additional permanent part-time employees, if any, that the state estimates are needed in order to
150 receive the federal funds or participate in the federal program; and
151 (E) any requirements that the state must meet as a condition for receiving the federal
152 funds or participating in the federal program.
153 (ii) "Federal funds request summary" includes, if available:
154 (A) the letter awarding an agency a grant of federal funds[;] or [(B)] other official
155 documentation awarding an agency a grant of federal funds[.]; and
156 (B) a document detailing federal maintenance of effort requirements.
157 (e) "Federal maintenance of effort requirements" means any matching, level of effort,
158 or earmarking requirements, as defined in Office of Management and Budget requirements,
159 that are imposed on an agency as a condition of receiving federal funds.
160 (f) "Local education agency" or "LEA" means:
161 (i) a school district;
162 (ii) a charter school; or
163 (iii) the Utah Schools for the Deaf and the Blind.
164 (g) "New federal funds" means:
165 (i) federal assistance or other federal funds that are available from the federal
166 government that:
167 (A) the state is not currently receiving; or
168 (B) exceed the federal funds amount most recently approved by the Legislature by
169 more than 25% for a federal grant or program in which the state is currently participating;

170 (ii) a federal assistance program or other federal program in which the state is not
171 currently participating; or
172 (iii) a one-time TANF request.
173 (h) "New federal funds request" means:
174 (i) the formal submission from an agency to the federal government:
175 (A) applying for or otherwise seeking to obtain new federal funds; or
176 (B) applying for or seeking to participate in a new federal program that will result in
177 federal funds being transferred to an agency; or
178 (ii) a one-time TANF request.
179 (i) (i) "New state money" means money, whether specifically appropriated by the
180 Legislature or not, that the federal government requires Utah to expend as a condition for
181 receiving the federal funds or participating in the federal program.
182 (ii) "New state money" includes money expended to meet federal maintenance of effort
183 requirements.
184 (j) "One-time TANF request" means a proposed expenditure by the Department of
185 Workforce Services from its reserves of federal Temporary Assistance for Needy Families
186 funds:
187 (i) for a project or program that will last for a fixed amount of time and is not an
188 ongoing project or program of the Department of Workforce Services; and
189 (ii) that is greater than $1,000,000 over the amount most recently approved by the
190 Legislature.
191 (k) (i) "Pass-through federal funds" means federal funds provided to an agency that are
192 distributed to local governments or private entities without being used by the agency.
193 (ii) "Pass-through federal funds" does not include federal funds provided to the State
194 Board of Education that are distributed to a local education agency or other subrecipient
195 without being used by the State Board of Education.
196 (l) "State" means the state of Utah and all of its agencies, and any administrative
197 subunits of those agencies.

198 (2) When this chapter describes an employee as a "permanent full-time employee" or a
199 "permanent part-time employee," it is not intended to, and may not be construed to, affect the
200 employee's status as an at-will employee.
201 Section 5. Section **63J-5-103** is amended to read:
202 **63J-5-103. Scope and applicability of chapter.**
203 (1) Except as provided in Subsection (2), and except as otherwise provided by a statute
204 superseding provisions of this chapter by explicit reference to this chapter, the provisions of
205 this chapter apply to each agency and govern each federal funds request.
206 (2) (a) This chapter does not govern federal funds requests for:
207 [(a)] (i) except as provided in Section 63J-5-206, the Medical Assistance Program,
208 commonly known as Medicaid; and
209 [(b)] (ii) except as provided in Section 63J-5-206, the Children's Health Insurance
210 Program[;].
211 (b) Until Subsections (2)(c) and (d) apply, this chapter does not govern federal funds
212 requests for:
213 [(c)] (i) the Women, Infant, and Children program;
214 [(d)] (ii) the Temporary Assistance for Needy Families program, except for a one-time
215 TANF request as defined in Section 63J-5-102;
216 [(e)] (iii) Social Security Act money;
217 [(f)] (iv) the Substance Abuse Prevention and Treatment program;
218 [(g)] (v) Child Care and Development Block Grant;
219 [(h)] (vi) SNAP Administration and Training money;
220 [(i)] (vii) Unemployment Insurance Operations money;
221 [(j)] (viii) Federal Highway Administration money;
222 [(k)] (ix) the Utah National Guard; or
223 [(l)] (x) pass-through federal funds.
224 (c) Federal funds requests described in Subsection (2)(b) are subject to the provisions
225 of this chapter:

226 (i) beginning on January 1, 2018, for each agency that receives more than
227 $200,000,000 annually in federal funds; or
228 (ii) beginning on July 1, 2018, for each agency that receives $200,000,000 or less
229 annually in federal funds.
230 (d) Maintenance of effort reporting requirements described in Subsection 63J-5-
231 102(1)(d)(ii)(B) may not be required until:
232 (i) January 1, 2018, for each agency that receives more than $200,000,000 annually in
233 federal funds; or
234 (ii) July 1, 2018, for each agency that receives $200,000,000 or less annually in federal
235 funds.
236 (3) The governor need not seek legislative review or approval of federal funds
237 received by the state if:
238 (a) the governor has declared a state of emergency; and
239 (b) the federal funds are received to assist victims of the state of emergency under
240 Section 53-2a-204.
241 Section 6. Section **63J-5-206** is enacted to read:
242 **63J-5-206. Intergovernmental transfers for Medicaid.**
243 (1) Subject to Subsections (2) and (3), an intergovernmental transfer program under
244 Section 26-18-21 is subject to the same review provisions as a federal funds request under this
245 chapter.
246 (2) Notwithstanding Subsection (1), if an intergovernmental transfer program created
247 under Subsection 26-18-21(3) will result in the state receiving total payments of $1,000,000 or
248 more per year from the federal government, the intergovernmental transfer program is subject
249 to the same review provisions as a high impact federal funds request in Subsections
250 63J-5-204(3), (4), and (5).
251 (3) Beginning on July 1, 2017, an intergovernmental transfer program created before
252 July 1, 2017, is subject to the federal funds review process of Section 63J-5-201 for periods
253 after July 1, 2017.