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H.B. 194
1st Sub. (Buff)

Representative Justin L. Fawson proposes the following substitute bill:

FEDERAL GRANTS MANAGEMENT AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Justin L. Fawson

Senate Sponsor: Ann Millner

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- increases oversight of intergovernmental transfers by prohibiting a city owned hospital or city owned nursing care facility that will participate in an intergovernmental transfer program from operating in another city or county without entering into an interlocal agreement;
- amends definitions;
- modifies the federal funds requests that are subject to the review and approval procedures under the Federal Funds Procedures Act;
- makes intergovernmental transfer programs between the Department of Health and a local government entity for Medicaid federal funding subject to the Federal Funds Procedures Act;
- prohibits the creation of new Medicaid intergovernmental transfer programs after July 1, 2017, unless the Department of Health submits the intergovernmental

transfer program for review as a new grant under the Federal Funds Procedures Act;

- establishes a requirement for the Department of Health to submit an annual report to Executive Appropriations regarding Medicaid intergovernmental transfer programs; and
- makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

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

ENACTS:

26-18-21, Utah Code Annotated 1953

63J-5-206, Utah Code Annotated 1953

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

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

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

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

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

care facility.

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

26-18-18. Optional Medicaid expansion.

(1) For purposes of this section, "PPACA" means the same as that term is defined in Section 31A-1-301.

(2) The department and the governor shall not expand the state's Medicaid program to the optional population under PPACA unless:

(a) the governor or the governor's designee has reported the intention to expand the state Medicaid program under PPACA to the Legislature in compliance with the legislative review process in Sections 63N-11-106 and 26-18-3; and

(b) [~~notwithstanding Subsection 63J-5-103(2),~~] the governor submits the request for expansion of the Medicaid program for optional populations to the Legislature under the high impact federal funds request process required by Section 63J-5-204, Legislative review and approval of certain federal funds request.

(3) The department shall request approval from the Centers for Medicare and Medicaid Services within the United States Department of Health and Human Services for waivers from federal statutory and regulatory law necessary to implement the health coverage improvement program under Section 26-18-411. The health coverage improvement program under Section 26-18-411 is not Medicaid expansion for purposes of this section.

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

26-18-21. Medicaid intergovernmental transfer report.

(1) As used in this section:

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

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

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

(ii) "Intergovernmental transfer" does not include the transfer of public funds from one state agency to another state agency.

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

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

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

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

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

(iii) other information required by the department in the contract for the intergovernmental transfer.

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

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

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

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

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

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

63J-5-102. Definitions.

(1) As used in this chapter:

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

(ii) "Agency" includes:

(A) executive branch entities;

(B) judicial branch entities; and

(C) the State Board of Education.

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

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

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

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

(c) "Federal funds reauthorization" means:

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

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

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

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

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

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

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

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

receive the federal funds or participate in the federal program; and

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

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

(A) the letter awarding an agency a grant of federal funds[~~;~~] or [~~(B)~~] other official documentation awarding an agency a grant of federal funds[~~.~~]; and

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

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

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

(i) a school district;

(ii) a charter school; or

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

(g) "New federal funds" means:

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

(A) the state is not currently receiving; or

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

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

(iii) a one-time TANF request.

(h) "New federal funds request" means:

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

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

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

(ii) a one-time TANF request.

(i) (i) "New state money" means money, whether specifically appropriated by the Legislature or not, that the federal government requires Utah to expend as a condition for

receiving the federal funds or participating in the federal program.

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

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

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

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

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

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

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

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

Section 5. Section **63J-5-103** is amended to read:

63J-5-103. Scope and applicability of chapter.

(1) Except as provided in Subsection (2), and except as otherwise provided by a statute superseding provisions of this chapter by explicit reference to this chapter, the provisions of this chapter apply to each agency and govern each federal funds request.

(2) (a) This chapter does not govern federal funds requests for:

[~~(a)~~] (i) except as provided in Section 63J-5-206, the Medical Assistance Program, commonly known as Medicaid; and

[~~(b)~~] (ii) except as provided in Section 63J-5-206, the Children's Health Insurance Program[~~;~~].

(b) Until October 1, 2017, this chapter does not govern federal funds requests for:

[~~(c)~~] (i) the Women, Infant, and Children program;

[~~(d)~~] (ii) the Temporary Assistance for Needy Families program, except for a one-time TANF request as defined in Section 63J-5-102;

[~~(e)~~] (iii) Social Security Act money;

[~~(f)~~] (iv) the Substance Abuse Prevention and Treatment program;

[~~(g)~~] (v) Child Care and Development Block Grant;

[~~(h)~~] (vi) SNAP Administration and Training money;

[~~(i)~~] (vii) Unemployment Insurance Operations money;

[~~(j)~~] (viii) Federal Highway Administration money;

[~~(k)~~] (ix) the Utah National Guard; or

[~~(l)~~] (x) pass-through federal funds.

(3) The governor need not seek legislative review or approval of federal funds received by the state if:

(a) the governor has declared a state of emergency; and

(b) the federal funds are received to assist victims of the state of emergency under Section 53-2a-204.

Section 6. Section **63J-5-206** is enacted to read:

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

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

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

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