

FEDERAL GRANTS MANAGEMENT AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Francis D. Gibson

Senate Sponsor: Evan J. Vickers

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

- 10-8-90**, as last amended by Laws of Utah 2017, Chapter 247
- 26-18-21**, as enacted by Laws of Utah 2017, Chapter 247
- 63J-5-102**, as last amended by Laws of Utah 2017, Chapter 247
- 63J-5-206**, as enacted by Laws of Utah 2017, Chapter 247

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

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

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

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

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

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

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

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

(1) As used in this section:

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

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

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

(ii) "Intergovernmental transfer" does not include:

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

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

(b) (i) "Intergovernmental transfer program" means a federally approved

56 reimbursement program or category that is authorized by the Medicaid state plan or waiver
57 authority for intergovernmental transfers.

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

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

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

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

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

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

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

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

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

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

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

82 (iii) other information the department gathers about the intergovernmental transfer

83 under Subsection (2)(a).

84 (3) The department shall not create a new intergovernmental transfer program after
85 July 1, 2017, unless the department reports to the Executive Appropriations Committee, in
86 accordance with Section [63J-5-206](#), before submitting the new intergovernmental transfer
87 program for federal approval. The report shall include information required by Subsection
88 [63J-5-102\(1\)\(d\)](#) and the analysis required in Subsections (2)(a) and (b).

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

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

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

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

110 from the Legislature and the governor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

149 (8) The non-state government entity shall have the primary responsibility for ensuring
150 compliance with Subsection (4)(d)(ii).

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

153 (b) Subsection (9)(a) does not apply to:

154 (i) a new Nursing Care Facility Non-State Government-Owned Upper Payment Limit
155 program contract that was included in the federal funds request summary under Section
156 63J-5-201 for fiscal year 2018; or

157 (ii) a nursing care facility that is operated or managed by the same company as a
158 nursing care facility that was included in the federal funds request summary under Section
159 63J-5-201 for fiscal year 2018.

160 Section 3. Section **63J-5-102** is amended to read:

161 **63J-5-102. Definitions.**

162 (1) As used in this chapter:

163 (a) (i) "Agency" means a department, division, committee, commission, council, court,

164 or other administrative subunit of the state.

165 (ii) "Agency" includes:

166 (A) executive branch entities;

167 (B) judicial branch entities; and

168 (C) the State Board of Education.

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

170 (b) (i) "Federal funds" means cash or other money received from the United States

171 government or from other individuals or entities for or on behalf of the United States and

172 deposited with the state treasurer or any agency of the state.

173 (ii) "Federal funds" includes federal assistance and federal assistance programs,

174 however described.

175 (iii) "Federal funds" does not include money received from the United States

176 government to reimburse the state or local government entity for money expended by the state

177 or local government entity.

178 (c) "Federal funds reauthorization" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

215 (i) a school district;

216 (ii) a charter school; or

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

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

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

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

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

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

226 (iii) a one-time TANF request.

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

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

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

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

232 (ii) a one-time TANF request.

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

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

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

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

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

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

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

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

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

255 Section 4. Section **63J-5-206** is amended to read:

256 **63J-5-206. Intergovernmental transfers for Medicaid.**

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

260 (2) Notwithstanding Subsection (1), if ~~[an]~~ a new intergovernmental transfer program
261 created under Subsection ~~26-18-21~~(3) will result in the state receiving total payments of
262 ~~[\$1,000,000]~~ \$10,000,000 or more per year from the federal government, the intergovernmental
263 transfer program is subject to the same review provisions as a high impact federal funds request
264 in Subsections ~~63J-5-204~~(3), (4), and (5).

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

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

272 Section 5. **Effective date.**

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