

1 **FEDERAL GRANTS MANAGEMENT AMENDMENTS**

2 2018 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Francis D. Gibson**

5 Senate Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

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

11 **Highlighted Provisions:**

12 This bill:

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

21 **Money Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 This bill provides a special effective date.

25 **Utah Code Sections Affected:**

26 AMENDS:

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



28 **26-18-21**, as enacted by Laws of Utah 2017, Chapter 247
 29 **63J-1-315**, as last amended by Laws of Utah 2016, Chapter 183
 30 **63J-5-102**, as last amended by Laws of Utah 2017, Chapter 247
 31 **63J-5-206**, as enacted by Laws of Utah 2017, Chapter 247

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

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

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

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

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

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

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

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

49 (1) As used in this section:

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

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

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

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

57 (b) (i) "Intergovernmental transfer program" means a federally approved
 58 reimbursement program or category that is authorized by the Medicaid state plan or waiver

59 authority for intergovernmental transfers.

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

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

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

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

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

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

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

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

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

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

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

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

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

90 63J-5-102(1)(d) and the analysis required in Subsections (2)(a) and (b).

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

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

100 (ii) If the nursing care facility expects to receive between \$1,000,000 and \$10,000,000
101 in federal funds each year, excluding seed funding and administrative fees paid by the non-state
102 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, excluding seed funding and administrative fees paid by the non-state
108 government entity, the department may not approve the application without obtaining approval
109 from the Legislature and the governor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

144 (b) 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 (c) a requirement that a non-state government entity or nursing care facility post a bond
148 or purchase insurance.

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

150 **63J-1-315. Medicaid Growth Reduction and Budget Stabilization Account --**
151 **Transfers of Medicaid growth savings -- Base budget adjustments.**

152 (1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

181 (3) (a) (i) Except as provided in Subsection (6), if, at the end of a fiscal year, there is a
182 General Fund revenue surplus, the Division of Finance shall transfer an amount equal to

183 Medicaid growth savings from the General Fund to the Medicaid Growth Reduction and
184 Budget Stabilization Account.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

243 **63J-5-102. Definitions.**

244 (1) As used in this chapter:

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

247 (ii) "Agency" includes:

248 (A) executive branch entities;

249 (B) judicial branch entities; and

250 (C) the State Board of Education.

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

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

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

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

260 (c) "Federal funds reauthorization" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

297 (i) a school district;

298 (ii) a charter school; or

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

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

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

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

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

306 (ii) a federal assistance program or other federal program in which the state is not

307 currently participating; or

308 (iii) a one-time TANF request.

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

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

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

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

314 (ii) a one-time TANF request.

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

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

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

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

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

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

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

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

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

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

338 **63J-5-206. Intergovernmental transfers for Medicaid.**

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

342 (2) Notwithstanding Subsection (1), if ~~[an]~~ a new intergovernmental transfer program
343 created under Subsection [26-18-21](#)(3) will result in the state receiving total payments of
344 ~~[\$1,000,000]~~ \$10,000,000 or more per year from the federal government, the intergovernmental
345 transfer program is subject to the same review provisions as a high impact federal funds request
346 in Subsections [63J-5-204](#)(3), (4), and (5).

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

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

354 **Section 6. Effective date.**

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

Legislative Review Note
Office of Legislative Research and General Counsel