

MEDICAID FUNDING AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brady Brammer

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to the Medicaid program and Medicaid expansion.

Highlighted Provisions:

This bill:

- ▶ defines terms, including "Medicaid shortfall";
- ▶ establishes conditions under which a Medicaid shortfall occurs;
- ▶ requires all appropriations of state funds for the Medicaid program to be appropriated from the Medicaid Restricted Account; and
- ▶ establishes a protocol of cost control measures related to the Medicaid program and to Medicaid expansion, in the event of a Medicaid shortfall.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26B-1-309, as renumbered and amended by Laws of Utah 2023, Chapter 305

26B-3-101, as last amended by Laws of Utah 2023, Chapter 306

26B-3-113, as renumbered and amended by Laws of Utah 2023, Chapter 306



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

29 Section 1. Section **26B-1-309** is amended to read:

30 **26B-1-309. Medicaid Restricted Account.**

31 (1) As used in this section:

32 (a) "Medicaid expansion" means the same as that term is defined in Section [26B-3-113](#).

33 (b) (i) "Medicaid program" means the state program for medical assistance for persons
34 who are eligible under the state plan adopted pursuant to Title XIX of the Social Security Act.

35 (ii) "Medicaid program" does not include Medicaid expansion.

36 (c) "Medicaid shortfall" means a condition in which the ongoing financial stability of
37 the Medicaid program is uncertain, as evidenced by:

38 (i) (A) the state's federal medical assistance percentage decreasing by more than one
39 percentage point within a one-year period, or by three percentage points or more within a
40 three-year period;

41 (B) the Office of the Legislative Fiscal Analyst projecting that state expenditures for
42 services offered under the Medicaid program exceed the amount of funds appropriated to fund
43 those services;

44 (C) the Executive Appropriations Committee finding that their most recently adopted
45 revenue estimates are insufficient to pay the ongoing appropriations for the Medicaid program
46 for any fiscal year; or

47 (D) an operating deficit; and

48 (ii) if the condition is described in Subsection (1)(b)(i)(B) or (C), the condition is not
49 removed within 45 days after the date on which the condition first occurs, by:

50 (A) the Legislature appropriating sufficient funds to fund the services and benefits
51 offered under the Medicaid program; or

52 (B) the Executive Appropriations Committee adopting revised revenue estimates that
53 are sufficient to pay the ongoing appropriations for any fiscal year.

54 (d) "Operating deficit" means the same as that term is defined in Section [63J-1-211](#).

55 (2) There is created a restricted account in the General Fund known as the "Medicaid
56 Restricted Account."

57 [~~(2)~~] (3) (a) Except as provided in Subsection [~~(3)~~] (4), the following shall be deposited
58 into the Medicaid Restricted Account:

59 (i) any general funds appropriated to the department for the state plan for medical
 60 assistance or for the Division of Health Care Financing that are not expended by the
 61 department in the fiscal year for which the general funds were appropriated and which are not
 62 otherwise designated as nonlapsing shall lapse into the Medicaid Restricted Account;

63 (ii) any unused state funds that are associated with the Medicaid program, as defined in
 64 Section 26B-3-101, from the Department of Workforce Services; and

65 (iii) any penalties imposed and collected under:

66 (A) Section 17B-2a-818.5;

67 (B) Section 19-1-206;

68 (C) Section 63A-5b-607;

69 (D) Section 63C-9-403;

70 (E) Section 72-6-107.5; or

71 (F) Section 79-2-404.

72 (b) The account shall earn interest and all interest earned shall be deposited into the
 73 account.

74 ~~[(c) The Legislature may appropriate money in the restricted account to fund programs
 75 that expand medical assistance coverage and private health insurance plans to low income
 76 persons who have not traditionally been served by Medicaid, including the Utah Children's
 77 Health Insurance Program created in Section 26B-3-902.]~~

78 (c) The Legislature may appropriate money to the Medicaid Restricted Account only
 79 for expenditures related to the Medicaid program.

80 (d) Beginning July 1, 2024, all appropriations of state funds for the Medicaid program
 81 shall be appropriated from the Medicaid Restricted Account.

82 ~~[(3)]~~ (4) (a) For fiscal years 2008-09, 2009-10, 2010-11, 2011-12, and 2012-13 the
 83 following funds are nonlapsing:

84 (i) any general funds appropriated to the department for the state plan for medical
 85 assistance, or for the Division of Health Care Financing that are not expended by the
 86 department in the fiscal year in which the general funds were appropriated; and

87 (ii) funds described in Subsection ~~[(2)(a)(ii)]~~ (3)(a)(i).

88 (b) For fiscal years 2019-20, 2020-21, 2021-22, and 2022-23, the funds described in
 89 Subsections ~~[(2)(a)(ii)]~~ (3)(a)(ii) and ~~[(3)(a)(i)]~~ (4)(a)(i) are nonlapsing.

90 (5) (a) Subject to Subsection (5)(b), in the event of a Medicaid shortfall, each state
91 division or agency expending state funds for the Medicaid program shall implement the
92 following cost control measures on Medicaid program spending:

93 (i) suspend hiring of noncritical employees;
94 (ii) suspend increasing employee wages, excluding employee benefits offered to
95 employees state-wide;

96 (iii) suspend increasing provider payment rates;
97 (iv) suspend expanding reimbursement benefits, including drug reimbursement;

98 (v) cancel coverage for any optional services or populations covered under the
99 Medicaid program;

100 (vi) revert all provider payment rate increases approved or implemented within the
101 preceding one-year to the prior year's rate; and

102 (vii) close enrollment to new members.

103 (b) The departments and agencies shall implement the cost control measures under
104 Subsection (a):

105 (i) one measure at a time, in the order listed under Subsection (5)(a), unless an
106 exception to the order is approved by the Executive Appropriations Committee;

107 (ii) in consultation with the executive director of the Department of Health and Human
108 Services and the executive director of the Office of the Legislative Fiscal Analyst;

109 (iii) only to the extent necessary to eliminate the Medicaid shortfall; and

110 (iv) subject to federal laws and regulations governing the Medicaid program.

111 (c) In the event of a Medicaid shortfall, the department shall maximize state financial
112 savings in implementing this Subsection (5).

113 Section 2. Section **26B-3-101** is amended to read:

114 **26B-3-101. Definitions.**

115 As used in this chapter:

116 (1) "Applicant" means any person who requests assistance under the medical programs
117 of the state.

118 (2) "CMS" means the Centers for Medicare and Medicaid Services within the United
119 States Department of Health and Human Services.

120 (3) "Division" means the Division of Integrated Healthcare within the department,

121 established under Section [26B-3-102](#).

122 (4) "Enrollee" or "member" means an individual whom the department has determined
123 to be eligible for assistance under the Medicaid program.

124 (5) "Medicaid program" [~~means the state program for medical assistance for persons
125 who are eligible under the state plan adopted pursuant to Title XIX of the federal Social
126 Security Act~~] means the same as that term is defined in Section [26B-1-309](#).

127 (6) "Medical assistance" means services furnished or payments made to or on behalf of
128 a member.

129 (7) (a) "Passenger vehicle" means a self-propelled, two-axle vehicle intended primarily
130 for operation on highways and used by an applicant or recipient to meet basic transportation
131 needs and has a fair market value below 40% of the applicable amount of the federal luxury
132 passenger automobile tax established in 26 U.S.C. Sec. 4001 and adjusted annually for
133 inflation.

134 (b) "Passenger vehicle" does not include:

135 (i) a commercial vehicle, as defined in Section [41-1a-102](#);

136 (ii) an off-highway vehicle, as defined in Section [41-1a-102](#); or

137 (iii) a motor home, as defined in Section [13-14-102](#).

138 (8) "PPACA" means the same as that term is defined in Section [31A-1-301](#).

139 (9) "Recipient" means a person who has received medical assistance under the
140 Medicaid program.

141 Section 3. Section **26B-3-113** is amended to read:

142 **26B-3-113. Expanding the Medicaid program.**

143 (1) As used in this section:

144 (a) "Federal poverty level" means the same as that term is defined in Section
145 [26B-3-207](#).

146 (b) "Medicaid expansion" means an expansion of the Medicaid program in accordance
147 with this section.

148 (c) "Medicaid Expansion Fund" means the Medicaid Expansion Fund created in
149 Section [26B-1-315](#).

150 (d) "Medicaid shortfall" means the same as that term is defined in Section [26B-1-309](#).

151 (2) (a) As set forth in Subsections (2) through (5), eligibility criteria for the Medicaid

152 program shall be expanded to cover additional low-income individuals.

153 (b) The department shall continue to seek approval from CMS to implement the
154 Medicaid waiver expansion as defined in Section 26B-1-112.

155 (c) The department may implement any provision described in Subsections
156 26B-3-112(2)(b)(iii) through (viii) in a Medicaid expansion if the department receives approval
157 from CMS to implement that provision.

158 (3) The department shall expand the Medicaid program in accordance with this
159 Subsection (3) if the department:

160 (a) receives approval from CMS to:

161 (i) expand Medicaid coverage to eligible individuals whose income is below 95% of
162 the federal poverty level;

163 (ii) obtain maximum federal financial participation under 42 U.S.C. Sec. 1396d(b) for
164 enrolling an individual in the Medicaid expansion under this Subsection (3); and

165 (iii) permit the state to close enrollment in the Medicaid expansion under this
166 Subsection (3) if the department has insufficient funds to provide services to new enrollment
167 under the Medicaid expansion under this Subsection (3);

168 (b) pays the state portion of costs for the Medicaid expansion under this Subsection (3)
169 with funds from:

170 (i) the Medicaid Expansion Fund;

171 (ii) county contributions to the nonfederal share of Medicaid expenditures; or

172 (iii) any other contributions, funds, or transfers from a nonstate agency for Medicaid
173 expenditures; and

174 (c) closes the Medicaid program to new enrollment under the Medicaid expansion
175 under this Subsection (3) if the department projects that the cost of the Medicaid expansion
176 under this Subsection (3) will exceed the appropriations for the fiscal year that are authorized
177 by the Legislature through an appropriations act adopted in accordance with Title 63J, Chapter
178 1, Budgetary Procedures Act.

179 (4) (a) The department shall expand the Medicaid program in accordance with this
180 Subsection (4) if the department:

181 (i) receives approval from CMS to:

182 (A) expand Medicaid coverage to eligible individuals whose income is below 95% of

183 the federal poverty level;

184 (B) obtain maximum federal financial participation under 42 U.S.C. Sec. 1396d(y) for
185 enrolling an individual in the Medicaid expansion under this Subsection (4); and

186 (C) permit the state to close enrollment in the Medicaid expansion under this
187 Subsection (4) if the department has insufficient funds to provide services to new enrollment
188 under the Medicaid expansion under this Subsection (4);

189 (ii) pays the state portion of costs for the Medicaid expansion under this Subsection (4)
190 with funds from:

191 (A) the Medicaid Expansion Fund;

192 (B) county contributions to the nonfederal share of Medicaid expenditures; or

193 (C) any other contributions, funds, or transfers from a nonstate agency for Medicaid
194 expenditures; and

195 (iii) closes the Medicaid program to new enrollment under the Medicaid expansion
196 under this Subsection (4) if the department projects that the cost of the Medicaid expansion
197 under this Subsection (4) will exceed the appropriations for the fiscal year that are authorized
198 by the Legislature through an appropriations act adopted in accordance with Title 63J, Chapter
199 1, Budgetary Procedures Act.

200 (b) The department shall submit a waiver, an amendment to an existing waiver, or a
201 state plan amendment to CMS to:

202 (i) administer federal funds for the Medicaid expansion under this Subsection (4)
203 according to a per capita cap developed by the department that includes an annual inflationary
204 adjustment, accounts for differences in cost among categories of Medicaid expansion enrollees,
205 and provides greater flexibility to the state than the current Medicaid payment model;

206 (ii) limit, in certain circumstances as defined by the department, the ability of a
207 qualified entity to determine presumptive eligibility for Medicaid coverage for an individual
208 enrolled in a Medicaid expansion under this Subsection (4);

209 (iii) impose a lock-out period if an individual enrolled in a Medicaid expansion under
210 this Subsection (4) violates certain program requirements as defined by the department;

211 (iv) allow an individual enrolled in a Medicaid expansion under this Subsection (4) to
212 remain in the Medicaid program for up to a 12-month certification period as defined by the
213 department; and

214 (v) allow federal Medicaid funds to be used for housing support for eligible enrollees
215 in the Medicaid expansion under this Subsection (4).

216 (5) (a) (i) If CMS does not approve a waiver to expand the Medicaid program in
217 accordance with Subsection (4)(a) on or before January 1, 2020, the department shall develop
218 proposals to implement additional flexibilities and cost controls, including cost sharing tools,
219 within a Medicaid expansion under this Subsection (5) through a request to CMS for a waiver
220 or state plan amendment.

221 (ii) The request for a waiver or state plan amendment described in Subsection (5)(a)(i)
222 shall include:

223 (A) a path to self-sufficiency for qualified adults in the Medicaid expansion that
224 includes employment and training as defined in 7 U.S.C. Sec. 2015(d)(4); and

225 (B) a requirement that an individual who is offered a private health benefit plan by an
226 employer to enroll in the employer's health plan.

227 (iii) The department shall submit the request for a waiver or state plan amendment
228 developed under Subsection (5)(a)(i) on or before March 15, 2020.

229 (b) Notwithstanding Sections [26B-3-127](#) and [63J-5-204](#), and in accordance with this
230 Subsection (5), eligibility for the Medicaid program shall be expanded to include all persons in
231 the optional Medicaid expansion population under PPACA and the Health Care Education
232 Reconciliation Act of 2010, Pub. L. No. 111-152, and related federal regulations and guidance,
233 on the earlier of:

234 (i) the day on which CMS approves a waiver to implement the provisions described in
235 Subsections (5)(a)(ii)(A) and (B); or

236 (ii) July 1, 2020.

237 (c) The department shall seek a waiver, or an amendment to an existing waiver, from
238 federal law to:

239 (i) implement each provision described in Subsections [26B-3-210\(2\)\(b\)\(iii\)](#) through
240 (viii) in a Medicaid expansion under this Subsection (5);

241 (ii) limit, in certain circumstances as defined by the department, the ability of a
242 qualified entity to determine presumptive eligibility for Medicaid coverage for an individual
243 enrolled in a Medicaid expansion under this Subsection (5); and

244 (iii) impose a lock-out period if an individual enrolled in a Medicaid expansion under

245 this Subsection (5) violates certain program requirements as defined by the department.

246 (d) The eligibility criteria in this Subsection (5) shall be construed to include all
247 individuals eligible for the health coverage improvement program under Section 26B-3-207.

248 (e) The department shall pay the state portion of costs for a Medicaid expansion under
249 this Subsection (5) entirely from:

250 (i) the Medicaid Expansion Fund;

251 (ii) county contributions to the nonfederal share of Medicaid expenditures; or

252 (iii) any other contributions, funds, or transfers from a nonstate agency for ~~[Medicaid]~~
253 expenditures for Medicaid expansion.

254 (f) If the costs of the Medicaid expansion under this Subsection (5) exceed the funds
255 available under Subsection (5)(e)[:];

256 ~~[(i) the department may reduce or eliminate optional Medicaid services under this
257 chapter;]~~

258 ~~[(ii) savings, as determined by the department, from the reduction or elimination of
259 optional Medicaid services under Subsection (5)(f)(i) shall be deposited into the Medicaid
260 Expansion Fund; and]~~

261 ~~[(iii)]~~ the department may submit to CMS a request for waivers, or an amendment of
262 existing waivers, from federal law necessary to implement budget controls within the Medicaid
263 program to address the deficiency.

264 (g) Subject to Subsection (5)(h), in the event of a Medicaid shortfall, each state
265 division or agency expending state funds for Medicaid expansion shall implement the
266 following cost control measures on Medicaid expansion spending:

267 (i) suspend hiring of noncritical employees;

268 (ii) suspend increasing employee wages, excluding employee benefits offered to
269 employees state-wide;

270 (iii) suspend increasing provider payment rates;

271 (iv) suspend expanding reimbursement benefits, including drug reimbursement;

272 (v) suspend each application to CMS for Medicaid expansion that CMS has not
273 approved as of the date on which the Medicaid shortfall first occurs;

274 (vi) cancel the implementation of coverage for services under Medicaid expansion for
275 any services that CMS has approved for coverage but that have not yet been covered under the

276 Medicaid program;

277 (vii) cancel the implementation of coverage for services under Medicaid expansion for
278 any populations that CMS has approved for coverage but that have not yet been covered under
279 the Medicaid program;

280 (viii) revert all provider rate increases implemented within the preceding one-year
281 period;

282 (ix) reverse all staff compensation increases implemented within the preceding
283 one-year period, excluding increases to benefits offered to employees state-wide;

284 (x) close enrollment to new members;

285 (xi) eliminate coverage under Medicaid expansion for each service and population for
286 which coverage was extended within the preceding one-year period; and

287 (xii) eliminate coverage under Medicaid expansion for each service and population for
288 which coverage was extended prior to the preceding one-year period, in reverse chronological
289 order by date that coverage was first extended.

290 (h) The departments and agencies shall implement the cost control measures under
291 Subsection (5)(g):

292 (i) one measure at a time, in the order listed under Subsection (5)(g), unless an
293 exception to the order is approved by the Executive Appropriations Committee;

294 (ii) in consultation with the executive director of the Department of Health and Human
295 Services and the executive director of the Office of the Legislative Fiscal Analyst;

296 (iii) only to the extent necessary to eliminate the Medicaid shortfall; and

297 (iv) subject to federal laws and regulations governing the Medicaid program.

298 [(g)] (i) If, after the department has acted in accordance with Subsections (5)(f) and (g),
299 the costs of the Medicaid expansion under this Subsection (5) are projected by the department
300 to exceed the funds available in the current fiscal year under Subsection (5)(e), including
301 savings resulting from any action taken under Subsection (5)(f):

302 (i) the governor shall direct the department and Department of Workforce Services to
303 reduce commitments and expenditures by an amount sufficient to offset the deficiency:

304 (A) proportionate to the share of total current fiscal year General Fund appropriations
305 for each of those agencies; and

306 (B) up to 10% of each agency's total current fiscal year General Fund appropriations;

307 (ii) the Division of Finance shall reduce allotments to the department and Department
308 of Workforce Services by a percentage:

309 (A) proportionate to the amount of the deficiency; and

310 (B) up to 10% of each agency's total current fiscal year General Fund appropriations;

311 and

312 (iii) the Division of Finance shall deposit the total amount from the reduced allotments
313 described in Subsection ~~[(5)(g)(ii)]~~ (6)(i)(iii) into the Medicaid Expansion Fund.

314 (6) (a) ~~[The]~~ Except as provided in Subsection (6)(b), the department shall maximize
315 federal financial participation in implementing this section, including by seeking to obtain any
316 necessary federal approvals or waivers.

317 (b) In the event of a Medicaid shortfall, the department shall maximize state financial
318 savings in implementing Subsection (5)(g).

319 (7) Notwithstanding Sections 17-43-201 and 17-43-301, a county does not have to
320 provide matching funds to the state for the cost of providing Medicaid services to newly
321 enrolled individuals who qualify for Medicaid coverage under a Medicaid expansion.

322 (8) The department shall report to the Social Services Appropriations Subcommittee on
323 or before November 1 of each year that a Medicaid expansion is operational:

324 (a) the number of individuals who enrolled in the Medicaid expansion;

325 (b) costs to the state for the Medicaid expansion;

326 (c) estimated costs to the state for the Medicaid expansion for the current and
327 following fiscal years;

328 (d) recommendations to control costs of the Medicaid expansion; and

329 (e) as calculated in accordance with Subsections 26B-3-506(4) and 26B-3-606(2), the
330 state's net cost of the qualified Medicaid expansion.

331 **Section 4. Effective date.**

332 This bill takes effect on May 1, 2024.