

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



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 Executive Appropriations regarding Medicaid intergovernmental transfer programs;
 29 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



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 ~~§~~ → [October 1, 2017] Subsections (2)(c) and (d) apply ← ~~§~~, this chapter does
211a not govern federal funds requests for:

- 212 ~~[(e)]~~ (i) the Women, Infant, and Children program;
- 213 ~~[(f)]~~ (ii) the Temporary Assistance for Needy Families program, except for a one-time
- 214 TANF request as defined in Section [63J-5-102](#);
- 215 ~~[(g)]~~ (iii) Social Security Act money;
- 216 ~~[(h)]~~ (iv) the Substance Abuse Prevention and Treatment program;
- 217 ~~[(i)]~~ (v) Child Care and Development Block Grant;
- 218 ~~[(j)]~~ (vi) SNAP Administration and Training money;
- 219 ~~[(k)]~~ (vii) Unemployment Insurance Operations money;
- 220 ~~[(l)]~~ (viii) Federal Highway Administration money;
- 221 ~~[(m)]~~ (ix) the Utah National Guard; or
- 222 ~~[(n)]~~ (x) pass-through federal funds.

222a **§→ (c) Federal funds requests described in Subsection (2)(b) are subject to the provisions of**

222b **this chapter:**

222c **(i) beginning on January 1, 2018, for each agency that receives more than \$200,000,000**

222d **annually in federal funds; or**

222e **(ii) beginning on July 1, 2018, for each agency that receives \$200,000,000 or less**

222f **annually in federal funds.**

222g **(d) Maintenance of effort reporting requirements described in Subsection 63J-5-**

222h **102(1)(d)(ii)(B) may not be required until:**

222i **(i) January 1, 2018, for each agency that receives more than \$200,000,000 annually in**

222j **federal funds; or**

222k **(ii) July 1, 2018, for each agency that receives \$200,000,000 or less annually in federal**

222l **funds. ←§**

223 (3) The governor need not seek legislative review or approval of federal funds

224 received by the state if:

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

226 (b) the federal funds are received to assist victims of the state of emergency under

227 Section [53-2a-204](#).

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

229 **63J-5-206. Intergovernmental transfers for Medicaid.**

230 (1) Subject to Subsections (2) and (3), an intergovernmental transfer program under

231 Section [26-18-21](#) is subject to the same review provisions as a federal funds request under this

232 chapter.

233 (2) Notwithstanding Subsection (1), if an intergovernmental transfer program created

234 under Subsection [26-18-21](#)(3) will result in the state receiving total payments of \$1,000,000 or
235 more per year from the federal government, the intergovernmental transfer program is subject
236 to the same review provisions as a high impact federal funds request in Subsections
237 [63J-5-204](#)(3), (4), and (5).

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