

UTAH DECIDES HEALTHCARE ACT OF 2018

LONG TITLE

General Description:

This initiative amends and enacts provisions to preserve the existing eligibility requirements, categories of care and services, and provider payments in Medicaid and the Utah Children's Health Insurance Program ("CHIP"); to expand the populations eligible for Medicaid; and to fund this preservation and expansion by adding 0.15 percentage points to the current state sales tax percentage rate.

Highlighted Provisions:

This initiative:

- mandates that the eligibility requirements for Medicaid and CHIP shall not become more restrictive than the requirements in effect on January 1, 2017;
- expands Medicaid eligibility to individuals who are in the federal optional Medicaid expansion population, as defined as of January 1, 2017;
- prohibits caps on enrollment in Medicaid and CHIP beyond those in place on January 1, 2017;
- prohibits restrictions on the categories of care and services and types of benefits available under Medicaid and CHIP beyond those in place on January 1, 2017;
- mandates that the premiums, beneficiary enrollment fees, and out-of-pocket costs for Medicaid and CHIP shall not be greater than those applicable on January 1, 2017;
- mandates that payment rates to Medicaid and CHIP providers for covered care and services shall not decrease below the rates in effect on January 1, 2017, subject to an annual adjustment;
- requires that accountable care organizations that contract to provide care and services under Medicaid or CHIP may not decrease payments to providers for such services below the rate that at least one accountable care organization paid on January 1, 2017, subject to an annual adjustment, and that payments by the state to accountable care organizations shall be sufficient for organizations to comply with this mandate;
- requires the maximization of federal financial participation in funding Medicaid and CHIP;
- increases the sales tax rate by adding 0.15 percentage points to the rate that would otherwise apply, and dedicates the additional revenue to implement the measures provided for in this act and in the Medicaid program; and
- provides that its provisions are severable and supersede conflicting provisions of law.

Other Special Clauses:

This act provides a coordination clause.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:

26-18-3.9, Utah Code Annotated 1953

AMENDS:

26-18-3.1, as last amended by Chapter 366, Laws of 2011

59-12-103, as last amended by Chapter 234, 421, and 422, Laws of 2017

This act enacts uncodified material.

Be it enacted by the people of the State of Utah:

Section 1. Title.

This act shall be known as the "Utah Decides Healthcare Act of 2018."

Section 2. Section 26-18-3.9 is enacted to read:

26-18-3.9. Protecting and expanding the Medicaid program and Utah Children's Health Insurance Program.

(1) Findings and purpose.

(a) Findings. The People of the State of Utah find that:

(i) Adequate medical care is crucial to the health and welfare of the residents of Utah;

(ii) It is essential that all Utahns have access to medical care, including preventive care, emergency services, and hospital care;

(iii) Utah's Medicaid program and CHIP provide care to Utahns who are unable to afford private health insurance and are not eligible for other health insurance. Medicaid and CHIP are vital parts of the Utah health care system and it is essential that they continue to provide health care for the most vulnerable citizens of our state;

(iv) However, over 250,000 Utahns remain uninsured and do not have adequate access to health care. Over 100,000 of the uninsured would be covered by Medicaid if the State of Utah were to expand eligibility to all individuals who are in the federal optional Medicaid expansion population, as defined as of January 1, 2017;

(v) When people don't have access to care they are far more likely to develop chronic conditions, like diabetes or asthma, that often require expensive treatment for a patient's entire life, resulting in unnecessary suffering and driving up the cost of healthcare;

(vi) When medical providers provide care for which patients are not insured, the cost of that care is passed on to others, thus increasing the cost of medical care for all Utah residents;

(vii) It is critical to the survival of the Medicaid program that it remain adequately funded so that it can provide needed medical services to those who otherwise would not have access to care, and can compensate the providers who serve participants. The compensation to providers must be adequate to encourage providers to continue to treat patients on Medicaid; and

(viii) From moral, health and fiscal perspectives, protecting and expanding the Medicaid program in Utah is essential to maintaining the quality of life in our state.

(b) Purpose. The purpose of this measure is to preserve and strengthen medical care in the State of Utah by the following:

(i) Protecting Medicaid and CHIP so that they can continue to provide medical care to those who are currently eligible, and

(ii) Expanding Medicaid eligibility to adults who are in the federal optional Medicaid expansion population, as defined as of January 1, 2017.

(2) Eligibility. As set forth in Subsections (2)(a) through (2)(d), eligibility criteria for the Medicaid program shall be maintained as they existed on January 1, 2017 and also expanded to cover additional low-income individuals.

(a) The standards, methodologies, and procedures for determining eligibility for the Medicaid program and CHIP shall be no more restrictive than the eligibility standards, methodologies, and procedures, respectively, that were in effect on January 1, 2017.

(b) Notwithstanding Sections 26-18-18 and 63J-5-204, beginning April 1, 2019, eligibility for the Medicaid program shall be expanded to include all persons in the optional Medicaid expansion population under the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 and the Health Care Education Reconciliation Act of 2010, Pub. L. No. 111-152, and related federal regulations and guidance, as those statutory and regulatory provisions and guidance existed on January 1, 2017.

(c) There shall be no caps on enrollment beyond those in place as of January 1, 2017.

(d) The eligibility criteria in Subsection (2)(b) shall be construed to include all individuals eligible for the health coverage improvement program under Section 26-18-411.

(3) Care and Services. For each enrollment group or category in the Medicaid program and CHIP, the categories of care or services and the types of benefits provided in each category shall be no more restrictive than the categories of care or services and the types of benefits provided on January 1, 2017. Such services and benefits shall be provided in sufficient amount, duration, and scope to achieve their purposes.

(4) Out-of-Pocket Costs. Any premium, beneficiary enrollment fee, and cost sharing requirement applicable to care and services described in this section, including but not limited to co-pay, co-insurance, deductible, or out-of-pocket maximum, shall be no greater than those in effect on January 1, 2017.

(5) Provider payments.

(a) Payments to providers under the Medicaid program and CHIP for covered care and services shall be made at a rate not less than 100% of the payment rate that

applied to such care and services on January 1, 2017, and shall increase annually at a rate not less than the region's Consumer Price Index.

(b) Managed care.

(i) If the department contracts with an accountable care organization or other organization to cover care and services under the Medicaid program or CHIP, a contract with that organization shall provide that the organization shall make payments to providers for items and services that are subject to the contract and that are furnished to individuals eligible for the Medicaid program or CHIP at a rate not less than 100% of the payment rate that at least one accountable care organization that contracted with the department paid for such care and services on January 1, 2017 (regardless of the manner in which such payments are made, including in the form of capitation or partial capitation), and that the minimum payment required by this provision will increase annually at a rate not less than the region's Consumer Price Index.

(ii) Payments by the department to accountable care organizations or such other organizations shall be sufficient for the organizations to comply with the provider payment rate requirements of this section.

(c) This subsection (5) shall not apply to physician reimbursement for drugs or devices.

(6) Nothing in this section shall prevent the people acting through initiative, the Legislature by statute, or the department by promulgating rules from:

(a) Expanding eligibility by adopting less restrictive eligibility standards, methodologies, or procedures than those permitted by Subsection (2);

(b) Expanding covered care and services by adding to the list, amount, duration, or scope of covered care and services required by Subsection (3);

(c) Reducing premiums, beneficiary enrollment fees, or cost sharing requirements below the maximum levels permitted by Subsection (4); or

(d) Increasing provider payments above the minimum payments required by Subsection (5).

(7) For purposes of this section:

(a) The "Medicaid program" means the Medicaid program defined by Section 26-18-2, including any waivers.

(b) The "Utah Children's Health Insurance Program" or "CHIP" means the Utah Children's Health Insurance Program created in Chapter 40, Utah Children's Health Insurance Act.

(8) The department shall maximize federal financial participation in implementing this section, including by seeking to obtain any necessary federal approvals or waivers.

(9) This section and Section 26-18-3.1(4) shall not apply to CHIP in any year for which the State Children's Health Insurance Program, as described in Subchapter XXI, 42 U.S.C. Sec. 1397aa et seq., is not extended at the federal level.

(10) Notwithstanding Sections 17-43-201 and 17-43-301, a county does not have to provide matching funds to the state for the cost of providing Medicaid services to newly enrolled individuals who qualify for Medicaid coverage under Subsection (2)(b).

(11) Severability. If any provision of this section or its application to any person or circumstance is held invalid, the remainder of this section shall be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

Section 3. Section **26-18-3.1** is amended to read:

26-18-3.1. Medicaid expansion

- (1) The purpose of this section is to expand the coverage of the Medicaid program to persons who are in categories traditionally not served by that program.
- (2) Within appropriations from the Legislature, the department may amend the state plan for medical assistance to provide for eligibility for Medicaid:
 - (a) on or after July 1, 1994, for children 12 to 17 years old who live in households below the federal poverty income guideline; and
 - (b) on or after July 1, 1995, for persons who have incomes below the federal poverty income guideline and who are aged, blind, or have a disability.
- (3) (a) Within appropriations from the Legislature, on or after July 1, 1996, the Medicaid program may provide for eligibility for persons who have incomes below the federal poverty income guideline.
 - (b) In order to meet the provisions of this subsection, the department may seek approval for a demonstration project under 42 U.S.C. Section 1315 from the secretary of the United States Department of Health and Human Services. This demonstration project may also provide for the voluntary participation of private firms that:
 - (i) are newly established or marginally profitable;
 - (ii) do not provide health insurance to their employees;
 - (iii) employ predominantly low wage workers; and
 - (iv) are unable to obtain adequate and affordable health care insurance in the private market.
- (4) The Medicaid program shall provide for eligibility for persons as required by Section 26-18-3.9(2).
- (5) Subject to the requirements of Section 26-18-3.9(2) and (3), services [Services] available for persons described in this section shall include required Medicaid services and may include one or more optional Medicaid services if those services are funded by the Legislature. Subject to the requirements of Section 26-18-3.9(2), the [The] department may also require persons described in this section to meet an asset test.

Section 4. Section **59-12-103** is amended to read:

59-12-103. Sales and use tax base -- Rates -- Effective dates -- Use of sales and use tax revenues.

...

- (2) (a) Except as provided in Subsections (2)(b) through (e), a state tax and a local tax is imposed on a transaction described in Subsection (1) equal to the sum of:
- (i) a state tax imposed on the transaction at a tax rate equal to the sum of:
 - (A) (I) through March 31, 2019, 4.70%; and
(II) beginning on April 1, 2019, 4.70% plus the rate specified in Subsection (14)(a); and
 - (B) (I) the tax rate the state imposes in accordance with Part 18, Additional State Sales and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211 through 59-12-215 is in a county in which the state imposes the tax under Part 18, Additional State Sales and Use Tax Act; and
(II) the tax rate the state imposes in accordance with Part 20, Supplemental State Sales and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211 through 59-12-215 is in a city, town, or the unincorporated area of a county in which the state imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and
 - (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the transaction under this chapter other than this part.

...

(7)

(a) Notwithstanding Subsection (3)(a), in addition to the amounts deposited in Subsection (6), and subject to Subsection (7)(b), for a fiscal year beginning on or after July 1, 2012, the Division of Finance shall deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124:

(i) a portion of the taxes listed under Subsection (3)(a) in an amount equal to 8.3% of the revenues collected from the following taxes, which represents a portion of the approximately 17% of sales and use tax revenues generated annually by the sales and use tax on vehicles and vehicle-related products:

- (A) the tax imposed by Subsection (2)(a)(i)(A) at a 4.7% rate;
- (B) the tax imposed by Subsection (2)(b)(i);
- (C) the tax imposed by Subsection (2)(c)(i); and
- (D) the tax imposed by Subsection (2)(d)(i)(A)(I); plus

(ii) an amount equal to 30% of the growth in the amount of revenues collected in the current fiscal year from the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) that exceeds the amount collected from the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) in the 2010-11 fiscal year.

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(8)

...

(c)

(i) Notwithstanding Subsection (3)(a), in addition to the amounts deposited under Subsections (6) and (7), and subject to Subsection (8)(c)(ii), for a fiscal year beginning on or after July 1, 2018, the commission shall annually deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124 a portion of the taxes listed under Subsection (3)(a) in an amount equal to 3.68% of the revenues collected from the following taxes:

(A) the tax imposed by Subsection (2)(a)(i)(A) at a 4.7% rate;

(B) the tax imposed by Subsection (2)(b)(i);

(C) the tax imposed by Subsection (2)(c)(i); and

(D) the tax imposed by Subsection (2)(d)(i)(A)(I).

(ii) For a fiscal year beginning on or after July 1, 2019, the commission shall annually reduce the deposit into the Transportation Investment Fund of 2005 under Subsection (8)(c)(i) by an amount that is equal to 35% of the amount of revenue generated in the current fiscal year by the portion of the tax imposed on motor and special fuel that is sold, used, or received for sale or use in this state that exceeds 29.4 cents per gallon.

...

(13) Notwithstanding Subsections (4) through (12) and (14), an amount required to be expended or deposited in accordance with Subsections (4) through (12) and (14) may not include an amount the Division of Finance deposits in accordance with Section 59-12-103.2.

(14) (a) The rate specified in this subsection is 0.15%.

(b) Notwithstanding Subsection (3)(a), the Division of Finance shall:

(i) on or before September 30, 2019, transfer the amount of revenue generated by a 0.15% tax rate imposed beginning on April 1, 2019, and ending on June 30, 2019, on the transactions that are subject to the sales and use tax under Subsection (2)(a)(i)(A) as dedicated credits to the Division of Health Care Financing; and

(ii) for a fiscal year beginning on or after fiscal year 2019-20, annually transfer the amount of revenue generated by a 0.15% tax rate on the transactions that are subject to the sales and use tax under Subsection (2)(a)(i)(A) as dedicated credits to the Division of Health Care Financing.

(c) The revenue described in Subsection (14)(b) that the Division of Finance transfers to the Division of Health Care Financing as dedicated credits shall be expended for the following uses:

(i) implementation of the Medicaid expansion described in Sections 26-18-3.1(4) and 26-18-3.9(2)(b);

(ii) if revenue remains after the use specified in Subsection (14)(c)(i), other measures required by Section 26-18-3.9; and

(iii) if revenue remains after the uses specified in Subsections (14)(c)(i) and (ii), other measures described in Title 26, Chapter 18, Medical Assistance Act.

Section 5. Competing Measures and Conflicting Provisions.

It is the intent of the People that, notwithstanding Section 20A-7-211(3)(b) or any other provision of law, the 0.15 percent increase to the state sales tax in Section 4 be enacted notwithstanding any other increase or adjustment to such rate enacted by the Legislature or by any law submitted to the people by initiative petition that is approved by the voters at the same election. It is also the intent of the People that the enactment of the Utah Decides Healthcare Act of 2018 accomplish the purposes identified in Section 2 and that this act supersede any other provision of law that conflicts with this act. This section shall not be construed to alter the power given to the Legislature under Section 20A-7-212(3)(b).

Section 6. Coordinating the Utah Decides Healthcare Act of 2018 with the Teacher and Student Success Act.

If this act and the Teacher and Student Success Act, an initiative sponsored by Our Schools Now, are both approved by the voters at the same election, it is the intent of the People that the Office of Legislative Research and General Counsel prepare the amendments to Section 59-12-103 in this act and the Teacher and Student Success Act for publication in the Utah Code by amending Subsections 59-12-103(2)(a), (7)(a), (8)(c), and (13) and adding Subsections 59-12-103(14) and (15) to read:

- (2) (a) Except as provided in Subsections (2)(b) through (e), a state tax and a local tax is imposed on a transaction described in Subsection (1) equal to the sum of:
- (i) a state tax imposed on the transaction at a tax rate equal to the sum of:
 - (A) (I) through March 31, 2019, 4.70%; and
 - (II) beginning on April 1, 2019, 5.15% plus the rate specified in Subsection (15)(a); and
 - (B) (I) the tax rate the state imposes in accordance with Part 18, Additional State Sales and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211 through 59-12-215 is in a county in which the state imposes the tax under Part 18, Additional State Sales and Use Tax Act; and
 - (II) the tax rate the state imposes in accordance with Part 20, Supplemental State Sales and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211 through 59-12-215 is in a city, town, or the unincorporated area of a county in which the state imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and
 - (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the transaction under this chapter other than this part.

...

(7)

(a) Notwithstanding Subsection (3)(a), in addition to the amounts deposited in Subsection (6), and subject to Subsection (7)(b), for a fiscal year beginning on or after July 1, 2012, the Division of Finance shall deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124:

(i) a portion of the taxes listed under Subsection (3)(a) in an amount equal to 8.3% of the revenues collected from the following taxes, which represents a portion of the approximately 17% of sales and use tax revenues generated annually by the sales and use tax on vehicles and vehicle-related products:

(A) the tax imposed by Subsection (2)(a)(i)(A) at a 4.7% rate;

(B) the tax imposed by Subsection (2)(b)(i);

(C) the tax imposed by Subsection (2)(c)(i); and

(D) the tax imposed by Subsection (2)(d)(i)(A)(I); plus

(ii) an amount equal to 30% of the growth in the amount of revenues collected in the current fiscal year from the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) that exceeds the amount collected from the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) in the 2010-11 fiscal year.

...

(8)

...

(c)

(i) Notwithstanding Subsection (3)(a), in addition to the amounts deposited under Subsections (6) and (7), and subject to Subsection (8)(c)(ii), for a fiscal year beginning on or after July 1, 2018, the commission shall annually deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124 a portion of the taxes listed under Subsection (3)(a) in an amount equal to 3.68% of the revenues collected from the following taxes:

(A) the tax imposed by Subsection (2)(a)(i)(A) at a 4.7% rate;

(B) the tax imposed by Subsection (2)(b)(i);

(C) the tax imposed by Subsection (2)(c)(i); and

(D) the tax imposed by Subsection (2)(d)(i)(A)(I).

(ii) For a fiscal year beginning on or after July 1, 2019, the commission shall annually reduce the deposit into the Transportation Investment Fund of 2005 under Subsection (8)(c)(i) by an amount that is equal to 35% of the amount of revenue generated in the current fiscal year by the portion of the tax imposed on motor and special fuel that is sold, used, or received for sale or use in this state that exceeds 29.4 cents per gallon.

...

- (13) Notwithstanding Subsections (4) through (12) and (14) and (15), an amount required to be expended or deposited in accordance with Subsections (4) through (12) and (14) and (15) may not include an amount the Division of Finance deposits in accordance with Section 59-12-103.2.
- (14) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1, 2019, the Division of Finance shall deposit into the Income and Sales Tax Growth Account created in Section 63J-1-316 the amount of tax collected from a .45% tax rate on the transactions described in Subsection (1) that are subject to the state sales and use tax under Section 59-12-103(2)(a)(i)(A).
- (15) (a) The rate specified in this subsection is 0.15%.
- (b) Notwithstanding Subsection (3)(a), the Division of Finance shall:
- (i) on or before September 30, 2019, transfer the amount of revenue generated by a 0.15% tax rate imposed beginning on April 1, 2019, and ending on June 30, 2019, on the transactions that are subject to the sales and use tax under Subsection (2)(a)(i)(A) as dedicated credits to the Division of Health Care Financing; and
 - (ii) for a fiscal year beginning on or after fiscal year 2019-20, annually transfer the amount of revenue generated by a 0.15% tax rate on the transactions that are subject to the sales and use tax under Subsection (2)(a)(i)(A) as dedicated credits to the Division of Health Care Financing.
- (c) The revenue described in Subsection (15)(b) that the Division of Finance transfers to the Division of Health Care Financing as dedicated credits shall be expended for the following uses:
- (i) implementation of the Medicaid expansion described in Sections 26-18-3.1(4) and 26-18-3.9(2)(b);
 - (ii) if revenue remains after the use specified in Subsection (15)(c)(i), other measures required by Section 26-18-3.9; and
 - (iii) if revenue remains after the uses specified in Subsections (15)(c)(i) and (ii), other measures described in Title 26, Chapter 18, Medical Assistance Act.

Section 7. Severability.

It is the intent of the People that the provisions of this act are severable and that if any provision of this act or the application thereof to any person or circumstance is held invalid, the remainder of this act shall be given effect without the invalid provision or application.

END OF UTAH DECIDES HEALTHCARE ACT

Persons gathering signatures for the petition may be paid for doing so.

This initiative seeks to increase the current state sales tax rate by 0.15 percent, resulting in a 3.2 percent increase in the current state sales tax rate.