

SELECT COMMITTEE ON EFFICIENCY IN GOVERNMENT

Children's System of Care Account

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Background

The Medicaid Subcommittee of the Select Committee on Efficiency in Government asked for more information in November 2011 about potential issues related to the Children's System of Care Account. This special revenue account allows for the pooling of funds in order to pay for certain types of services for some children who are served by more than one state program.

This briefing paper provides information about the account and its use, as well as legal questions related to state finance laws. It also presents options for subcommittee consideration.

History and Use of the Account

The 2007 Legislature approved HB 98, a bill introduced at the request of the Department of Public Health and Human Services (DPHHS). The bill created the Children's System of Care Account, which may consist of funds:

- transferred into the account by the Office of Public Instruction, the Board of Crime Control, the youth courts, and the DPHHS divisions that provide mental health, child protective, developmental disability, or chemical dependency treatment services;
- designated by the Legislature; or
- received for the account from any other source.

Funds in the account may reimburse in-state or community-based providers for services that allow high-risk children to be treated in the least restrictive and most appropriate setting.

HB 98 gave DPHHS authority to use up to \$500,000 in state Medicaid funds for the account in fiscal years 2008 and 2009. It also required the agency to report to the Children, Families, Health, and Human Services Interim Committee by Sept. 15, 2008, on the use of the account.

The account funded \$46,232 in services for 11 children in the first fiscal year of operation. The account paid for services that prevented nine children from being placed in an inpatient psychiatric facility, one child from being returned to state custody from an adoptive family, and one child from going to an out-of-state therapeutic group home.¹

Subsequent legislatures did not specifically designate state funds for use by the account or transfer funds into the account.

¹ Memo from Mary Dalton, Administrator, DPHHS Health Resources Division, to the Legislative Finance Committee and Children, Families, Health, and Human Services Interim Committee, Sept. 12, 2008.

Legal Questions Related to the Statute

The subcommittee requested information based on questions raised by the Legislative Fiscal Division about the account's relationship to state finance laws. The Fiscal Division identified four specific questions following the subcommittee's November meeting. The questions and the legal analysis subsequently provided by Legislative Services Division Attorney Jaret Coles are summarized below.

- *Does the statute creating the account (52-2-309, MCA) give the listed agencies authority to transfer any type of appropriation authority to the account?* No. The Legislature may transfer money between different fund types only through specific legislation or statutes. Federal funds may not be transferred to state fund types unless allowed by state and federal law. Agency transfer requests also must comply with 17-7-139, MCA, which allows agencies to transfer appropriations between programs within each fund type within a fiscal year. The general fund and state special revenue funds are different fund types.
- *Does the statute override other statutes that govern specific funds and accounts in the state treasury?* No. The language in 52-2-309, MCA, is not specific enough to override the laws that define fund types and procedures for use of state and federal funds.
- *Does the statute allow transfer of general fund or federal appropriation authority to increase state special revenue authority?* This would be allowed only with a law expressly granting that authority, as HB 98 did in 2007. The statute's language is not specific in that respect.
- *Does the statute supersede statutes that allow transfer of appropriation authority between state agencies only if the original purpose of the appropriation is maintained? If not, would the Legislature need to enact a statute to transfer general fund or federal funds to the system of care account?* All agency expenditures must be made in substantial compliance with the budget approved by the Legislature. The original purpose of the appropriation must be maintained. The language of 52-2-309, MCA, does not allow a deviation from the original purpose of any appropriation authority. The Legislature may transfer money between fund types through specific statutes or through legislation in any session. Any legislation to allow transfer of federal funds into the account should prohibit transfers that would conflict with federal law.

DPHHS has not transferred federal funds into the account and has indicated that it does not intend to use the account for that purpose.

Statutory Authorization for Use of Funds

Existing state law does allow for either ongoing fund transfers or ongoing appropriations for certain purposes. Transfers or appropriations identified in statute do not need to be reauthorized in each legislative session, but are instead built into the budget.

However, a future Legislature may amend the statute to change the amount of the transfer or appropriation or eliminate it altogether.

Options for Subcommittee Consideration

Based on the legal review of questions related to the Children's System of Care Account, the subcommittee may want to recommend that the full committee:

1. Find that the account is being used as intended and recommend no action.
2. Find that the account allows multiple agencies to serve high-risk children in an efficient manner.
3. Approve the drafting of legislation to allow the transfer of general fund dollars into the special revenue account without biennial authorization by the Legislature. (The text of 15-1-122, MCA, is reprinted below to provide an example of legislation authorizing ongoing transfers.)
4. Approve the drafting of legislation authorizing DPHHS to transfer a specified amount of general fund dollars into the account in the next biennium. This would allow a limited, two-year authority for fund transfers, rather than ongoing authority.
5. Encourage the state agencies that are authorized to transfer funds into the account to do so to the extent possible, in order to increase the use of less restrictive, more appropriate, and less costly care for a high-risk child.
6. Pursue other options identified by the subcommittee.

Fund Transfer Statute

15-1-122. Fund transfers. (1) There is transferred from the state general fund to the adoption services account, provided for in 42-2-105, a base amount of \$59,209, and the amount of the transfer must be increased by 10% in each succeeding fiscal year.

(2) For each fiscal year, there is transferred from the state general fund to the accounts, entities, or recipients indicated the following amounts:

(a) to the motor vehicle recycling and disposal program provided for in Title 75, chapter 10, part 5, 1.48% of the motor vehicle revenue deposited in the state general fund in each fiscal year. The amount of 9.48% of the allocation in each fiscal year must be used for the purpose of reimbursing the hired removal of abandoned vehicles. Any portion of the allocation not used for abandoned vehicle removal reimbursement must be used as provided in 75-10-532.

(b) to the noxious weed state special revenue account provided for in 80-7-816, 1.50% of the motor vehicle revenue deposited in the state general fund in each fiscal year;

(c) to the department of fish, wildlife, and parks:

(i) 0.46% of the motor vehicle revenue deposited in the state general fund, with the applicable percentage to be:

(A) used to:

(I) acquire and maintain pumpout equipment and other boat facilities, 4.8% in each fiscal year;

(II) administer and enforce the provisions of Title 23, chapter 2, part 5, 19.1% in each fiscal year;

(III) enforce the provisions of 23-2-804, 11.1% in each fiscal year; and

(IV) develop and implement a comprehensive program and to plan appropriate

off-highway vehicle recreational use, 16.7% in each fiscal year; and

(B) deposited in the state special revenue fund established in 23-1-105 in an amount equal to 48.3% in each fiscal year;

(ii) 0.10% of the motor vehicle revenue deposited in the state general fund in each fiscal year, with 50% of the amount to be used for enforcing the purposes of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-618, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 and 50% of the amount designated for use in the development, maintenance, and operation of snowmobile facilities; and

(iii) 0.16% of the motor vehicle revenue deposited in the state general fund in each fiscal year to be deposited in the motorboat account to be used as provided in 23-2-533;

(d) 0.64% of the motor vehicle revenue deposited in the state general fund in each fiscal year, with 24.55% to be deposited in the state veterans' cemetery account provided for in 10-2-603 and with 75.45% to be deposited in the veterans' services account provided for in 10-2-112(1);

(e) 0.30% of the motor vehicle revenue deposited in the state general fund in each fiscal year for deposit in the state special revenue fund to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112; and

(f) to the search and rescue account provided for in 10-3-801, 0.04% of the motor vehicle revenue deposited in the state general fund in each fiscal year.

(3) The amount of \$200,000 is transferred from the state general fund to the livestock loss reduction and mitigation restricted state special revenue account provided for in 81-1-112 in each fiscal year.

(4) For the purposes of this section, "motor vehicle revenue deposited in the state general fund" means revenue received from:

(a) fees for issuing a motor vehicle title paid pursuant to 61-3-203;

(b) fees, fees in lieu of taxes, and taxes for vehicles, vessels, and snowmobiles registered or reregistered pursuant to 61-3-321 and 61-3-562;

(c) GVW fees for vehicles registered for licensing pursuant to Title 61, chapter 3, part 3; and

(d) all money collected pursuant to 15-1-504(3).

(5) The amounts transferred from the general fund to the designated recipient must be appropriated as state special revenue in the general appropriations act for the designated purposes.

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