Fiscal Note 2023 Biennium

Bill #	HJ0020	**Title:**	Joint resolution to terminate the current declaration of emergency/disaster
Primary Sponsor:	Noland, Mark	**Status:**	As Introduced

☒Significant Local Gov Impact ☒Needs to be included in HB 2 ☒Technical Concerns

☐Included in the Executive Budget ☐Significant Long-Term Impacts ☐Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2021 Difference	FY 2022 Difference	FY 2023 Difference	FY 2024 Difference	FY 2025 Difference
Expenditures:					
General Fund	$20,868,764	$245,000	$0	$0	$0
State Special Revenue	$493,504	$0	$0	$0	$0
Federal Special Revenue	($56,018,281)	$0	$0	$0	$0
Revenue:					
General Fund	$0	$0	$0	$0	$0
State Special Revenue	$0	$0	$0	$0	$0
Federal Special Revenue	($56,018,281)	$0	$0	$0	$0
Net Impact-General Fund Balance:	($20,868,764)	($245,000)	$0	$0	$0

Description of fiscal impact: HJ 20 terminates the current state declaration of emergency and disaster related to the COVID-19 pandemic. This results in loss of federal funding provided to the Department of Public Health and Human Services (DPHHS) for COVID-19 Enhanced Federal Medical Assistance Percentage (FMAP) and other COVID-19 related federal grants tied to state level emergency declaration.

FISCAL ANALYSIS

Assumptions:

Department of Public Health and Human Services (DPHHS)

1. For purposes of this fiscal note, it is assumed that HJ 20 would pass in April, immediately ending the state emergency declaration. The calculations for FY 2021 assume loss of applicable federal funding for quarter 4 of FY 2021 (April through June).
2. DPHHS has been receiving a COVID-19 enhanced FMAP throughout FY 2021, and the current Public Health Emergency (PHE) letter as declared by the Secretary of Health and Human Services (HHS) under section 319 of the Public Health Service Act (42 U.S.C. §247d) was renewed effective January 21, 2021 and will be in effect for 90 days. This extends into the fourth quarter of FY 2021, which allows DPHHS to receive enhanced FMAP for the entire fourth quarter of the fiscal year.
3. Federal Medical Assistance Percentage (FMAP) rates without the PHE enhanced rates are shown below.

   a. Medicaid/Title IV-E services: FFY 2021 (October 2020 to September 2021) is 34.40% state funding/65.60% federal funding.
   b. CHIP FFY 2021 (October 2020 to September 2021) is 24.08% state funding/75.92% federal funding.
4. The Public Health Emergency (PHE) provides for an enhanced FMAP rate of 6.20% for Medicaid and Title IV-E services, and 4.34% for the Children's Health Insurance program (CHIP). This reduces the state share of expenditures and increases the federal share by a like amount.
5. For this fiscal note, DPHHS calculated the removal of the enhanced FMAP rate in the last quarter of FY 2021 (April 1, 2021 to June 30, 2021). Impacts during FY 2022 are addressed in the technical notes.
6. DPHHS used the current caseload information for FY 2021 to develop the Federal Medical Assistance Percentage (FMAP) effects on funding due to the removal of the enhanced FMAP rates. Based on current caseload projections, DPHHS will be required to spend an additional $18,202,482 of general fund, an additional $343,504 of state special, and a reduction of $18,652,359 in federal funds.
7. The Hospital Utilization Fee and Outpatient Revenue would decrease in federal funding if the enhanced FMAP is removed. The Hospital Reimbursement Adjustment configures a volume calculation for each hospital's inpatient days and outpatient revenue percentages related to the upper payment limit requirements. The change in FMAP affects the upper payment limits that are calculated for both inpatient and outpatient revenue. The enhanced FMAP provides the hospitals the ability to receive larger payments and brought hospitals closer to the upper payment limits that they are allowed. Loss of the enhanced FMAP will result in a reduction of $13,653,844 in federal funds.
8. The state typically pays a 2.6 percent adjustment for continuous eligibility as required under the authority of Section 1115(a)(2) of the Social Security Act (the Act) that has been waived during the PHE. The 2.6 percent is based on the Medicaid Expansion expenditures for the benefit claims that receive the Expansion FMAP rate. If the current state declaration of emergency were to be terminated, the state would be required to pay the additional 2.6 percent offset. That is projected to cost the state $2,538,281 in general fund in FY 2021.
9. There are several federal grants that have been provided directly to DPHHS in response to the COVID-19 pandemic that are dependent on state level emergency declarations.
10. If the current state declaration of emergency/disaster were to be terminated, it would result in DPHHS no longer being able to provide federal funded Emergency Allotments for families receiving SNAP benefits. This would result in approximately $18.9 million of lost food benefits for FY2021.
11. The Senior and Long Term Care (SLTC) division would lose the ability to spend the federal funded Aging Services Nutrition Services federal grant of $840,000.
12. The Addictive and Mental Disorders Division (AMDD) received a federal grant from the Substance Abuse and Mental Health Services Administration for Crisis Counseling Assistance and Training Program. The Crisis Counseling Assistance and Training Program grant is $1,642,155 with a budget period of 11/16/2020 through 8/15/2021. This Federal grant is dependent on the declaration of emergency and disaster response to the COVID-19 pandemic.
13. There are several regulatory flexibilities that will no longer be valid without a state emergency declaration, including:
    a. Providing health care professional licensing flexibilities to ensure adequate staffing levels can be maintained in health care.
    b. Providing licensing flexibilities for congregate care settings for youth and the disabled to ensure adequate staffing levels can be maintained.
    c. Providing procurement flexibilities so that adequate patient space and necessary medical supplies can be maintained to ensure safe response to the pandemic.
    d. Providing the flexibilities necessary to allow licensed pharmacists to order and administer vaccines to children ages 3 through 18 years.

Department of Military Affairs (DMA)

14. With the elimination of a state emergency and loss of federal emergency funds, the DMA would rely on general fund support for the last quarter of FY 2021 and the first quarter of FY 2022.
15. Overtime costs at the State Emergency Coordination Center (SECC) to address local requests for support would be $10,000 in FY 2021 and $18,000 in FY 2022.
16. The use of National Guard vehicles is estimated at $100,000 in FY 2021 and $200,000 in FY 2022.
17. Warehouse costs to store supplies is estimated at $10,000 in FY 2021 and $15,000 in FY 2022.
18. Shipping costs to send supplies across Montana would be $8,000 in FY 2021 and $12,000 in FY 2022.
19. Total costs for DMA are $128,000 in FY 2021 and $245,000 in FY 2022. Funding would be 100 percent general funds.

Department of Labor and Industry (DLI)

20. Emergency rule 24.11.478 ARM is tied to the state's declaration of disaster.
21. The elimination of this rule would reinstate the work search provision for Unemployment Insurance (UI) claimants, which would substantially increase workload for UI staff.
22. The waiver of the work search would apply to all UI programs, including the Pandemic Unemployment Assistance (PUA) program, which largely impacts self-employed and gig workers. The current PUA system does not account for a work search requirement, so programming would be required to implement one. Costs to reprogram the PUA system is estimated to be $150,000 in FY 2021.
23. The elimination of emergency rule 24.11.478 ARM would also mean that claimants who were unable to work due to a COVID-19 related quarantine, would no longer qualify for UI benefits.
24. Rule waivers associated with licensing health care professionals and telemedicine that are tied to the disaster declaration would end with the passage of this bill.

Department of Commerce (DOC)

25. The DOC had been granted the authority under Governor's directive as authorized by the state of emergency to reallocate state funds from the TANF revolving loan program and the Big Sky Trust Fund for the purposes of emergency COVID relief. Both programs have expired with only a few payments remaining to be made from the Big Sky Trust Fund program. It is assumed that funds previously awarded and committed to under a signed agreement, but not yet disbursed, would be allowed to be disbursed. Any funds not obligated at the time of the bill passage would revert to their original purpose.
26. The DOC has not received any federal funds contingent on the state of emergency declaration.

	FY 2021 Difference	FY 2022 Difference	FY 2023 Difference	FY 2024 Difference	FY 2025 Difference
Fiscal Impact:					
Expenditures:					
Personal Services	($204,299)	$18,000	$0	$0	$0
Operating Expenses	$245,806	$227,000	$0	$0	$0
Benefits	($33,393,844)	$0	$0	$0	$0
Grants	($1,303,677)	$0	$0	$0	$0
TOTAL Expenditures	($34,656,014)	$245,000	$0	$0	$0
Funding of Expenditures:					
General Fund (01)	$20,868,764	$245,000	$0	$0	$0
State Special Revenue (02)	$493,504	$0	$0	$0	$0
Federal Special Revenue (03)	($56,018,281)	$0	$0	$0	$0
TOTAL Funding of Exp.	($34,656,014)	$245,000	$0	$0	$0
Revenues:					
General Fund (01)	$0	$0	$0	$0	$0
State Special Revenue (02)	$0	$0	$0	$0	$0
Federal Special Revenue (03)	($56,018,281)	$0	$0	$0	$0
TOTAL Revenues	($56,018,281)	$0	$0	$0	$0
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):					
General Fund (01)	($20,868,764)	($245,000)	$0	$0	$0
State Special Revenue (02)	($493,504)	$0	$0	$0	$0
Federal Special Revenue (03)	$0	$0	$0	$0	$0

Effect on County or Other Local Revenues or Expenditures:

Department of Military Affairs (DMA)

1. Congregate shelter costs may not be eligible for local counties.
2. Nonprofit medical facilities may not be eligible for contract medical staffing for increasing vaccine capabilities.
3. Temporary hires for COVID-19 response and vaccine distribution may not be eligible costs (see Technical Notes 10, 11, 12).

Technical Notes:

Department of Public Health and Human Services (DPHHS)

1. The current Public Health Emergency (PHE) letter as declared by the Secretary of Health and Human Services (HHS) under section 319 of the Public Health Service Act (42 U.S.C. §247d) was renewed effective January 21, 2021 and will be in effect for 90 days. The letter also stated that the PHE will likely remain in place for the entirety of calendar year 2021. If a state level declaration of emergency is not in effect, this means that enhanced FMAP cannot be claimed from July 2021 through December 2021 (if it is officially approved).

DPHHS would be required to spend an additional $40,209,463 of general fund, $803,301 of state special, and a reduction of $41,012,764 in federal funds.

2. Should the Public Health Emergency continue through December 2021, the lost SNAP benefits would be approximately $33.0 million for the July 2021-December 2021 period.
3. Early Childhood and Family Support Division (ECSD) childcare policies were amended because of the emergency to waive activities referenced in Executive Order 2-2021 to ease the requirements for providers and families and are tied to the state emergency declaration. Elimination of the waivers and adjusted rules/policies which allow flexibility would impact childcares and families. The bill may also impact the loosening of some telehealth and insurance billing rules, which may affect how some Title X clinics are providing care during the pandemic.
4. The Senior and Long Term Care Division has an Appendix K in place for a higher assisted living rate. The Centers for Medicare and Medicaid Services (CMS) has allowed six months to return to pre-waiver status. A waiver amendment has been submitted to approve the rate which should come within the six-month period.
5. DPHHS Addictive and Mental Health Disorders Division - Sixty days after the health emergency ends, the requirement that Targeted Case Management (TCM) services can only be delivered by a case manager whose primary responsibility is the delivery of TCM services will be reinstated.
6. Expanded telemedicine/telehealth reimbursement will expire with the end of the Public Health Emergency and the face-to-face delivery requirements will be reinstated.
7. Prior authorization and continued stay reviews and clinical criteria that was suspended during the Public Health Emergency will be reinstated.
8. With the Home and Community Based Waiver renewal effective July 1, 2020, a new service was added, agency based Behavioral Intervention Assistant (BIA). In September 2020, it was brought to AMDD's attention that certain providers where billing for BIA for self-directed services using the agency-based reimbursement rate, which is not approved in the current waiver. AMDD has been working with providers to remedy this issue while ensuring continuation of services for self-directed members. The Department has drafted an Appendix K (K3) that proposes to add the self-direction option for BIA through the emergency authorities that would approve the implementation of self-directed BIA services retroactively to July 1, 2020; this waiver amendment has not been filed with CMS. In addition, AMDD has filed a waiver amendment with CMS to add self-directed BIA as a permanent service, which is currently scheduled to become effective April 1, 2021. If Montana's state of emergency is removed, the Department would not be able to file the Appendix K3 which would result in the following:
   a. Estimated provider overpayment if the K3 is approved (July 1, 2020 – March 31, 2021) $90,619.
   b. Estimated provider overpayment if the K3 is not approved (July 1, 2020 – March 31, 2021) $436,351.
      i. The Department would be required to recoup the overpayments from local providers.
9. CMS has issued guidelines for resumption of prior authorization and continued stay activities with intervals for specific activities of 3, 6, and 9 months depending upon activity. If activities are allowed to resume as directed by the CMS letter, it is anticipated to have no fiscal impact. If all activities must be resumed and fully functional in a 2-month time period, the anticipated travel cost to each nursing home for face-to-face, over-time costs for licensed professionals and support staff, PPE, additional short-term staff, necessary computer programming/staffing to update the systems since the full stop of utilization review services, and supports to manage this short turn around would be $1,438,139.

Department of Military Affairs (DMA)

10. State active duty would not be available for use for non-mission assignment taskings. State and local authorities would need temporary hires which may not be allowable for FEMA reimbursement.
11. National Guard Soldiers under Title 32 are mission assigned; without Federal Mission Assignment, National Guard soldiers would not be available for testing, vaccine, warehouse, or local support missions.

12. The cost to continue the use of the National Guard soldiers with state funds would be $2,400,000 in general fund for FY 2021 and $1,800,000 in general fund for FY 2022.
13. Currently the DMA has a temporary hospital or, alternate care facility (ACF). Without a declaration of disaster in place, it is unknown whether the costs, to return the ACF back to its original condition will be reimbursed with federal funds. If the costs, estimated at $50,000 for FY 2022, were not eligible for federal reimbursement, the costs to the general fund would increase by $50,000 in FY 2022.

NOT SIGNED BY SPONSOR

	3/9/21	KA	3/2/21
Sponsor's Initials	*Date*	*Budget Director's Initials*	*Date*