



Montana Legislative Services Division

Legal Services Office

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To: Chair Jones and Chair Keenan  
From: Julie Johnson, LSD Staff Attorney  
Re: Expenditures of Appropriations in Section 8 of HB 872 Clarification  
Date: November 22, 2023

You have requested I provide clarification regarding the use of funds appropriated to the Department of Public Health and Human Services (DPHHS) in section 8 of House Bill No. 872 (HB 872), and whether the \$70 million appropriated in the current biennium may be expended prior to the Behavioral Health System for Future Generations Commission submitting a report on its final recommendations to legislative committees and the Governor as outlined in Section 2 of HB 872. In brief, the answer is yes, the \$70 million appropriated in section 8 may be expended prior to the submission of the Commission's reports on its final recommendations. My analysis is provided below.

Section 1 of HB 872 provides for the creation of the Behavioral Health System for Future Generations Commission. The Commission is tasked with submitting a report of its final recommendation on the use of funds *allocated* to Department of Public Health and Human Services (the Department) of \$155 million by July 1, 2024. The Commission also reports on the use of funds *appropriated* to it in section 8, as outlined below. The Department both staffs and pays for the operational costs of the Commission from the appropriation in section 8 of HB 872.

Section 8 provides:

**Section 8. Appropriations.** (1) There is appropriated \$40 million to the department of public health and human services on passage and approval of [this act] through the biennium beginning July 1, 2023, from the account established in [section 3] to pay for eligible uses identified in [section 3], and to pay for the operational costs of the commission established in [section 1].

(2) There is appropriated \$30 million to the department of public health and human services for the fiscal year beginning July 1, 2024, from the account established in [section 3] to pay for eligible uses identified in [section 3].

(3) Any funds remaining in the fund established in [section 3] are subject to legislative appropriation.

Section 3 establishes the "Behavioral Health System for Future Generations for Montanans Fund," (Behavioral Health Fund) which is a state special revenue account. This section also identifies the eligible uses of the fund as follows:

- Medicaid and CHIP matching funds for payments made to behavioral health settings;
- Medicaid and CHIP matching funds for payments made to intermediate care facilities for individuals with intellectual disabilities;
- Statewide community-based investments to stabilize behavioral health and developmental disabilities service providers and delivery, increase and strengthen the behavioral health and developmental disabilities workforce, increase service capacity to meet identified behavioral health and developmental disabilities services demands, and increase opportunities for Montanans to receive integrated physical and behavioral health care;
- Acquisition of new or remodeling of existing infrastructure or property to support the establishment of behavioral health settings and intermediate care facilities for individuals with intellectual disabilities;
- Planning, operation, or other contract expenses associated with intermediate care facilities for individuals with intellectual disabilities;
- Planning, operation, or other contract expenses associated with behavioral health settings; and
- Studying and planning of the development of a comprehensive behavioral health system.

The section also prohibits the use of funds to operate existing state facilities.

Section 7 of HB 872 provides for a series of transfers of funds from the general fund into the Behavioral Health Fund. According to this section, the first transfer of \$70 million into the Behavioral Health Fund must occur no later than June 30, 2023, and the second transfer of \$155 million must occur no later than June 30, 2024. This transfer of \$70 million into the Behavioral Health Fund provides the \$40 million appropriated to the Department effective on passage of the bill and through the biennium beginning July 1, 2023, as well as the \$30 million that is appropriated to the Department for the fiscal year beginning July 1, 2024, under section 8. Section 7 also provides for a transfer of \$155 million from the general fund to the Behavioral Health Fund no later than June 30, 2024. These funds are *allocated* to the Department but have not yet been *appropriated* by the Legislature. It is for these funds that the Commission must submit a report on its final recommendations on how the funds are to be expended no later than June 30, 2024.

As addressed briefly above, section 2 of HB 872 outlines a process by which funds in the Behavioral Health Fund *allocated* to the Department are expended. The process outlines a very specific and detailed series of steps that include, but are not limited to:

- meetings for the Commission to receive stakeholder and public comment on proposed behavioral health initiatives,
- submission by the Commission of a report on its final recommendations by July 1, 2024
- within 60 days of the report, three legislative committees meet jointly to receive the report on the Commission's final recommendations, which is presented by the Commission, the Legislative Fiscal Analyst, and the OBPP
- transmission of the recommendations to the Governor; and
- appropriation of the funds by the 2025 Legislature

In contrast, the Commission shall submit reports to OBPP and the LFA on the expenditure of the \$70 million already appropriated to the Department in section 8. These funds may only be expended for the eligible uses outlined in section 3 during the current biennium.

In conclusion, the \$155 million that is *allocated*, but not yet appropriated to the Department, may only be expended once the detailed process outlined in section 2 is followed and the Legislature appropriates the funds in the 2025 session. However, the \$70 million already *appropriated* by the Legislature for this biennium may be expended for the eligible uses outlined in section 3 of HB 872 and the Commission shall report on those expenditures to OBPP and the Legislative Fiscal Analyst.

Please let me know if you have any follow up questions regarding the appropriations in section 8 of the HB 872 or require further clarification.