

**Superseded 3/25/2016**

**26-21-23 Licensing of non-Medicaid nursing care facility beds.**

- (1) Notwithstanding the provisions of Section 26-21-2, for purposes of this section "nursing care facility" and "small health care facility":
  - (a) mean the following facilities licensed by the department under this chapter:
    - (i) skilled nursing homes;
    - (ii) intermediate care facilities; or
    - (iii) small health care facilities with four to 16 beds functioning as a skilled nursing home; and
  - (b) does not mean:
    - (i) an intermediate care facility for the mentally retarded;
    - (ii) a critical access hospital that meets the criteria of 42 U.S.C. 1395i-4(c)(2) (1998);
    - (iii) a small health care facility that is hospital based; or
    - (iv) a small health care facility other than a skilled nursing home with 16 beds or less.
- (2) Except as provided in Subsection (5), a new nursing care facility shall be approved for a health facility license only if the applicant proves to the division that:
  - (a) the facility will be Medicaid certified under the provisions of Section 26-18-503;
  - (b) the facility will have at least 100 beds; or
  - (c)
    - (i) the facility's projected Medicare inpatient revenues do not exceed 49% of the facility's revenues;
    - (ii) the facility has identified projected non-Medicare inpatient revenue sources; and
    - (iii) the non-Medicare inpatient revenue sources identified in this Subsection (2)(c)(iii) will constitute at least 51% of the revenues as demonstrated through an independently certified feasibility study submitted and paid for by the facility and provided to the division.
- (3) The division may not approve the addition of licensed beds in an existing nursing care facility unless the nursing care facility satisfies the criteria established in Subsection (2).
- (4) The department may make rules to administer and enforce this part in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (5) The provisions of Subsection (2) do not apply to a nursing care facility that has:
  - (a) filed an application with the department and paid all applicable fees to the department on or before February 28, 2007; and
  - (b) submitted to the department the working drawings, as defined by the department by administrative rule, on or before July 1, 2008.