

**NURSING CARE FACILITY MEDICAID
CERTIFICATION AMENDMENTS**

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Rebecca D. Lockhart

LONG TITLE

General Description:

This bill amends the procedure used by the Department of Health to certify nursing care facilities for Medicaid reimbursement.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ prohibits the department from certifying any additional beds for Medicaid

reimbursement unless certain criteria are met;

- ▶ establishes the criteria for certifying additional beds for Medicaid reimbursement;
- ▶ provides an appeal process when the department rejects a request for additional

Medicaid beds; and

- ▶ provides rulemaking authority.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2004.

Utah Code Sections Affected:

ENACTS:

26-18-501, Utah Code Annotated 1953

26-18-502, Utah Code Annotated 1953

26-18-503, Utah Code Annotated 1953

26-18-504, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **26-18-501** is enacted to read:

Part 5. Long Term Care Facility - Medicaid Certification

26-18-501. Definitions.

As used in this part:

- (1) "Certified program" means a nursing care facility program with Medicaid certification.
- (2) "Director" means the director of the Division of Health Care Financing.
- (3) "Medicaid certification" means the right to Medicaid reimbursement as a provider of a nursing care facility program as established by division rule.
- (4) (a) "Nursing care facility" means the following facilities licensed by the department under Chapter 21, Health Care Facility Licensing and Inspection Act:
 - (i) skilled nursing homes;
 - (ii) intermediate care facilities; and
 - (iii) intermediate care facilities for the mentally retarded.
- (b) "Nursing care facility" does not mean a critical access hospital that meets the criteria of 42 U.S.C. 13951-4(c)(2) (1998).
- (5) "Nursing care facility program" means the personnel, licenses, services, contracts and all other requirements that must be met for a nursing care facility to be eligible for Medicaid certification under this part and division rule.
- (6) "Physical facility" means the buildings or other physical structures where a nursing care facility program is operated.
- (7) "Service area" means the boundaries of the distinct geographic area served by a certified program as determined by the division in accordance with this part and division rule.

Section 2. Section **26-18-502** is enacted to read:

26-18-502. Purpose -- Medicaid certification of nursing care facilities.

(1) The Legislature finds:

- (a) that an oversupply of nursing care facility programs in the state adversely affects the

state Medicaid program and the health of the people in the state; and

(b) it is in the best interest of the state to prohibit Medicaid certification of nursing care facility programs, except as authorized by this part.

(2) Medicaid reimbursement of nursing care facility programs is limited to:

(a) the number of nursing care facility programs with Medicaid certification as of May 4, 2004; and

(b) additional nursing care facility programs approved for Medicaid certification under the provisions of Subsection 26-18-503(5).

(3) The division shall not:

(a) except as authorized by Section 26-18-503:

(i) process initial applications for Medicaid certification or execute provider agreements with nursing care facility programs; or

(ii) reinstate Medicaid certification for a nursing care facility whose certification expired or was terminated by action of the federal or state government; or

(b) execute a Medicaid provider agreement with a certified program that moves its nursing care facility program to a different physical facility, except as authorized by Subsection 26-18-503(3).

Section 3. Section **26-18-503** is enacted to read:

26-18-503. Authorization to renew, transfer, or increase Medicaid certified programs.

(1) The division may renew Medicaid certification of a certified program if the program, without lapse in service to Medicaid recipients, has its nursing care facility program certified by the division at the same physical facility.

(2) (a) The division may issue a Medicaid certification for a new nursing care facility program if a current owner of the Medicaid certified program transfers its ownership of the Medicaid certification to the new nursing care facility program and the new nursing care facility program meets all of the following conditions:

(i) the new nursing care facility program operates at the same physical facility as the

previous Medicaid certified program;

(ii) the new nursing care facility program gives a written assurance to the director in accordance with Subsection (4); and

(iii) the new nursing care facility program receives the Medicaid certification within one year of the date the previously certified program ceased to provide medical assistance to a Medicaid recipient.

(b) A nursing care facility program that receives Medicaid certification under the provisions of Subsection (2)(a) does not assume the Medicaid liabilities of the previous nursing care facility program if the new nursing care facility program:

(i) is not owned in whole or in part by the previous nursing care facility program; or

(ii) is not a successor in interest of the previous nursing care facility program.

(3) The division may issue a Medicaid certification to a nursing care facility program that was previously a certified program but now resides in a new or renovated physical facility if the nursing care facility program meets all of the following:

(a) the nursing care facility program met all applicable requirements for Medicaid certification at the time of closure;

(b) the new or renovated physical facility is in the same county or within a five-mile radius of the original physical facility;

(c) the time between which the certified program ceased to operate in the original facility and will begin to operate in the new physical facility is not more than three years;

(d) if Subsection (3)(c) applies, the certified program notifies the department within 90 days after ceasing operations in its original facility, of its intent to retain its Medicaid certification;

(e) the provider gives written assurance to the director in accordance with Subsection (4) that no third party has a legitimate claim to operate a certified program at the previous physical facility; and

(f) the bed capacity in the physical facility that will be used for additional Medicaid certification has not been expanded by more than 30% over the previously certified program's bed capacity, unless the director has approved additional beds in accordance with Subsection (5).

(4) (a) The entity requesting Medicaid certification under Subsections (2) and (3) must give written assurances satisfactory to the director or his designee that:

(i) no third party has a legitimate claim to operate the certified program;

(ii) the requesting entity agrees to defend and indemnify the department against any claims by a third party who may assert a right to operate the certified program; and

(iii) if a third party is found, by final agency action of the department after exhaustion of all administrative and judicial appeal rights, to be entitled to operate a certified program at the physical facility the certified program shall voluntarily comply with Subsection (4)(b).

(b) If a finding is made under the provisions of Subsection (4)(a)(iii):

(i) the certified program shall immediately surrender its Medicaid certification and comply with division rules regarding billing for Medicaid and the provision of services to Medicaid patients; and

(ii) the department shall transfer the surrendered Medicaid certification to the third party who prevailed under Subsection (4)(a)(iii).

(5) (a) As provided in Subsection 26-21-502(2)(b), the director shall issue additional Medicaid certification when requested by a nursing care facility or other interested party if there is insufficient bed capacity with current certified programs in a service area. A determination of insufficient bed capacity shall be based on the nursing care facility or other interested party providing reasonable evidence of an inadequate number of beds in the county or group of counties impacted by the requested Medicaid certification based on:

(i) current demographics which demonstrate nursing care facility occupancy levels of at least 90% for all existing and proposed facilities within a prospective three-year period;

(ii) current nursing care facility occupancy levels of 90%; or

(iii) no other nursing care facility within a 35-mile radius of the nursing care facility requesting the additional certification.

(b) In addition to the requirements of Subsection (5)(a), a nursing care facility program must demonstrate by an independent analysis that the nursing care facility can financially support itself at an after tax break-even net income level based on projected occupancy levels.

(c) When making a determination to certify additional beds or an additional nursing care facility program under Subsection (5)(a):

(i) the director shall consider whether the nursing care facility will offer specialized or unique services that are underserved in a service area;

(ii) the director shall consider whether any Medicaid certified beds are subject to a claim by a previous certified program that may reopen under the provisions of Subsections (2) and (3); and

(iii) the director may consider how to add additional capacity to the long-term care delivery system to best meet the needs of Medicaid recipients.

Section 4. Section **26-18-504** is enacted to read:

26-18-504. Appeals of division decision -- Rulemaking authority -- Application of act.

(1) A decision by the director under this part to deny Medicaid certification for a nursing care facility program or to deny additional bed capacity for an existing certified program is subject to review under the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act.

(2) The department shall make rules to administer and enforce this part in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(3) A nursing care facility may receive Medicaid certification under the rules in effect prior to July 1, 2004 if the nursing care facility, prior to May 4, 2004:

(a) paid applicable fees to the department; and

(b) submits construction plans to the department; or

(c) is in a current phase of construction approved by the department.

Section 5. **Effective date.**

This bill takes effect on July 1, 2004.