

**Representative Rebecca D. Lockhart** proposes the following substitute bill:

**AMENDMENTS TO INTERMEDIATE CARE  
FACILITIES FOR MENTALLY RETARDED**

2005 GENERAL SESSION

STATE OF UTAH

**Sponsor: Rebecca D. Lockhart**

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**LONG TITLE**

**General Description:**

This bill amends the Nursing Care Facility Assessment Act to include intermediate care facilities for the mentally retarded.

**Highlighted Provisions:**

This bill:

- ▶ amends the definition of nursing care facility to include intermediate care facilities for the mentally retarded;
- ▶ clarifies the rulemaking authority of the department in setting the uniform rate for intermediate care facilities for the mentally retarded; and
- ▶ makes conforming amendments in the definitions for health care facilities.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill takes effect on July 1, 2005.

**Utah Code Sections Affected:**

AMENDS:

- 26-21-2**, as last amended by Chapter 1, Laws of Utah 2000
- 26-35a-103**, as enacted by Chapter 284, Laws of Utah 2004



26 ENACTS:

27 **26-35a-108**, Utah Code Annotated 1953



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

30 Section 1. Section **26-21-2** is amended to read:

31 **26-21-2. Definitions.**

32 As used in this chapter:

33 (1) "Abortion clinic" means a facility, other than a general acute or specialty hospital,  
34 that performs abortions and provides abortion services during the second trimester of  
35 pregnancy.

36 (2) "Activities of daily living" means essential activities including:

37 (a) dressing;

38 (b) eating;

39 (c) grooming;

40 (d) bathing;

41 (e) toileting;

42 (f) ambulation;

43 (g) transferring; and

44 (h) self-administration of medication.

45 (3) "Ambulatory surgical facility" means a freestanding facility, which provides  
46 surgical services to patients not requiring hospitalization.

47 (4) "Assistance with activities of daily living" means providing of or arranging for the  
48 provision of assistance with activities of daily living.

49 (5) (a) "Assisted living facility" means:

50 (i) a type I assisted living facility, which is a residential facility that provides assistance  
51 with activities of daily living and social care to two or more residents who:

52 (A) require protected living arrangements; and

53 (B) are capable of achieving mobility sufficient to exit the facility without the  
54 assistance of another person; and

55 (ii) a type II assisted living facility, which is a residential facility with a home-like  
56 setting that provides an array of coordinated supportive personal and health care services

57 available 24 hours per day to residents who have been assessed under department rule to need  
58 any of these services.

59 (b) Each resident in a type I or type II assisted living facility shall have a service plan  
60 based on the assessment, which may include:

61 (i) specified services of intermittent nursing care;

62 (ii) administration of medication; and

63 (iii) support services promoting residents' independence and self sufficiency.

64 (6) "Birthing center" means a freestanding facility, receiving maternal clients and  
65 providing care during pregnancy, delivery, and immediately after delivery.

66 (7) "Committee" means the Health Facility Committee created in Section 26-1-7.

67 (8) "Consumer" means any person not primarily engaged in the provision of health care  
68 to individuals or in the administration of facilities or institutions in which such care is provided  
69 and who does not hold a fiduciary position, or have a fiduciary interest in any entity involved in  
70 the provision of health care, and does not receive, either directly or through his spouse, more  
71 than 1/10 of his gross income from any entity or activity relating to health care.

72 (9) "End stage renal disease facility" means a facility which furnishes staff-assisted  
73 kidney dialysis services, self-dialysis services, or home-dialysis services on an outpatient basis.

74 (10) "Freestanding" means existing independently or physically separated from another  
75 health care facility by fire walls and doors and administrated by separate staff with separate  
76 records.

77 (11) "General acute hospital" means a facility which provides diagnostic, therapeutic,  
78 and rehabilitative services to both inpatients and outpatients by or under the supervision of  
79 physicians.

80 (12) "Governmental unit" means the state, or any county, municipality, or other  
81 political subdivision or any department, division, board, or agency of the state, a county,  
82 municipality, or other political subdivision.

83 (13) (a) "Health care facility" means general acute hospitals, specialty hospitals, home  
84 health agencies, hospices, nursing care facilities, residential-assisted living facilities, birthing  
85 centers, ambulatory surgical facilities, small health care facilities, abortion clinics, facilities  
86 owned or operated by health maintenance organizations, end stage renal disease facilities, and  
87 any other health care facility which the committee designates by rule.

88 (b) "Health care facility" does not include the offices of private physicians or dentists,  
89 whether for individual or group practice.

90 (14) "Health maintenance organization" means an organization, organized under the  
91 laws of any state which:

92 (a) is a qualified health maintenance organization under 42 U.S.C. Sec. 300e-9; or

93 (b) (i) provides or otherwise makes available to enrolled participants at least the  
94 following basic health care services: usual physician services, hospitalization, laboratory, x-ray,  
95 emergency, and preventive services and out-of-area coverage;

96 (ii) is compensated, except for copayments, for the provision of the basic health  
97 services listed in Subsection (14)(b)(i) to enrolled participants by a payment which is paid on a  
98 periodic basis without regard to the date the health services are provided and which is fixed  
99 without regard to the frequency, extent, or kind of health services actually provided; and

100 (iii) provides physicians' services primarily directly through physicians who are either  
101 employees or partners of such organizations, or through arrangements with individual  
102 physicians or one or more groups of physicians organized on a group practice or individual  
103 practice basis.

104 (15) (a) "Home health agency" means an agency, organization, or facility or a  
105 subdivision of an agency, organization, or facility which employs two or more direct care staff  
106 persons who provide licensed nursing services, therapeutic services of physical therapy, speech  
107 therapy, occupational therapy, medical social services, or home health aide services on a  
108 visiting basis.

109 (b) "Home health agency" does not mean an individual who provides services under  
110 the authority of a private license.

111 (16) "Hospice" means a program of care for the terminally ill and their families which  
112 occurs in a home or in a health care facility and which provides medical, palliative,  
113 psychological, spiritual, and supportive care and treatment.

114 (17) "Nursing care facility" means a health care facility, other than a general acute or  
115 specialty hospital, constructed, licensed, and operated to provide patient living  
116 accommodations, 24-hour staff availability, and at least two of the following patient services:

117 (a) a selection of patient care services, under the direction and supervision of a  
118 registered nurse, ranging from continuous medical, skilled nursing, psychological, or other

119 professional therapies to intermittent health-related or paraprofessional personal care services;

120 (b) a structured, supportive social living environment based on a professionally  
121 designed and supervised treatment plan, oriented to the individual's habilitation or  
122 rehabilitation needs; or

123 (c) a supervised living environment that provides support, training, or assistance with  
124 individual activities of daily living.

125 (18) "Person" means any individual, firm, partnership, corporation, company,  
126 association, or joint stock association, and the legal successor thereof.

127 (19) "Resident" means a person 21 years of age or older who:

128 (a) as a result of physical or mental limitations or age requires or requests services  
129 provided in an assisted living facility; and

130 (b) does not require intensive medical or nursing services as provided in a hospital or  
131 nursing care facility.

132 (20) "Small health care facility" means a four to sixteen bed facility that provides  
133 licensed health care programs and services to residents [~~who generally do not need continuous~~  
134 ~~nursing care or supervision~~].

135 (21) "Specialty hospital" means a facility which provides specialized diagnostic,  
136 therapeutic, or rehabilitative services in the recognized specialty or specialties for which the  
137 hospital is licensed.

138 (22) "Substantial compliance" means in a department survey of a licensee, the  
139 department determines there is an absence of deficiencies which would harm the physical  
140 health, mental health, safety, or welfare of patients or residents of a licensee.

141 Section 2. Section **26-35a-103** is amended to read:

142 **26-35a-103. Definitions.**

143 As used in this chapter:

144 (1) (a) "Nursing care facility" means:

145 (i) a nursing care facility described in Subsection 26-21-2(17)[:];

146 (ii) beginning January 1, 2006, a designated swing bed in:

147 (A) a general acute hospital as defined in Subsection 26-21-2(11); and

148 (B) a critical access hospital which meets the criteria of 42, U.S.C.

149 1935i-4(c)(2)(1998); and

150 (iii) an intermediate care facility for the mentally retarded that is licensed under Section  
151 26-21-13.5.

152 (b) "Nursing care facility" does not include:

153 (i) the Utah State Developmental Center;

154 (ii) the Utah State Hospital;

155 (iii) a general acute hospital, specialty hospital, or small health care facility as defined  
156 in Section 26-21-2; or

157 [~~(iv) an intermediate care facility for the mentally retarded that is licensed under~~  
158 ~~Section 26-21-13.5; or]~~

159 [~~(v)~~] (iv) the Utah State Veteran's Home.

160 (2) "Patient day" means each calendar day in which an individual patient is admitted to  
161 the nursing care facility during a calendar month, even if on a temporary leave of absence from  
162 the facility.

163 Section 3. Section **26-35a-108** is enacted to read:

164 **26-35a-108. Intermediate care facilities for the mentally retarded -- Uniform rate.**

165 An intermediate care facility for the mentally retarded is subject to all the provisions of  
166 this chapter, except that the department shall establish a uniform rate for intermediate care  
167 facilities for the mentally retarded that:

168 (1) is based on the same formula specified for nursing care facilities under the  
169 provisions of Subsection 26-35a-104(1)(b); and

170 (2) may be different than the uniform rate established for other nursing care facilities.

171 Section 4. **Effective date.**

172 This bill takes effect on July 1, 2005.

**State Impact**

This bill adds certain hospital swing beds and intermediate care facilities for the mentally retarded to the definition of "nursing care facilities" which are subject to the Nursing Care Facility Assessment. It is estimated that revenue generated from this assessment would be approximately \$1,454,300, which could be matched with federal funds of \$3,579,600. The total of \$5 million would be appropriated to the Medicaid budget to increase reimbursement rates for those facilities.

|                  | <u>FY 2006</u><br><u>Approp.</u> | <u>FY 2007</u><br><u>Approp.</u> | <u>FY 2006</u><br><u>Revenue</u> | <u>FY 2007</u><br><u>Revenue</u> |
|------------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|
| Federal Funds    | \$3,579,600                      | \$3,579,600                      | \$3,579,600                      | \$3,579,600                      |
| Restricted Funds | \$1,454,300                      | \$1,454,300                      | \$1,454,300                      | \$1,454,300                      |
| <b>TOTAL</b>     | <b>\$5,033,900</b>               | <b>\$5,033,900</b>               | <b>\$5,033,900</b>               | <b>\$5,033,900</b>               |

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**Individual and Business Impact**

Owners of intermediate care facilities for the mentally retarded would be required to pay the assessment imposed by 26-35a-104. This increase will be offset by an increase in reimbursement rates for Medicaid patients.

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**Office of the Legislative Fiscal Analyst**