

NURSING CARE FACILITY LICENSURE

MODIFICATIONS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen H. Urquhart

Senate Sponsor: Peter C. Knudson

LONG TITLE

General Description:

This bill amends the Long-term Care Facility - Licensing part of the Health Code.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ places restrictions on the Department of Health's authority to issue a license for certain nursing care facilities; and
- ▶ adds a sunset date of July 1, 2009.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

This bill provides revisor instructions.

Utah Code Sections Affected:

AMENDS:

26-18-503, as enacted by Chapter 215, Laws of Utah 2004

63-55-226, as last amended by Chapter 116, Laws of Utah 2006

ENACTS:

26-21-23, Utah Code Annotated 1953

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

30 Section 1. Section **26-18-503** is amended to read:

31 **26-18-503. Authorization to renew, transfer, or increase Medicaid certified**
32 **programs.**

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

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

40 (i) the new nursing care facility program operates at the same physical facility as the
41 previous Medicaid certified program;

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

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

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

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

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

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

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

57 (b) the new or renovated physical facility is in the same county or within a five-mile

58 radius of the original physical facility;

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

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

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

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

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

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

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

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

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

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

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

85 (5) (a) As provided in Subsection 26-21-502(2)(b), the director shall issue additional

86 Medicaid certification when requested by a nursing care facility or other interested party if
87 there is insufficient bed capacity with current certified programs in a service area. A
88 determination of insufficient bed capacity shall be based on the nursing care facility or other
89 interested party providing reasonable evidence of an inadequate number of beds in the county
90 or group of counties impacted by the requested Medicaid certification based on:

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

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

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

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

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

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

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

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

108 Section 2. Section **26-21-23** is enacted to read:

109 **26-21-23. Licensing of non-Medicaid nursing care facility beds.**

110 (1) Notwithstanding the provisions of Section 26-21-2, for purposes of this section
111 "nursing care facility" and "small health care facility":

112 (a) mean the following facilities licensed by the department under this chapter:

113 (i) skilled nursing homes;

114 (ii) intermediate care facilities; or
115 (iii) small health care facilities with four to sixteen beds functioning as a skilled
116 nursing home; and
117 (b) does not mean:
118 (i) an intermediate care facility for the mentally retarded;
119 (ii) a critical access hospital that meets the criteria of 42 U.S.C. 1395i-4(c)(2) (1998);
120 (iii) a small health care facility which is hospital based; or
121 (iv) a small health care facility other than a skilled nursing home with 16 beds or less.
122 (2) Except as provided in Subsection (5), a new nursing care facility shall be approved
123 for a health facility license only if the applicant proves to the division that:
124 (a) the facility will be Medicaid certified under the provisions of Section 26-18-503;
125 (b) the facility will have at least 120 beds; or
126 (c) (i) the facility's projected Medicare inpatient revenues do not exceed 49% of the
127 facility's revenues;
128 (ii) the facility has identified projected non-Medicare inpatient revenue sources; and
129 (iii) the non-Medicare inpatient revenue sources identified in this Subsection (2)(c)(iii)
130 will constitute at least 51% of the revenues as demonstrated through an independently certified
131 feasibility study submitted and paid for by the facility and provided to the division.
132 (3) The division may not approve the addition of licensed beds in an existing nursing
133 care facility unless the nursing care facility satisfies the criteria established in Subsection (2).
134 (4) The department may make rules to administer and enforce this part in accordance
135 with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.
136 (5) The provisions of Subsection (2) do not apply to a nursing care facility that has:
137 (a) filed an application with the department and paid all applicable fees to the
138 department on or before the effective date of this bill; and
139 (b) submitted to the department the working drawings, as defined by the department by
140 administrative rule, on or before July 1, 2008.
141 Section 3. Section **63-55-226** is amended to read:

142 **63-55-226. Repeal dates, Title 26.**

143 (1) Title 26, Chapter 9f, Utah Digital Health Service Commission Act, is repealed July
144 1, 2015.

145 (2) Title 26, Chapter 23b, Detection of Public Health Emergencies Act, is repealed July
146 1, 2009.

147 (3) Title 26, Chapter 33a, Utah Health Data Authority Act, is repealed July 1, 2014.

148 (4) Section 26-21-23, Licensing of non-Medicaid nursing care facility beds, is repealed
149 July 1, 2009.

150 Section 4. **Effective date.**

151 If approved by two-thirds of all the members elected to each house, this bill takes effect
152 upon approval by the governor, or the day following the constitutional time limit of Utah
153 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
154 the date of veto override.

155 Section 5. **Revisor instructions.**

156 It is the intent of the Legislature that, in preparing the Utah Code database for
157 publication, the Office of Legislative Research and General Counsel shall delete "the effective
158 date of this bill" where it appears in Subsection 26-21-23(5)(a) and replace it with the actual
159 date on which the bill takes effect.