

**MEDICAID LONG TERM CARE AMENDMENTS**

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Merlynn T. Newbold**

Senate Sponsor: Sheldon L. Killpack

---

---

**LONG TITLE**

**General Description:**

This bill amends the facility licensing chapter and the medical assistance chapters of the Health Code.

**Highlighted Provisions:**

This bill:

- ▶ removes the authority of a Medicaid certified nursing care facility to increase its Medicaid certified bed capacity by 30% without Department of Health oversight;
- ▶ eliminates bed banking by nursing care facilities for the purpose of Medicaid reimbursement;
- ▶ requires the Department of Health to adjust the Medicaid reimbursement methodology for nursing care facilities, but protects rural nursing care facilities from some of the adjustments; and
- ▶ extends the time period for obtaining Medicaid certification for a bed for a nursing care facility providing service to the medically fragile.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides an immediate effective date.

**Utah Code Sections Affected:**

AMENDS:

**26-18-503**, as last amended by Laws of Utah 2007, Chapters 24 and 306

**26-18-504**, as last amended by Laws of Utah 2006, Chapter 170

30 ENACTS:

31 **26-21-24**, Utah Code Annotated 1953



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

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

35 **26-18-503. Authorization to renew, transfer, or increase Medicaid certified**  
36 **programs -- Reimbursement methodology.**

37 (1) The division may renew Medicaid certification of a certified program if the program,  
38 without lapse in service to Medicaid recipients, has its nursing care facility program certified by  
39 the division at the same physical facility as long as the licensed and certified bed capacity at the  
40 facility has not been expanded, unless the director has approved additional beds in accordance  
41 with Subsection (5).

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

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

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

50 (iii) the new nursing care facility program receives the Medicaid certification within one  
51 year of the date the previously certified program ceased to provide medical assistance to a  
52 Medicaid recipient[-]; and

53 (iv) the licensed and certified bed capacity at the facility has not been expanded, unless  
54 the director has approved additional beds in accordance with Subsection (5).

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

58 (i) is not owned in whole or in part by the previous nursing care facility program; or  
59 (ii) is not a successor in interest of the previous nursing care facility program.  
60 (3) The division may issue a Medicaid certification to a nursing care facility program  
61 that was previously a certified program but now resides in a new or renovated physical facility if  
62 the nursing care facility program meets all of the following:  
63 (a) the nursing care facility program met all applicable requirements for Medicaid  
64 certification at the time of closure;  
65 (b) the new or renovated physical facility is in the same county or within a five-mile  
66 radius of the original physical facility;  
67 (c) the time between which the certified program ceased to operate in the original  
68 facility and will begin to operate in the new physical facility is not more than three years;  
69 (d) if Subsection (3)(c) applies, the certified program notifies the department within 90  
70 days after ceasing operations in its original facility, of its intent to retain its Medicaid  
71 certification;  
72 (e) the provider gives written assurance to the director in accordance with Subsection  
73 (4) that no third party has a legitimate claim to operate a certified program at the previous  
74 physical facility; and  
75 (f) the bed capacity in the physical facility has not been expanded [~~by more than 30%~~  
76 ~~over the previous program's bed capacity,~~] unless the director has approved additional beds in  
77 accordance with Subsection (5).  
78 (4) (a) The entity requesting Medicaid certification under Subsections (2) and (3) must  
79 give written assurances satisfactory to the director or his designee that:  
80 (i) no third party has a legitimate claim to operate the certified program;  
81 (ii) the requesting entity agrees to defend and indemnify the department against any  
82 claims by a third party who may assert a right to operate the certified program; and  
83 (iii) if a third party is found, by final agency action of the department after exhaustion of  
84 all administrative and judicial appeal rights, to be entitled to operate a certified program at the  
85 physical facility the certified program shall voluntarily comply with Subsection (4)(b).

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

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

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

92 (5) (a) As provided in Subsection 26-18-502(2)(b), the director shall issue additional  
93 Medicaid certification when requested by a nursing care facility or other interested party if there  
94 is insufficient bed capacity with current certified programs in a service area. A determination of  
95 insufficient bed capacity shall be based on the nursing care facility or other interested party  
96 providing reasonable evidence of an inadequate number of beds in the county or group of  
97 counties impacted by the requested Medicaid certification based on:

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

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

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

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

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

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

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

113 (iii) the director may consider how to add additional capacity to the long-term care

114 delivery system to best meet the needs of Medicaid recipients.

115 (6) The department shall adopt administrative rules in accordance with Title 63,  
116 Chapter 46a, Utah Administrative Rulemaking Act, to adjust the Medicaid nursing care facility  
117 property reimbursement methodology to:

118 (a) beginning July 1, 2008, only pay that portion of the property component of rates,  
119 representing actual bed usage by Medicaid clients as a percentage of the greater of:

120 (i) actual occupancy; or

121 (ii) (A) for a nursing care facility other than a facility described in Subsection  
122 (6)(a)(ii)(B), 85% of total bed capacity; or

123 (B) for a rural nursing care facility, 65% of total bed capacity; and

124 (b) beginning July 1, 2008, not allow for increases in reimbursement for property values  
125 without major renovation or replacement projects as defined by the department by rule.

126 Section 2. Section **26-18-504** is amended to read:

127 **26-18-504. Appeals of division decision -- Rulemaking authority -- Application of**  
128 **act.**

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

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

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

137 (a) (i) paid applicable fees to the department; and

138 ~~[(b)]~~ (ii) submits construction plans to the department; or

139 ~~[(c)]~~ (b) is in a current phase of construction approved by the department.

140 (4) (a) In the event the department is at risk for a federal disallowance with regard to a  
141 Medicaid recipient being served in a nursing care facility program that is not Medicaid certified,

142 the department may grant temporary Medicaid certification to that facility for up to 24 months.

143 (b) (i) The department may extend a temporary Medicaid certification granted to a  
144 facility under Subsection (4)(a):

145 (A) for the number of beds in the nursing care facility occupied by a Medicaid recipient;

146 and

147 (B) for the period of time during which the Medicaid recipient resides at the facility.

148 (ii) A temporary Medicaid certification granted under this Subsection (4) is revoked

149 upon:

150 (A) the discharge of the patient from the facility; or

151 (B) the patient no longer residing at the facility for any reason.

152 (c) The department may place conditions on the temporary certification granted under  
153 Subsections (4)(a) and (b), such as:

154 (i) not allowing additional admissions of Medicaid recipients to the program; and

155 (ii) not paying for the care of the patient after October 1, 2008, with state only dollars.

156 Section 3. Section **26-21-24** is enacted to read:

157 **26-21-24. Prohibition against bed banking by nursing care facilities for Medicaid**  
158 **reimbursement.**

159 (1) For purposes of this section:

160 (a) "bed banking" means the designation of a nursing care facility bed as not part of the  
161 facility's operational bed capacity; and

162 (b) "nursing care facility" is as defined in Subsection 26-21-23(1).

163 (2) Beginning July 1, 2008, the department shall, for purposes of Medicaid  
164 reimbursement under Chapter 18, Part 1, Medical Assistance Programs, prohibit the banking of  
165 nursing care facility beds.

166 Section 4. **Effective date.**

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

170 the date of veto override.