Skilled Nursing Facility Upper Payment Limit Amendments

2027 GENERAL SESSION

STATE OF UTAH

Chief Sponsor:

Sponsor:

LONG TITLE

General Description:

This bill establishes requirements for the Nursing Care Facility Non-State Government-Owned Upper Payment Limit program.

Highlighted Provisions:

This bill:

- limits administrative fees the Department of Health and Human Services (department) charges to a non-state government entity to the department's actual costs for administering the Nursing Care Facility Non-State Government-Owned Upper Payment Limit Program (program);
- establishes requirements for a nursing facility that participates in the program, including:
  - requirements for spending a certain percentage of revenue on direct patient care;
  - minimum staffing requirements; and
  - reporting requirements;
- provides penalties for a nursing facility's failure to meet requirements;
- requires a non-state government entity to submit an annual report to the Division of Integrated Healthcare (division) related to the non-state government entity's finances;
- requires the division to publish certain information on the division's website;
- requires the division to establish a program to require nursing facilities participating in the program to meet certain quality improvement metrics;
- provides rulemaking authority;
- defines terms; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26B-3-130, as last amended by Laws of Utah 2024, Chapter 286

ENACTS:

26B-3-145, Utah Code Annotated 1953

26B-3-146, Utah Code Annotated 1953

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

Section 1. Section **26B-3-130** is amended to read:

26B-3-130 . Medicaid intergovernmental transfer report -- Approval requirements.

(1) As used in this section:

(a)(i) "Intergovernmental transfer" means the transfer of public funds from:

(A) a local government entity to another nonfederal governmental entity; or

(B) from a nonfederal, government owned health care facility regulated under Chapter 2, Part 2, Health Care Facility Licensing and Inspection, to another nonfederal governmental entity.

(ii) "Intergovernmental transfer" does not include:

(A) the transfer of public funds from one state agency to another state agency; or

(B) a transfer of funds from the University of Utah Hospitals and Clinics.

(b)(i) "Intergovernmental transfer program" means a federally approved reimbursement program or category that is authorized by the Medicaid state plan or waiver authority for intergovernmental transfers.

(ii) "Intergovernmental transfer program" does not include the addition of a provider to an existing intergovernmental transfer program.

(c) "Local government entity" means a county, city, town, special service district, special district, or local education agency as that term is defined in Section 63J-5-102.

(d) "Non-state government entity" means a hospital authority, hospital district, health care district, special service district, county, or city.

(2)(a) An entity that receives federal Medicaid dollars from the department as a result of an intergovernmental transfer shall, on or before August 1, 2017, and on or before August 1 each year thereafter, provide the department with:

(i) information regarding the payments funded with the intergovernmental transfer as authorized by and consistent with state and federal law;

(ii) information regarding the entity's ability to repay federal funds, to the extent

required by the department in the contract for the intergovernmental transfer; and

(iii) other information reasonably related to the intergovernmental transfer that may be required by the department in the contract for the intergovernmental transfer.

(b) On or before October 15, 2017, and on or before October 15 each subsequent year, the department shall prepare a report for the Executive Appropriations Committee that includes:

(i) the amount of each intergovernmental transfer under Subsection (2)(a);

(ii) a summary of changes to CMS regulations and practices that are known by the department regarding federal funds related to an intergovernmental transfer program; and

(iii) other information the department gathers about the intergovernmental transfer under Subsection (2)(a).

(3) The department shall not create a new intergovernmental transfer program after July 1, 2017, unless the department reports to the Executive Appropriations Committee, in accordance with Section 63J-5-206, before submitting the new intergovernmental transfer program for federal approval. The report shall include information required by Subsection 63J-5-102(1)(e) and the analysis required in Subsections (2)(a) and (b).

(4)(a) The department shall enter into new Nursing Care Facility Non-State Government-Owned Upper Payment Limit program contracts and contract amendments adding new nursing care facilities and new non-state government entity operators in accordance with this Subsection (4).

(b)(i) If the nursing care facility expects to receive less than $1,000,000 in federal funds each year from the Nursing Care Facility Non-State Government-Owned Upper Payment Limit program, excluding seed funding and administrative fees paid by the non-state government entity, the department shall enter into a Nursing Care Facility Non-State Government-Owned Upper Payment Limit program contract with the non-state government entity operator of the nursing care facility.

(ii) If the nursing care facility expects to receive between $1,000,000 and $10,000,000 in federal funds each year from the Nursing Care Facility Non-State Government-Owned Upper Payment Limit program, excluding seed funding and administrative fees paid by the non-state government entity, the department shall enter into a Nursing Care Facility Non-State Government-Owned Upper Payment Limit program contract with the non-state government entity operator of the nursing care facility after receiving the approval of the Executive Appropriations

Committee.

(iii) If the nursing care facility expects to receive more than $10,000,000 in federal funds each year from the Nursing Care Facility Non-State Government-Owned Upper Payment Limit program, excluding seed funding and administrative fees paid by the non-state government entity, the department may not approve the application without obtaining approval from the Legislature and the governor.

(c) A non-state government entity may not participate in the Nursing Care Facility Non-State Government-Owned Upper Payment Limit program unless the non-state government entity is a special service district, county, or city that operates a hospital or holds a license under Chapter 2, Part 2, Health Care Facility Licensing and Inspection.

(d) Each non-state government entity that participates in the Nursing Care Facility Non-State Government-Owned Upper Payment Limit program shall certify to the department that:

(i) the non-state government entity is a local government entity that is able to make an intergovernmental transfer under applicable state and federal law;

(ii) the non-state government entity has sufficient public funds or other permissible sources of seed funding that comply with the requirements in 42 C.F.R. Part 433, Subpart B;

(iii) the funds received from the Nursing Care Facility Non-State Government-Owned Upper Payment Limit program are:

(A) for each nursing care facility, available for patient care until the end of the non-state government entity's fiscal year; and

(B) used exclusively for operating expenses for nursing care facility operations, patient care, capital expenses, rent, royalties, and other operating expenses; and

(iv) the non-state government entity has completed all licensing, enrollment, and other forms and documents required by federal and state law to register a change of ownership with the department and with CMS.

(5) The department shall add a nursing care facility to an existing Nursing Care Facility Non-State Government-Owned Upper Payment Limit program contract if:

(a) the nursing care facility is managed by or affiliated with the same non-state government entity that also manages one or more nursing care facilities that are included in an existing Nursing Care Facility Non-State Government-Owned Upper Payment Limit program contract; and

(b) the non-state government entity makes the certification described in Subsection (4)(d)(ii).

(6)(a) The department may not increase the percentage of the administrative fee paid by a non-state government entity to the department under the Nursing Care Facility Non-State Government-Owned Upper Payment Limit program.

(b) After January 1, 2028, the department may not charge an administrative fee to a non-state government entity under the Nursing Care Facility Non-State Government-Owned Upper Payment Limit program that exceeds the department's actual cost to administer the Nursing Care Facility Non-State Government-Owned Upper Payment Limit program.

(7) The department may not condition participation in the Nursing Care Facility Non-State Government-Owned Upper Payment Limit program on:

(a) a requirement that the department be allowed to direct or determine the types of patients that a non-state government entity will treat or the course of treatment for a patient in a non-state government nursing care facility; or

(b) a requirement that a non-state government entity or nursing care facility post a bond, purchase insurance, or create a reserve account of any kind.

(8) The non-state government entity shall have the primary responsibility for ensuring compliance with Subsection (4)(d)(ii).

(9)(a) The department may not enter into a new Nursing Care Facility Non-State Government-Owned Upper Payment Limit program contract before January 1, 2019.

(b) Subsection (9)(a) does not apply to:

(i) a new Nursing Care Facility Non-State Government-Owned Upper Payment Limit program contract that was included in the federal funds request summary under Section 63J-5-201 for fiscal year 2018; or

(ii) a nursing care facility that is operated or managed by the same company as a nursing care facility that was included in the federal funds request summary under Section 63J-5-201 for fiscal year 2018.

Section 2. Section **26B-3-145** is enacted to read:

26B-3-145 . Nursing Care Facility Non-State Government-Owned Upper Payment Limit program requirements -- Reporting -- Penalties.

(1) As used in this section:

(a) "Certified nurse aide" means a nursing aide certified by the department and as defined in department rule.

(b) "Declared public health emergency" means the same as that term is defined in Section 58-85-106.

(c) "Direct care staff" means an individual who is a health care provider that provides hands-on care services to a resident of a nursing facility.

(d) "Direct patient care" means the care, services, and supplies that address a resident's physical, behavioral, social, or clinical needs.

(e)(i) "Direct patient care cost" means an expenditure for the care, services, and supplies that directly address a resident's physical, behavioral, social, or clinical needs, as determined by the division in rules the division makes in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(ii) "Direct patient care cost" includes expenditures in the following cost categories:

(A) resident-facing staffing;

(B) plant operation and maintenance;

(C) laundry and linen services;

(D) resident beauty and barber services;

(E) housekeeping;

(F) resident dietary services;

(G) nursing administration;

(H) resident recreational activities and social services;

(I) health care provider education;

(J) medical director services;

(K) resident transportation;

(L) laboratory services;

(M) podiatry and optometry;

(N) dental services;

(O) behavioral health services, including psychology and psychiatry;

(P) physical therapy and occupational therapy;

(Q) speech therapy and audiology therapy;

(R) pharmacy services and prescription drugs; and

(S) non-medical and medical supplies.

(iii) "Direct patient care cost" does not include:

(A) an administrative cost other than nursing administration;

(B) a capital expense;

(C) debt services;

(D) a tax, other than a sales tax or payroll tax attributable to direct patient care;

(E) rent or a lease payment;

(F) a fiscal service;

(G) an ownership distribution;

(H) a management fee, except for the portion of the fee that the nursing facility demonstrates is directly attributable to direct patient care;

(I) compensation paid to an individual who is not actively engaged in providing services to the nursing facility;

(J) a related-party payment to the extent that the payment exceeds the fair market value of the property or service provided; or

(K) any other expenditure that the division establishes in rules made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, does not directly address a resident's physical, behavioral, social, or clinical needs.

(f) "Expense" means all operating and non-operating expenses, before extraordinary gains, that a nursing facility reports in a facility cost profile.

(g) "Facility cost profile" means a nursing facility's annual cost report to the division.

(h) "Health care provider" means the same as that term is defined in Section 78B-3-403.

(i) "Immediate family member" means a spouse, child, parent, sibling, grandparent, or grandchild.

(j) "Licensed nurse" means an individual who is licensed under Title 58, Chapter 31b, Nurse Practice Act.

(k) "Natural disaster" means the same as that term is defined in Section 63G-6a-803.

(l) "Non-program revenue" means a non-state government entity's operating revenue that does not include program revenue.

(m) "Non-state government entity" means the same as that term is defined in Section 26B-3-130.

(n) "Nursing facility" means a nursing care facility that:

(i) is enrolled as a Medicaid provider;

(ii) participates in the program; and

(iii) receives or is eligible to receive a supplemental Medicaid payment under the program.

(o) "Patient care spending quotient" means the amount of a nursing facility's resident care revenue spent on direct patient care calculated by dividing the nursing facility's direct patient care costs for the reporting year by the nursing facility's resident care

revenue for the reporting year.

(p) "Program" means the Nursing Care Facility Non-State Government-Owned Upper Payment Limit program described in Section 26B-3-130.

(q) "Program revenue" means the revenue retained by a non-state government entity from the program that a nursing facility does not spend on direct patient care.

(r) "Quality improvement incentive program" means the nursing home quality improvement incentive program established as part of the Medicaid state plan.

(s) "Related party" means a person that, directly or indirectly through one or more intermediaries:

(i) controls, is controlled by, or is under common control with a nursing facility;

(ii) owns 5% or more of a nursing facility or an entity that controls the nursing facility;

(iii) manages or provides administrative services to a nursing facility; or

(iv) is an immediate family member of an individual described in Subsections (1)(s)(i) through (iii).

(t) "Resident" means an individual who receives health care services from a nursing facility.

(u)(i) "Resident care revenue" means the total operating revenue received by or on behalf of a nursing facility from a resident, government payer, or third-party payer to pay for:

(A) a resident's occupancy or health care at a facility;

(B) resident care; or

(C) the facility's operation.

(ii) "Resident care revenue" does not include:

(A) reimbursements for capital expenditures;

(B) quality improvement program incentive payments;

(C) an intergovernmental transfer or other amount provided as the non-federal share of a Medicaid payment;

(D) an amount the facility is legally required to remit to the department or another governmental entity;

(E) a grant legally restricted to a capital project or another purpose unrelated to facility operations;

(F) funds received from the federal government as reimbursement for expenses related to a federally declared emergency;

(G) insurance proceeds attributable to a casualty loss;

(H) proceeds from the sale of real or personal property; or

(I) extraordinary or non-operating revenue that the division excludes in rules the division makes in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(v)(i) "Resident-facing staffing" means staffing expenditures for an individual who provides services directly to a resident.

(ii) "Resident-facing staffing" includes:

(A) salary and wages;

(B) employee benefits;

(C) payroll taxes;

(D) worker compensation costs;

(E) training expenses; and

(F) contract staffing expenses.

(2)(a) Beginning January 1, 2028, a nursing facility shall demonstrate on the nursing facility's facility cost profile and additional forms or reports that the division requires in rule the division makes in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that the nursing facility's patient care spending quotient is at least 70%.

(b) The division shall determine a nursing facility's compliance with Subsection (2)(a) on an annual basis.

(c) A nursing facility shall demonstrate that an expenditure included in the calculation of the patient care spending quotient:

(i) qualifies as a direct patient care cost expenditure;

(ii) is reasonable and necessary;

(iii) is supported by adequate documentation; and

(iv) has not been included in more than one expenditure category.

(3)(a) Beginning January 1, 2028, a nursing facility shall provide, during each 24-hour period, an average of at least three and six-tenths hours of direct care by direct care staff per resident per day, including:

(i) two hours of direct care by a certified nurse aide per resident per day; and

(ii) one hour of direct care by a licensed nurse per day.

(b) In calculating the hours under this Subsection (3), a nursing facility:

(i) may only include hours:

(A) that a direct care staff actually worked;

(B) during which the direct care staff was assigned to provide, or to clinically supervise, direct patient care; and

(C) that are supported by payroll records, timekeeping records, contract labor records, or other records the division requires; and

(ii) may not include:

(A) paid leave;

(B) time spent on administrative duties or duties unrelated to direct patient care;

(C) time spent on services provided to an individual who is not a resident; or

(D) time worked by an individual whose required license or certification was invalid at the time the individual provided the service.

(c) The division shall calculate resident days using daily resident census information the nursing facility reports.

(4)(a) Beginning January 1, 2028, a nursing facility shall have on duty at all times at least:

(i) one certified nurse aide for every 20 residents; and

(ii) one licensed nurse for every 40 residents.

(b) For purposes of Subsection (4)(a), a nursing facility shall:

(i) calculate the number of required staff members using the number of residents physically present in the nursing facility; and

(ii) round a fraction of a required staff member up to the next whole number.

(c) A nursing facility's compliance:

(i) with Subsection (3) does not excuse noncompliance with this Subsection (4); and

(ii) with this Subsection (4) does not excuse noncompliance with Subsection (3).

(d) This Subsection (4) does not limit a nursing facility's obligation to provide additional staff necessary to satisfy resident acuity, resident needs, or any other applicable state or federal requirement.

(5)(a) A nursing facility violates this section if the nursing facility:

(i) fails to meet the minimum patient care spending quotient required under Subsection (2);

(ii) fails to satisfy a staffing requirement described in Subsection (3) or (4); or

(iii) fails to submit a complete and accurate report required under rules the department makes in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(b) If a nursing facility violates this section as described in Subsection (5)(a), the nursing facility is ineligible to receive incentives in accordance with the quality improvement incentive program.

(c) If a nursing facility violates this section as described in Subsection (5)(a)(i), the division shall impose a penalty in an amount equal to the difference between:

(i) 70% of the nursing facility's resident care revenue for the reporting year; and

(ii) the facility's direct patient care cost expenditures for the reporting year.

(d) If a nursing facility violates Subsection (5)(a)(ii) or (iii), the division may:

(i) require a nursing facility to submit and implement a corrective action plan;

(ii) impose a penalty in an amount that is equal to all or a portion of a supplemental Medicaid payment under the program; or

(iii) take both actions described in Subsections (5)(d)(i) and (ii).

(6)(a) The division shall collect an amount due under Subsection (5), including by any of the following methods:

(i) deducting from a Medicaid payment owed to the nursing facility;

(ii) withholding a future supplemental Medicaid payment under the program;

(iii) recovering a supplemental Medicaid payment previously made under the program; or

(iv) requiring direct payment of the penalty.

(b) Before imposing a penalty or implementing another remedy described in Subsection (5), the division shall provide notice to the nursing facility that includes:

(i) a description of the nature of the violation;

(ii) the amount of the penalty or description of the remedy that the division will impose; and

(iii) the deadline for the nursing facility to pay a penalty or comply with another remedy.

(c) The division shall use penalties collected under this Subsection (6) to provide incentives for quality improvement in accordance with the quality improvement incentive program.

(d) A penalty imposed under this section is in addition to, and does not affect, a nursing facility's obligation to make any other payment or repayment required by state or federal law.

(e) The division may not implement any remedy described in this section to the extent the implementation would result in a direct violation of federal law or regulations.

(7)(a) The division may waive a requirement described in Subsection (2), (3), or (4), if the nursing facility demonstrates that unexpected or exceptional circumstances prevented compliance.

(b) The division may exclude from the calculation under Subsection (2) or (5), extraordinary revenue or extraordinary expenses if the extraordinary revenue or extraordinary expense is the result of:

(i) a natural disaster;

(ii) a declared public health emergency;

(iii) an emergency repair necessary to protect resident health or safety; or

(iv) another extraordinary circumstance the division establishes in rule the division makes in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(c)(i) A waiver the division grants under this Subsection (7) may not exceed one year.

(ii) The division may renew a waiver the division grants under this Subsection (7) if the division makes a new determination under Subsection (7)(a) or (7)(b).

(8) A non-state government entity that participates in the program shall annually submit a report to the division, in accordance with rules the division makes in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that includes:

(a) program revenue, including a detailed accounting of how the non-state government entity spent program revenue;

(b) disaggregated management fee amounts that each nursing facility paid to the non-state government entity, including a description of services performed in exchange for the management fee;

(c) the non-state government entity's annual independently audited financial statement, including documentation of any deficiencies in internal controls;

(d) a statement from the non-state government entity that indicates whether the non-state government entity's non-program revenue is sufficient to cover the non-state government entity's expenses without program revenue; and

(e) any other information the division requires.

(9) The division shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement this section, including rules to establish:

(a) reporting requirements, including the method for a nursing facility to demonstrate:

(i) the portion of a management fee directly attributable to direct patient care; and

(ii) the extent that a related-party payment exceeds the fair market value of the

property or service provided;

(b) as the department deems necessary, additional expenditures that:

(i) directly address a resident's physical, behavioral, social, or clinical needs; and

(ii) do not directly address a resident's physical, behavioral, social, or clinical needs;

(c) extraordinary revenue or non-operating revenue that is excluded from the calculation of resident care revenue for purposes of this section;

(d) the forms and reporting requirements described in Subsection (2) for a nursing facility to demonstrate compliance with this section;

(e) reporting requirements and methodologies for a nursing facility to demonstrate compliance with Subsections (3) and (4);

(f) penalties for a violation of Subsections (3) and (4), as described in Subsection (7)(b);

(g) requirements for demonstrating unexpected or exceptional circumstances that prevented a nursing facility's compliance with this section for purposes of granting a waiver under Subsection (7)(a);

(h) other extraordinary circumstances described in Subsection (7)(b);

(i) reporting requirements for the report described in Subsection (8); and

(j) timelines for compliance with division rules and this section.

(10) Beginning on July 1, 2028, the division shall annually publish on the division's website, for each nursing facility:

(a) the nursing facility's patient care spending quotient;

(b) the nursing facility's compliance status with Subsections (2), (3), and (4);

(c) the amount of any penalty the division imposed under this section;

(d) the status of the nursing facility's corrective action plan required under this section, if any; and

(e) any current waiver the division granted to the nursing facility under Subsection (7)(a).

Section 3. Section **26B-3-146** is enacted to read:

26B-3-146 . Nursing facility quality improvement program.

(1) As used in this section:

(a) "Nursing facility" the same as that term is defined in Section 26B-3-145.

(b) "Quality improvement program" means the program the division establishes to require a nursing facility to meet certain quality metrics.

(2) The division shall:

(a) establish a quality improvement program; and

(b) on or before January 1, 2028, make rules in accordance with Title 63G, Chapter 3,

Utah Administrative Rulemaking Act, to establish at least 15 quality metrics for nursing facilities participating in the quality improvement program.

Section 4. **Effective Date.**

This bill takes effect on May 5, 2027.