

Effective 3/25/2016

26-21-23 Licensing of a new nursing care facility -- Approval for a licensed bed in an existing nursing care facility -- Fine for excess Medicare inpatient revenue.

- (1) Notwithstanding Section 26-21-2, as used in this section:
 - (a) "Medicaid" means the Medicaid program, as that term is defined in Section 26-18-2.
 - (b) "Medicaid certification" means the same as that term is defined in Section 26-18-501.
 - (c) "Nursing care facility" and "small health care facility":
 - (i) mean the following facilities licensed by the department under this chapter:
 - (A) a skilled nursing facility;
 - (B) an intermediate care facility; or
 - (C) a small health care facility with four to 16 beds functioning as a skilled nursing facility;and
 - (ii) do not mean:
 - (A) an intermediate care facility for the intellectually disabled;
 - (B) a critical access hospital that meets the criteria of 42 U.S.C. 1395i-4(c)(2) (1998);
 - (C) a small health care facility that is hospital based; or
 - (D) a small health care facility other than a skilled nursing care facility with no more than 16 beds.
 - (d) "Rural county" means the same as that term is defined in Section 26-18-501.
- (2) Except as provided in Subsection (6) and Section 26-21-28, a new nursing care facility shall be approved for a health facility license only if:
 - (a) under the provisions of Section 26-18-503 the facility's nursing care facility program has received Medicaid certification or will receive Medicaid certification for each bed in the facility;
 - (b) the facility's nursing care facility program has received or will receive approval for Medicaid certification under Subsection 26-18-503(5), if the facility is located in a rural county; or
 - (c)
 - (i) the applicant submits to the department the information described in Subsection (3); and
 - (ii) based on that information, and in accordance with Subsection (4), the department determines that approval of the license best meets the needs of the current and future patients of nursing care facilities within the area impacted by the new facility.
- (3) A new nursing care facility seeking licensure under Subsection (2) shall submit to the department the following information:
 - (a) proof of the following as reasonable evidence that bed capacity provided by nursing care facilities within the county or group of counties that would be impacted by the facility is insufficient:
 - (i) nursing care facility occupancy within the county or group of counties:
 - (A) has been at least 75% during each of the past two years for all existing facilities combined; and
 - (B) is projected to be at least 75% for all nursing care facilities combined that have been approved for licensure but are not yet operational;
 - (ii) there is no other nursing care facility within a 35-mile radius of the new nursing care facility seeking licensure under Subsection (2); and
 - (b) a feasibility study that:
 - (i) shows the facility's annual Medicare inpatient revenue, including Medicare Advantage revenue, will not exceed 49% of the facility's annual total revenue during each of the first three years of operation;
 - (ii) shows the facility will be financially viable if the annual occupancy rate is at least 88%;
 - (iii) shows the facility will be able to achieve financial viability;

- (iv) shows the facility will not:
 - (A) have an adverse impact on existing or proposed nursing care facilities within the county or group of counties that would be impacted by the facility; or
 - (B) be within a three-mile radius of an existing nursing care facility or a new nursing care facility that has been approved for licensure but is not yet operational;
 - (v) is based on reasonable and verifiable demographic and economic assumptions;
 - (vi) is based on data consistent with department or other publicly available data; and
 - (vii) is based on existing sources of revenue.
- (4) When determining under Subsection (2)(c) whether approval of a license for a new nursing care facility best meets the needs of the current and future patients of nursing care facilities within the area impacted by the new facility, the department shall consider:
- (a) whether the county or group of counties that would be impacted by the facility is underserved by specialized or unique services that would be provided by the facility; and
 - (b) how additional bed capacity should be added to the long-term care delivery system to best meet the needs of current and future nursing care facility patients within the impacted area.
- (5) The division may approve the addition of a licensed bed in an existing nursing care facility only if:
- (a) each time the facility seeks approval for the addition of a licensed bed, the facility satisfies each requirement for licensure of a new nursing care facility in Subsections (2)(c), (3), and (4); or
 - (b) the bed has been approved for Medicaid certification under Section 26-18-503 or 26-18-505.
- (6) Subsection (2) does not apply to a nursing care facility that:
- (a) has, by the effective date of this act, submitted to the department schematic drawings, and paid applicable fees, for a particular site or a site within a three-mile radius of that site;
 - (b) before July 1, 2016:
 - (i) filed an application with the department for licensure under this section and paid all related fees due to the department; and
 - (ii) submitted to the department architectural plans and specifications, as defined by the department by administrative rule, for the facility;
 - (c) applies for a license within three years of closing for renovation;
 - (d) replaces a nursing care facility that:
 - (i) closed within the past three years; or
 - (ii) is located within five miles of the facility;
 - (e) is undergoing a change of ownership, even if a government entity designates the facility as a new nursing care facility; or
 - (f) is a state-owned veterans home, regardless of who operates the home.
- (7)
- (a) For each year the annual Medicare inpatient revenue, including Medicare Advantage revenue, of a nursing care facility approved for a health facility license under Subsection (2)(c) exceeds 49% of the facility's total revenue for the year, the facility shall be subject to a fine of \$50,000, payable to the department.
 - (b) A nursing care facility approved for a health facility license under Subsection (2)(c) shall submit to the department the information necessary for the department to annually determine whether the facility is subject to the fine in Subsection (7)(a).
 - (c) The department:
 - (i) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, specifying the information a nursing care facility shall submit to the department under Subsection (7)(b);

- (ii) shall annually determine whether a facility is subject to the fine in Subsection (7)(a);
- (iii) may take one or more of the actions in Section 26-21-11 or 26-23-6 against a facility for nonpayment of a fine due under Subsection (7)(a); and
- (iv) shall deposit fines paid to the department under Subsection (7)(a) into the Nursing Care Facilities Account, created by Section 26-35a-106.

Amended by Chapter 276, 2016 General Session

Amended by Chapter 357, 2016 General Session