

**NURSING CARE FACILITY MEDICAID  
CERTIFICATION AMENDMENTS**

2004 GENERAL SESSION

STATE OF UTAH

**Sponsor: Rebecca D. Lockhart**

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**LONG TITLE**

**General Description:**

This bill amends the procedure used by the Department of Health to certify nursing care facilities for Medicaid reimbursement.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ prohibits the department from certifying any additional beds for Medicaid reimbursement unless certain criteria are met;
- ▶ establishes the criteria for certifying additional beds for Medicaid reimbursement;
- ▶ provides an appeal process when the department rejects a request for additional Medicaid beds; and
- ▶ provides rulemaking authority.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill takes effect on July 1, 2004.

**Utah Code Sections Affected:**

ENACTS:

**26-18-501**, Utah Code Annotated 1953

**26-18-502**, Utah Code Annotated 1953



28 26-18-503, Utah Code Annotated 1953

29 26-18-504, Utah Code Annotated 1953



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

32 Section 1. Section 26-18-501 is enacted to read:

33 **Part 5. Long Term Care Facility - Medicaid Certification**

34 **26-18-501. Definitions.**

35 As used in this part:

36 (1) "Certified program" means a nursing care facility program with Medicaid  
37 certification.

38 (2) "Director" means the director of the Division of Health Care Financing.

39 (3) "Medicaid certification" means the right to Medicaid reimbursement as a provider  
40 of a nursing care facility program as established by division rule.

41 (4) (a) "Nursing care facility" means the following facilities licensed by the department  
42 under Chapter 21, Health Care Facility Licensing and Inspection Act:

43 (i) skilled nursing homes;

44 (ii) intermediate care facilities; and

45 (iii) intermediate care facilities for the mentally retarded.

46 (b) "Nursing care facility" does not mean a critical access hospital that meets the  
47 criteria of 42 U.S.C. 13951-4(c)(2) (1998).

48 (5) "Nursing care facility program" means the personnel, licenses, services, contracts  
49 and all other requirements that must be met for a nursing care facility to be eligible for  
50 Medicaid certification under this part and division rule.

51 (6) "Physical facility" means the buildings or other physical structures where a nursing  
52 care facility program is operated.

53 (7) "Service area" means the boundaries of the distinct geographic area served by a  
54 certified program as determined by the division in accordance with this part and division rule.

55 Section 2. Section 26-18-502 is enacted to read:

56 **26-18-502. Purpose -- Medicaid certification of nursing care facilities.**

57 (1) The Legislature finds:

58 (a) that an oversupply of nursing care facility programs in the state adversely affects the

59 state Medicaid program and the health of the people in the state; and

60 (b) it is in the best interest of the state to prohibit Medicaid certification of nursing care  
61 facility programs, except as authorized by this part.

62 (2) Medicaid reimbursement of nursing care facility programs is limited to:

63 (a) the number of nursing care facility programs with Medicaid certification as of

64 Ĥ [January 13, 1989] MAY 4, 2004 ĥ ; and

65 (b) additional nursing care facility programs approved for Medicaid certification under  
66 the provisions of Subsection 26-18-503(5).

67 (3) The division shall not:

68 (a) except as authorized by Section 26-18-503:

69 (i) process initial applications for Medicaid certification or execute provider  
70 agreements with nursing care facility programs; or

71 (ii) reinstate Medicaid certification for a nursing care facility whose certification  
72 expired or was terminated by action of the federal or state government; or

73 (b) execute a Medicaid provider agreement with a certified program that moves its  
74 nursing care facility program to a different physical facility, except as authorized by Subsection  
75 26-18-503(3).

76 Section 3. Section **26-18-503** is enacted to read:

77 **26-18-503. Authorization to renew, transfer, or increase Medicaid certified**  
78 **programs.**

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

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

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

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

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

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

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

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

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

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

103 (b) the new or renovated physical facility is in the same county or within a five-mile  
104 radius of the original physical facility;

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

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

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

113 (f) the bed capacity in the physical facility that will be used for additional Medicaid  
114 certification has not been expanded by more than 30% over the previously certified program's  
115 bed capacity, unless the director has approved additional beds in accordance with Subsection  
116 (5).

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

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

120 (ii) the requesting entity agrees to defend and indemnify the department against any

121 claims by a third party who may assert a right to operate the certified program; and  
122 (iii) if a third party is found, by final agency action of the department after exhaustion  
123 of all administrative and judicial appeal rights, to be entitled to operate a certified program at  
124 the physical facility the certified program shall voluntarily comply with Subsection (4)(b).  
125 (b) If a finding is made under the provisions of Subsection (4)(a)(iii):  
126 (i) the certified program shall immediately surrender its Medicaid certification and  
127 comply with division rules regarding billing for Medicaid and the provision of services to  
128 Medicaid patients; and  
129 (ii) the department shall transfer the surrendered Medicaid certification to the third  
130 party who prevailed under Subsection (4)(a)(iii).  
131 (5) (a) As provided in Subsection 26-21-502(2)(b), the director shall issue additional  
132 Medicaid certification when requested by a nursing care facility or other interested party if  
133 there is insufficient bed capacity with current certified programs in a service area. A  
134 determination of insufficient bed capacity shall be based on the nursing care facility or other  
135 interested party providing reasonable evidence of an inadequate number of beds in the county  
136 or group of counties impacted by the requested Medicaid certification based on:  
137 (i) current demographics which demonstrate nursing care facility occupancy levels of at  
138 least 90% for all existing and proposed facilities within a prospective three-year period;  
139 (ii) current nursing care facility occupancy levels of 90%; or  
140 (iii) no other nursing care facility within a 35-mile radius of the nursing care facility  
141 requesting the additional certification.  
142 (b) In addition to the requirements of Subsection (5)(a), a nursing care facility program  
143 must demonstrate by an independent analysis that the nursing care facility can financially  
144 support itself at an after tax break-even net income level based on projected occupancy levels.  
145 (c) When making a determination to certify additional beds or an additional nursing  
146 care facility program under Subsection (5)(a):  
147 (i) the director shall consider whether the nursing care facility will offer specialized or  
148 unique services that are underserved in a service area;  
149 (ii) the director shall consider whether any Medicaid certified beds are subject to a  
150 claim by a previous certified program that may reopen under the provisions of Subsections (2)  
151 and (3); and

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

154 Section 4. Section **26-18-504** is enacted to read:

155 **26-18-504. Appeals of division decision -- Rulemaking authority -- Application of**  
156 **act.**

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

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

163 (3) A nursing care facility may receive Medicaid certification under the rules in effect  
164 prior to July 1, 2004 if the nursing care facility, prior to ~~July 1~~ **MAY 4**, 2004:

165 (a) paid applicable fees to the department; and

166 (b) ~~H [received preliminary approval of the facility's construction plan by the department]~~

166a **SUBMITS CONSTRUCTION PLANS TO THE DEPARTMENT h :**

167 or

168 (c) is in a current phase of construction approved by the department.

169 Section 5. **Effective date.**

170 This bill takes effect on July 1, 2004.

**Legislative Review Note**  
**as of 1-22-04 1:30 PM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**

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**Fiscal Note**  
**Bill Number HB0249**

**Nursing Care Facility Medicaid Certification Amendments**

*02-Feb-04*

*10:29 AM*

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**State Impact**

This bill establishes current Department of Health procedures in code for the certification of nursing care facilities. Any additional administrative costs associated with this bill are expected to be minimal and can be handled within existing budgets.

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**Individual and Business Impact**

No fiscal impact.

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**Office of the Legislative Fiscal Analyst**