

Senator Leonard M. Blackham proposes the following substitute bill:

LONG-TERM CARE FACILITIES

AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Leonard M. Blackham

LONG TITLE

General Description:

This bill enacts the Nursing Care Facility Assessment Act to improve the Medicaid reimbursement rate for care given to the elderly and the physically disabled in nursing care facilities.

Highlighted Provisions:

This bill:

- ▶ designates the Department of Health as the collecting agent for the nursing care facility assessment; and
- ▶ enacts the Nursing Care Facility Assessment Act which includes:
 - definitions;
 - collection, remittance, and payment of the nursing care facility assessment;
 - penalties for nonpayment or underpayment of the assessment;
 - the creation of a restricted account; and
 - adjustments to the nursing care facility Medicaid reimbursement rate under certain circumstances.

Monies Appropriated in this Bill:

None

Other Special Clauses:



26 This bill takes effect on July 1, 2004.

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **26-1-30 (Effective 07/01/04)**, as last amended by Chapter 171, Laws of Utah 2003

30 ENACTS:

31 **26-35a-101**, Utah Code Annotated 1953

32 **26-35a-102**, Utah Code Annotated 1953

33 **26-35a-103**, Utah Code Annotated 1953

34 **26-35a-104**, Utah Code Annotated 1953

35 **26-35a-105**, Utah Code Annotated 1953

36 **26-35a-106**, Utah Code Annotated 1953

37 **26-35a-107**, Utah Code Annotated 1953



38
39 *Be it enacted by the Legislature of the state of Utah:*

40 Section 1. Section **26-1-30 (Effective 07/01/04)** is amended to read:

41 **26-1-30 (Effective 07/01/04). Powers and duties of department.**

42 (1) The department shall:

43 (a) enter into cooperative agreements with the Department of Environmental Quality to
44 delineate specific responsibilities to assure that assessment and management of risk to human
45 health from the environment are properly administered; and

46 (b) consult with the Department of Environmental Quality and enter into cooperative
47 agreements, as needed, to ensure efficient use of resources and effective response to potential
48 health and safety threats from the environment, and to prevent gaps in protection from potential
49 risks from the environment to specific individuals or population groups.

50 (2) In addition to all other powers and duties of the department, it shall have and
51 exercise the following powers and duties:

52 (a) promote and protect the health and wellness of the people within the state;

53 (b) establish, maintain, and enforce rules necessary or desirable to carry out the
54 provisions and purposes of this title to promote and protect the public health or to prevent
55 disease and illness;

56 (c) investigate and control the causes of epidemic, infectious, communicable, and other

57 diseases affecting the public health;

58 (d) provide for the detection, reporting, prevention, and control of communicable,
59 infectious, acute, chronic, or any other disease or health hazard that the department considers to
60 be dangerous, important, or likely to affect the public health;

61 (e) collect and report information on causes of injury, sickness, death, and disability
62 and the risk factors that contribute to the causes of injury, sickness, death, and disability within
63 the state;

64 (f) collect, prepare, publish, and disseminate information to inform the public
65 concerning the health and wellness of the population, specific hazards, and risks that may affect
66 the health and wellness of the population and specific activities which may promote and protect
67 the health and wellness of the population;

68 (g) establish and operate programs necessary or desirable for the promotion or
69 protection of the public health and the control of disease or which may be necessary to
70 ameliorate the major causes of injury, sickness, death, and disability in the state, except that the
71 programs shall not be established if adequate programs exist in the private sector;

72 (h) establish, maintain, and enforce isolation and quarantine, and for this purpose only,
73 exercise physical control over property and individuals as the department finds necessary for
74 the protection of the public health;

75 (i) close theaters, schools, and other public places and forbid gatherings of people
76 when necessary to protect the public health;

77 (j) abate nuisances when necessary to eliminate sources of filth and infectious and
78 communicable diseases affecting the public health;

79 (k) make necessary sanitary and health investigations and inspections in cooperation
80 with local health departments as to any matters affecting the public health;

81 (l) establish laboratory services necessary to support public health programs and
82 medical services in the state;

83 (m) establish and enforce standards for laboratory services which are provided by any
84 laboratory in the state when the purpose of the services is to protect the public health;

85 (n) cooperate with the Labor Commission to conduct studies of occupational health
86 hazards and occupational diseases arising in and out of employment in industry, and make
87 recommendations for elimination or reduction of the hazards;

88 (o) cooperate with the local health departments, the Department of Corrections, the
89 Administrative Office of the Courts, the Division of Juvenile Justice Services, and the Crime
90 Victims Reparations Board to conduct testing for HIV infection of convicted sexual offenders
91 and any victims of a sexual offense;

92 (p) investigate the cause of maternal and infant mortality;

93 (q) establish, maintain, and enforce a procedure requiring the blood of adult pedestrians
94 and drivers of motor vehicles killed in highway accidents be examined for the presence and
95 concentration of alcohol;

96 (r) provide the commissioner of public safety with monthly statistics reflecting the
97 results of the examinations provided for in Subsection (2)(q) and provide safeguards so that
98 information derived from the examinations is not used for a purpose other than the compilation
99 of statistics authorized in this Subsection (2)(r);

100 (s) establish qualifications for individuals permitted to draw blood pursuant to Section
101 41-6-44.10, and to issue permits to individuals it finds qualified, which permits may be
102 terminated or revoked by the department;

103 (t) establish a uniform public health program throughout the state which includes
104 continuous service, employment of qualified employees, and a basic program of disease
105 control, vital and health statistics, sanitation, public health nursing, and other preventive health
106 programs necessary or desirable for the protection of public health;

107 (u) adopt rules and enforce minimum sanitary standards for the operation and
108 maintenance of:

109 (i) orphanages;

110 (ii) boarding homes;

111 (iii) summer camps for children;

112 (iv) lodging houses;

113 (v) hotels;

114 (vi) restaurants and all other places where food is handled for commercial purposes,
115 sold, or served to the public;

116 (vii) tourist and trailer camps;

117 (viii) service stations;

118 (ix) public conveyances and stations;

- 119 (x) public and private schools;
- 120 (xi) factories;
- 121 (xii) private sanatoria;
- 122 (xiii) barber shops;
- 123 (xiv) beauty shops;
- 124 (xv) physicians' offices;
- 125 (xvi) dentists' offices;
- 126 (xvii) workshops;
- 127 (xviii) industrial, labor, or construction camps;
- 128 (xix) recreational resorts and camps;
- 129 (xx) swimming pools, public baths, and bathing beaches;
- 130 (xxi) state, county, or municipal institutions, including hospitals and other buildings,
- 131 centers, and places used for public gatherings; and
- 132 (xxii) of any other facilities in public buildings and on public grounds;
- 133 (v) conduct health planning for the state;
- 134 (w) monitor the costs of health care in the state and foster price competition in the
- 135 health care delivery system;
- 136 (x) adopt rules for the licensure of health facilities within the state pursuant to Title 26,
- 137 Chapter 21, Health Care Facility Licensing and Inspection Act;
- 138 (y) license the provision of child care; [~~and~~]
- 139 (z) accept contributions to and administer the funds contained in the Organ Donation
- 140 Contribution Fund created in Section 26-18b-101[-]; and
- 141 (aa) serve as the collecting agent, on behalf of the state, for the nursing care facility
- 142 assessment fee imposed under Title 26, Chapter 35a, Nursing Care Facility Assessment Act,
- 143 and adopt rules for the enforcement and administration of the nursing facility assessment
- 144 consistent with the provisions of Title 26, Chapter 35a.

Section 2. Section **26-35a-101** is enacted to read:

CHAPTER 35a. NURSING CARE FACILITY ASSESSMENT ACT

26-35a-101. Title.

This chapter is known as the "Nursing Care Facility Assessment Act."

Section 3. Section **26-35a-102** is enacted to read:

150 **26-35a-102. Legislative findings.**

151 (1) The Legislature finds that there is an important state purpose to improve the quality
152 of care given to the elderly and the physically disabled, in long-term care nursing facilities.

153 (2) The Legislature finds that in order to improve the quality of care to those persons
154 described in Subsection (1), the rates paid to the nursing care facilities by the Medicaid
155 program must be adequate to encourage and support quality care.

156 (3) The Legislature finds that in order to meet the objectives in Subsections (1) and (2),
157 adequate funding must be provided to increase the rates paid to nursing care facilities providing
158 services pursuant to the Medicaid program.

159 Section 4. Section **26-35a-103** is enacted to read:

160 **26-35a-103. Definitions.**

161 As used in this chapter:

162 (1) (a) "Nursing care facility" means a nursing care facility described in Subsection
163 26-21-2(17).

164 (b) "Nursing care facility" does not include:

165 (i) the Utah State Developmental Center;

166 (ii) the Utah State Hospital;

167 (iii) a general acute hospital, specialty hospital, or small health care facility as defined
168 in Section 26-21-2;

169 (iv) an intermediate care facility for the mentally retarded that is licensed under Section
170 26-21-13.5; or

171 (v) the Utah State Veteran's Home.

172 (2) "Patient day" means each calendar day in which an individual patient is admitted to
173 the nursing care facility during a calendar month, even if on a temporary leave of absence from
174 the facility.

175 Section 5. Section **26-35a-104** is enacted to read:

176 **26-35a-104. Collection, remittance, and payment of nursing care facilities**
177 **assessment.**

178 (1) (a) Beginning July 1, 2004, an assessment is imposed upon each nursing care
179 facility in the amount designated in Subsection (1)(c).

180 (b) (i) The department shall establish by rule, a uniform rate per non-Medicare patient

181 day that may not exceed 6% of the total gross revenue for services provided to patients of all
182 nursing care facilities licensed in this state.

183 (ii) For purposes of Subsection (1)(b)(i), total revenue does not include charitable
184 contribution received by a nursing care facility.

185 (c) The department shall calculate the assessment imposed under Subsection (1)(a) by
186 multiplying the total number of patient days of care provided to non-Medicare patients by the
187 nursing care facility, as provided to the department pursuant to Subsection (3)(a), by the
188 uniform rate established by the department pursuant to Subsection (1)(b).

189 (2) (a) The assessment imposed by this chapter is due and payable on a monthly basis
190 on or before the last day of the month next succeeding each monthly period.

191 (b) The collecting agent for this assessment shall be the department which is vested
192 with the administration and enforcement of this chapter, including the right to audit records of
193 a nursing care facility related to patient days of care for the facility.

194 (c) The department shall forward proceeds from the assessment imposed by this
195 chapter to the state treasurer for deposit in the restricted account as specified in Section
196 26-35a-106.

197 (3) Each nursing care facility shall, on or before the end of the month next succeeding
198 each calendar monthly period, file with the department:

199 (a) a report which includes:

200 (i) the total number of patient days of care the facility provided to non-Medicare
201 patients during the preceding month;

202 (ii) the total gross revenue the facility earned as compensation for services provided to
203 patients during the preceding month; and

204 (iii) any other information required by the department; and

205 (b) a return for the monthly period, and shall remit with the return the assessment
206 required by this chapter to be paid for the period covered by the return.

207 (4) Each return shall contain information and be in the form the department prescribes
208 by rule.

209 (5) The assessment as computed in the return is an allowable cost for Medicaid
210 reimbursement purposes.

211 (6) The department may by rule, extend the time for making returns and paying the

212 assessment.

213 (7) Each nursing care facility that fails to pay any assessment required to be paid to the
214 state, within the time required by this chapter, or that fails to file a return as required by this
215 chapter, shall pay, in addition to the assessment, penalties and interest as provided in Section
216 26-35a-105.

217 Section 6. Section **26-35a-105** is enacted to read:

218 **26-35a-105. Penalties and interest.**

219 (1) The penalty for failure to file a return or pay the assessment due within the time
220 prescribed by this chapter is the greater of \$50, or 1% of the assessment due on the return.

221 (2) For failure to pay within 30 days of a notice of deficiency of assessment required to
222 be paid, the penalty is the greater of \$50 or 5% of the assessment due.

223 (3) The penalty for underpayment of the assessment is as follows:

224 (a) If any underpayment of assessment is due to negligence, the penalty is 25% of the
225 underpayment.

226 (b) If the underpayment of the assessment is due to intentional disregard of law or rule,
227 the penalty is 50% of the underpayment.

228 (4) For intent to evade the assessment, the penalty is 100% of the underpayment.

229 (5) The rate of interest applicable to an underpayment of an assessment under this
230 chapter or an unpaid penalty under this chapter is 12% annually.

231 (6) The department may waive the imposition of a penalty for good cause.

232 Section 7. Section **26-35a-106** is enacted to read:

233 **26-35a-106. Restricted account -- Creation -- Deposits.**

234 (1) (a) There is created a restricted account in the General Fund known as the "Nursing
235 Care Facilities Account" consisting of:

236 (i) proceeds from the assessment imposed by Section 26-35a-104 which shall be
237 deposited in the restricted account to be used for the purpose described in Subsection (1)(b);

238 (ii) money appropriated or otherwise made available by the Legislature; and

239 (iii) any interest earned on the account.

240 (b) (i) Money in the account shall only be used:

241 (A) to the extent authorized by federal law, to obtain federal financial participation in
242 the Medicaid program; and

243 (B) in the manner described in Subsection (1)(b)(ii).

244 (ii) The money appropriated from the restricted account to the department:

245 (A) shall be used only to increase the rates paid prior to the effective date of this act to

246 nursing care facilities for providing services pursuant to the Medicaid program and for

247 administrative expenses as described in Subsection (1)(b)(ii)(C);

248 (B) may not be used to replace existing state expenditures paid to nursing care facilities

249 for providing services pursuant to the Medicaid program; and

250 (C) may be used for ~~the~~ **actual** administrative expenses for implementation of this act, if

251 the administrative expenses for the fiscal year do not exceed ~~the~~ **1%** **3%** of the money deposited

251a into

252 the restricted account during the fiscal year.

253 (2) Money shall be appropriated from the restricted account to the department for the

254 purposes described in Subsection (1)(b) in accordance with Title 63, Chapter 38, Budgetary

255 Procedures Act.

256 Section 8. Section **26-35a-107** is enacted to read:

257 **26-35a-107. Adjustment to nursing care facility Medicaid reimbursement rates.**

258 If federal law or regulation prohibits the money in the Nursing Care Facilities Account

259 from being used in the manner set forth in Subsection 26-35a-106(1)(b), the rates paid to

260 nursing care facilities for providing services pursuant to the Medicaid program must be

261 changed as follows:

262 (1) except as otherwise provided in Subsection (2), to the rates paid to nursing care

263 facilities on June 30, 2004; or

264 (2) if the Legislature or the department has on or after July 1, 2004, changed the rates

265 paid to facilities through a manner other than the use of expenditures from the Nursing Care

266 Facilities Account, to the rates provided for by the Legislature or the department.

267 Section 9. **Effective date.**

268 This bill takes effect on July 1, 2004.