

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:

This bill takes effect on July 1, 2004.

Utah Code Sections Affected:

AMENDS:

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

ENACTS:

26-35a-101, Utah Code Annotated 1953

26-35a-102, Utah Code Annotated 1953

26-35a-103, Utah Code Annotated 1953

26-35a-104, Utah Code Annotated 1953

26-35a-105, Utah Code Annotated 1953

26-35a-106, Utah Code Annotated 1953

26-35a-107, Utah Code Annotated 1953

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

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

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

(1) The department shall:

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

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

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

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

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

(c) investigate and control the causes of epidemic, infectious, communicable, and other diseases affecting the public health;

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

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

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

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

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

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

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

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

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

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

(n) cooperate with the Labor Commission to conduct studies of occupational health

hazards and occupational diseases arising in and out of employment in industry, and make recommendations for elimination or reduction of the hazards;

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

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

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

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

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

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

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

(i) orphanages;

(ii) boarding homes;

(iii) summer camps for children;

(iv) lodging houses;

(v) hotels;

- (vi) restaurants and all other places where food is handled for commercial purposes, sold, or served to the public;
- (vii) tourist and trailer camps;
- (viii) service stations;
- (ix) public conveyances and stations;
- (x) public and private schools;
- (xi) factories;
- (xii) private sanatoria;
- (xiii) barber shops;
- (xiv) beauty shops;
- (xv) physicians' offices;
- (xvi) dentists' offices;
- (xvii) workshops;
- (xviii) industrial, labor, or construction camps;
- (xix) recreational resorts and camps;
- (xx) swimming pools, public baths, and bathing beaches;
- (xxi) state, county, or municipal institutions, including hospitals and other buildings, centers, and places used for public gatherings; and
- (xxii) of any other facilities in public buildings and on public grounds;
- (v) conduct health planning for the state;
- (w) monitor the costs of health care in the state and foster price competition in the health care delivery system;
- (x) adopt rules for the licensure of health facilities within the state pursuant to Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act;
- (y) license the provision of child care; [~~and~~]
- (z) accept contributions to and administer the funds contained in the Organ Donation Contribution Fund created in Section 26-18b-101[-]; and
- (aa) serve as the collecting agent, on behalf of the state, for the nursing care facility

assessment fee imposed under Title 26, Chapter 35a, Nursing Care Facility Assessment Act, and adopt rules for the enforcement and administration of the nursing facility assessment 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:

26-35a-102. Legislative findings.

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

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

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

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

26-35a-103. Definitions.

As used in this chapter:

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

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

(i) the Utah State Developmental Center;

(ii) the Utah State Hospital;

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

(iv) an intermediate care facility for the mentally retarded that is licensed under Section

26-21-13.5; or

(v) the Utah State Veteran's Home.

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

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

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

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

(b) (i) The department shall establish by rule, a uniform rate per non-Medicare patient day that may not exceed 6% of the total gross revenue for services provided to patients of all nursing care facilities licensed in this state.

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

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

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

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

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

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

- (a) a report which includes:
 - (i) the total number of patient days of care the facility provided to non-Medicare patients during the preceding month;
 - (ii) the total gross revenue the facility earned as compensation for services provided to patients during the preceding month; and
 - (iii) any other information required by the department; and
- (b) a return for the monthly period, and shall remit with the return the assessment required by this chapter to be paid for the period covered by the return.
- (4) Each return shall contain information and be in the form the department prescribes by rule.
- (5) The assessment as computed in the return is an allowable cost for Medicaid reimbursement purposes.
- (6) The department may by rule, extend the time for making returns and paying the assessment.
- (7) Each nursing care facility that fails to pay any assessment required to be paid to the state, within the time required by this chapter, or that fails to file a return as required by this chapter, shall pay, in addition to the assessment, penalties and interest as provided in Section 26-35a-105.

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

26-35a-105. Penalties and interest.

- (1) The penalty for failure to file a return or pay the assessment due within the time prescribed by this chapter is the greater of \$50, or 1% of the assessment due on the return.
- (2) For failure to pay within 30 days of a notice of deficiency of assessment required to be paid, the penalty is the greater of \$50 or 5% of the assessment due.
- (3) The penalty for underpayment of the assessment is as follows:
 - (a) If any underpayment of assessment is due to negligence, the penalty is 25% of the underpayment.
 - (b) If the underpayment of the assessment is due to intentional disregard of law or rule,

the penalty is 50% of the underpayment.

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

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

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

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

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

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

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

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

(iii) any interest earned on the account.

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

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

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

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

(A) shall be used only to increase the rates paid prior to the effective date of this act to nursing care facilities for providing services pursuant to the Medicaid program and for administrative expenses as described in Subsection (1)(b)(ii)(C);

(B) may not be used to replace existing state expenditures paid to nursing care facilities for providing services pursuant to the Medicaid program; and

(C) may be used for administrative expenses for implementation of this act, if the administrative expenses for the fiscal year do not exceed 3% of the money deposited into the restricted account during the fiscal year.

(2) Money shall be appropriated from the restricted account to the department for the purposes described in Subsection (1)(b) in accordance with Title 63, Chapter 38, Budgetary

Procedures Act.

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

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

If federal law or regulation prohibits the money in the Nursing Care Facilities Account from being used in the manner set forth in Subsection 26-35a-106(1)(b), the rates paid to nursing care facilities for providing services pursuant to the Medicaid program must be changed as follows:

(1) except as otherwise provided in Subsection (2), to the rates paid to nursing care facilities on June 30, 2004; or

(2) if the Legislature or the department has on or after July 1, 2004, changed the rates paid to facilities through a manner other than the use of expenditures from the Nursing Care Facilities Account, to the rates provided for by the Legislature or the department.

Section 9. **Effective date.**

This bill takes effect on July 1, 2004.