

28 AMENDS:

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

30 **51-5-4**, as last amended by Chapter 256, Laws of Utah 2002

31 ENACTS:

32 **26-35a-101**, Utah Code Annotated 1953

33 **26-35a-102**, Utah Code Annotated 1953

34 **26-35a-103**, Utah Code Annotated 1953

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

36 **26-35a-105**, Utah Code Annotated 1953

37 **26-35a-106**, Utah Code Annotated 1953

38 **26-35a-107**, Utah Code Annotated 1953

39

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

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

42 **26-1-30 (Effective 07/01/04). Powers and duties of department.**

43 (1) The department shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

89 (o) cooperate with the local health departments, the Department of Corrections, the

90 Administrative Office of the Courts, the Division of Juvenile Justice Services, and the Crime
91 Victims Reparations Board to conduct testing for HIV infection of convicted sexual offenders
92 and any victims of a sexual offense;

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

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

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

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

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

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

110 (i) orphanages;

111 (ii) boarding homes;

112 (iii) summer camps for children;

113 (iv) lodging houses;

114 (v) hotels;

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

117 (vii) tourist and trailer camps;

118 (viii) service stations;

119 (ix) public conveyances and stations;

120 (x) public and private schools;

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

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

147 **CHAPTER 35a. NURSING CARE FACILITY ASSESSMENT ACT**

148 **26-35a-101. Title.**

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

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

151 **26-35a-102. Legislative findings.**

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

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

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

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

161 **26-35a-103. Definitions.**

162 As used in this chapter:

163 (1) (a) "Nursing care facility" means a nursing care facility described in Subsection
164 26-21-2(17).

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

166 (i) the Utah State Developmental Center;

167 (ii) the Utah State Hospital;

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

170 (iv) an intermediate care facility for the mentally retarded that is licensed under Section
171 26-21-13.5; or

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

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

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

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

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

181 (b) (i) The department shall establish by rule, a uniform rate per non-Medicare patient
182 day that may not exceed 6% of the total annual accrual basis gross revenue for services

183 provided to patients of all nursing care facilities licensed in this state.

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

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

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

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

195 (c) The department shall forward proceeds from the assessment imposed by this
196 chapter to the state treasurer for deposit in the Special Revenue Fund as specified in Section
197 26-35a-106.

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

200 (a) a report which includes:

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

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

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

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

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

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

212 (6) The department may by rule, extend the time for making returns and paying the
213 assessment.

214 (7) Each nursing care facility that fails to pay any assessment required to be paid to the
215 state, within the time required by this chapter, or that fails to file a return as required by this
216 chapter, shall pay, in addition to the assessment, penalties and interest as provided in Section
217 26-35a-105.

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

219 **26-35a-105. Penalties and interest.**

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

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

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

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

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

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

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

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

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

234 **26-35a-106. Special Revenue Fund -- Creation -- Deposits.**

235 (1) (a) There is created in accordance with Section 51-5-4, a Special Revenue Fund
236 known as the "Nursing Care Facilities Fund" consisting of:

237 (i) proceeds from the assessment imposed by Section 26-35a-104 which shall be
238 deposited in the Special Revenue Fund to be used for the purpose described in Subsection

239 (1)(b);

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

241 (iii) any interest earned on the fund.

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

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

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

246 (ii) The money appropriated from the fund to the department:

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

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

252 (C) may be used for actual administrative expenses for implementation of this act, if
253 the administrative expenses for the fiscal year do not exceed 1% of the money deposited into
254 the fund during the fiscal year.

255 (2) Money shall be appropriated from the fund to the department for the purposes
256 described in Subsection (1)(b) in accordance with Title 63, Chapter 38, Budgetary Procedures
257 Act.

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

259 **26-35a-107. Adjustment to nursing care facility Medicaid reimbursement rates.**

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

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

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

269 Section 9. Section **51-5-4** is amended to read:

270 **51-5-4. Funds established -- Titles of funds -- Fund functions.**

271 (1) (a) (i) The funds enumerated in this section are established as major fund types.

272 (ii) All resources and financial transactions of Utah state government shall be
273 accounted for within one of these major fund types.

274 (b) (i) All funds or subfunds shall be consolidated into one of the state's major fund
275 types.

276 (ii) Where a specific statute requires that a restricted fund be established, that fund
277 shall be accounted for as an individual fund or subfund within the major fund type to meet
278 generally accepted accounting principles.

279 (iii) Existing and new activities of state government authorized by the Legislature shall
280 be accounted for within the framework of the major fund types established in this section.

281 (c) The Division of Finance shall determine the accounting classification that complies
282 with generally accepted accounting principles for all funds or subfunds created by the
283 Legislature.

284 (d) (i) Major fund types shall be added by amending this chapter.

285 (ii) Whenever a new act creates or establishes a fund without amending this chapter,
286 the reference to a fund in the new act shall be classified within one of the major fund types
287 established by this section.

288 (2) Major Fund Type Titles:

289 (a) General Fund;

290 (b) Special Revenue Funds;

291 (c) Capital Projects Funds;

292 (d) Debt Service Funds;

293 (e) Permanent Funds;

294 (f) Enterprise Funds;

295 (g) Internal Service Funds;

296 (h) Trust and Agency Funds;

297 (i) General Fixed Assets Account Group;

298 (j) General Long-Term Obligation Account Group; and

299 (k) College and University Funds.

300 (3) The General Fund shall receive all revenues and account for all expenditures not
301 otherwise provided for by law in any other fund.

302 (4) Special Revenue Funds account for proceeds of specific revenue sources, other than
303 permanent funds, trust and agency funds, or major capital projects, that are legally restricted to
304 expenditures for a specific purpose.

305 (a) The Uniform School Fund is a Special Revenue Fund that accounts for all revenues
306 that are required by law to be expended for the public school programs of the state.

307 (b) The Transportation Fund is a Special Revenue Fund that accounts for all revenues
308 that are required by law to be expended for highway purposes.

309 (c) The Nursing Care Facilities Fund is a Special Revenue Fund that accounts for all
310 revenues that are required by Section 26-35a-106 to be expended for Medicaid reimbursement
311 rates for nursing care facilities.

312 [~~(c)~~] (d) (i) A Restricted Special Revenue Fund is a Special Revenue Fund created by
313 legislation or contractual relationship with parties external to the state that:

314 (A) identifies specific revenues collected from fees, taxes, dedicated credits, donations,
315 federal funds, or other sources;

316 (B) defines the use of the money in the fund for a specific function of government or
317 program within an agency; and

318 (C) delegates spending authority or authorization to use the fund's assets to a governing
319 board, administrative department, or other officials as defined in the enabling legislation or
320 contract establishing the fund.

321 (ii) A Restricted Special Revenue Fund may only be created by contractual relationship
322 with external parties when the sources of revenue for the fund are donated revenues or federal
323 revenues.

324 (iii) Restricted Special Revenue Funds are subject to annual legislative review by the
325 appropriate legislative appropriations subcommittee.

326 (5) Capital Projects Funds account for financial resources to be expended for the
327 acquisition or construction of major capital facilities, except that when financing for the
328 acquisition or construction of a major capital facility is obtained from a trust fund or a
329 proprietary type fund within one of the major fund types, the monies shall be accounted for in
330 those accounts.

331 (6) Debt Service Funds account for the accumulation of resources for, and the payment
332 of, the principal and interest on general long-term obligations.

333 (7) Permanent Funds account for assets that are legally restricted to the extent that only
334 earnings, and not principal, may be used for a specific purpose.

335 (8) Enterprise Funds are designated to account for the following:

336 (a) operations, financed and operated in a manner similar to private business
337 enterprises, where the Legislature intends that the costs of providing goods or services to the

338 public are financed or recovered primarily through user charges;

339 (b) operations where the Legislature requires periodic determination of revenues
340 earned, expenses incurred, and net income;

341 (c) operations for which a fee is charged to external users for goods or services; or

342 (d) operations that are financed with debt that is secured solely by a pledge of the net
343 revenues from fees and charges of the operations.

344 (9) Internal Service Funds account for the financing of goods or services provided by
345 one department, division, or agency to other departments, divisions, or agencies of the state, or
346 to other governmental units, on a cost-reimbursement basis.

347 (10) (a) Trust and Agency Funds account for assets held by the state as trustee or agent
348 for individuals, private organizations, or other governmental units.

349 (b) Pension Trust Funds, Investment Trust Funds, Private-Purpose Trust Funds, and
350 Agency Funds are Trust and Agency Funds.

351 (11) The General Fixed Assets Account Group accounts for all fixed assets acquired or
352 constructed for use by the state, except for the fixed assets accounted for in the Internal
353 Service, Enterprise, Trust and Agency, and College and University Funds.

354 (12) The General Long-Term Obligation Account Group accounts for general
355 obligation bonds, revenue bonds, capital lease obligations, accrued annual and compensatory
356 leave, and other long-term obligations not otherwise recorded in Internal Service, Enterprise,
357 Trust and Agency, and College and University Funds.

358 (13) College and University Funds account for the financial resources used to operate
359 the state's colleges and universities.

360 **Section 10. Effective date.**

361 This bill takes effect on July 1, 2004.

Legislative Review Note
as of 1-20-04 11:48 AM

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

Office of Legislative Research and General Counsel

State Impact

This bill establishes an assessment on nursing care facilities in order to gain federal matching funds to enhance the total funding for these facilities. The bill authorizes the assessment to be up to 6% of each nursing care facility's total annual accrual basis gross revenue. It is estimated that each 1% would generate \$1.8 million to the Special Revenue Fund established in the bill. These funds could be matched with \$4.6 million of federal Medicaid funds. The nursing care facility industry estimates the assessment in FY 2005 will be set at 4.25%, accruing a total of \$27,360,500.

	<u>FY 2005</u> <u>Approp.</u>	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2005</u> <u>Revenue</u>	<u>FY 2006</u> <u>Revenue</u>
Federal Funds	\$19,710,500	\$19,710,500	\$19,710,500	\$19,710,500
Special Revenue Fund	\$7,650,000	\$7,650,000	\$7,650,000	\$7,650,000
TOTAL	\$27,360,500	\$27,360,500	\$27,360,500	\$27,360,500

Individual and Business Impact

Owners of nursing care facilities will incur the increased costs of the assessment. This increase will be offset by an increase in reimbursement rate for Medicaid patients. Private-pay patients in nursing care facilities will likely see an increase in their charges, if the owners pass the cost of the assessment on to them.
