

**MEDICAID LONG TERM CARE AMENDMENTS**

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Merlynn T. Newbold**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill amends the facility licensing chapter and the medical assistance chapters of the Health Code.

**Highlighted Provisions:**

This bill:

- ▶ removes the authority of a Medicaid certified nursing care facility to increase its Medicaid certified bed capacity by 30% without Department of Health oversight;
- ▶ eliminates bed banking by nursing care facilities for the purpose of Medicaid reimbursement; and
- ▶ requires the Department of Health to adjust the Medicaid reimbursement methodology for nursing care facilities.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**26-18-503**, as last amended by Laws of Utah 2007, Chapters 24 and 306

ENACTS:

**26-21-24**, Utah Code Annotated 1953



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

Section 1. Section **26-18-503** is amended to read:

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

(1) The division may renew Medicaid certification of a certified program if the program, without lapse in service to Medicaid recipients, has its nursing care facility program certified by the division at the same physical facility as long as the licensed and certified bed capacity at the facility has not been expanded, unless the director has approved additional beds in accordance with Subsection (5).

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

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

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

(iii) the new nursing care facility program receives the Medicaid certification within one year of the date the previously certified program ceased to provide medical assistance to a Medicaid recipient[-]; and

(iv) the licensed and certified bed capacity at the facility has not been expanded, unless the director has approved additional beds in accordance with Subsection (5).

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

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

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

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

- 59 (a) the nursing care facility program met all applicable requirements for Medicaid  
60 certification at the time of closure;
- 61 (b) the new or renovated physical facility is in the same county or within a five-mile  
62 radius of the original physical facility;
- 63 (c) the time between which the certified program ceased to operate in the original  
64 facility and will begin to operate in the new physical facility is not more than three years;
- 65 (d) if Subsection (3)(c) applies, the certified program notifies the department within 90  
66 days after ceasing operations in its original facility, of its intent to retain its Medicaid  
67 certification;
- 68 (e) the provider gives written assurance to the director in accordance with Subsection  
69 (4) that no third party has a legitimate claim to operate a certified program at the previous  
70 physical facility; and
- 71 (f) the bed capacity in the physical facility has not been expanded [~~by more than 30%~~  
72 ~~over the previous program's bed capacity;~~] unless the director has approved additional beds in  
73 accordance with Subsection (5).
- 74 (4) (a) The entity requesting Medicaid certification under Subsections (2) and (3) must  
75 give written assurances satisfactory to the director or his designee that:
- 76 (i) no third party has a legitimate claim to operate the certified program;
- 77 (ii) the requesting entity agrees to defend and indemnify the department against any  
78 claims by a third party who may assert a right to operate the certified program; and
- 79 (iii) if a third party is found, by final agency action of the department after exhaustion  
80 of all administrative and judicial appeal rights, to be entitled to operate a certified program at  
81 the physical facility the certified program shall voluntarily comply with Subsection (4)(b).
- 82 (b) If a finding is made under the provisions of Subsection (4)(a)(iii):
- 83 (i) the certified program shall immediately surrender its Medicaid certification and  
84 comply with division rules regarding billing for Medicaid and the provision of services to  
85 Medicaid patients; and
- 86 (ii) the department shall transfer the surrendered Medicaid certification to the third  
87 party who prevailed under Subsection (4)(a)(iii).
- 88 (5) (a) As provided in Subsection 26-18-502(2)(b), the director shall issue additional  
89 Medicaid certification when requested by a nursing care facility or other interested party if

90 there is insufficient bed capacity with current certified programs in a service area. A  
91 determination of insufficient bed capacity shall be based on the nursing care facility or other  
92 interested party providing reasonable evidence of an inadequate number of beds in the county  
93 or group of counties impacted by the requested Medicaid certification based on:

94 (i) current demographics which demonstrate nursing care facility occupancy levels of at  
95 least 90% for all existing and proposed facilities within a prospective three-year period;

96 (ii) current nursing care facility occupancy levels of 90%; or

97 (iii) no other nursing care facility within a 35-mile radius of the nursing care facility  
98 requesting the additional certification.

99 (b) In addition to the requirements of Subsection (5)(a), a nursing care facility program  
100 must demonstrate by an independent analysis that the nursing care facility can financially  
101 support itself at an after tax break-even net income level based on projected occupancy levels.

102 (c) When making a determination to certify additional beds or an additional nursing  
103 care facility program under Subsection (5)(a):

104 (i) the director shall consider whether the nursing care facility will offer specialized or  
105 unique services that are underserved in a service area;

106 (ii) the director shall consider whether any Medicaid certified beds are subject to a  
107 claim by a previous certified program that may reopen under the provisions of Subsections (2)  
108 and (3); and

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

111 (6) The department shall adopt administrative rules in accordance with Title 63,  
112 Chapter 46a, Utah Administrative Rulemaking Act, to adjust the Medicaid nursing care facility  
113 reimbursement methodology to:

114 (a) only pay that portion of costs representing actual bed usage by Medicaid clients as a  
115 percentage of total bed capacity; and

116 (b) not allow for increases in reimbursement for property values without major  
117 renovation or replacement projects as defined by the department by rule.

118 Section 2. Section **26-21-24** is enacted to read:

119 **26-21-24. Prohibition against bed banking by nursing care facilities for Medicaid**  
120 **program.**

121 (1) For purposes of this section:

122 (a) "bed banking" means the designation of a nursing care facility bed as not part of the  
123 facility's operational bed capacity; and

124 (b) "nursing care facility" is defined in Subsection 26-21-23(1).

125 (2) Beginning July 1, 2008, the department shall, for purposes of Medicaid  
126 reimbursement under Chapter 18, Part 1, Medical Assistance Programs, prohibit the banking of  
127 nursing care facility beds.

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**Legislative Review Note**  
as of 1-25-08 4:13 PM

**Office of Legislative Research and General Counsel**

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**H.B. 366 - Medicaid Long Term Care Amendments**

**Fiscal Note**

2008 General Session  
State of Utah

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**State Impact**

This Legislation changes the reimbursement formula for nursing care facilities serving Medicaid clients. The new formula would save the state approximately (\$11,624,000) in General Fund Restricted monies and (\$28,376,000) Federal Funds for a total savings of (\$40,000,000) in FY 2009 and FY 2010.

	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>	<u>FY 2010</u> <u>Revenue</u>
General Fund Restricted	\$0	(\$11,624,000)	(\$11,624,000)	\$0	\$0	\$0
Federal Funds	\$0	(\$28,376,000)	(\$28,376,000)	\$0	\$0	\$0
<b>Total</b>	<b>\$0</b>	<b>(\$40,000,000)</b>	<b>(\$40,000,000)</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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**Individual, Business and/or Local Impact**

The savings to the state represent lower payments to those businesses serving nursing home Medicaid clients. Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals or local governments.

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