

**LONG-TERM CARE FACILITY - MEDICAID
CERTIFICATION FOR BED CAPACITY AMENDMENTS**

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Luz Robles

House Sponsor: Larry B. Wiley

LONG TITLE

General Description:

This bill amends provisions for the Medicaid certification of nursing care facility programs.

Highlighted Provisions:

This bill:

▶ allows the Division of Health Care Financing within the Department of Health, under certain conditions, to renew Medicaid certification of a nursing care facility program ~~that is~~ not ~~currently~~ certified; and

▶ makes technical corrections.

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 2008, Chapter 347

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

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

S.B. 238



28 **26-18-503. Authorization to renew, transfer, or increase Medicaid certified**
 29 **programs -- Reimbursement methodology.**

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

35 (b) The division may renew Medicaid certification of a nursing care facility program

36 ~~§~~→ that is ←~~§~~ not ~~§~~→ [currently] ←~~§~~ certified if:

37 (i) since the program last operated with Medicaid certification:

38 (A) the physical facility where the program last operated with Medicaid certification
 39 has functioned continuously and only as a nursing care facility; and

40 (B) the owner of the program has not, under this section or Section 26-18-505,
 41 transferred to another nursing care facility program the license for any of the Medicaid beds in
 42 the program;

43 (ii) at the time the program last operated with Medicaid certification, all beds in the
 44 physical facility where the program operated were Medicaid certified; and

45 (iii) the number of beds granted renewed Medicaid certification does not exceed the
 46 number of beds certified at the time the program last operated with Medicaid certification.

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

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

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

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

58 (iv) the licensed and certified bed capacity at the facility has not been expanded, unless

59 the director has approved additional beds in accordance with Subsection (5).

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

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

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

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

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

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

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

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

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

80 (f) the bed capacity in the physical facility has not been expanded unless the director
81 has approved additional beds in accordance with Subsection (5).

82 (4) (a) The entity requesting Medicaid certification under Subsections (2) and (3)
83 ~~[must]~~ shall give written ~~[assurances]~~ assurance satisfactory to the director or ~~[his]~~ the
84 director's designee that:

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

86 (ii) the requesting entity agrees to defend and indemnify the department against any
87 claims by a third party who may assert a right to operate the certified program; and

88 (iii) if a third party is found, by final agency action of the department after exhaustion
89 of all administrative and judicial appeal rights, to be entitled to operate a certified program at

90 the physical facility the certified program shall voluntarily comply with Subsection (4)(b).

91 (b) If a finding is made under the provisions of Subsection (4)(a)(iii):

92 (i) the certified program shall immediately surrender its Medicaid certification and
93 comply with division rules regarding billing for Medicaid and the provision of services to
94 Medicaid patients; and

95 (ii) the department shall transfer the surrendered Medicaid certification to the third
96 party who prevailed under Subsection (4)(a)(iii).

97 (5) (a) As provided in Subsection 26-18-502(2)(b), the director shall issue additional
98 Medicaid certification when requested by a nursing care facility or other interested party if
99 there is insufficient bed capacity with current certified programs in a service area. A
100 determination of insufficient bed capacity shall be based on the nursing care facility or other
101 interested party providing reasonable evidence of an inadequate number of beds in the county
102 or group of counties impacted by the requested Medicaid certification based on:

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

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

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

108 (b) In addition to the requirements of Subsection (5)(a), a nursing care facility program
109 [~~must~~] shall demonstrate by an independent analysis that the nursing care facility can
110 financially support itself at an after tax break-even net income level based on projected
111 occupancy levels.

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

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

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

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

121 (6) The department shall adopt administrative rules in accordance with Title 63G,
122 Chapter 3, Utah Administrative Rulemaking Act, to adjust the Medicaid nursing care facility
123 property reimbursement methodology to:
124 (a) beginning July 1, 2008, only pay that portion of the property component of rates,
125 representing actual bed usage by Medicaid clients as a percentage of the greater of:
126 (i) actual occupancy; or
127 (ii) (A) for a nursing care facility other than a facility described in Subsection
128 (6)(a)(ii)(B), 85% of total bed capacity; or
129 (B) for a rural nursing care facility, 65% of total bed capacity; and
130 (b) beginning July 1, 2008, not allow for increases in reimbursement for property
131 values without major renovation or replacement projects as defined by the department by rule.

Legislative Review Note
as of 2-16-10 10:26 AM

Office of Legislative Research and General Counsel

Fiscal Note**S.B. 238 - Long-term Care Facility - Medicaid Certification for Bed Capacity
Amendments**

2010 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals local governments. Business may be impacted due to the proposed change in statute.
