

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

3                                   2011 GENERAL SESSION

4                                   STATE OF UTAH

5                                   **Chief Sponsor: Eric K. Hutchings**

6                                   Senate Sponsor: Luz Robles

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8 **LONG TITLE**

9 **General Description:**

10                   This bill amends provisions of the Medical Assistance Act regarding Medicaid  
11 certification of nursing care facility programs.

12 **Highlighted Provisions:**

13                   This bill:

14                   ▶ allows the Division of Healthcare Financing within the Department of Health, under  
15 certain conditions, to renew Medicaid certification of a nursing care facility not  
16 currently certified; and

17                   ▶ makes technical changes.

18 **Money Appropriated in this Bill:**

19                   None

20 **Other Special Clauses:**

21                   None

22 **Utah Code Sections Affected:**

23 AMENDS:

24                   **26-18-503**, as last amended by Laws of Utah 2008, Chapter 347

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

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

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 day on which the program last operated with Medicaid certification:

38           (A) the physical facility where the program operated has functioned solely and  
39 continuously 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; and

43           (ii) the number of beds granted renewed Medicaid certification does not exceed the  
44 number of beds certified at the time the program last operated with Medicaid certification,  
45 excluding a period of time where the program operated with temporary certification under  
46 Subsection 26-18-504(4).

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) must  
83 give written assurances satisfactory to the director or his designee that:

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

85 (ii) the requesting entity agrees to defend and indemnify the department against any

86 claims by a third party who may assert a right to operate the certified program; and

87 (iii) if a third party is found, by final agency action of the department after exhaustion  
88 of all administrative and judicial appeal rights, to be entitled to operate a certified program at  
89 the physical facility the certified program shall voluntarily comply with Subsection (4)(b).

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

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

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

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

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

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

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

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

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

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

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

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

119 (6) The department shall adopt administrative rules in accordance with Title 63G,  
120 Chapter 3, Utah Administrative Rulemaking Act, to adjust the Medicaid nursing care facility  
121 property reimbursement methodology to:

122 (a) beginning July 1, 2008, only pay that portion of the property component of rates,  
123 representing actual bed usage by Medicaid clients as a percentage of the greater of:

124 (i) actual occupancy; or

125 (ii) (A) for a nursing care facility other than a facility described in Subsection  
126 (6)(a)(ii)(B), 85% of total bed capacity; or

127 (B) for a rural nursing care facility, 65% of total bed capacity; and

128 (b) beginning July 1, 2008, not allow for increases in reimbursement for property  
129 values without major renovation or replacement projects as defined by the department by rule.