

1 **LICENSING OF NURSING CARE FACILITY BEDS**

2 2013 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Curtis S. Bramble**

5 House Sponsor: James A. Dunnigan

6

7 **LONG TITLE**

8 **General Description:**

9 This bill amends the licensing of non-Medicaid nursing care facility beds for a facility
10 with 100 or more beds and provides continuity of care provisions for patients who have
11 exhausted Medicare benefits.

12 **Highlighted Provisions:**

13 This bill:

14 ▶ authorizes the department to license non-Medicaid nursing care facility beds for a
15 facility that will have at least 100 beds;

16 ▶ if a facility has 100 or more beds, authorizes the department to convert a limited
17 number of non-Medicaid certified beds in the nursing care facility to Medicaid
18 certified beds for continuity of care for patients who have exhausted personal
19 resources and Medicare reimbursements; and

20 ▶ extends the moratorium on licensing of non-Medicaid certified beds until July 1,
21 2018.

22 **Money Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 None

26 **Utah Code Sections Affected:**

27 AMENDS:



- 28 **26-18-502**, as last amended by Laws of Utah 2011, Chapter 297
- 29 **26-18-503**, as last amended by Laws of Utah 2011, Chapters 120 and 297
- 30 **26-21-23**, as last amended by Laws of Utah 2008, Chapter 382
- 31 **63I-1-226**, as last amended by Laws of Utah 2012, Chapters 171 and 328

32

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

34 Section 1. Section **26-18-502** is amended to read:

35 **26-18-502. Purpose -- Medicaid certification of nursing care facilities.**

36 (1) The Legislature finds:

37 (a) that an oversupply of nursing care facility programs in the state adversely affects the
38 state Medicaid program and the health of the people in the state; and

39 (b) it is in the best interest of the state to prohibit Medicaid certification of nursing care
40 facility programs, except as authorized by this part.

41 (2) Medicaid reimbursement of nursing care facility programs is limited to:

42 (a) the number of nursing care facility programs with Medicaid certification as of May
43 4, 2004; and

44 (b) additional nursing care facility programs approved for Medicaid certification under
45 the provisions of [~~Subsection~~] Subsections 26-18-503(5) and (7).

46 (3) The division may not:

47 (a) except as authorized by Section 26-18-503:

48 (i) process initial applications for Medicaid certification or execute provider
49 agreements with nursing care facility programs; or

50 (ii) reinstate Medicaid certification for a nursing care facility whose certification
51 expired or was terminated by action of the federal or state government; or

52 (b) execute a Medicaid provider agreement with a certified program that moves its
53 nursing care facility program to a different physical facility, except as authorized by Subsection
54 26-18-503(3).

55 Section 2. Section **26-18-503** is amended to read:

56 **26-18-503. Authorization to renew, transfer, or increase Medicaid certified**
57 **programs -- Reimbursement methodology.**

58 (1) (a) The division may renew Medicaid certification of a certified program if the

59 program, without lapse in service to Medicaid recipients, has its nursing care facility program
60 certified by the division at the same physical facility as long as the licensed and certified bed
61 capacity at the facility has not been expanded, unless the director has approved additional beds
62 in accordance with Subsection (5).

63 (b) The division may renew Medicaid certification of a nursing care facility program
64 that is not currently certified if:

65 (i) since the day on which the program last operated with Medicaid certification:

66 (A) the physical facility where the program operated has functioned solely and
67 continuously as a nursing care facility; and

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

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

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

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

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

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

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

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

90 care facility program if the new nursing care facility program:

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

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

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

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

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

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

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

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

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

110 (4) (a) The entity requesting Medicaid certification under Subsections (2) and (3) shall
111 give written assurances satisfactory to the director or the director's designee that:

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

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

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

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

119 (i) the certified program shall immediately surrender its Medicaid certification and
120 comply with division rules regarding billing for Medicaid and the provision of services to

121 Medicaid patients; and

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

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

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

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

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

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

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

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

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

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

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

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

- 152 (i) actual occupancy; or
- 153 (ii) (A) for a nursing care facility other than a facility described in Subsection
- 154 (6)(a)(ii)(B), 85% of total bed capacity; or
- 155 (B) for a rural nursing care facility, 65% of total bed capacity; and
- 156 (b) beginning July 1, 2008, not allow for increases in reimbursement for property
- 157 values without major renovation or replacement projects as defined by the department by rule.

158 (7) (a) Notwithstanding Subsection 26-18-504(4), if a nursing care facility does not
 159 seek Medicaid certification for a bed under the provisions of Subsections (1) through (6), the
 160 department shall grant Medicaid certification for a licensed non-Medicaid certified bed if:

- 161 (i) the nursing care facility is licensed under Subsection 26-21-23(2)(b);
- 162 (ii) the nursing care facility meets the quality of care regulations issued by the Center
 163 for Medicare and Medicaid Services;
- 164 (iii) the Medicaid certified bed will be used by a patient who:
- 165 (A) is a resident of the nursing care facility;
- 166 (B) has exhausted the patient's Medicare benefits for skilled nursing services; and
- 167 (C) qualifies for Medicaid; and
- 168 (iv) the total number of licensed beds in the facility that are granted Medicaid
 169 certification under the provisions of this Subsection (7)(a) does not exceed 10% of the total
 170 number of licensed beds in the facility.

171 (b) The department may not revoke the Medicaid certification of a bed under this
 172 Subsection (7) as long as the provisions of Subsections (7)(a)(ii) and (iii) are met.

173 Section 3. Section **26-21-23** is amended to read:

174 **26-21-23. Licensing of non-Medicaid nursing care facility beds.**

175 (1) Notwithstanding the provisions of Section 26-21-2, for purposes of this section
 176 "nursing care facility" and "small health care facility":

- 177 (a) mean the following facilities licensed by the department under this chapter:
- 178 (i) skilled nursing homes;
- 179 (ii) intermediate care facilities; or
- 180 (iii) small health care facilities with four to 16 beds functioning as a skilled nursing
- 181 home; and

182 (b) does not mean:

- 183 (i) an intermediate care facility for the mentally retarded;
- 184 (ii) a critical access hospital that meets the criteria of 42 U.S.C. 1395i-4(c)(2) (1998);
- 185 (iii) a small health care facility [~~which~~] that is hospital based; or
- 186 (iv) a small health care facility other than a skilled nursing home with 16 beds or less.

187 (2) Except as provided in Subsection (5), a new nursing care facility shall be approved
188 for a health facility license only if the applicant proves to the division that:

- 189 (a) the facility will be Medicaid certified under the provisions of Section 26-18-503;
- 190 (b) the facility will have at least [~~120~~] 100 beds; or
- 191 (c) (i) the facility's projected Medicare inpatient revenues do not exceed 49% of the
192 facility's revenues;
- 193 (ii) the facility has identified projected non-Medicare inpatient revenue sources; and
- 194 (iii) the non-Medicare inpatient revenue sources identified in this Subsection (2)(c)(iii)
195 will constitute at least 51% of the revenues as demonstrated through an independently certified
196 feasibility study submitted and paid for by the facility and provided to the division.

197 (3) The division may not approve the addition of licensed beds in an existing nursing
198 care facility unless the nursing care facility satisfies the criteria established in Subsection (2).

199 (4) The department may make rules to administer and enforce this part in accordance
200 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

201 (5) The provisions of Subsection (2) do not apply to a nursing care facility that has:

- 202 (a) filed an application with the department and paid all applicable fees to the
203 department on or before February 28, 2007; and
- 204 (b) submitted to the department the working drawings, as defined by the department by
205 administrative rule, on or before July 1, 2008.

206 Section 4. Section **63I-1-226** is amended to read:

207 **63I-1-226. Repeal dates, Title 26.**

208 (1) Title 26, Chapter 9f, Utah Digital Health Service Commission Act, is repealed July
209 1, 2015.

210 (2) Section 26-18-12, Expansion of 340B drug pricing programs, is repealed July 1,
211 2013.

212 (3) Section 26-21-23, Licensing of non-Medicaid nursing care facility beds, is repealed
213 July 1, [~~2016~~] 2018.

- 214 (4) Section 26-21-211 is repealed July 1, 2013.
 - 215 (5) Title 26, Chapter 33a, Utah Health Data Authority Act, is repealed July 1, 2014.
 - 216 (6) Title 26, Chapter 36a, Hospital Provider Assessment Act, is repealed July 1, 2013.
 - 217 (7) Section 26-38-2.5 is repealed July 1, 2017.
 - 218 (8) Section 26-38-2.6 is repealed July 1, 2017.
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Legislative Review Note
as of **1-30-13 10:09 AM**

Office of Legislative Research and General Counsel