

28           ▶ makes technical changes.

29 **Money Appropriated in this Bill:**

30           None

31 **Other Special Clauses:**

32           ~~H~~→ [None] This bill has a special effective date. ←~~H~~

33 **Utah Code Sections Affected:**

34 AMENDS:

35           **26-18-501**, as last amended by Laws of Utah 2011, Chapters 297 and 366

36           **26-18-502**, as last amended by Laws of Utah 2013, Chapter 60

37           **26-18-503**, as last amended by Laws of Utah 2013, Chapter 60

38           **26-18-505**, as last amended by Laws of Utah 2011, Chapter 297

39           **26-21-23**, as last amended by Laws of Utah 2013, Chapter 60

40           **26-35a-106**, as last amended by Laws of Utah 2010, Chapter 340



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

43           Section 1. Section **26-18-501** is amended to read:

44           **26-18-501. Definitions.**

45           As used in this part:

46           (1) "Certified program" means a nursing care facility program with Medicaid  
47 certification.

48           (2) "Director" means the director of the Division of Health Care Financing.

49           (3) "Medicaid certification" means the right ~~[to Medicaid reimbursement]~~ of a nursing  
50 care facility, as a provider of a nursing care facility program ~~[as established by division rule]~~, to  
51 receive Medicaid reimbursement for a specified number of beds within the facility.

52           (4) (a) "Nursing care facility" means the following facilities licensed by the department  
53 under Chapter 21, Health Care Facility Licensing and Inspection Act:

54           (i) skilled nursing ~~[homes]~~ facilities;

55           (ii) intermediate care facilities; and

56           (iii) an intermediate care facility for people with an intellectual disability.

57           (b) "Nursing care facility" does not mean a critical access hospital that meets the  
58 criteria of 42 U.S.C. 1395i-4(c)(2) (1998).

276 (iv) if the nursing care facility program for which the license will be transferred or  
 277 purchased is located in an urban county with a nursing care facility average annual occupancy  
 278 rate over the previous two years less than or equal to 75%, the nursing care facility program  
 279 transferring or selling the license demonstrates to the satisfaction of the director that the sale or  
 280 transfer:

281 (A) will not result in an excessive number of Medicaid certified beds within the county  
 282 or group of counties that would be impacted by the transfer or sale; and

283 (B) best meets the needs of Medicaid recipients.

284 (b) ~~[A]~~ Except as provided in Subsection (2)(c), a nursing care facility program may  
 285 transfer or sell one or more of its licenses for Medicaid beds to:

286 (i) a nursing care facility program that has the same owner or successor in interest of  
 287 the same owner;

288 (ii) a nursing care facility program that has a different owner; [or]

289 (iii) notwithstanding Section 26-18-502, an entity that intends to establish a nursing  
 290 care facility program[-]; or

291 (iv) notwithstanding Section 26-18-502, a related-party nonnursing-care-facility entity  
 292 that wants to hold one or more of the licenses for a future nursing care facility program not yet  
 293 identified, as long as:

294 (A) the licenses are subsequently transferred or sold to a nursing care facility program  
 295 within three years; ~~H~~→ and

296 ~~(B) once transferred under Subsection (2)(b)(iv)(A), the licenses are not transferred or~~  
 297 ~~sold again under the provisions of this Subsection (2)(b)(iv); and~~

298 ~~——~~ ~~(C)~~ ~~(B)~~ ~~←H~~ the nursing care facility program notifies the director of the transfer or sale in  
 299 accordance with Subsection (2)(a)(iii).

300 (c) A nursing care facility program may not transfer or sell one or more of its licenses  
 301 for Medicaid beds to an entity under Subsection (2)(b)(i), (ii), (iii), or (iv) that is located in a  
 302 rural county unless the entity requests, and the director issues, Medicaid certification for the  
 303 beds under Subsection 26-18-503(5).

304 (3) An entity under Subsection (2)(b)(i), (ii), (iii), or (iv) that receives or purchases a  
 305 license for a Medicaid bed under Subsection (2)(b):

306 (a) may receive a license for a Medicaid bed from more than one nursing care facility

338 (B) the nursing care facility program meets other requirements for Medicaid  
339 certification under Subsection (3)(e).

340 (c) A license for a Medicaid bed may not be approved for Medicaid certification  
341 without meeting the requirements of Sections 26-18-502 and 26-18-503 if:

342 (i) the license for a Medicaid bed is transferred under this section but the receiving  
343 entity does not obtain Medicaid certification for the licensed bed within the time required by  
344 Subsection (3)(f); or

345 (ii) the license for a Medicaid bed is transferred under this section but the license is no  
346 longer eligible for Medicaid certification as a result of the conversion factor established in  
347 Subsection (3)(c).

348 Section 5. Section 26-21-23 is amended to read:

349 **26-21-23. Licensing of a new nursing care facility -- Approval for a licensed bed**  
350 **in an existing nursing care facility -- Fine for excess Medicare inpatient revenue.**

351 ~~[(1) Notwithstanding the provisions of Section 26-21-2, for purposes of this section~~  
352 ~~"nursing]~~

353 (1) Notwithstanding Section 26-21-2, as used in this section:

354 (a) "Medicaid" means the Medicaid program, as that term is defined in Section  
355 26-18-2.

356 (b) "Medicaid certification" means the same as that term is defined in Section  
357 26-18-501.

358 (c) "Nursing care facility" and "small health care facility":

359 ~~[(a)]~~ (i) mean the following facilities licensed by the department under this chapter:

360 ~~[(i)]~~ (A) a skilled nursing ~~[homes]~~ facility;

361 ~~[(ii)]~~ (B) an intermediate care ~~[facilities]~~ facility; or

362 ~~[(iii)]~~ (C) a small health care ~~[facilities]~~ facility with four to 16 beds functioning as a  
363 skilled nursing ~~[home]~~ facility; and

364 ~~[(b) does]~~ (ii) do not mean:

365 ~~[(i)]~~ (A) an intermediate care facility for the ~~[mentally-retarded]~~ intellectually disabled;

366 ~~[(ii)]~~ (B) a critical access hospital that meets the criteria of 42 U.S.C. 1395i-4(c)(2)  
367 (1998);

368 ~~[(iii)]~~ (C) a small health care facility that is hospital based; ~~Ĥ→~~ [f] or [i] ~~←Ĥ~~

369           ~~[(iv)] (D)~~ a small health care facility other than a skilled nursing ~~[home]~~ care facility  
 370 with no more than 16 beds [or less:] ~~H→~~ . ~~;~~ or

371 ~~—— (E) a small health care facility with four to 16 beds that functions as a skilled nursing~~  
 372 ~~facility, is located on the same campus as an ambulatory surgical facility, as defined by the~~  
 373 ~~department by administrative rule adopted in accordance with Title 63G, Chapter 3, Utah~~  
 374 ~~Administrative Rulemaking Act, serves only individuals leaving the care of the ambulatory~~  
 375 ~~surgical facility, allows patients to stay at the small health care facility for no more than 10~~  
 376 ~~days, and is the only small health care facility with four to 16 beds that functions as a skilled~~  
 377 ~~nursing facility on the campus of the ambulatory surgical facility.] ←H~~

378           (d) "Rural county" means the same as that term is defined in Section 26-18-501.

379           (2) Except as provided in Subsection ~~[(5)] (6)~~, a new nursing care facility shall be  
 380 approved for a health facility license only if ~~[the applicant proves to the division that]:~~

381           (a) ~~[the facility will be Medicaid-certified]~~ under the provisions of Section 26-18-503  
 382 the facility's nursing care facility program has received Medicaid certification or will receive  
 383 Medicaid certification for each bed in the facility;

384           ~~[(b) the facility will have at least 100 beds; or]~~

385           ~~[(c) (i) the facility's projected Medicare inpatient revenues do not exceed 49% of the~~  
 386 ~~facility's revenues;]~~

387           ~~[(ii) the facility has identified projected non-Medicare inpatient revenue sources; and]~~

388           ~~[(iii) the non-Medicare inpatient revenue sources identified in this Subsection~~

389 ~~(2)(c)(iii) will constitute at least 51% of the revenues as demonstrated through an~~

390 ~~independently certified feasibility study submitted and paid for by the facility and provided to~~  
 391 ~~the division.]~~

392           (b) the facility's nursing care facility program has received H→ or will receive approval  
 392a for ←H Medicaid certification under  
 393 Subsection 26-18-503(5), if the facility is located in a rural county; or

394           (c) (i) the applicant submits to the department the information described in Subsection  
 395 (3); and

396           (ii) based on that information, and in accordance with Subsection (4), the department  
 397 determines that approval of the license best meets the needs of the current and future patients  
 398 of nursing care facilities within the area impacted by the new facility.

399           (3) A new nursing care facility seeking licensure under Subsection (2) shall submit to

431 (b) how additional bed capacity should be added to the long-term care delivery system  
 432 to best meet the needs of current and future nursing care facility patients within the impacted  
 433 area.

434 ~~[(3)]~~ (5) The division may ~~[not]~~ approve the addition of a licensed ~~[beds]~~ bed in an  
 435 existing nursing care facility ~~[unless the nursing care facility satisfies the criteria established in~~  
 436 ~~Subsection (2).]~~ only if:

437 (a) each time the facility seeks approval for the addition of a licensed bed, the facility  
 438 satisfies each requirement for licensure of a new nursing care facility in Subsections (2)(c), (3),  
 439 and (4); or

440 (b) the bed has been approved for Medicaid certification under Section 26-18-503 or  
 441 26-18-505.

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

444 ~~[(5) The provisions of Subsection (2) do]~~

445 (6) Subsection (2) does not apply to a nursing care facility that ~~H→~~ :

445a (a) [f] has [h] , by the effective date of this act, submitted to the department schematic  
 445b drawings, and paid applicable fees, for a particular site or a site within a three mile radius of  
 445c that site; [:]

446 ~~[(a)]~~ (b) ←H before July 1, 2016:

447 ~~[(a)]~~ (i) filed an application with the department for licensure under this section and  
 448 paid all ~~[applicable]~~ related fees due to the department ~~[on or before February 28, 2007]; and~~

449 ~~[(b)]~~ (ii) submitted to the department ~~[the working drawings]~~ architectural plans and  
 450 specifications, as defined by the department by administrative rule, ~~[on or before July 1, 2008.]~~  
 451 for the facility;

452 ~~H→~~ ~~[(b)]~~ (c) ←H applies for a license within three years of closing for renovation;

453 ~~H→~~ ~~[(c)]~~ (d) ←H replaces a nursing care facility that:

454 (i) closed within the past three years; or

455 (ii) is located within five miles of the facility;

456 ~~H→~~ ~~[(d)]~~ (e) ←H is undergoing a change of ownership, even if a government entity  
 456a designates the  
 457 facility as a new nursing care facility; or

458 ~~H→~~ ~~[(e)]~~ (f) ←H is a state-owned veterans home, regardless of who operates the home.

459 (7) (a) For each year the annual Medicare inpatient revenue, including Medicare  
 460 Advantage revenue, of a nursing care facility approved for a health facility license under  
 461 Subsection (2)(c) exceeds 49% of the facility's total revenue for the year, the facility shall be

493 Medicare and Medicaid Services within the United States Department of Health and Human  
 494 Services; and

495 [~~(C)~~] (D) in the manner described in Subsection (1)(b)(ii).

496 (ii) The money appropriated from the restricted account to the department:

497 (A) shall be used only to increase the rates paid prior to [~~the effective date of this act~~]  
 498 July 1, 2004, to nursing care facilities for providing services pursuant to the Medicaid program  
 499 and for administrative expenses as described in Subsection (1)(b)(ii)(C);

500 (B) may not be used to replace existing state expenditures paid to nursing care facilities  
 501 for providing services pursuant to the Medicaid program, except for increased costs due to  
 502 hospice reimbursement under Subsection (1)(b)(i)(B); and

503 (C) may be used for administrative expenses, if the administrative expenses for the  
 504 fiscal year do not exceed 3% of the money deposited into the restricted account during the  
 505 fiscal year.

506 (2) Money shall be appropriated from the restricted account to the department for the  
 507 purposes described in Subsection (1)(b) in accordance with Title 63J, Chapter 1, Budgetary  
 508 Procedures Act.

508a **Ĥ→ Section 7. Effective Date.**

508b **If approved by two-thirds of all members elected to each house, this bill takes effect**  
 508c **upon the approval by the governor, or the day following the constitutional time limit of Utah**  
 508d **Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,**  
 508e **the date of veto override. ←Ĥ**

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**Legislative Review Note**  
**Office of Legislative Research and General Counsel**