

1 **NURSING CARE FACILITY AMENDMENTS**

2 2016 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Francis D. Gibson**

5 Senate Sponsor: Evan J. Vickers

7 **LONG TITLE**

8 **General Description:**

9 This bill amends the Health Care Facility Licensing and Inspection Act and other
10 provisions of the Utah Health Code.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ amends definitions;
- 14 ▶ amends Medicaid certification provisions for nursing care facilities;
- 15 ▶ amends provisions governing the transfer of a license for a Medicaid bed from a
16 nursing care facility program to another entity;
- 17 ▶ permits a related-party nonnursing-care-facility entity to hold a license for a
18 Medicaid bed for a future nursing care facility program not yet identified;
- 19 ▶ amends licensing requirements for a new nursing care facility;
- 20 ▶ imposes a fine on certain health care facilities with Medicare inpatient revenue that
21 exceeds a specified amount;
- 22 ▶ requires the Department of Health to make rules specifying information a health
23 care facility must submit to the department so that the department can determine
24 whether the facility is subject to the fine;
- 25 ▶ requires that fines be deposited into the Nursing Care Facilities Account;
- 26 ▶ authorizes the use of money in the Nursing Care Facilities Account for Medicaid
27 quality incentive payments made to nursing care facilities; and



28 ▶ makes technical changes.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

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).

59 (5) "Nursing care facility program" means the personnel, licenses, services, contracts
 60 and all other requirements that shall be met for a nursing care facility to be eligible for
 61 Medicaid certification under this part and division rule.

62 (6) "Physical facility" means the buildings or other physical structures where a nursing
 63 care facility program is operated.

64 (7) "Rural county" means a county with a population of less than 50,000, as determined
 65 by:

66 (a) the most recent official census or census estimate of the United States Census
 67 Bureau; or

68 (b) the most recent population estimate for the county from the Utah Population
 69 Estimates Committee, if a population figure for the county is not available under Subsection
 70 (7)(a).

71 ~~[(7)]~~ (8) "Service area" means the boundaries of the distinct geographic area served by
 72 a certified program as determined by the division in accordance with this part and division rule.

73 (9) "Urban county" means a county that is not a rural county.

74 Section 2. Section **26-18-502** is amended to read:

75 **26-18-502. Purpose -- Medicaid certification of nursing care facilities.**

76 (1) The Legislature finds:

77 (a) that an oversupply of nursing care ~~[facility programs]~~ facilities in the state adversely
 78 affects the state Medicaid program and the health of the people in the state; ~~[and]~~

79 (b) it is in the best interest of the state to prohibit nursing care facilities from receiving
 80 Medicaid certification ~~[of nursing care facility programs]~~, except as ~~[authorized]~~ provided by
 81 this part~~[-]; and~~

82 (c) it is in the best interest of the state to encourage aging nursing care facilities with
 83 Medicaid certification to renovate the nursing care facilities' physical facilities so that the
 84 quality of life and clinical services for Medicaid residents are preserved.

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

86 (a) the number of nursing care facility programs with Medicaid certification as of May
 87 ~~[4, 2004]~~ 9, 2016; and

88 (b) additional nursing care facility programs approved for Medicaid certification under
 89 the provisions of Subsections **26-18-503(5)** and (7).

- 90 (3) The division may not:
- 91 (a) except as authorized by Section 26-18-503:
- 92 (i) process initial applications for Medicaid certification or execute provider
- 93 agreements with nursing care facility programs; or
- 94 (ii) reinstate Medicaid certification for a nursing care facility whose certification
- 95 expired or was terminated by action of the federal or state government; or
- 96 (b) execute a Medicaid provider agreement with a certified program that moves [~~its~~
- 97 ~~nursing care facility program~~] to a different physical facility, except as authorized by
- 98 Subsection 26-18-503(3).

99 Section 3. Section 26-18-503 is amended to read:

100 **26-18-503. Authorization to renew, transfer, or increase Medicaid certified**
101 **programs -- Reimbursement methodology.**

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

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

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

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

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

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

119 (2) (a) The division may issue a Medicaid certification for a new nursing care facility
120 program if a current owner of the Medicaid certified program transfers its ownership of the

121 Medicaid certification to the new nursing care facility program and the new nursing care
122 facility program meets all of the following conditions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

168 (5) (a) As provided in Subsection ~~26-18-502~~(2)(b), the director [~~shall issue additional~~
169 ~~Medicaid certification when requested by a~~] may approve additional nursing care facility
170 programs for Medicaid certification, or additional beds for Medicaid certification within an
171 existing nursing care facility program, if a nursing care facility or other interested party [if there
172 ~~is insufficient bed capacity with current certified programs in a service area. A determination~~
173 ~~of insufficient bed capacity shall be based on the nursing care facility or other interested party~~
174 ~~providing reasonable evidence of an inadequate number of beds in] requests Medicaid~~
175 certification for a nursing care facility program or additional beds within an existing nursing
176 care facility program, and the nursing care facility program or other interested party complies
177 with this section.

178 (b) The nursing care facility or other interested party requesting Medicaid certification
179 for a nursing care facility program or additional beds within an existing nursing care facility
180 program under Subsection (5)(a) shall submit to the director:

181 (i) proof of the following as reasonable evidence that bed capacity provided by
182 Medicaid certified programs within the county or group of counties impacted by the requested

183 additional Medicaid certification [based on] is insufficient:

184 ~~[(i) current demographics which demonstrate]~~

185 (A) nursing care facility occupancy levels [of at least 90%] for all existing and
186 proposed facilities [within a prospective three-year period] will be at least 90% for the next
187 three years;

188 ~~[(ii) (B) current nursing care facility occupancy [levels of 90%] is 90% or more; or~~

189 ~~[(iii) (C) there is no other nursing care facility within a 35-mile radius of the nursing~~
190 ~~care facility requesting the additional certification[-]; and~~

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

195 ~~[(c) When making a determination to certify additional beds or an additional nursing~~
196 ~~care facility program under Subsection (5)(a):]~~

197 ~~[(i) the director shall consider whether the nursing care facility will offer specialized or~~
198 ~~unique services that are underserved in a service area;]~~

199 (ii) an independent analysis demonstrating that at projected occupancy rates the nursing
200 care facility's after-tax net income is sufficient for the facility to be financially viable.

201 (c) The director shall determine whether to issue additional Medicaid certification by
202 considering:

203 (i) whether bed capacity provided by certified programs within the county or group of
204 counties impacted by the requested additional Medicaid certification is insufficient, based on
205 the information submitted to the director under Subsection (5)(b);

206 (ii) whether the county or group of counties impacted by the requested additional
207 Medicaid certification is underserved by specialized or unique services that would be provided
208 by the nursing care facility;

209 ~~[(ii) the director shall consider]~~ (iii) whether any Medicaid certified beds are subject to
210 a claim by a previous certified program that may reopen under the provisions of Subsections
211 (2) and (3); and

212 ~~[(iii) the director may consider how to add]~~

213 (iv) how additional bed capacity should be added to the long-term care delivery system

214 to best meet the needs of Medicaid recipients, which may include the renovation of aging
215 nursing care facilities, as permitted by Subsection (7).

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

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

221 (i) actual occupancy; or

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

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

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

227 (7) (a) Notwithstanding Subsection [26-18-504\(4\)](#), if a nursing care facility does not
228 seek Medicaid certification for a bed under [~~the provisions of~~] Subsections (1) through (6), the
229 department shall grant Medicaid certification for [~~a licensed non-Medicaid certified bed~~]
230 additional beds in an existing Medicaid certified nursing care facility that has 90 or fewer
231 licensed beds, including Medicaid certified beds, in the facility if:

232 (i) the nursing care facility [~~is licensed under Subsection [26-21-23\(2\)\(b\)](#)~~] program was
233 previously a certified program for all beds but now resides in a new facility or in a facility that
234 underwent major renovations involving major structural changes, and 50% or greater facility
235 square footage design changes, requiring review and approval by the department;

236 (ii) the nursing care facility meets the quality of care regulations issued by the Center
237 for Medicare and Medicaid Services; and

238 [~~(iii) the Medicaid certified bed will be used by a patient who:~~]

239 [(A) is a resident of the nursing care facility;]

240 [(B) has exhausted the patient's Medicare benefits for skilled nursing services; and]

241 [(C) qualifies for Medicaid; and]

242 [(iv)] (iii) the total number of [~~icensed~~] additional beds in the facility [~~that are~~] granted
243 Medicaid certification under [~~the provisions of this Subsection (7)(a)~~] this section does not
244 exceed 10% of the [~~total~~] number of licensed beds in the facility.

245 (b) The department may not revoke the Medicaid certification of a bed under this
 246 Subsection (7) as long as the provisions of [~~Subsections~~] Subsection (7)(a)(ii) [~~and (iii)~~] are
 247 met.

248 (8) (a) If a nursing care facility or other interested party indicates in its request for
 249 additional Medicaid certification under Subsection (5)(a) that the facility will offer specialized
 250 or unique services, but the facility does not offer those services after receiving additional
 251 Medicaid certification, the director may revoke the additional Medicaid certification.

252 (b) If a nursing care facility or other interested party obtains Medicaid certification for
 253 a nursing care facility program or additional beds within an existing nursing care facility
 254 program under Subsection (5), but Medicaid reimbursement is not received for a bed within
 255 three years of the date on which Medicaid certification was obtained for the bed under
 256 Subsection (5), Medicaid certification for the bed is revoked.

257 Section 4. Section **26-18-505** is amended to read:

258 **26-18-505. Authorization to sell or transfer licensed Medicaid beds -- Duties of**
 259 **transferor -- Duties of transferee -- Duties of division.**

260 (1) This section provides a method to transfer or sell the license for a Medicaid bed
 261 from [~~one~~] a nursing care facility program to another entity that is in addition to the
 262 authorization to transfer under Section [26-18-503](#).

263 (2) (a) A nursing care facility program may transfer or sell one or more of its licenses
 264 for Medicaid beds in accordance with Subsection (2)(b) if:

265 (i) at the time of the transfer, and with respect to the license for the Medicaid bed that
 266 will be transferred, the nursing care facility program that will transfer the Medicaid license
 267 meets all applicable regulations for Medicaid certification;

268 (ii) 30 days prior to the transfer, the nursing care facility program gives a written
 269 assurance to the director and to the transferee in accordance with Subsection [26-18-503\(4\)](#);
 270 [~~and~~]

271 (iii) 30 days prior to the transfer, the nursing care facility program that will transfer the
 272 license for a Medicaid bed notifies the division in writing of:

273 (A) the number of bed licenses that will be transferred;

274 (B) the date of the transfer; and

275 (C) the identity and location of the entity receiving the transferred licenses[~~-~~]; and

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;

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) 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

307 program;

308 (b) within 14 days of seeking Medicaid certification of beds in the nursing care facility
309 program, give the division notice of the total number of licenses for Medicaid beds that the
310 entity received and who it received the licenses from;

311 (c) may only seek Medicaid certification for the number of licensed beds in the nursing
312 care facility program equal to the total number of licenses for Medicaid beds received by the
313 entity~~[, multiplied by a conversion factor of .7, and rounded down to the lowest integer];~~

314 (d) notwithstanding Section 26-18-502, does not have to demonstrate need or seek
315 approval for the Medicaid licensed ~~[beds]~~ bed under Subsection 26-18-503(5), except as
316 provided in Subsections (2)(a)(iv) and (2)(c);

317 (e) shall meet the standards for Medicaid certification other than those in Subsection
318 26-18-503(5), including personnel, services, contracts, and licensing of facilities under Chapter
319 21, Health Care Facility Licensing and Inspection Act; and

320 (f) shall obtain Medicaid certification for the licensed Medicaid beds within three years
321 of the date of transfer as documented under Subsection (2)(a)(iii)(B).

322 ~~[(4) The conversion formula required by Subsection (3)(c) shall be calculated:]~~

323 ~~[(a) when the nursing care facility program applies to the Department for Medicaid
324 certification of the licensed beds; and]~~

325 ~~[(b) based on the total number of licenses for Medicaid beds transferred to the nursing
326 care facility at the time of the request for Medicaid certification.]~~

327 ~~[(5)]~~ (4) (a) When the division receives notice of a transfer of a license for a Medicaid
328 bed under Subsection (2)(a)(iii)(A), the ~~[division]~~ department shall reduce the number of
329 licenses for Medicaid beds at the transferring nursing care facility:

330 (i) equal to the number of licenses transferred; and

331 (ii) effective on the date of the transfer as reported under Subsection (2)(a)(iii)(B).

332 (b) For purposes of Section 26-18-502, the division shall approve Medicaid
333 certification for the receiving entity:

334 (i) in accordance with the formula established in Subsection (3)(c); and

335 (ii) if:

336 (A) the nursing care facility seeks Medicaid certification for the transferred licenses
337 within the time limit required by Subsection (3)(f); and

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; ~~[or]~~

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.]; 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.

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 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

400 the department the following information:

401 (a) proof of the following as reasonable evidence that bed capacity provided by nursing
402 care facilities within the county or group of counties that would be impacted by the facility is
403 insufficient:

404 (i) nursing care facility occupancy within the county or group of counties:

405 (A) has been at least 75% during each of the past two years for all existing facilities
406 combined; and

407 (B) is projected to be at least 75% for all nursing care facilities combined that have
408 been approved for licensure but are not yet operational;

409 (ii) there is no other nursing care facility within a 35-mile radius of the new nursing
410 care facility seeking licensure under Subsection (2); and

411 (b) a feasibility study that:

412 (i) shows the facility's annual Medicare inpatient revenue, including Medicare
413 Advantage revenue, will not exceed 49% of the facility's annual total revenue during each of
414 the first three years of operation;

415 (ii) shows the facility will be financially viable if the annual occupancy rate is at least
416 88%;

417 (iii) shows the facility will be able to achieve financial viability;

418 (iv) shows the facility will not:

419 (A) have an adverse impact on existing or proposed nursing care facilities within the
420 county or group of counties that would be impacted by the facility; or

421 (B) be within a three-mile radius of an existing nursing care facility or a new nursing
422 care facility that has been approved for licensure but is not yet operational;

423 (v) is based on reasonable and verifiable demographic and economic assumptions;

424 (vi) is based on data consistent with department or other publicly available data; and

425 (vii) is based on existing sources of revenue.

426 (4) When determining under Subsection (2)(c) whether approval of a license for a new
427 nursing care facility best meets the needs of the current and future patients of nursing care
428 facilities within the area impacted by the new facility, the department shall consider:

429 (a) whether the county or group of counties that would be impacted by the facility is
430 underserved by specialized or unique services that would be provided by the facility; and

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 [has]:

446 (a) 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 (b) applies for a license within three years of closing for renovation;

453 (c) 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 (d) is undergoing a change of ownership, even if a government entity designates the
457 facility as a new nursing care facility; or

458 (e) 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

462 subject to a fine of \$50,000, payable to the department.

463 (b) A nursing care facility approved for a health facility license under Subsection (2)(c)
464 shall submit to the department the information necessary for the department to annually
465 determine whether the facility is subject to the fine in Subsection (7)(a).

466 (c) The department:

467 (i) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative
468 Rulemaking Act, specifying the information a nursing care facility shall submit to the
469 department under Subsection (7)(b);

470 (ii) shall annually determine whether a facility is subject to the fine in Subsection
471 (7)(a);

472 (iii) may take one or more of the actions in Section 26-21-11 or 26-23-6 against a
473 facility for nonpayment of a fine due under Subsection (7)(a); and

474 (iv) shall deposit fines paid to the department under Subsection (7)(a) into the Nursing
475 Care Facilities Account, created by Section 26-35a-106.

476 Section 6. Section **26-35a-106** is amended to read:

477 **26-35a-106. Restricted account -- Creation -- Deposits -- Uses.**

478 (1) (a) There is created a restricted account in the General Fund known as the "Nursing
479 Care Facilities Account" consisting of:

480 (i) proceeds from the assessment imposed by Section 26-35a-104 which shall be
481 deposited in the restricted account to be used for the purpose described in Subsection (1)(b);

482 (ii) fines paid by nursing care facilities for excessive Medicare inpatient revenue under
483 Section 26-18-506;

484 ~~[(ii)]~~ (iii) money appropriated or otherwise made available by the Legislature; and
485 ~~[(iii)]~~ (iv) any interest earned on the account.

486 (b) (i) Money in the account shall only be used:

487 (A) to the extent authorized by federal law, to obtain federal financial participation in
488 the Medicaid program;

489 (B) to provide the increased level of hospice reimbursement resulting from the nursing
490 care facilities assessment imposed under Section 26-35a-104;

491 (C) for the Medicaid program to make quality incentive payments to nursing care
492 facilities, subject to approval of a Medicaid state plan amendment to do so by the Centers for

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.

Legislative Review Note
Office of Legislative Research and General Counsel