

MEDICAID AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Steve Eliason

Senate Sponsor: Michael K. McKell

LONG TITLE

General Description:

This bill amends provisions relating to the certification of beds by the Medicaid program for intermediate care facilities for individuals with intellectual disabilities.

Highlighted Provisions:

This bill:

- ▶ creates limitations on the number of beds that can be certified by the Medicaid program at intermediate care facilities for individuals with intellectual disabilities;
- ▶ creates an exception for certain time limits in a state or national emergency that affects an intermediate care facility for individuals with intellectual disabilities; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26-18-502, as last amended by Laws of Utah 2016, Chapter 276

26-18-503, as last amended by Laws of Utah 2019, Chapters 136 and 393

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

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

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

30 (1) The Legislature finds:

31 (a) that an oversupply of nursing care facilities in the state adversely affects the state
32 Medicaid program and the health of the people in the state;

33 (b) it is in the best interest of the state to prohibit nursing care facilities from receiving
34 Medicaid certification, except as provided by this part; and

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

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

39 (a) the number of nursing care facility programs with Medicaid certification as of May
40 9, 2016; and

41 (b) additional nursing care facility programs approved for Medicaid certification under
42 the provisions of Subsections [26-18-503](#)(5) and (7).

43 (3) The division may not:

44 (a) except as authorized by Section [26-18-503](#):

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

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

49 (b) execute a Medicaid provider agreement with a certified program that moves to a
50 different physical facility, except as authorized by Subsection [26-18-503](#)(3).

51 (4) Notwithstanding Section [26-18-503](#), beginning May 4, 2021, the division may not
52 approve a new or additional bed in an intermediate care facility for individuals with an
53 intellectual disability for Medicaid certification, unless certification of the bed by the division
54 does not increase the total number in the state of Medicaid-certified beds in intermediate care
55 facilities for individuals with an intellectual disability.

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

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

58 **programs -- Reimbursement methodology.**

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

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

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

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

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

72 (ii) except as provided in Subsection [26-18-502\(4\)](#), the number of beds granted
73 renewed Medicaid certification does not exceed the number of beds certified at the time the
74 program last operated with Medicaid certification, excluding a period of time where the
75 program operated with temporary certification under Subsection [26-18-504\(3\)](#).

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

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

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

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

86 Medicaid recipient; and

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

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

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

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

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

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

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

101 (c) the time between which the certified program ceased to operate in the original
102 facility and will begin to operate in the new physical facility is not more than three years[;],
103 unless:

104 (i) an emergency is declared by the president of the United States or the governor,
105 affecting the building or renovation of the physical facility;

106 (ii) the director approves an exception to the three-year requirement for any nursing
107 care facility program within the three-year requirement;

108 (iii) the provider submits documentation supporting a request for an extension to the
109 director that demonstrates a need for an extension; and

110 (iv) the exception does not extend for more than two years beyond the three-year
111 requirement;

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

114 certification;

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

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

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

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

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

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

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

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

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

134 (5) (a) ~~[As provided in Subsection 26-18-502(2)(b), the]~~ The director may approve
135 additional nursing care facility programs for Medicaid certification, or additional beds for
136 Medicaid certification within an existing nursing care facility program, if a nursing care facility
137 or other interested party requests Medicaid certification for a nursing care facility program or
138 additional beds within an existing nursing care facility program, and the nursing care facility
139 program or other interested party complies with this section.

140 (b) The nursing care facility or other interested party requesting Medicaid certification
141 for a nursing care facility program or additional beds within an existing nursing care facility

142 program under Subsection (5)(a) shall submit to the director:

143 (i) proof of the following as reasonable evidence that bed capacity provided by
144 Medicaid certified programs within the county or group of counties impacted by the requested
145 additional Medicaid certification is insufficient:

146 (A) nursing care facility occupancy levels for all existing and proposed facilities will
147 be at least 90% for the next three years;

148 (B) current nursing care facility occupancy is 90% or more; or

149 (C) there is no other nursing care facility within a 35-mile radius of the nursing care
150 facility requesting the additional certification; and

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

153 (c) Any request for additional beds as part of a renovation project are limited to the
154 maximum number of beds allowed in Subsection (7).

155 (d) The director shall determine whether to issue additional Medicaid certification by
156 considering:

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

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

163 (iii) whether any Medicaid certified beds are subject to a claim by a previous certified
164 program that may reopen under the provisions of Subsections (2) and (3);

165 (iv) how additional bed capacity should be added to the long-term care delivery system
166 to best meet the needs of Medicaid recipients; and

167 (v) (A) whether the existing certified programs within the county or group of counties
168 have provided services of sufficient quality to merit at least a two-star rating in the Medicare
169 Five-Star Quality Rating System over the previous three-year period; and

170 (B) information obtained under Subsection (9).

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

174 (a) only pay that portion of the property component of rates, representing actual bed
175 usage by Medicaid clients as a percentage of the greater of:

176 (i) actual occupancy; or

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

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

180 (b) not allow for increases in reimbursement for property values without major
181 renovation or replacement projects as defined by the department by rule.

182 (7) (a) [~~Notwithstanding Subsection 26-18-504(3)~~] Except as provided in Subsection
183 26-18-502(3)(c), if a nursing care facility does not seek Medicaid certification for a bed under
184 Subsections (1) through (6), the department shall, notwithstanding Subsections 26-18-504(3)(a)
185 and (b), grant Medicaid certification for additional beds in an existing Medicaid certified
186 nursing care facility that has 90 or fewer licensed beds, including Medicaid certified beds, in
187 the facility if:

188 (i) the nursing care facility program was previously a certified program for all beds but
189 now resides in a new facility or in a facility that underwent major renovations involving major
190 structural changes, with 50% or greater facility square footage design changes, requiring review
191 and approval by the department;

192 (ii) the nursing care facility meets the quality of care regulations issued by CMS; and

193 (iii) the total number of additional beds in the facility granted Medicaid certification
194 under this section does not exceed 10% of the number of licensed beds in the facility.

195 (b) The department may not revoke the Medicaid certification of a bed under this
196 Subsection (7) as long as the provisions of Subsection (7)(a)(ii) are met.

197 (8) (a) If a nursing care facility or other interested party indicates in its request for

198 additional Medicaid certification under Subsection (5)(a) that the facility will offer specialized
199 or unique services, but the facility does not offer those services after receiving additional
200 Medicaid certification, the director shall revoke the additional Medicaid certification.

201 (b) The nursing care facility program shall obtain Medicaid certification for any
202 additional Medicaid beds approved under Subsection (5) or (7) within three years of the date of
203 the director's approval, or the approval is void.

204 (9) (a) If the director makes an initial determination that quality standards under
205 Subsection (5)(d)(v) have not been met in a rural county or group of rural counties over the
206 previous three-year period, the director shall, before approving certification of additional
207 Medicaid beds in the rural county or group of counties:

208 (i) notify the certified program that has not met the quality standards in Subsection
209 (5)(d)(v) that the director intends to certify additional Medicaid beds under the provisions of
210 Subsection (5)(d)(v); and

211 (ii) consider additional information submitted to the director by the certified program
212 in a rural county that has not met the quality standards under Subsection (5)(d)(v).

213 (b) The notice under Subsection (9)(a) does not give the certified program that has not
214 met the quality standards under Subsection (5)(d)(v), the right to legally challenge or appeal the
215 director's decision to certify additional Medicaid beds under Subsection (5)(d)(v).