

Representative Jefferson S. Burton proposes the following substitute bill:

NURSING CARE FACILITY AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jefferson S. Burton

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends Medicaid provisions impacting nursing care facilities.

Highlighted Provisions:

This bill:

▶ Allows a state-owned veterans nursing care facility to obtain a one-time approval for up to five total Medicaid certified beds, without the facility first proving bed capacity insufficiency or financial viability.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26B-3-311, as renumbered and amended by Laws of Utah 2023, Chapter 306

26B-3-313, as renumbered and amended by Laws of Utah 2023, Chapter 306

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

Section 1. Section **26B-3-311** is amended to read:



26 **26B-3-311. Authorization to renew, transfer, or increase Medicaid certified**
27 **programs -- Reimbursement methodology.**

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

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

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

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

38 (B) the owner of the program has not, under this section or Section 26B-3-313,
39 transferred to another nursing care facility program the license for any of the Medicaid beds in
40 the program; and

41 (ii) except as provided in Subsection 26B-3-310(4), the number of beds granted
42 renewed Medicaid certification does not exceed the number of beds certified at the time the
43 program last operated with Medicaid certification, excluding a period of time where the
44 program operated with temporary certification under Subsection 26B-3-312(3).

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

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

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

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

56 (iv) the licensed and certified bed capacity at the facility has not been expanded, unless

57 the director has approved additional beds in accordance with Subsection (5).

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

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

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

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

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

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

70 (c) the time between which the certified program ceased to operate in the original
71 facility and will begin to operate in the new physical facility is not more than three years,
72 unless:

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

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

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

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

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

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

87 (f) the bed capacity in the physical facility has not been expanded unless the director

88 has approved additional beds in accordance with Subsection (5).

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

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

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

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

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

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

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

103 (5) (a) The director may approve additional nursing care facility programs for Medicaid
104 certification, or additional beds for Medicaid certification within an existing nursing care
105 facility program, if a nursing care facility or other interested party requests Medicaid
106 certification for a nursing care facility program or additional beds within an existing nursing
107 care facility program, and the nursing care facility program or other interested party complies
108 with this section.

109 (b) ~~[The]~~ Except as provided under Subsection (5)(e), a nursing care facility or other
110 interested party requesting Medicaid certification for a nursing care facility program or
111 additional beds within an existing nursing care facility program under Subsection (5)(a) shall
112 submit to the director:

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

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

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

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

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

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

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

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

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

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

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

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

140 (B) information obtained under Subsection (9)~~[-]~~; and

141 (vi) subject to Subsection (5)(e), for a state-owned veterans nursing care facility,
142 whether the facility has previously been approved for a Medicaid certified bed increase under
143 this Subsection (5).

144 (e) For a state-owned veterans nursing care facility that has not previously been
145 approved for a certified bed increase under this Subsection (5):

146 (i) the facility is exempt from the requirements under Subsection (5)(b); and

147 (ii) the director may approve, for that facility location only, up to five total Medicaid
148 certified beds.

149 (6) The department shall adopt administrative rules in accordance with Title 63G,

150 Chapter 3, Utah Administrative Rulemaking Act, to adjust the Medicaid nursing care facility
151 property reimbursement methodology to:

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

154 (i) actual occupancy; or

155 (ii) (A) for a nursing care facility other than a facility described in Subsection

156 (6)(a)(ii)(B), 85% of total bed capacity; or

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

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

160 (7) (a) Except as provided in Subsection 26B-3-310(3), if a nursing care facility does
161 not seek Medicaid certification for a bed under Subsections (1) through (6), the department
162 shall, notwithstanding Subsections 26B-3-312(3)(a) and (b), grant Medicaid certification for
163 additional beds in an existing Medicaid certified nursing care facility that has 90 or fewer
164 licensed beds, including Medicaid certified beds, in the facility if:

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

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

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

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

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

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

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

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

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

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

193 Section 2. Section **26B-3-313** is amended to read:

194 **26B-3-313. Authorization to sell or transfer licensed Medicaid beds -- Duties of**
195 **transferor -- Duties of transferee -- Duties of division.**

196 (1) This section provides a method to transfer or sell the license for a Medicaid bed
197 from a nursing care facility program to another entity that is in addition to the authorization to
198 transfer under Section [26B-3-311](#).

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

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

204 (ii) the nursing care facility program gives a written assurance, which is postmarked or
205 has proof of delivery 30 days before the transfer, to the director and to the transferee in
206 accordance with Subsection [26B-3-311](#)(4);

207 (iii) the nursing care facility program that will transfer the license for a Medicaid bed
208 notifies the division in writing, which is postmarked or has proof of delivery 30 days before the
209 transfer, of:

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

211 (B) the date of the transfer; and

212 (C) the identity and location of the entity receiving the transferred licenses; and
213 (iv) if the nursing care facility program for which the license will be transferred or
214 purchased is located in an urban county with a nursing care facility average annual occupancy
215 rate over the previous two years less than or equal to 75%, the nursing care facility program
216 transferring or selling the license demonstrates to the satisfaction of the director that the sale or
217 transfer:

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

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

221 (b) Except as provided in Subsection (2)(c), a nursing care facility program may
222 transfer or sell one or more of its licenses for Medicaid beds to:

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

225 (ii) a nursing care facility program that has a different owner; or

226 (iii) a related-party nonnursing-care-facility entity that wants to hold one or more of the
227 licenses for a nursing care facility program not yet identified, as long as:

228 (A) the licenses are subsequently transferred or sold to a nursing care facility program
229 within three years; and

230 (B) the nursing care facility program notifies the director of the transfer or sale in
231 accordance with Subsection (2)(a)(iii).

232 (c) A nursing care facility program may not transfer or sell one or more of its licenses
233 for Medicaid beds to:

234 (i) an entity under Subsection (2)(b)(i), (ii), or (iii) that is located in a rural county
235 unless the entity requests, and the director issues, Medicaid certification for the beds under
236 Subsection [26B-3-311\(5\)](#)~~[-];~~ or

237 (ii) another entity or nursing care facility program that has been approved for any
238 additional beds under Subsection [26B-3-311\(5\)\(e\)](#).

239 (3) A nursing care facility program or entity under Subsection (2)(b)(i), (ii), or (iii) that
240 receives or purchases a license for a Medicaid bed under Subsection (2)(b):

241 (a) may receive a license for a Medicaid bed from more than one nursing care facility
242 program;

243 (b) shall give the division notice, which is postmarked or has proof of delivery within
244 14 days of the nursing care facility program or entity seeking Medicaid certification of beds in
245 the nursing care facility program or entity, of the total number of licenses for Medicaid beds
246 that the entity received and who it received the licenses from;

247 (c) may only seek Medicaid certification for the number of licensed beds in the nursing
248 care facility program equal to the total number of licenses for Medicaid beds received by the
249 entity;

250 (d) does not have to demonstrate need or seek approval for the Medicaid licensed bed
251 under Subsection 26B-3-311(5), except as provided in Subsections (2)(a)(iv) and (2)(c);

252 (e) shall meet the standards for Medicaid certification other than those in Subsection
253 26B-3-311(5), including personnel, services, contracts, and licensing of facilities under Chapter
254 2, Part 2, Health Care Facility Licensing and Inspection; and

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

257 (4) (a) When the division receives notice of a transfer of a license for a Medicaid bed
258 under Subsection (2)(a)(iii)(A), the department shall reduce the number of licenses for
259 Medicaid beds at the transferring nursing care facility:

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

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

262 (b) For purposes of Section 26B-3-310, the division shall approve Medicaid
263 certification for the receiving nursing care facility program or entity:

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

265 (ii) if:

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

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

270 (c) A license for a Medicaid bed may not be approved for Medicaid certification
271 without meeting the requirements of Sections 26B-3-310 and 26B-3-311 if:

272 (i) the license for a Medicaid bed is transferred under this section but the receiving
273 entity does not obtain Medicaid certification for the licensed bed within the time required by

274 Subsection (3)(f); or

275 (ii) the license for a Medicaid bed is transferred under this section but the license is no
276 longer eligible for Medicaid certification.

277 Section 3. **Effective date.**

278 This bill takes effect on May 1, 2024.