

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: Michael K. McKell

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; and

▶ limits the transfer or sale of Medicaid certified beds in certain conditions.

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:



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 119 (B) current nursing care facility occupancy is 90% or more; or
120 (C) there is no other nursing care facility within a 35-mile radius of the nursing care
121 facility requesting the additional certification; and
122 (ii) an independent analysis demonstrating that at projected occupancy rates the nursing
123 care facility's after-tax net income is sufficient for the facility to be financially viable.
124 (c) Any request for additional beds as part of a renovation project are limited to the
125 maximum number of beds allowed in Subsection (7).
126 (d) The director shall determine whether to issue additional Medicaid certification by
127 considering:
128 (i) whether bed capacity provided by certified programs within the county or group of
129 counties impacted by the requested additional Medicaid certification is insufficient, based on
130 the information submitted to the director under Subsection (5)(b);
131 (ii) whether the county or group of counties impacted by the requested additional
132 Medicaid certification is underserved by specialized or unique services that would be provided
133 by the nursing care facility;
134 (iii) whether any Medicaid certified beds are subject to a claim by a previous certified
135 program that may reopen under the provisions of Subsections (2) and (3);
136 (iv) how additional bed capacity should be added to the long-term care delivery system
137 to best meet the needs of Medicaid recipients; and
138 (v) (A) whether the existing certified programs within the county or group of counties
139 have provided services of sufficient quality to merit at least a two-star rating in the Medicare
140 Five-Star Quality Rating System over the previous three-year period; [~~and~~]
141 (B) information obtained under Subsection (9)[~~;~~]; and
142 (vi) subject to Subsection (5)(e), for a state-owned veterans nursing care facility,
143 whether the facility has previously been approved for a Medicaid certified bed increase under
144 this Subsection (5).
145 (e) For a state-owned veterans nursing care facility that has not previously been
146 approved for a Medicaid certified bed increase under this Subsection (5):
147 (i) the facility is exempt from the requirements under Subsection (5)(b); and
148 (ii) the director may approve, for that facility location only, up to five total Medicaid
149 certified beds.

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

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

155 (i) actual occupancy; or

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

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

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

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

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

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

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

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

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

179 (b) The nursing care facility program shall obtain Medicaid certification for any
180 additional Medicaid beds approved under Subsection (5) or (7) within three years of the date of

181 the director's approval, or the approval is void.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

233 [~~e~~-A]

234 (c) (i) Subject to Subsection (2)(c)(ii), a nursing care facility program may not transfer
235 or sell one or more of its licenses for Medicaid beds to an entity under Subsection (2)(b)(i), (ii),
236 or (iii) that is located in a rural county unless the entity requests, and the director issues,
237 Medicaid certification for the beds under Subsection 26B-3-311(5).

238 (ii) A veterans nursing care facility that has been approved for a Medicaid certified bed
239 increase under Subsection 26B-3-311(5) may not transfer or sell any of the veterans nursing
240 care facility's Medicaid certified beds.

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

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

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

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

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

254 (e) shall meet the standards for Medicaid certification other than those in Subsection
255 26B-3-311(5), including personnel, services, contracts, and licensing of facilities under Chapter
256 2, Part 2, Health Care Facility Licensing and Inspection; and

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

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

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

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

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

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

267 (ii) if:

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

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

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

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

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

279 **Section 3. Effective date.**

280 This bill takes effect on May 1, 2024.