

**HOUSING ALTERNATIVES FOR NURSING HOME
ELIGIBLE PAROLEES**

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Eric K. Hutchings

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions of the Medical Assistance Act relating to a Medicaid certification request for additional beds.

Highlighted Provisions:

This bill:

▶ authorizes the director of the Division of Healthcare Financing to issue Medicaid certification for additional beds to meet the needs of nursing home eligible parolees;

and

▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26-18-503, as last amended by Laws of Utah 2008, Chapter 347

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

Section 1. Section **26-18-503** is amended to read:



28 **26-18-503. Authorization to renew, transfer, or increase Medicaid certified**
29 **programs -- Reimbursement methodology.**

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

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

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

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

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

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

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

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

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

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

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

58 (b) the new or renovated physical facility is in the same county or within a five-mile

59 radius of the original physical facility;

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

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

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

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

70 (4) (a) The entity requesting Medicaid certification under Subsections (2) and (3) must
71 give written assurances satisfactory to the director or his designee that:

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

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

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

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

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

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

84 (5) (a) As provided in Subsection 26-18-502(2)(b), the director shall issue additional
85 Medicaid certification when requested by a nursing care facility or other interested party if
86 there is insufficient bed capacity with current certified programs in a service area. A
87 determination of insufficient bed capacity shall be based on the nursing care facility or other
88 interested party providing reasonable evidence of an inadequate number of beds in the county
89 or group of counties impacted by the requested Medicaid certification based on:

90 (i) current demographics which demonstrate nursing care facility occupancy levels of at
91 least 90% for all existing and proposed facilities within a prospective three-year period;

92 (ii) current nursing care facility occupancy levels of 90%; [~~or~~]

93 (iii) no other nursing care facility within a 35-mile radius of the nursing care facility
94 requesting the additional certification[-]; or

95 (iv) the need for a facility, unit, or additional beds for parolees.

96 (b) In addition to the requirements of Subsection (5)(a), a nursing care facility program
97 must demonstrate by an independent analysis that the nursing care facility can financially
98 support itself at an after tax break-even net income level based on projected occupancy levels.

99 (c) When making a determination to certify additional beds or an additional nursing
100 care facility program under Subsection (5)(a):

101 (i) the director shall consider whether the nursing care facility will offer specialized or
102 unique services that are underserved in a service area;

103 (ii) the director shall consider whether any Medicaid certified beds are subject to a
104 claim by a previous certified program that may reopen under the provisions of Subsections (2)
105 and (3); and

106 (iii) the director may consider how to add additional capacity to the long-term care
107 delivery system to best meet the needs of Medicaid recipients.

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

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

113 (i) actual occupancy; or

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

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

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

Legislative Review Note
as of 2-9-11 11:23 AM

Office of Legislative Research and General Counsel