

MEDICAID AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Steve Eliason

Senate Sponsor: _____

LONG TITLE

General Description:

This bill places a moratorium on Medicaid certification of beds in certain intermediate care facilities.

Highlighted Provisions:

This bill:

- ▶ places a moratorium on Medicaid certification of new or additional beds in intermediate care facilities for people with an intellectual disability; 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 --



28 **Moratorium on beds.**

29 (1) The Legislature finds:

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

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

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

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

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

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

42 (3) The division may not:

43 (a) except as authorized by Section 26-18-503:

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

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

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

50 (c) notwithstanding Section 26-18-503, approve, after May 11, 2020, a new or
51 additional bed in an intermediate care facility for people with an intellectual disability for
52 Medicaid certification, unless Medicaid certification of the bed does not increase the total
53 number of Medicaid certified beds in intermediate care facilities for people with an intellectual
54 disability in the state.

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

56 **26-18-503. Authorization to renew, transfer, or increase Medicaid certified**
57 **programs -- Reimbursement methodology.**

58 (1) (a) The division may renew Medicaid certification of a certified program if the

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

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

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

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

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

71 (ii) subject to Subsection [26-18-503\(3\)\(c\)](#), the number of beds granted renewed
72 Medicaid certification does not exceed the number of beds certified at the time the program last
73 operated with Medicaid certification, excluding a period of time where the program operated
74 with temporary certification under Subsection [26-18-504\(3\)](#).

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

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

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

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

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

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

90 care facility program if the new nursing care facility program:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

119 (i) the certified program shall immediately surrender its Medicaid certification and
120 comply with division rules regarding billing for Medicaid and the provision of services to

121 Medicaid patients; and

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

124 (5) (a) [~~As provided in Subsection 26-18-502(2)(b);~~] Except as provided in Subsection
125 26-18-502(3)(c), the director may, as provided in Subsection 26-18-502(2)(b), approve
126 additional nursing care facility programs for Medicaid certification, or additional beds for
127 Medicaid certification within an existing nursing care facility program, if a nursing care facility
128 or other interested party requests Medicaid certification for a nursing care facility program or
129 additional beds within an existing nursing care facility program, and the nursing care facility
130 program or other interested party complies with this section.

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

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

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

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

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

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

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

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

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

151 (ii) whether the county or group of counties impacted by the requested additional

152 Medicaid certification is underserved by specialized or unique services that would be provided
153 by the nursing care facility;

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

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

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

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

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

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

167 (i) actual occupancy; or

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

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

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

173 (7) (a) [~~Notwithstanding Subsection 26-18-504(3),~~] Except as provided in Subsection
174 26-18-502(3)(c), if a nursing care facility does not seek Medicaid certification for a bed under
175 Subsections (1) through (6), the department shall, notwithstanding Subsections 26-18-504(3)(a)
176 and (b), grant Medicaid certification for additional beds in an existing Medicaid certified
177 nursing care facility that has 90 or fewer licensed beds, including Medicaid certified beds, in
178 the facility if:

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

183 (ii) the nursing care facility meets the quality of care regulations issued by CMS; and
184 (iii) the total number of additional beds in the facility granted Medicaid certification
185 under this section does not exceed 10% of the number of licensed beds in the facility.

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

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

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

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

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

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

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