

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:

▶ exempts state-owned veteran homes from Medicaid moratoriums and licensed bed capacity limits.

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

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

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

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

(1) (a) The division may renew Medicaid certification of a certified program if the program, without lapse in service to Medicaid recipients, has its nursing care facility program



28 certified by the division at the same physical facility as long as the licensed and certified bed
29 capacity at the facility has not been expanded, unless the director has approved additional beds
30 in accordance with Subsection (5).

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

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

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

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

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

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

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

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

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

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

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

- 59 (i) is not owned in whole or in part by the previous nursing care facility program; or
- 60 (ii) is not a successor in interest of the previous nursing care facility program.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

120 (c) Any request for additional beds as part of a renovation project are limited to the

121 maximum number of beds allowed in Subsection (7).

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

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

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

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

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

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

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

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

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

143 (i) actual occupancy; or

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

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

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

149 (7) (a) Except as provided in Subsection 26B-3-310(3), if a nursing care facility does
150 not seek Medicaid certification for a bed under Subsections (1) through (6), the department
151 shall, notwithstanding Subsections 26B-3-312(3)(a) and (b), grant Medicaid certification for

152 additional beds in an existing Medicaid certified nursing care facility that has 90 or fewer
153 licensed beds, including Medicaid certified beds, in the facility if:

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

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

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

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

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

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

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

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

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

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

182 (10) Notwithstanding the other provisions of this section:

183 (a) state-owned veteran homes are exempt from Medicaid moratoriums and Medicaid
184 certified bed capacity limits; and

185 (b) if a state-owned veteran home meets CMS's quality of care regulations for a nursing
186 care facility, the director shall approve any number of Medicaid certified beds for that
187 state-owned veteran home.

188 Section 2. **Effective date.**

189 This bill takes effect on May 1, 2024.