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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:

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 certified by the division at the same physical facility as long as the licensed and certified bed capacity at the facility has not been expanded, unless the director

- 29 has approved additional beds in accordance with Subsection (5).
- 30 (b) The division may renew Medicaid certification of a nursing care facility program
31 that is not currently certified if:
- 32 (i) since the day on which the program last operated with Medicaid certification:
- 33 (A) the physical facility where the program operated has functioned solely and
34 continuously as a nursing care facility; and
- 35 (B) the owner of the program has not, under this section or Section 26B-3-313,
36 transferred to another nursing care facility program the license for any of the
37 Medicaid beds in the program; and
- 38 (ii) except as provided in Subsection 26B-3-310(4), the number of beds granted
39 renewed Medicaid certification does not exceed the number of beds certified at the
40 time the program last operated with Medicaid certification, excluding a period of
41 time where the program operated with temporary certification under Subsection
42 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
45 of the Medicaid certification to the new nursing care facility program and the new
46 nursing care 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
53 assistance to a Medicaid recipient; and
- 54 (iv) the licensed and certified bed capacity at the facility has not been expanded,
55 unless 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
58 previous nursing 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 that
62 was previously a certified program but now resides in a new or renovated physical

- 63 facility 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
70 years, 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 (4)
83 that no third party has a legitimate claim to operate a certified program at the
84 previous physical facility; and
- 85 (f) the bed capacity in the physical facility has not been expanded unless the director has
86 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
94 program at the physical facility the certified program shall voluntarily comply
95 with Subsection (4)(b).
- 96 (b) If a finding is made under the provisions of Subsection (4)(a)(iii):

- 97 (i) the certified program shall immediately surrender its Medicaid certification and
98 comply with division rules regarding billing for Medicaid and the provision of
99 services to Medicaid patients; and
- 100 (ii) the department shall transfer the surrendered Medicaid certification to the third
101 party who prevailed under Subsection (4)(a)(iii).
- 102 (5) (a) The director may approve additional nursing care facility programs for Medicaid
103 certification, or additional beds for Medicaid certification within an existing nursing
104 care facility program, if a nursing care facility or other interested party requests
105 Medicaid certification for a nursing care facility program or additional beds within an
106 existing nursing care facility program, and the nursing care facility program or other
107 interested party complies with this section.
- 108 (b) ~~[The]~~ Except as provided under Subsection (5)(e), a nursing care facility or other
109 interested party requesting Medicaid certification for a nursing care facility program
110 or additional beds within an existing nursing care facility program under Subsection
111 (5)(a) shall submit to the director:
- 112 (i) proof of the following as reasonable evidence that bed capacity provided by
113 Medicaid certified programs within the county or group of counties impacted by
114 the requested additional Medicaid certification is insufficient:
- 115 (A) nursing care facility occupancy levels for all existing and proposed facilities
116 will be at least 90% for the next three years;
- 117 (B) current nursing care facility occupancy is 90% or more; or
- 118 (C) there is no other nursing care facility within a 35-mile radius of the nursing
119 care facility requesting the additional certification; and
- 120 (ii) an independent analysis demonstrating that at projected occupancy rates the
121 nursing care facility's after-tax net income is sufficient for the facility to be
122 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
129 insufficient, based on the information submitted to the director under Subsection
130 (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
133 be provided 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
137 system to best meet the needs of Medicaid recipients;[~~and~~]
- 138 (v) (A) whether the existing certified programs within the county or group of
139 counties have provided services of sufficient quality to merit at least a two-star
140 rating in the Medicare Five-Star Quality Rating System over the previous
141 three-year period; and
142 (B) information obtained under Subsection (9)[~~;~~] ; and
- 143 (vi) subject to Subsection (5)(e), for a state-owned veterans nursing care facility,
144 whether the facility has previously been approved for a Medicaid certified bed
145 increase under this Subsection (5).
- 146 (e) For a state-owned veterans nursing care facility that has not previously been
147 approved for a Medicaid certified bed increase under this Subsection (5):
- 148 (i) the facility is exempt from the requirements under Subsection (5)(b); and
149 (ii) the director may approve, for that facility location only, up to five total Medicaid
150 certified beds.
- 151 (6) The department shall adopt administrative rules in accordance with Title 63G, Chapter
152 3, Utah Administrative Rulemaking Act, to adjust the Medicaid nursing care facility
153 property reimbursement methodology to:
- 154 (a) only pay that portion of the property component of rates, representing actual bed
155 usage by Medicaid clients as a percentage of the greater of:
- 156 (i) actual occupancy; or
157 (ii) (A) for a nursing care facility other than a facility described in Subsection
158 (6)(a)(ii)(B), 85% of total bed capacity; or
159 (B) for a rural nursing care facility, 65% of total bed capacity; and
- 160 (b) not allow for increases in reimbursement for property values without major
161 renovation or replacement projects as defined by the department by rule.
- 162 (7) (a) Except as provided in Subsection 26B-3-310(3), if a nursing care facility does not
163 seek Medicaid certification for a bed under Subsections (1) through (6), the
164 department shall, notwithstanding Subsections 26B-3-312(3)(a) and (b), grant

165 Medicaid certification for additional beds in an existing Medicaid certified nursing
166 care facility that has 90 or fewer licensed beds, including Medicaid certified beds, in
167 the facility if:

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

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

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

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

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

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

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

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

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

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

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

200 **26B-3-313 . Authorization to sell or transfer licensed Medicaid beds -- Duties of**
201 **transferor -- Duties of transferee -- Duties of division.**

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

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

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

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

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

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

217 (B) the date of the transfer; and

218 (C) the identity and location of the entity receiving the transferred licenses; and

219 (iv) if the nursing care facility program for which the license will be transferred or
220 purchased is located in an urban county with a nursing care facility average annual
221 occupancy rate over the previous two years less than or equal to 75%, the nursing
222 care facility program transferring or selling the license demonstrates to the
223 satisfaction of the director that the sale or transfer:

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

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

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

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

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

232 (iii) a related-party nonnursing-care-facility entity that wants to hold one or more of

233 the licenses for a nursing care facility program not yet identified, as long as:
 234 (A) the licenses are subsequently transferred or sold to a nursing care facility
 235 program within three years; and
 236 (B) the nursing care facility program notifies the director of the transfer or sale in
 237 accordance with Subsection (2)(a)(iii).

238 [~~e~~ A]

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

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

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

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

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

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

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

261 (e) shall meet the standards for Medicaid certification other than those in Subsection
 262 26B-3-311(5), including personnel, services, contracts, and licensing of facilities
 263 under Chapter 2, Part 2, Health Care Facility Licensing and Inspection; and

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

266 (4) (a) When the division receives notice of a transfer of a license for a Medicaid bed

- 267 under Subsection (2)(a)(iii)(A), the department shall reduce the number of licenses
268 for Medicaid beds at the transferring nursing care facility:
- 269 (i) equal to the number of licenses transferred; and
 - 270 (ii) effective on the date of the transfer as reported under Subsection (2)(a)(iii)(B).
- 271 (b) For purposes of Section 26B-3-310, the division shall approve Medicaid certification
272 for the receiving nursing care facility program or entity:
- 273 (i) in accordance with the formula established in Subsection (3)(c); and
 - 274 (ii) if:
 - 275 (A) the nursing care facility seeks Medicaid certification for the transferred
 - 276 licenses within the time limit required by Subsection (3)(f); and
 - 277 (B) the nursing care facility program meets other requirements for Medicaid
 - 278 certification under Subsection (3)(e).
- 279 (c) A license for a Medicaid bed may not be approved for Medicaid certification without
280 meeting the requirements of Sections 26B-3-310 and 26B-3-311 if:
- 281 (i) the license for a Medicaid bed is transferred under this section but the receiving
282 entity does not obtain Medicaid certification for the licensed bed within the time
283 required by Subsection (3)(f); or
 - 284 (ii) the license for a Medicaid bed is transferred under this section but the license is
285 no longer eligible for Medicaid certification.

286 Section 3. **Effective date.**

287 This bill takes effect on May 1, 2024.