

Fifty-ninth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1252

Introduced by

Representatives Delzer, Devlin, Kreidt

Senators Brown, Fischer, J. Lee

1 A BILL for an Act to amend and reenact sections 50-24.4-06 and 50-24.4-10, subsection 1 of
2 section 50-24.4-11, and sections 50-24.4-13, 50-24.4-14, 50-24.4-16, 50-24.4-19, and
3 50-24.4-27 of the North Dakota Century Code, relating to nursing home rates; and to repeal
4 section 50-24.4-09 of the North Dakota Century Code, relating to interim rates for nursing
5 homes.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1. AMENDMENT.** Section 50-24.4-06 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **50-24.4-06. Rate determination.** The department shall determine prospective
10 payment rates for resident care costs. ~~For rate years beginning on or after January 1, 1990,~~
11 ~~the~~ The department shall develop procedures for determining operating cost payment rates that
12 take into account the mix of resident needs and other factors as determined by the department.

13 The department shall establish, by rule, limitations on compensation recognized in the
14 historical base for top management personnel. Compensation for top management personnel
15 must be categorized as a general and administrative cost and is subject to any limits imposed
16 on that cost category.

17 **SECTION 2. AMENDMENT.** Section 50-24.4-10 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **50-24.4-10. Operating costs after January 1, 1990.**

- 20 1. ~~For rate years beginning on or after January 1, 1990, the~~ The department shall
21 establish procedures for determining per diem reimbursement for operating costs.
22 2. The department shall maintain access to national and state economic change
23 indices that can be applied to the appropriate cost categories when determining the
24 operating cost payment rate.

- 1 3. The department shall analyze and evaluate each nursing home's cost report of
2 allowable operating costs incurred by the nursing home during the reporting year
3 immediately preceding the rate year for which the payment rate becomes effective.
- 4 4. The department shall establish limits on actual allowable historical operating cost
5 per diems based on cost reports of allowable operating costs ~~for the reporting year~~
6 ~~that begins July 1, 1987,~~ taking into consideration relevant factors including
7 resident needs, nursing hours necessary to meet resident needs, size of the
8 nursing home, and the costs that must be incurred for the care of residents in an
9 efficiently and economically operated nursing home. ~~The limits established by the~~
10 ~~department may not be less, in the aggregate, than the sixtieth percentile of total~~
11 ~~actual allowable historical operating cost per diems for each group of nursing~~
12 ~~homes established under this chapter based on cost reports of allowable operating~~
13 ~~costs in the previous reporting year. The limits established under this subsection~~
14 ~~remain in effect until the department establishes a new base period. The~~
15 department shall establish limits for cost categories using the June 30, 2003, cost
16 report year as the base period. The limits established may not be less in the
17 aggregate than a rate calculated as the median rate plus twenty percent for direct
18 care, median rate plus twenty percent for other direct care, and median rate plus
19 ten percent for indirect care. The median plus rate must be established using the
20 total allowable historical operating costs, as of the June 30, 2003, cost report, for
21 each nursing facility that would be subject to a limit under this chapter. Until the a
22 new base period is established, the department shall adjust the limits annually
23 using the appropriate economic change indices established in subsection 5. In
24 determining allowable historical operating cost per diems for purposes of setting
25 limits and nursing home payment rates, the department shall divide the allowable
26 historical operating costs by the actual number of resident days, except that where
27 a nursing home is occupied at less than ninety percent of licensed capacity days,
28 the department may establish procedures to adjust the computation of the indirect
29 care cost per diem to an imputed occupancy level at or below ninety percent. To
30 encourage the development of home and community-based services as an
31 alternative to nursing home care, the department may waive the imputed

1 occupancy level requirements for a nursing home that the department determines
2 to be providing significant home and community-based services in coordination
3 with home and community-based service providers to avoid duplicating existing
4 services. The department shall establish efficiency incentives ~~as appropriate for~~
5 indirect care costs. The department may establish efficiency incentives for
6 different operating cost categories. The department shall consider establishing
7 efficiency incentives in care-related cost categories. ~~The department may combine~~
8 ~~one or more operating cost categories and may use different methods for~~
9 ~~calculating payment rates for each operating cost category or combination of~~
10 ~~operating cost categories.~~

11 5. The department shall establish a composite index or indices based on the average
12 of the increase in the ~~Data Resources~~ global insight, ~~incorporated~~ incorporated,
13 nursing home input price index and the increase in the consumer price index for all
14 urban wage earners and clerical workers (all items, United States city average) to
15 be applied to specific operating cost categories or combination of operating cost
16 categories.

17 6. Each nursing home shall receive an operating cost payment rate equal to the sum
18 of the nursing home's operating cost payment rates for each operating cost
19 category. The operating cost payment rate for an operating cost category must be
20 the lesser of the nursing home's historical operating cost in the category increased
21 by the appropriate index established in subsection 5 for the operating cost category
22 plus an efficiency incentive established pursuant to subsection 4 or the limit for the
23 operating cost category increased by the same index. If a nursing home's actual
24 historic operating costs are greater than the prospective payment rate for that rate
25 year, there may be no retroactive cost settle-up. In establishing payment rates for
26 one or more operating cost categories, the department may establish separate
27 rates for different classes of residents based on their relative care needs.

28 7. ~~Effective July 1, 1991, the~~ The efficiency incentives to be established by the
29 department pursuant to subsection 4 for a facility with an actual rate below the limit
30 rate for indirect care costs must include the lesser of two dollars and sixty cents per
31 resident day or the amount determined by multiplying seventy percent times the

1 difference between the actual rate, exclusive of inflation indices, and the limit rate,
2 exclusive of current inflation indices. The efficiency incentive must be included as
3 a part of the indirect care cost rate.

4 8. ~~Effective July 1, 1991, each~~ Each nursing home must receive an operating margin
5 of at least three percent based upon the lesser of the actual direct care and other
6 direct care costs and the limit rate prior to inflation. The operating margin will then
7 be added to the rate for direct care and other direct care cost categories.

8 9. A new base period must be established every four years beginning with the cost
9 report period June 30, 2007.

10 **SECTION 3. AMENDMENT.** Subsection 1 of section 50-24.4-11 of the North Dakota
11 Century Code is amended and reenacted as follows:

12 1. ~~For rate years beginning on or after January 1, 1991, the~~ The department may
13 allow a one-time adjustment to historical operating costs of a nursing home that
14 has been found by the department to be significantly below care related minimum
15 standards appropriate to the mix of resident needs in that nursing home when it is
16 determined by the department that the nursing home is unable to meet minimum
17 standards through reallocation of nursing home costs and efficiency incentives or
18 allowances. In developing procedures to allow adjustments, the department shall
19 specify the terms and conditions governing any additional payments made to a
20 nursing home as a result of the adjustment. The department shall establish
21 procedures to recover amounts paid under this section, in whole or in part, and to
22 adjust current and future rates, for nursing homes that fail to use the adjustment to
23 satisfy care related minimum standards.

24 **SECTION 4. AMENDMENT.** Section 50-24.4-13 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **50-24.4-13. Exclusion.** Until procedures for determining operating cost payment rates
27 according to mix of resident needs are established for nursing homes that exclusively provide
28 residential services for nongeriatric individuals with physical disabilities or units within nursing
29 homes which exclusively provide geropsychiatric services, such nursing homes or units within
30 nursing homes may not be included in the calculation of the ~~percentiles of any group~~ limits of
31 any cost categories. Each of these nursing homes or units within nursing homes shall receive

its actual allowed historical operating cost per diem adjusted by a percentage amount equal to the increase, if any, in the national or state economic change index, made available under section 50-24.4-10, and which the department determines to be relevant to residential services for nongeriatric individuals with physical disabilities or geropsychiatric services.

SECTION 5. AMENDMENT. Section 50-24.4-14 of the North Dakota Century Code is amended and reenacted as follows:

50-24.4-14. General and administrative costs after January 1, 1990. ~~For rate years beginning on or after January 1, 1990, all~~ All general and administrative costs must be included in general and administrative costs in total, without direct or indirect allocation to other cost categories. In a nursing home of sixty or fewer beds, part of an administrator's salary may be allocated to other cost categories to the extent justified in records kept by the nursing home. Central or home office costs representing services of consultants required by law in areas including, but not limited to, dietary, pharmacy, social services, or activities may be allocated to the appropriate department, but only if those costs are directly identified by the nursing home. Central, affiliated, or corporate office costs representing services of consultants not required by law in the areas of nursing, medical records, dietary, other care related services, and plant operations may be allocated to the appropriate operating cost category of a nursing home according to subsections 1 through 5.

1. Only the salaries, fringe benefits, and payroll taxes associated with the individual performing the service may be allocated. No other costs may be allocated.
2. The allocation must be based on direct identification and only to the extent justified in time distribution records that show the actual time spent by the consultant performing the services ~~in~~ for the nursing home.
3. The cost in subsection 1 for each consultant must not be allocated to more than one operating cost category in the nursing home. If more than one nursing home is served by a consultant, all nursing homes shall allocate the consultant's cost to the same operating category.
4. Top management personnel must not be considered consultants.
5. The consultant's full-time responsibilities are to provide the services identified in this section.

1 **SECTION 6. AMENDMENT.** Section 50-24.4-16 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **50-24.4-16. Special rates.**

- 4 1. For nursing homes with a significant capacity increase and for newly constructed
5 nursing homes, which first provide services on or after July 1, 1988, and which are
6 not included in the calculation of the ~~percentile for any group~~ limits of any cost
7 category, the department shall establish procedures for determining interim
8 operating cost payment rates. The interim payment rate may not be in effect for
9 more than eighteen months. The department shall establish procedures for
10 determining the interim rate and for making a retroactive cost settle-up for periods
11 when an interim rate was in effect.
- 12 2. As soon as is practicable following the establishment of the procedures required by
13 subsection 1, the department shall apply the special rates for all affected facilities
14 ~~for rate periods beginning on or after January 1, 1990.~~

15 **SECTION 7. AMENDMENT.** Section 50-24.4-19 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **50-24.4-19. Prohibited practices.** ~~From and after January 1, 1990, a~~ A nursing home
18 is not eligible to receive medical assistance payments unless it refrains from all of the following:

- 19 1. Charging private-paying residents rates for similar services which exceed those
20 rates which are approved by the department for medical assistance recipients, as
21 determined by the prospective desk audit rate, except under the following
22 circumstances: the nursing home may charge private-paying residents a higher
23 rate for a private room and charge for special services which are not included in
24 the daily rate if medical assistance residents are charged separately at the same
25 rate for the same services in addition to the daily rate paid by the department of
26 human services. Services covered by the payment rate must be the same
27 regardless of payment source. Special services, if offered, must be offered to all
28 residents and charged separately at the same rate. Residents are free to select or
29 decline special services. Special services must not include services which must be
30 provided by the nursing home in order to comply with licensure or certification
31 standards and that if not provided would result in a deficiency or violation by the

nursing home. Services beyond those required to comply with licensure or certification standards must not be charged separately as a special service if they were included in the payment rate for the previous reporting year. A nursing home that charges a private-paying resident a rate in violation of this chapter is subject to an action by the state or any of its subdivisions or agencies for civil damages. A private-paying resident or the resident's legal representative has a cause of action for civil damages against a nursing home that charges the resident rates in violation of this chapter. The damages awarded shall include three times the payments that result from the violation, together with costs and disbursements, including reasonable ~~attorneys'~~ attorney's fees or their equivalent.

2. Requiring an applicant for admission to the home, or the guardian or conservator of the applicant, as a condition of admission, to pay any fee or deposit in excess of one hundred dollars, loan any money to the nursing home, or promise to leave all or part of the applicant's estate to the home.
3. Requiring any resident of the nursing home to utilize a vendor of health care services who is a licensed physician or pharmacist chosen by the nursing home.
4. Providing differential treatment on the basis of status with regard to public assistance.
5. Discriminating in admissions, services offered, or room assignment on the basis of status with regard to public assistance. Admissions discrimination shall include, but is not limited to:
 - a. Basing admissions decisions upon assurance by the applicant to the nursing home, or the applicant's guardian or conservator, that the applicant is neither eligible for nor will seek public assistance for payment of nursing home care costs.
 - b. Engaging in preferential selection from waiting lists based on an applicant's ability to pay privately.

The collection and use by a nursing home of financial information of any applicant pursuant to a preadmission screening program does not raise an inference that the nursing home is utilizing that information for any purpose prohibited by this chapter.

6. Requiring any vendor of medical care, who is reimbursed by medical assistance under a separate fee schedule, to pay any portion of the vendor's fee to the nursing home except as payment for the fair market value of renting or leasing space or equipment of the nursing home or purchasing support services, if those agreements are disclosed to the department.

7. Refusing, for more than twenty-four hours, to accept a resident returning to the resident's same bed or a bed certified for the same level of care, in accordance with a physician's order authorizing transfer, after receiving inpatient hospital services.

8. Violating any of the rights of health care facility residents enumerated in section 50-10.2-02.

9. Charging a managed care organization a rate that is less than the rate approved by the department for a medical assistance recipient in the same classification.

SECTION 8. AMENDMENT. Section 50-24.4-27 of the North Dakota Century Code is amended and reenacted as follows:

50-24.4-27. Medicare certification. All nursing facilities certified under the medical assistance program shall participate in medicare part A and part B with respect to at least thirty percent of the beds in the facility unless, after submitting an application, medicare certification is denied by the federal health care financing administration. The facility shall file on behalf of each patient or assist each patient in the filing of requests for any third-party benefits to which the patient may be entitled. ~~Medicare review must be conducted at the time of the annual medical assistance review.~~ Charges for medicare-covered services provided to residents who are simultaneously eligible for medical assistance and medicare must be billed to medicare part A or part B before billing medical assistance. Medical assistance may be billed only for charges not reimbursed by medicare.

SECTION 9. REPEAL. Section 50-24.4-09 of the North Dakota Century Code is repealed.