

Testimony
House Bill 1065 – Department of Human Services
House Human Services Committee
Representative Robin Weisz, Chairman
January 13, 2021

Chairman Weisz, members of the House Human Services Committee, I am LeeAnn Thiel, Assistant Director of the Medical Services Division, for the Department of Human Services (Department). I am here today in support of House Bill 1065, which was introduced at the request of the Department.

This bill alters subsection 3 of North Dakota Century Code section 50-24.4-10. Currently this section of Century Code sets ninety percent as the minimum occupancy rate that nursing facilities must meet without any financial penalty. The Department seeks to alter this subsection such that by January 1st of each year the Department will publish what the minimum occupancy rate is for the upcoming calendar year.

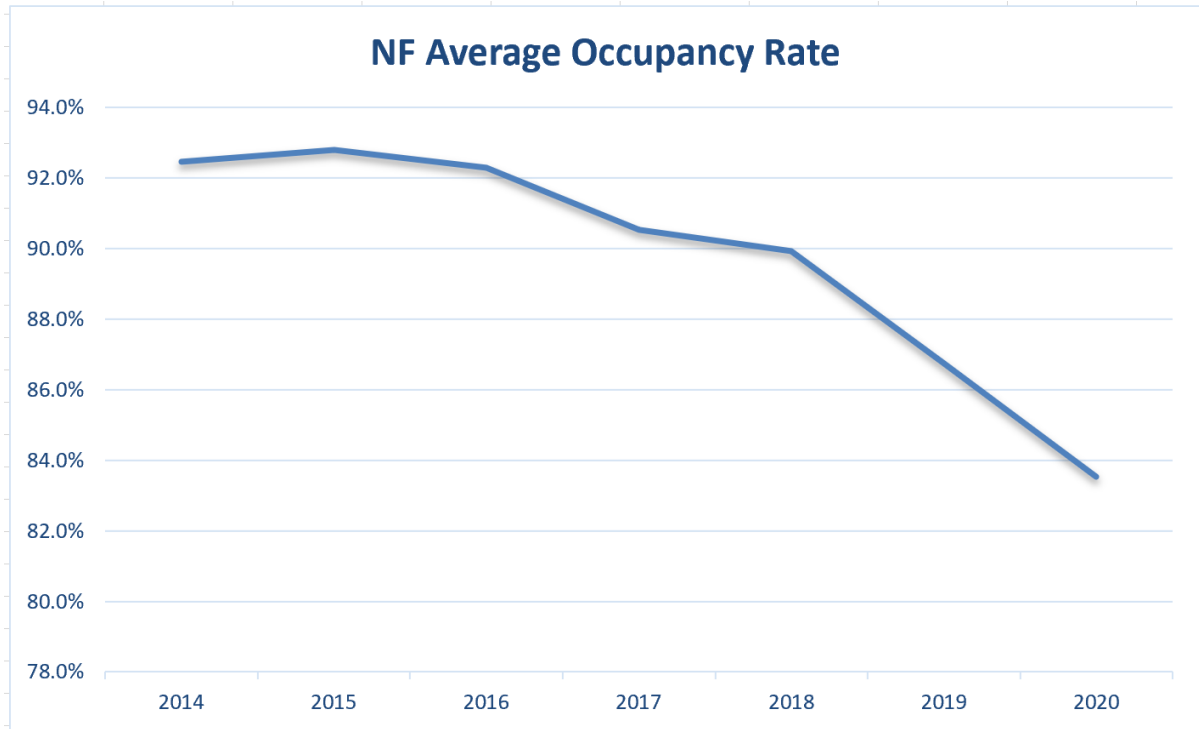
Setting a minimum occupancy rate is important so that the supply of beds is not significantly higher than the demand thereby resulting in a surplus of beds. When there is a surplus of beds in the system the State's financial liability is greater than it should be. Each biennium the Department aims to propose to the Legislature an overall appropriation that comes as close as possible to equilibrium whereby the supply is equal to the demand.

Nursing facilities do have the ability to manage their supply of licensed beds by utilizing the bed layaway system administered by the Department of Health. Nursing facilities that have excess capacity and need to decrease their bed supply to meet the minimum occupancy rate

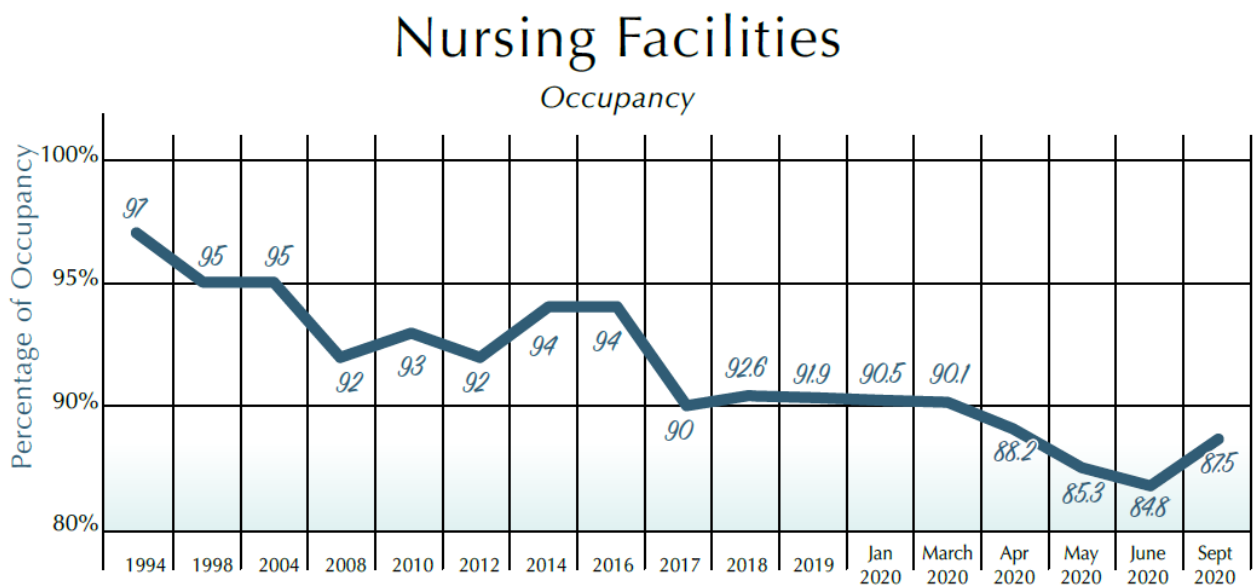
can move beds from active use to bed layaway. Beds can remain in layaway for up to four years. At the end of the fourth year if the nursing facility does not want to bring the bed back into active use it can be retired and is no longer considered in the State's total bed count. Beds can be sold between facilities as long as the total number of licensed beds in the State does not increase.

Nursing facilities that do not meet the minimum occupancy rate are penalized in the rate setting process. The indirect care and property rate per diem is generally adjusted downward for failure to meet the minimum occupancy rate.

The Department has two reasons for the proposed change to subsection 3. First, throughout the COVID-19 pandemic the Department monitored nursing facility occupancy rates. Since March 2020, occupancy rates have steadily fallen due to a combination of deaths and reduced demand. Below are two graphs that show the trend in occupancy rates over time: one using Department data and another using data from the North Dakota Long Term Care Association (NDLTCA).



Source: Department of Human Services



Source: 1994-2019 Based on Cost Report Data
January – June 2020 Based on NDLTCA Survey
September 2020 Based on HC Standard Report on September 10, 2020.
North Dakota Long Term Care Association - 2020

In a circumstance such as a national public health emergency, this proposed change would allow the Department more flexibility in setting a different minimum occupancy rate to account for extenuating circumstances. Second, the Department is proposing House Bill 1090 which will be presented to this committee shortly. House Bill 1090 changes the current payment structure of care and property for nursing facilities. While a minimum occupancy rate is still needed in the new payment models, the Department again maintains that it needs flexibility to account for extenuating circumstances under the new system.

The Department wants to reiterate that a minimum occupancy rate is important, and this bill is not meant in any way to move away from that policy. Controlling the supply of beds is critical to financial sustainability of the system and safeguarding taxpayer dollars. House Bill 1065 simply asks for more flexibility so that the Department can react appropriately as needed.

Finally, the Department is aware that the NDLTCA is submitting an amendment to House Bill 1065. The amendment asks that the occupancy rate not exceed 90%. The Department does not oppose this amendment.

I would be happy to answer any questions that you may have.