

Fifty-ninth  
Legislative Assembly  
of North Dakota

ENGROSSED 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  
24 the 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. For the rate~~  
15          ~~year beginning 2006, the department shall establish limits for cost categories using~~  
16          ~~the June 30, 2003, cost report year as the base period. The limits may not fall~~  
17          ~~below the median of the most recent cost report. Until the a new base period is~~  
18          established, the department shall adjust the limits annually using the appropriate  
19          economic change indices established in subsection 5. In determining allowable  
20          historical operating cost per diems for purposes of setting limits and nursing home  
21          payment rates, the department shall divide the allowable historical operating costs  
22          by the actual number of resident days, except that where a nursing home is  
23          occupied at less than ninety percent of licensed capacity days, the department  
24          may establish procedures to adjust the computation of the indirect care cost per  
25          diem to an imputed occupancy level at or below ninety percent. To encourage the  
26          development of home and community-based services as an alternative to nursing  
27          home care, the department may waive the imputed occupancy level requirements  
28          for a nursing home that the department determines to be providing significant  
29          home and community-based services in coordination with home and  
30          community-based service providers to avoid duplicating existing services. The  
31          department shall establish efficiency incentives ~~as appropriate~~ for indirect care

- 1            costs. The department may establish efficiency incentives for different operating  
2            cost categories. The department shall consider establishing efficiency incentives  
3            in care-related cost categories. ~~The department may combine one or more~~  
4            ~~operating cost categories and may use different methods for calculating payment~~  
5            ~~rates for each operating cost category or combination of operating cost categories.~~
- 6            5. The department shall establish a composite index or indices based on the average  
7            of the increase in the ~~Data Resources~~ global insight, ~~Incorporated~~ incorporated,  
8            nursing home input price index and the increase in the consumer price index for all  
9            urban wage earners and clerical workers (all items, United States city average) to  
10           be applied to specific operating cost categories or combination of operating cost  
11           categories.
- 12           6. Each nursing home shall receive an operating cost payment rate equal to the sum  
13           of the nursing home's operating cost payment rates for each operating cost  
14           category. The operating cost payment rate for an operating cost category must be  
15           the lesser of the nursing home's historical operating cost in the category increased  
16           by the appropriate index established in subsection 5 for the operating cost  
17           category plus an efficiency incentive established pursuant to subsection 4 or the  
18           limit for the operating cost category increased by the same index. If a nursing  
19           home's actual historic operating costs are greater than the prospective payment  
20           rate for that rate year, there may be no retroactive cost settle-up. In establishing  
21           payment rates for one or more operating cost categories, the department may  
22           establish separate rates for different classes of residents based on their relative  
23           care needs.
- 24           7. ~~Effective July 1, 1991, the~~ The efficiency incentives to be established by the  
25           department pursuant to subsection 4 for a facility with an actual rate below the limit  
26           rate for indirect care costs must include the lesser of two dollars and sixty cents  
27           per resident day or the amount determined by multiplying seventy percent times  
28           the difference between the actual rate, exclusive of inflation indices, and the limit  
29           rate, exclusive of current inflation indices. The efficiency incentive must be  
30           included as a part of the indirect care cost rate.

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

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

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

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

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

23           **50-24.4-13. Exclusion.** Until procedures for determining operating cost payment rates  
24 according to mix of resident needs are established for nursing homes that exclusively provide  
25 residential services for nongeriatric individuals with physical disabilities or units within nursing  
26 homes which exclusively provide geropsychiatric services, such nursing homes or units within  
27 nursing homes may not be included in the calculation of the ~~percentiles of any group~~ limits of  
28 any cost categories. Each of these nursing homes or units within nursing homes shall receive  
29 its actual allowed historical operating cost per diem adjusted by a percentage amount equal to  
30 the increase, if any, in the national or state economic change index, made available under

1 section 50-24.4-10, and which the department determines to be relevant to residential services  
2 for nongeriatric individuals with physical disabilities or geropsychiatric services.

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

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

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

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

31 **50-24.4-16. Special rates.**

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

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

14           **50-24.4-19. Prohibited practices.** ~~From and after January 1, 1990, a~~ A nursing home  
15           is not eligible to receive medical assistance payments unless it refrains from all of the following:

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

1 that charges a private-paying resident a rate in violation of this chapter is subject to  
2 an action by the state or any of its subdivisions or agencies for civil damages. A  
3 private-paying resident or the resident's legal representative has a cause of action  
4 for civil damages against a nursing home that charges the resident rates in  
5 violation of this chapter. The damages awarded shall include three times the  
6 payments that result from the violation, together with costs and disbursements,  
7 including reasonable ~~attorneys'~~ attorney's fees or their equivalent.

8 2. Requiring an applicant for admission to the home, or the guardian or conservator  
9 of the applicant, as a condition of admission, to pay any fee or deposit in excess of  
10 one hundred dollars, loan any money to the nursing home, or promise to leave all  
11 or part of the applicant's estate to the home.

12 3. Requiring any resident of the nursing home to utilize a vendor of health care  
13 services who is a licensed physician or pharmacist chosen by the nursing home.

14 4. Providing differential treatment on the basis of status with regard to public  
15 assistance.

16 5. Discriminating in admissions, services offered, or room assignment on the basis of  
17 status with regard to public assistance. Admissions discrimination shall include,  
18 but is not limited to:

19 a. Basing admissions decisions upon assurance by the applicant to the nursing  
20 home, or the applicant's guardian or conservator, that the applicant is neither  
21 eligible for nor will seek public assistance for payment of nursing home care  
22 costs.

23 b. Engaging in preferential selection from waiting lists based on an applicant's  
24 ability to pay privately.

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

29 6. Requiring any vendor of medical care, who is reimbursed by medical assistance  
30 under a separate fee schedule, to pay any portion of the vendor's fee to the  
31 nursing home except as payment for the fair market value of renting or leasing

1 space or equipment of the nursing home or purchasing support services, if those  
2 agreements are disclosed to the department.

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

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

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

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

13 **50-24.4-27. Medicare certification.** All nursing facilities certified under the medical  
14 assistance program shall participate in medicare part A and part B with respect to at least thirty  
15 percent of the beds in the facility unless, after submitting an application, medicare certification  
16 is denied by the federal health care financing administration. The facility shall file on behalf of  
17 each patient or assist each patient in the filing of requests for any third-party benefits to which  
18 the patient may be entitled. ~~Medicare review must be conducted at the time of the annual~~  
19 ~~medical assistance review.~~ Charges for medicare-covered services provided to residents who  
20 are simultaneously eligible for medical assistance and medicare must be billed to medicare  
21 part A or part B before billing medical assistance. Medical assistance may be billed only for  
22 charges not reimbursed by medicare.

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