

**SECOND ENGROSSMENT  
with Senate Amendments**Fifty-ninth  
Legislative Assembly  
of North Dakota**REENGROSSED HOUSE BILL NO. 1252**

Introduced by

Representatives Delzer, Devlin, Kreidt

Senators Brown, Fischer, J. Lee

1 A BILL for an Act to create and enact a new section to chapter 50-24.1 of the North Dakota  
2 Century Code, relating to developmental disabilities service providers; to amend and reenact  
3 sections 50-24.4-06 and 50-24.4-10, subsection 1 of section 50-24.4-11, sections 50-24.4-13,  
4 50-24.4-14, 50-24.4-16, 50-24.4-19, and 50-24.4-27, and subsection 3 of section 50-24.5-02 of  
5 the North Dakota Century Code, relating to nursing home rates and basic care rates; and to  
6 repeal section 50-24.4-09 of the North Dakota Century Code, relating to interim rates for  
7 nursing homes.

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

9 **SECTION 1.** A new section to chapter 50-24.1 of the North Dakota Century Code is  
10 created and enacted as follows:

11 **Operating costs for developmental disabilities service providers.** The department  
12 of human services shall determine the budget for private, licensed developmental disability  
13 providers by inflating historical costs by the annual percentage developed for long-term care  
14 facilities. Any additional funds appropriated by the legislative assembly must be in addition to  
15 the annual inflator.

16 **SECTION 2. AMENDMENT.** Section 50-24.4-06 of the North Dakota Century Code is  
17 amended and reenacted as follows:

18 **50-24.4-06. Rate determination.** The department shall determine prospective  
19 payment rates for resident care costs. ~~For rate years beginning on or after January 1, 1990,~~  
20 ~~the~~ The department shall develop procedures for determining operating cost payment rates that  
21 take into account the mix of resident needs and other factors as determined by the department.

22 The department shall establish, by rule, limitations on compensation recognized in the  
23 historical base for top management personnel. Compensation for top management personnel

1 must be categorized as a general and administrative cost and is subject to any limits imposed  
2 on that cost category.

3 **SECTION 3. AMENDMENT.** Section 50-24.4-10 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 **50-24.4-10. Operating costs after ~~January 1, 1990.~~**

- 6 1. ~~For rate years beginning on or after January 1, 1990, the~~ The department shall  
7 establish procedures for determining per diem reimbursement for operating costs.
- 8 2. The department shall maintain access to national and state economic change  
9 indices that can be applied to the appropriate cost categories when determining  
10 the operating cost payment rate.
- 11 3. The department shall analyze and evaluate each nursing home's cost report of  
12 allowable operating costs incurred by the nursing home during the reporting year  
13 immediately preceding the rate year for which the payment rate becomes effective.
- 14 4. The department shall establish limits on actual allowable historical operating cost  
15 per diems based on cost reports of allowable operating costs ~~for the reporting year~~  
16 ~~that begins July 1, 1987,~~ taking into consideration relevant factors including  
17 resident needs, nursing hours necessary to meet resident needs, size of the  
18 nursing home, and the costs that must be incurred for the care of residents in an  
19 efficiently and economically operated nursing home. ~~The limits established by the~~  
20 ~~department may not be less, in the aggregate, than the sixtieth percentile of total~~  
21 ~~actual allowable historical operating cost per diems for each group of nursing~~  
22 ~~homes established under this chapter based on cost reports of allowable operating~~  
23 ~~costs in the previous reporting year. The limits established under this subsection~~  
24 ~~remain in effect until the department establishes a new base period. For the rate~~  
25 ~~year beginning 2006, the department shall establish limits for cost categories using~~  
26 ~~the June 30, 2003, cost report year as the base period. The limits may not fall~~  
27 ~~below the median of the cost report used for the base period. Until ~~the~~ a new base~~  
28 period is established, the department shall adjust the limits annually using the  
29 appropriate economic change indices established in subsection 5. In determining  
30 allowable historical operating cost per diems for purposes of setting limits and  
31 nursing home payment rates, the department shall divide the allowable historical

- 1 operating costs by the actual number of resident days, except that where a nursing  
2 home is occupied at less than ninety percent of licensed capacity days, the  
3 department may establish procedures to adjust the computation of the indirect  
4 care cost per diem to an imputed occupancy level at or below ninety percent. To  
5 encourage the development of home and community-based services as an  
6 alternative to nursing home care, the department may waive the imputed  
7 occupancy level requirements for a nursing home that the department determines  
8 to be providing significant home and community-based services in coordination  
9 with home and community-based service providers to avoid duplicating existing  
10 services. The department shall establish efficiency incentives ~~as appropriate for~~  
11 indirect care costs. The department may establish efficiency incentives for  
12 different operating cost categories. The department shall consider establishing  
13 efficiency incentives in care-related cost categories. ~~The department may combine~~  
14 ~~one or more operating cost categories and may use different methods for~~  
15 ~~calculating payment rates for each operating cost category or combination of~~  
16 ~~operating cost categories.~~
- 17 5. The department shall establish a composite index or indices based on the average  
18 of the increase in the ~~Data Resources, Incorporated, Global Insight~~ nursing home  
19 input price index and the increase in the consumer price index for all urban wage  
20 earners and clerical workers (all items, United States city average) to be applied to  
21 specific operating cost categories or combination of operating cost categories.
- 22 6. Each nursing home shall receive an operating cost payment rate equal to the sum  
23 of the nursing home's operating cost payment rates for each operating cost  
24 category. The operating cost payment rate for an operating cost category must be  
25 the lesser of the nursing home's historical operating cost in the category increased  
26 by the ~~appropriate index established in subsection 5~~ inflation rate for nursing home  
27 services used to develop the legislative appropriation for the department for the  
28 operating cost category plus an efficiency incentive established pursuant to  
29 subsection 4 or the limit for the operating cost category increased by the same  
30 ~~index~~ inflation rate. If a nursing home's actual historic operating costs are greater  
31 than the prospective payment rate for that rate year, there may be no retroactive

1 cost settle-up. In establishing payment rates for one or more operating cost  
2 categories, the department may establish separate rates for different classes of  
3 residents based on their relative care needs.

4 7. ~~Effective July 1, 1991, the~~ The efficiency incentives to be established by the  
5 department pursuant to subsection 4 for a facility with an actual rate below the limit  
6 rate for indirect care costs must include the lesser of two dollars and sixty cents  
7 per resident day or the amount determined by multiplying seventy percent times  
8 the difference between the actual rate, exclusive of inflation ~~indices~~ rates, and the  
9 limit rate, exclusive of current inflation ~~indices~~ rates. The efficiency incentive must  
10 be included as a part of the indirect care cost rate.

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

15 9. A new base period must be established at least every four years beginning with  
16 the cost report period June 30, 2006.

17 **SECTION 4. AMENDMENT.** Subsection 1 of section 50-24.4-11 of the North Dakota  
18 Century Code is amended and reenacted as follows:

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

1           **SECTION 5. AMENDMENT.** Section 50-24.4-13 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3           **50-24.4-13. Exclusion.** Until procedures for determining operating cost payment rates  
4 according to mix of resident needs are established for nursing homes that exclusively provide  
5 residential services for nongeriatric individuals with physical disabilities or units within nursing  
6 homes which exclusively provide geropsychiatric services, such nursing homes or units within  
7 nursing homes may not be included in the calculation of the ~~percentiles of any group~~ limits of  
8 any cost categories. Each of these nursing homes or units within nursing homes shall receive  
9 its actual allowed historical operating cost per diem adjusted by a percentage amount equal to  
10 the increase, if any, in the national or state economic change index, made available under  
11 section 50-24.4-10, and which the department determines to be relevant to residential services  
12 for nongeriatric individuals with physical disabilities or geropsychiatric services.

13           **SECTION 6. AMENDMENT.** Section 50-24.4-14 of the North Dakota Century Code is  
14 amended and reenacted as follows:

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

- 27           1. Only the salaries, fringe benefits, and payroll taxes associated with the individual  
28 performing the service may be allocated. No other costs may be allocated.
- 29           2. The allocation must be based on direct identification and only to the extent justified  
30 in time distribution records that show the actual time spent by the consultant  
31 performing the services ~~in~~ for the nursing home.

1           3. The cost in subsection 1 for each consultant must not be allocated to more than  
2           one operating cost category in the nursing home. If more than one nursing home  
3           is served by a consultant, all nursing homes shall allocate the consultant's cost to  
4           the same operating category.

5           4. Top management personnel must not be considered consultants.

6           5. The consultant's full-time responsibilities are to provide the services identified in  
7           this section.

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

10           **50-24.4-16. Special rates.**

11           1. For nursing homes with a significant capacity increase and for newly constructed  
12           nursing homes, which first provide services on or after July 1, 1988, and which are  
13           not included in the calculation of the ~~percentile for any group~~ limits of any cost  
14           category, the department shall establish procedures for determining interim  
15           operating cost payment rates. The interim payment rate may not be in effect for  
16           more than eighteen months. The department shall establish procedures for  
17           determining the interim rate and for making a retroactive cost settle-up for periods  
18           when an interim rate was in effect.

19           2. As soon as is practicable following the establishment of the procedures required by  
20           subsection 1, the department shall apply the special rates for all affected facilities  
21           ~~for rate periods beginning on or after January 1, 1990.~~

22           **SECTION 8. AMENDMENT.** Section 50-24.4-19 of the North Dakota Century Code is  
23 amended and reenacted as follows:

24           **50-24.4-19. Prohibited practices.** ~~From and after January 1, 1990, a~~ A nursing home  
25 is not eligible to receive medical assistance payments unless it refrains from all of the following:

26           1. Charging private-paying residents rates for similar services which exceed those  
27           rates which are approved by the department for medical assistance recipients, as  
28           determined by the prospective desk audit rate, except under the following  
29           circumstances: the nursing home may charge private-paying residents a higher  
30           rate for a private room and charge for special services which are not included in  
31           the daily rate if medical assistance residents are charged separately at the same

- 1 rate for the same services in addition to the daily rate paid by the department of  
2 human services. Services covered by the payment rate must be the same  
3 regardless of payment source. Special services, if offered, must be offered to all  
4 residents and charged separately at the same rate. Residents are free to select or  
5 decline special services. Special services must not include services which must  
6 be provided by the nursing home in order to comply with licensure or certification  
7 standards and that if not provided would result in a deficiency or violation by the  
8 nursing home. Services beyond those required to comply with licensure or  
9 certification standards must not be charged separately as a special service if they  
10 were included in the payment rate for the previous reporting year. A nursing home  
11 that charges a private-paying resident a rate in violation of this chapter is subject to  
12 an action by the state or any of its subdivisions or agencies for civil damages. A  
13 private-paying resident or the resident's legal representative has a cause of action  
14 for civil damages against a nursing home that charges the resident rates in  
15 violation of this chapter. The damages awarded shall include three times the  
16 payments that result from the violation, together with costs and disbursements,  
17 including reasonable ~~attorneys'~~ attorney's fees or their equivalent.
- 18 2. Requiring an applicant for admission to the home, or the guardian or conservator  
19 of the applicant, as a condition of admission, to pay any fee or deposit in excess of  
20 one hundred dollars, loan any money to the nursing home, or promise to leave all  
21 or part of the applicant's estate to the home.
- 22 3. Requiring any resident of the nursing home to utilize a vendor of health care  
23 services who is a licensed physician or pharmacist chosen by the nursing home.
- 24 4. Providing differential treatment on the basis of status with regard to public  
25 assistance.
- 26 5. Discriminating in admissions, services offered, or room assignment on the basis of  
27 status with regard to public assistance. Admissions discrimination shall include,  
28 but is not limited to:
- 29 a. Basing admissions decisions upon assurance by the applicant to the nursing  
30 home, or the applicant's guardian or conservator, that the applicant is neither

1 eligible for nor will seek public assistance for payment of nursing home care  
2 costs.

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

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

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

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

18 8. Violating any of the rights of health care facility residents enumerated in section  
19 50-10.2-02.

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

22 **SECTION 9. AMENDMENT.** Section 50-24.4-27 of the North Dakota Century Code is  
23 amended and reenacted as follows:

24 **50-24.4-27. Medicare certification.** All nursing facilities certified under the medical  
25 assistance program shall participate in medicare part A and part B with respect to at least thirty  
26 percent of the beds in the facility unless, after submitting an application, medicare certification  
27 is denied by the federal health care financing administration. The facility shall file on behalf of  
28 each patient or assist each patient in the filing of requests for any third-party benefits to which  
29 the patient may be entitled. ~~Medicare review must be conducted at the time of the annual~~  
30 ~~medical assistance review.~~ Charges for medicare-covered services provided to residents who  
31 are simultaneously eligible for medical assistance and medicare must be billed to medicare

1 part A or part B before billing medical assistance. Medical assistance may be billed only for  
2 charges not reimbursed by medicare.

3 **SECTION 10. AMENDMENT.** Subsection 3 of section 50-24.5-02 of the North Dakota  
4 Century Code is amended and reenacted as follows:

5 3. Supplement, within the limits of legislative appropriation, the income of an eligible  
6 beneficiary receiving necessary basic care services to the extent that the eligible  
7 beneficiary lacks income sufficient to meet the cost of that care, provided at rates  
8 determined by the department adjusted by the inflation rate for basic care services  
9 used to develop the legislative appropriation for the department.

10 **SECTION 11. REPEAL.** Section 50-24.4-09 of the North Dakota Century Code is  
11 repealed.