

**SECOND ENGROSSMENT
with Conference Committee Amendments**

REENGROSSED 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, sections 50-24.4-13, 50-24.4-14, 50-24.4-16, 50-24.4-19, and 50-24.4-27,
3 and subsection 3 of section 50-24.5-02 of the North Dakota Century Code, relating to nursing
4 home rates and basic care rates; and to repeal section 50-24.4-09 of the North Dakota Century
5 Code, relating to interim rates for nursing 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. 3. 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 by the inflation rate for~~
20 ~~nursing home services used to develop the legislative appropriation for the~~
21 ~~department.~~ In determining allowable historical operating cost per diems for
22 purposes of setting limits and nursing home payment rates, the department shall
23 divide the allowable historical operating costs by the actual number of resident
24 days, except that where a nursing home is occupied at less than ninety percent of
25 licensed capacity days, the department may establish procedures to adjust the
26 computation of the indirect care cost per diem to an imputed occupancy level at or
27 below ninety percent. To encourage the development of home and
28 community-based services as an alternative to nursing home care, the department
29 may waive the imputed occupancy level requirements for a nursing home that the
30 department determines to be providing significant home and community-based
31 services in coordination with home and community-based service providers to

1 avoid duplicating existing services. The department shall establish efficiency
2 incentives ~~as appropriate for indirect care costs~~. The department may establish
3 efficiency incentives for different operating cost categories. The department shall
4 consider establishing efficiency incentives in care-related cost categories. ~~The~~
5 ~~department may combine one or more operating cost categories and may use~~
6 ~~different methods for calculating payment rates for each operating cost category or~~
7 ~~combination of operating cost categories.~~

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

13 ~~6.~~ 4. Each nursing home shall receive an operating cost payment rate equal to the sum
14 of the nursing home's operating cost payment rates for each operating cost
15 category. The operating cost payment rate for an operating cost category must be
16 the lesser of the nursing home's historical operating cost in the category increased
17 by the ~~appropriate index established in subsection 5~~ inflation rate for nursing home
18 services used to develop the legislative appropriation for the department for the
19 operating cost category plus an efficiency incentive established pursuant to
20 subsection 4 3 or the limit for the operating cost category increased by the same
21 ~~index~~ inflation rate. If a nursing home's actual historic operating costs are greater
22 than the prospective payment rate for that rate year, there may be no retroactive
23 cost settle-up. In establishing payment rates for one or more operating cost
24 categories, the department may establish separate rates for different classes of
25 residents based on their relative care needs.

26 ~~7.~~ 5. ~~Effective July 1, 1991, the~~ The efficiency incentives to be established by the
27 department pursuant to subsection 4 3 for a facility with an actual rate below the
28 limit rate for indirect care costs must include the lesser of two dollars and sixty
29 cents per resident day or the amount determined by multiplying seventy percent
30 times the difference between the actual rate, exclusive of inflation ~~indices~~ rates,

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

3 ~~8- 6. Effective July 1, 1991, each~~ Each nursing home must receive an operating margin
4 of at least three percent based upon the lesser of the actual direct care and other
5 direct care costs and the limit rate prior to inflation. The operating margin will then
6 be added to the rate for direct care and other direct care cost categories.

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

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

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

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

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

1 ~~the increase, if any, in the national or state economic change index, made available under~~
2 ~~section 50-24.4-10~~ the inflation rate for nursing home services used to develop the legislative
3 appropriation for the department, and which the department determines to be relevant to
4 residential services for nongeriatric individuals with physical disabilities or geropsychiatric
5 services.

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

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

- 20 1. Only the salaries, fringe benefits, and payroll taxes associated with the individual
21 performing the service may be allocated. No other costs may be allocated.
- 22 2. The allocation must be based on direct identification and only to the extent justified
23 in time distribution records that show the actual time spent by the consultant
24 performing the services ~~in~~ for the nursing home.
- 25 3. The cost in subsection 1 for each consultant must not be allocated to more than
26 one operating cost category in the nursing home. If more than one nursing home
27 is served by a consultant, all nursing homes shall allocate the consultant's cost to
28 the same operating category.
- 29 4. Top management personnel must not be considered consultants.
- 30 5. The consultant's full-time responsibilities are to provide the services identified in
31 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
30 be 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

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

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

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

17 4. Providing differential treatment on the basis of status with regard to public
18 assistance.

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

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

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

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

- 1 6. Requiring any vendor of medical care, who is reimbursed by medical assistance
2 under a separate fee schedule, to pay any portion of the vendor's fee to the
3 nursing home except as payment for the fair market value of renting or leasing
4 space or equipment of the nursing home or purchasing support services, if those
5 agreements are disclosed to the department.
- 6 7. Refusing, for more than twenty-four hours, to accept a resident returning to the
7 resident's same bed or a bed certified for the same level of care, in accordance
8 with a physician's order authorizing transfer, after receiving inpatient hospital
9 services.
- 10 8. Violating any of the rights of health care facility residents enumerated in section
11 50-10.2-02.
- 12 9. Charging a managed care organization a rate that is less than the rate approved
13 by the department for a medical assistance recipient in the same classification.

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

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

26 **SECTION 9. AMENDMENT.** Subsection 3 of section 50-24.5-02 of the North Dakota
27 Century Code is amended and reenacted as follows:

- 28 3. Supplement, within the limits of legislative appropriation, the income of an eligible
29 beneficiary receiving necessary basic care services to the extent that the eligible
30 beneficiary lacks income sufficient to meet the cost of that care, provided at rates

- 1 determined by the department adjusted by the inflation rate for basic care services
2 used to develop the legislative appropriation for the department.
3 **SECTION 10. REPEAL.** Section 50-24.4-09 of the North Dakota Century Code is
4 repealed.