

Sixty-fifth  
Legislative Assembly  
of North Dakota

ENGROSSED HOUSE BILL NO. 1115

Introduced by

Human Services Committee

(At the request of the Department of Human Services)

1 A BILL for an Act to create and enact a new subsection to section 50-24.4-15 of the North  
2 Dakota Century Code, relating to actual allowable historical property costs; to amend and  
3 reenact subsection 1 of section 23-09.3-01.1, subsection 1 of section 23-16-01.1, subsection 3  
4 of section 50-24.4-06; subsection 6 of section 50-24.4-07; section 50-24.4-10; and subsection 1  
5 of 50-24.4-19 of the North Dakota Century Code, relating to the moratoria on basic care and  
6 nursing facility bed capacity and ratesetting for nursing homes.

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

8 **SECTION 1. AMENDMENT.** Subsection 1 of section 23-09.3-01.1 of the North Dakota  
9 Century Code is amended and reenacted as follows:

- 10 1. Basic care beds may not be added to the state's licensed bed capacity during the  
11 period between August 1, ~~2015~~2017, and July 31, ~~2017~~2019, except when:
  - 12 a. A nursing facility converts nursing facility beds to basic care;
  - 13 b. An entity licenses bed capacity transferred as basic care bed capacity under  
14 section 23-16-01.1;
  - 15 c. An entity demonstrates to the state department of health and the department of  
16 human services that basic care services are not readily available within a  
17 designated area of the state or that existing basic care beds within a fifty-mile  
18 [80.47-kilometer] radius have been occupied at ninety percent or more for the  
19 previous twelve months. In determining whether basic care services will be  
20 readily available if an additional license is issued, preference may be given to an  
21 entity that agrees to any participation program established by the department of  
22 human services for individuals eligible for services under the medical assistance  
23 program under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.];

1           d. The state department of health and the department of human services grant a  
2           short-term license to allow an individual to transition from an assisted living bed  
3           to a basic care bed at the same facility; or

4           ~~d.e.~~ The state department of health and the department of human services grant  
5           approval of new basic care beds to an entity. The approved entity shall license  
6           the beds within forty-eight months from the date of approval.

7           **SECTION 2. AMENDMENT.** Subsection 1 of section 23-16-01.1 of the North Dakota  
8 Century Code is amended and reenacted as follows:

9           1. Notwithstanding sections 23-16-06 and 23-16-10, except when a facility reverts basic  
10          care beds to nursing facility beds or relicenses nursing facility beds delicensed after  
11          July 31, 2011, nursing facility beds may not be added to the state's licensed bed  
12          capacity during the period between August 1, ~~2015~~2017, and July 31, ~~2017~~2019. A  
13          nursing facility may not delicense nursing facility bed capacity, relicense nursing facility  
14          bed capacity, convert licensed nursing bed capacity to basic care bed capacity, revert  
15          licensed basic care bed capacity back to nursing facility bed capacity, or otherwise  
16          reconfigure licensed nursing facility bed capacity more than one time in a  
17          twelve-month period.

18          **SECTION 3. AMENDMENT.** Subsection 3 of section 50-24.4-06 of the North Dakota  
19 Century Code is amended and reenacted as follows:

20          3. For purposes of determining rates, the department shall:  
21          a. Include, contingent upon approval of the medicaid state plan by the centers for  
22          medicare and medicaid services, allowable bad debt expenses in an amount not  
23          to exceed one hundred eighty days of resident care per year or an aggregate of  
24          three hundred sixty days of resident care for any one individual; and  
25          b. Include allowable bad debt expenses in the ~~property~~indirect care cost category in  
26          the report year in which the bad debt is determined to be uncollectible with no  
27          likelihood of future recovery.  
28          c. Notwithstanding section 50-24.4-07, include as an allowable cost any tax paid by  
29          a basic care or nursing facility due to provisions of the federal Patient Protection  
30          and Affordable Care Act [Pub. L. 111-148], as amended by the Health Care and  
31          Education Reconciliation Act of 2010 [Pub. L. 111-152].

1       **SECTION 4. AMENDMENT.** Subsection 6 of section 50-24.4-07 of the North Dakota  
2 Century Code is amended and reenacted as follows:

- 3       6. The facility shall report the education expense separately on the facility's cost report.  
4       The expense is allowed as a ~~passthrough~~ in the indirect care cost category and is  
5       limited only by the fifteen thousand dollar maximum per individual.

6       **SECTION 5. AMENDMENT.** Section 50-24.4-10 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8       **50-24.4-10. Operating costs.**

- 9       1. The department shall establish procedures for determining per diem reimbursement  
10       for operating costs.
- 11       2. 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       3. The department shall establish limits on actual allowable historical operating cost per  
15       diems based on cost reports of allowable operating costs taking into consideration  
16       relevant factors including resident needs, nursing hours necessary to meet resident  
17       needs, size of the nursing home, and the costs that must be incurred for the care of  
18       residents in an efficiently and economically operated nursing home. For the rate year  
19       beginning 2006, the department shall establish limits for cost categories using the  
20       June 30, 2003, cost report year as the base period. The limits may not fall below the  
21       median of the most recent cost report. Until a new base period is established, the  
22       department shall adjust the limits annually by the inflation rate for nursing home  
23       services used to develop the legislative appropriation for the department. In  
24       determining allowable historical operating cost per diems for purposes of setting limits  
25       and nursing home payment rates, the department shall divide the allowable historical  
26       operating costs by the actual number of resident days, except that when a nursing  
27       home is occupied at less than ninety percent of licensed capacity days, the  
28       department may establish procedures to adjust the computation of the indirect care  
29       cost per diem to an imputed occupancy level at or below ninety percent. To encourage  
30       the development of home and community-based services as an alternative to nursing  
31       home care, the department may waive the imputed occupancy level requirements for a

1 nursing home that the department determines to be providing significant home and  
2 community-based services in coordination with home and community-based service  
3 providers to avoid duplicating existing services. The department shall establish  
4 efficiency incentives for indirect care costs. The department may establish efficiency  
5 incentives for different operating cost categories. The department shall consider  
6 establishing efficiency incentives in care-related cost categories.

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

- 19 5. a. The efficiency incentives to be established by the department, pursuant to  
20 subsection 3 for a facility with an actual rate below the limit rate for, ~~shall~~  
21 ~~establish an~~ indirect care costs must include the lesser of two dollars and sixty  
22 cents per resident day or the amount determined by multiplying seventy percent  
23 times the difference between the actual rate, exclusive of inflation rates, and the  
24 limit rate, exclusive of current inflation rates ~~cost category incentive for a nursing~~  
25 ~~home with an actual indirect care cost rate below the limit rate for indirect care~~  
26 ~~costs, within the limits of legislative appropriations.~~ The efficiency incentive must  
27 be included as a part of the indirect care cost rate.  
28 b. Pursuant to subsection 3 and within the limits of legislative appropriations, the  
29 department shall establish an indirect care cost category incentive for a nursing  
30 home with an actual indirect care cost rate below the limit rate for indirect care

1 costs. The incentive must be included as part of the indirect care cost rate and  
2 calculated as follows:

3 a. (1) The base year for each nursing home's indirect care limit rate is the 2016  
4 reporting year;

5 b. (2) Annually, the base year limit must be adjusted by the inflation rate for  
6 nursing home services used to develop the legislative appropriation for the  
7 department; and

8 c. (3) The incentive is equal to half of the difference between the nursing home's  
9 indirect care limit rate and the nursing home's actual indirect care cost per  
10 diem that is under the nursing home's limit rate.

11 6. Each nursing home must receive an operating margin of at least three percent based  
12 upon the lesser of the actual **direct care and** other direct care costs and the limit rate  
13 prior to inflation. The operating margin will then be added to the rate for **direct care**  
14 **and** other direct care cost **categoriescategory**.

15 7. ~~A~~Except as provided in subsections 5 and 8, a new base period must be established  
16 at least every four years beginning with the cost report period June 30, 2006.

17 8. The department, pursuant to subsection 3, shall establish a direct care cost category  
18 incentive based on nursing salaries and benefits and contract nursing staffing costs  
19 within the direct care cost category for a nursing home with an actual rate below the  
20 limit rate for direct care costs, within the limits of legislative appropriations, and  
21 calculated as follows:

22 a. The base year for each nursing home's staffing limit rate is the 2016 reporting  
23 year;

24 b. Annually, the base year limit must be adjusted by the inflation rate for nursing  
25 home services used to develop the legislative appropriation for the department;

26 c. The incentive is equal to half of the difference between the nursing home's  
27 staffing limit rate and the nursing home's actual staffing rate that is under the  
28 nursing home's limit rate; and

29 d. The direct care operating margin will be added to the direct care cost category  
30 rate.

1 ~~9. The department, pursuant to subsection 3, shall establish a direct care operating~~  
2 ~~margin incentive of three and one-half percent for nursing homes that are under the~~  
3 ~~direct care limit before inflation. The direct care operating margin will be added to the~~  
4 ~~direct care cost category rate.~~

5 **SECTION 6.** A new subsection to section 50-24.4-15 of the North Dakota Century Code is  
6 created and enacted as follows:

7 For rate years beginning after December 31, 2017, the limitation on actual allowable  
8 historical property costs per diem is sixty dollars for a nursing home licensed before  
9 July 1, 20172018. The limitation on actual allowable historical property costs per diem  
10 is fortyfifty dollars for a nursing home first licensed after June 30, 20172018. Annually,  
11 the department shall adjust the limits by the inflation rate for nursing home services  
12 used to develop the legislative appropriation for the department.

13 **SECTION 7. AMENDMENT.** Subsection 1 of section 50-24.4-19 of the North Dakota  
14 Century Code is amended and reenacted as follows:

- 15 1. Charging private-paying residents rates for similar services which exceed those rates  
16 which are approved by the department for medical assistance recipients, as  
17 determined by the prospective desk audit rate, except under the following  
18 circumstances: the nursing home may charge private-paying residents a property rate  
19 that does not exceed the actual allowable historical property costs less the property  
20 costs reimbursable under section 6 of this Act; and the nursing home may charge  
21 private-paying residents a higher rate for a private room and charge for special  
22 services which are not included in the daily rate if medical assistance residents are  
23 charged separately at the same rate for the same services in addition to the daily rate  
24 paid by the department of human services. Services covered by the payment rate  
25 must be the same regardless of payment source. Special services, if offered, must be  
26 offered to all residents and charged separately at the same rate. Residents are free to  
27 select or decline special services. Special services must not include services which  
28 must be provided by the nursing home in order to comply with licensure or certification  
29 standards and that if not provided would result in a deficiency or violation by the  
30 nursing home. Services beyond those required to comply with licensure or certification  
31 standards must not be charged separately as a special service if they were included in

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