

**HOUSE BILL NO. 1065**

Introduced by

Human Services Committee

(At the request of the Department of Human Services)

1 A BILL ~~for an Act to amend and reenact subsection 3 of section 50-24.4-10 of the North Dakota~~  
2 ~~Century Code, relating to nursing home's operating costs.~~for an Act to amend and reenact  
3 section 23-16-01.1 of the North Dakota Century Code, relating to the moratorium on the  
4 expansion of long-term care bed capacity.

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

6 ~~SECTION 1. AMENDMENT.~~ Subsection 3 of section 50-24.4-10 of the North Dakota  
7 Century Code is amended and reenacted as follows:—

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

~~on or before January first of each year. To encourage the development of home and community-based services as an alternative to nursing home care, the department may waive the imputed occupancy level requirements for a nursing home that the department determines to be providing significant home and community-based services in coordination with home and community-based service providers to avoid duplicating existing services. The department shall establish efficiency incentives for indirect care costs. The department may establish efficiency incentives for different operating cost categories. The department shall consider establishing efficiency incentives in care-related cost categories.~~

**SECTION 1. AMENDMENT.** Section 23-16-01.1 of the North Dakota Century Code is amended and reenacted as follows:

**23-16-01.1. Moratorium on expansion of long-term care bed capacity.**

1. Notwithstanding sections 23-16-06 and 23-16-10, except when a facility reverts basic care beds to nursing facility beds or relicenses nursing facility beds delicensed after July 31, 2011, nursing facility beds may not be added to the state's licensed bed capacity during the period between August 1, 2019, and July 31, 2021. A nursing facility may not delicense nursing facility bed capacity, relicense nursing facility bed capacity, convert licensed nursing bed capacity to basic care bed capacity, revert licensed basic care bed capacity back to nursing facility bed capacity, or otherwise reconfigure licensed nursing facility bed capacity more than ~~one time~~ two times in a twelve-month period.
2. Transfer of licensed nursing facility bed capacity from a nursing facility to another entity is permitted. The nursing facility may transfer the bed capacity either as nursing facility bed capacity or basic care bed capacity. Transferred bed capacity must become licensed by an entity within seventy-two months of transfer. Bed capacity transferred as basic care bed capacity may not be reverted to nursing facility bed capacity at any time. A receiving entity may transfer the received bed capacity to another entity within the seventy-two-month period originally established at the time the nursing facility first transferred the licensed nursing facility bed capacity. The subsequent receiving entity must license the received bed capacity within the seventy-two-month period originally established at the time of the first transfer.

- 1       3. A nursing facility may convert licensed nursing facility bed capacity to basic care. If the  
2       converted beds remain in the same facility and are not transferred, the beds may  
3       revert to nursing facility status after one year of licensure as basic care beds.
- 4       4. Nursing facility beds that are converted to basic care may be transferred as basic care  
5       beds. However, upon the transfer, the basic care beds may not be relicensed as  
6       nursing facility beds.
- 7       5. If ~~an Indian tribe~~ a federally recognized tribal nation acquires nursing facility beds, the  
8       tribal facility must meet state licensing requirements for those beds within seventy-two  
9       months of acquisition. A tribal facility may seek to participate in the medical assistance  
10      programs. Medical assistance payments may only be made to a Medicaid certified  
11      tribal facility that agrees to participate and adhere to all federal and state requirements  
12      of the medical assistance program, including participation, screening, ratesetting, and  
13      licensing requirements.
- 14     6. A nursing facility, upon prior written notice to the state department of health, may  
15     delicense a maximum of ~~twenty-five~~ thirty percent of its licensed nursing facility bed  
16     capacity and have the delicensed nursing facility held for a period of forty-eight  
17     months. The total delicensed nursing facility bed capacity that may be held for a  
18     nursing facility at no time may be greater than fifty percent of the number of currently  
19     licensed beds in the nursing facility. Delicensed nursing facility bed capacity in excess  
20     of fifty percent of the nursing facility's licensed capacity may not be held and is not  
21     eligible for the provisions of subsection 7. Delicensed bed capacity not sold or  
22     relicensed at the conclusion of the forty-eight-month holding period ceases to exist.
- 23     7. During the forty-eight-month holding period established at the time of delicensure,  
24     delicensed nursing facility bed capacity that is being held for the nursing facility may  
25     be:
  - 26     a. Relicensed by the nursing facility. Relicensing of nursing facility bed capacity may  
27     not occur for twelve months from the time of delicensure.
  - 28     b. Transferred to another entity as nursing facility bed capacity or basic care bed  
29     capacity. The receiving entity must license the transferred bed capacity as the  
30     type of bed capacity transferred within a seventy-two-month period established at  
31     the time of transfer. Bed capacity transferred as basic care bed capacity may not

1 be reverted to nursing facility bed capacity at any time. A receiving entity may  
2 transfer the received bed capacity to another entity within the seventy-two-month  
3 period established at the time of transfer. The subsequent receiving entity must  
4 license the received bed capacity within the seventy-two-month period  
5 established at the time of transfer.

6 c. Licensed as basic care beds by the same facility. If the licensed basic care beds  
7 remain in the same facility and are not transferred, the beds may be reverted to  
8 licensed nursing facility bed capacity after twelve months.

9 8. Notwithstanding any other provision of this section, a nursing facility bed transferred  
10 before July 1, 2019, must be relicensed by the receiving entity within a seventy-two-  
11 month period established at the time of transfer.

12 9. Notwithstanding any other provision of this section, a nursing facility bed in the  
13 layaway program before July 1, 2019, may remain in the program for forty-eight  
14 months from the time the bed was first laid away.