

Testimony on HB 1322
Senate Human Services Committee
March 1, 2023

Good morning, Chairman Lee and members of the Senate Human Services Committee. My name is Shelly Peterson, President of the North Dakota Long Term Care Association. I am here on behalf of all 77 skilled nursing facilities, we are asking for your support of HB 1322.

HB 1322 is very simple, we are asking you to eliminate one sentence in Century Code and allow the issue to be addressed by rule. HB 1322 proposes to delete, “Any adjustments that result in a cumulative change of more than one dollar per day from the desk rate will be included in the next subsequent cost report to the extent not corrected by a rate adjustment made pursuant to this subsection.”.

What does this sentence mean and why are we asking you to delete it from the century code? Nursing facilities follow detailed rules regarding what cost center expenditures are coded to, allocations regarding staff and space and numerous other requirements in ND Century Code, ND Administrative Code, the Nursing Facility Rate Setting Manual, policy letters and generally accepted accounting principles. DHHS contracts with a third-party national accounting firm to complete field audits onsite in a nursing facility at least every 6 years. In the years where an onsite audit isn't completed, the department completes a “desk” review and final rates are issued from these desk reviews. Audits and desk reviews are lagging, and this results in nursing facilities not getting “final” rates for a few years.

When you get a final rate often there are minor adjustments, sometimes larger ones. You can appeal the adjustments when you get the final

rate, and this can further delay the final rate. When you get a final rate, adjustments could result in an increase or decrease in your rates. DHHS will then go back to the beginning of the rate year and make the adjustments in rates. This is true for Medicaid rates, but it's different for the private pay. If the rate adjustment results in a rate increase, we cannot go back and charge the private pay more. This is as it should be, as often because of final rates being issued a couple of years later, many private pay individuals are deceased or no longer live in your facility. To get a bill after your nursing facility stay of 2 or 3 years ago, would anger the surviving family.

On the other side though, if the adjustment results in a lower rate a different process is followed, you must provide a refund if the decrease is more than a dollar per day. The dollar per day was implemented in 2017 through legislation. Prior to that a decrease of \$.25 cents per day needed to be refunded. With short stay residents, that could result in a check of only couple of dollars. In the last three years of my mother's life, she had three different nursing home admissions. Her last stay only 6 days. I was my mother's conservator and received a check for .63 cents. I decided to save it rather than divide it between my 6 siblings.

Average length of stay in the nursing home is decreasing and many residents are in our care for less than 30 days. Let's say a nursing facility had a rate decrease of one dollar per day, three years after their death. IF the private paying resident was in that nursing home for 30 days, we would need to find them or their estate and issue a refund of \$30. Again , if our rate increased a dollar per day we don't go back and try to retrieve \$30 from a closed estate.

What do other states do in this situation? In all states except ND, no refund is issued on finalized rates, it is considered a prospective rate with no settle up.

Nursing facilities work very hard to submit cost reports that result in zero adjustments. What we are asking you to do is to have this issue decided by administrative code rather than century code. We have met with Chris Jones on this issue and he is supportive of eliminating this sentence in century code and creating a rule to address this issue.

In summary, we are asking for your support in passing HB 1322. It passed 91 – 0 in the House. Thank you for your consideration of our request. I would be happy to answer any questions you might have.

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