17.8061.03000

# FISCAL NOTE

**Requested by Legislative Council**
**02/17/2017**

Revised
Amendment to: HB 1115

1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

| | 2015-2017 Biennium | | 2017-2019 Biennium | | 2019-2021 Biennium | |
|---|---|---|---|---|---|---|
| | General Fund | Other Funds | General Fund | Other Funds | General Fund | Other Funds |
| **Revenues** | | | | $632,744 | | $353,042 |
| **Expenditures** | | | $632,734 | $632,744 | $353,054 | $353,042 |
| **Appropriations** | | | $632,734 | $632,744 | $353,054 | $353,042 |

1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

| | 2015-2017 Biennium | 2017-2019 Biennium | 2019-2021 Biennium |
|---|---|---|---|
| **Counties** | | | |
| **Cities** | | | |
| **School Districts** | | | |
| **Townships** | | | |

2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Engrossed HB 1115 creates, amends & reenacts the NDCC as follows; a new subsection to section 50-24-4-15, changes to subsection 1 of section 23-09.3-01.1 & 23-16-01.1 subsection 3 of section 50-24.4-06, subsection 6 of section 50-24.4-07 & section 50-24.4-10 and subsection 1 of 50-24.4-19.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Engrossed HB 1115 Sections 1, 2, 3, and 4 have no impact to the department.

Section 5 provides and incentive to Nursing Facilities with an actual rate below the limit rate for indirect care and direct care costs.

Section 6 sets a property cost limit for certain facilities and would limit future property costs above the limit.

Section 7 will allow for nursing facilities to assess a higher property rate for private pay residents. Section 7 does not have a fiscal impact on Medicaid expenditures.
Rate changes would be effective January 1, 2018 and are independent of the restoration of the rebasing and operating margin in Engrossed HB 1012.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Federal dollars will be accessed to match general funds.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Engrossed HB 1115 Sections 1, 2, 3, and 4 have no impact to the department.

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Rate changes would be effective January 1, 2018 and are independent of the restoration of the rebasing and operating margin in Engrossed HB 1012.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

The Department of Human Services will need appropriations in the 2017 - 2019 biennium in the amount of $1,265,478 and the 2019 - 2021 biennium is projected to need $706,096.

**Name:** Debra A McDermott

**Agency:** Human Services

**Telephone:** 328-3695

**Date Prepared:** 02/23/2017

17.8061.03000

# FISCAL NOTE
**Requested by Legislative Council**
**02/17/2017**

Amendment to: HB 1115

1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

| | 2015-2017 Biennium | | 2017-2019 Biennium | | 2019-2021 Biennium | |
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1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

| | 2015-2017 Biennium | 2017-2019 Biennium | 2019-2021 Biennium |
|---|---|---|---|
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B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

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C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

The Department of Human Services will need appropriations in the 2017 - 2019 biennium in the amount of $1,265,478 and the 2019 - 2021 biennium is projected to need $706,096.

**Name:** Debra A McDermott

**Agency:** Human Services

**Telephone:** 328-3695

**Date Prepared:** 02/22/2017

17.8061.02000

# FISCAL NOTE

**Requested by Legislative Council**
**02/09/2017**

Amendment to: Engrossed HB 1115

1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

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|---|---|---|---|---|---|---|
| | General Fund | Other Funds | General Fund | Other Funds | General Fund | Other Funds |
| Revenues | | | | | | |
| Expenditures | | | | | | |
| Appropriations | | | | | | |

1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

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|---|---|---|---|
| Counties | | | |
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Engrossed HB 1115 creates, amends & reenacts the NDCC as follows; a new subsection to section 50-24-4-15, changes to subsection 1 of section 23-09.3-01.1 & 23-16-01.1 subsection 3 of section 50-24.4-06, subsection 6 of section 50-24.4-07 & section 50-24.4-10 and subsection 1 of 50-24.4-19.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

A fiscal impact cannot be determined within the period of time provided. The Department will continue to calculate the fiscal impact and update the FN when information is available.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

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**Name:** Debra A McDermott
**Agency:** Human Services
**Telephone:** 328-3695
**Date Prepared:** 02/10/2017

**2017 HOUSE HUMAN SERVICES**

**HB 1115**

# 2017 HOUSE STANDING COMMITTEE MINUTES

**Human Services Committee**
Fort Union Room, State Capitol

HB 1115
1/10/2017
26713

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature Judy Kopple

Relating to the moratorium on basic care and nursing facility bed capacity

**Minutes:** 1, 2, 3

Chairman Weisz: called the committee to order.

Attendance taken: everyone present
Chairman Weisz: Opened the hearing on HB 1115

Chairman Weisz: Is there any support for HB 1115
2:00

LeeAnn Thiel: Administrator of Medicaid Payment and Reimbursement Services
3:36 (Attachment 1)

Representative Seibel: Sixteen nursing facilities below 90%. How many do we have?

L. Thiel: We have 80 facilities that are enrolled in Medicaid

Vice Chairman Rohr: Who collects the data and where does it come from?

L. Thiel: The data for beds per thousand is kept at the Dept. of Health.

Representative P. Anderson: What does it cost to buy a bed these days?

L. Thiel: I don't know. That is not allowed in rate setting. That would be something Shelly Peterson can answer later.

Chairman Weisz: in the last biennium how many exceptions did the department make for basic care?

L. Thiel: There were 3 requests. Two of them a lower number than what they requested were given. The third one did not receive any beds.

Chairman Weisz: How many beds were given?

L. Thiel: A total of 14 beds

Representative Porter: Inside of the basic care what role does the state play in the determine payment inside of basic care as compared to the skilled care?

L. Thiel: For basic care there is not equalization of rates meaning the facility has to charge at least their private pay what they charge Medicaid. They can charge more. The Medicaid basic care rate is established every year based upon cost reports submitted by each facility. We look at allowable costs and establish a rate. On the nursing home side because of equalized rates they cannot charge a private pay resident more than the established rate for Medicaid. The department also sets those rates based upon a cost report submitted yearly by the nursing facilities.

Representative Porter: Why do we limit a person who wants to open a standalone business such as a basic care when we as a state really have nothing to do with it. WE don't penalize them if they're under 90% and we don't pay them more if they are over 90%. We have a stand back kind of approach. We just pay the bill if they are on Medicaid at an assigned rate. Why do we care about basic care numbers inside the operation of the free market?

L.Thiel: Our budget is based upon the current moratorium. If there was no moratorium we would have more basic care facilities. Some of those may or may not enroll in Medicaid and when you see a brand new facility the rates are higher just because of the cost of the property. That would have a financial impact on our budget.

Representative Porter: That make no sense. You said there is a set rate for basic care and a new facility could charge whatever they want to whoever they want. They can even not take Medicaid patients if the rates are not high enough.

Representative Porter: How would that effect the budget? I don't know where the people on Medicaid are that would suddenly rush toward this basic care facility and move in. Where are they living now?

L. Thiel: If new basic care facilities were built in the state, but they chose not to enroll in Medicaid which they have the option. Then it would not have an impact on our budget because we only work on the Medicaid side. More of them do have a least some of their beds Medicaid so that when their private pay residents pay down and then qualify for Medicaid they would not have to move just because their payment source has changed.

Representative Porter: I still don't understand, because that doesn't change your budget number. You have already factored in those number of people that would convert during the term of residency. That does not change as to why we have our nose in basic care.

L Thiel: With a new basic care because the property rate is not limited that is where the financial impact would come in. It may not involve more people, but would come in with a higher property rate than one that has been there for a number of years.

Representative Porter: For each basic care across the state we have a different rate that we pay or do we have one standard rate for Medicaid that they get paid for basic care?

L. Thiel: Each facility has its own rate. We do have limits on the direct care and indirect care, but the property rate is not limited, so each facility has their own rate.

Representative Porter: Looking at the basic care model. If we took this bill and put that if a new facility wants to be built and open up a new basic care type facility and chooses not to have any Medicaid beds, then the department's position would be what?

L. Thiel: That would not impact our budget, because if they are not involved with Medicaid we would not set their rates. They could charge whatever they want.

Representative Porter: Can't they charge whatever they like now?

L Thiel: Yes, for their non- Medicaid individuals.

Chairman Weisz: You would still license that facility though because there is a moratorium.

L.Thiel: We don't license. The Health Dept. does.

Chairman Weisz: but they wouldn't get a license to operate because of the moratorium, correct?

L. Thiel: There are facilities that do not enroll in Medicaid and have found beds on the open market.

Chairman Weisz: That was my point. They would have to find beds on the open market or close one of their facilities and move the beds, correct?

L. Thiel: Correct.

Chairman Weisz: It has always been said that if we took off the moratorium it would increase the number of residents in basic care. Where are those people that need more beds now. Why would there be more Medicaid people if we took the moratorium off if they already qualify Basic care. Where are they?

L. Thiel: Most are living at home but would choose to move in with Medicaid.

Representative Skroch: Could you explain the difference between basic and skilled? And what the effect would be on skilled if moratorium removed?

L.Thiel: The difference between basic care and skilled care is level of care. Skilled provide

24 hour nursing care, basic care side may not provide that. To be in a skilled facility they have to have a need and qualify for care. In basic care just need a little help with activities of daily living. Nursing facilities have been able to be build with in the moratorium. Beds have been transferred between facilities or purchased from others.

Representative Skroch: When they build they have to be able to prove sustainability of the new facility.

L. Thiel: Yes they would have to find beds within the system, but we don't look at whether they can sustain it, but I am sure they check it out.

Representative McWilliams: What is the purpose of the moritorim?

L. Thiel: Are talking about the moratorium or the exceptions?

Representative McWilliams: If we make exceptions and the exceptions are fine within the moratorium then what is the purpose?

L.Thiel: If they show a need they can add so they can stay in their community. The moratorium has been in place since 1995 and has become the way of doing business. We do look at it every biennium to see what the impact of the moratorium would be if it was not in place on our budget. We are aware that it could have an impact.

Representative McWilliams: So we have a moratorium in place because it might have an impact the budget, but we don't know if it is really going to effect it or not.

L. Thiel: We believe it would have an impact, but we have not quantified that. We don't know what kind of impact it would be.

Representative McWilliams: So if we have a moratorium restricting the free market from letting them build could and possibly being more cost effective and making other facilities compete could lower the prices and have a positive impact.

L. Thiel: New facilities don't lower the rates. Property costs would be higher and so it raises the rates. There are limits on direct care and indirect, but not on property costs. It doesn't lower the rate. Each facility has its own rate.

Chairman Weisz: Do you have the property cost range for each skilled and basic care.

L. Thiel: I don't remember the basic care, but on the nursing home side for the 2017 rates it ranges from $3.65/day to $87.33/day. Send me an email on the basic care rates.

Representative Skroch: If the moratorium was lifted in our town and a new one built and took some of our residents so we have empty beds. That would be a negative effect on our little nursing home the fluctuation in the occupancy would have a negative effect.

L. Thiel: Sometimes in smaller communities where choices are limited they may go to a nursing home. They only go to a nursing home when they cannot take care of themselves Don't know if they would choose basic care.

Representative Skroch: No limit on beds. How would that effect an existing nursing home if they would not have to buy beds, but could just put them in the system,

L.Thiel: In nursing rate setting 90% occupancy rule. If they don't have 90% we still use that anyway to set their rates. Can put beds in layaway or to sell them or to delicense them. That is their option to use.

Representative Westlind: I would assume that they put this on because of lack of occupancy because of too many beds. We went from a licensure of 72 beds to 30 beds. We have sold those beds for as high as $15,000/ bed to as low as $5,000/bed. We have always been able to sell them, so I don't think there is a need to pull the moratorium off. I think it needs to be there and I would be in favor of that.

Chairman Weisz: Further testimony in support HB1115?

Shelly Peterson, President of the ND Long Term Care Association.
(attachment 2 and 3)

Originally put in because of a surplus and they thought there were too many beds in ND. We didn't need any more. Concern about lack of development of home and community based services and we were putting too many resources into nursing homes. So you decided that they needed a moratorium to limit expansion and put more into other parts of the continuum. We were the highest in the number of beds in the country in 1995 at 89/1000. Based on 2014 information we are now down to 60/1000 elderly. The goal is to go to 55/1000. The national average is 40/1000.
34:00

Chairman Weisz: Any questions from the committee?

Representative Porter: Is there the same 90% reimbursement penalty on basic care as there is on skilled care?

Shelly Peterson: There is not.
6 facilities have closed

Representative Damschen: In assisted living because the basic care beds are full.
If they go on Medicaid no beds available, so have to move for basic care and then again for skilled care. It would be nice if there was a floating limit where they could temporarily change assisted living to a basic care bed. Would be nice if they didn't have to move

Shelly Peterson: Assisted living is 100% private pay, so if they need a higher level of care such as basic care and there is not room, they would have to move.
Nursing home can have the flexibility once a year of converting some beds to basic care.

Assisted living and basic care cannot do that. Not a moratorium on assisted living that is much more flexibility, but then we don't have the assistance for the resident that might need it.
The assisted living could apply to convert from assisted living to basic care beds. They can apply based on need.

Vice Chairman Rohr: Half of the skilled residents go back home again. Does that include the ones that are in the hospital and come to the nursing home for rehab?

Shelly Peterson: Yes, 49.8% are discharged back home. Other states are higher. ND is at the bottom. The others go as high as 63%.

Representative Skroch: Would that difference might be due to age of the population in ND. What criteria is to deny beds to basic care?

Shelly Peterson: We have very high elderly pop. All but 3 nursing home are nonprofit. That is very rare in the rest of the country. They are denied because you have to prove that facilities in a 50 mile radius are above 90% occupied. They survey the state and see what the occupancy is. If it is not average of 90% within that 50 mile radius that shows there is not a need. There are open beds in that area. Beds per 1000 and what is our goal. In ND not more than 55/1000 for nursing facilities and for basic care not to have more than 15/1000. The only real need is for dementia area. We have a high need in that area.

Representative Schneider: Do we have a higher rate of dementia than other states?
If we want to keep beds down what services are we lacking?

Shelly Peterson: Yes, we have a higher rate of dementia. We are facing the challenge of staffing to provide that in home care.

Chairman Weisz: Any more questions?
Chairman Weisz: Further support for HB1115
Chairman Weisz: Is there any opposition for HB 1115

Hearing none we will close the hearing on HB 1115.
Chairman Weisz: closed

# 2017 HOUSE STANDING COMMITTEE MINUTES

**Human Services Committee**
Fort Union Room, State Capitol

HB 1115
2/8/2017
28076

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature Judy Kepple

**Explanation or reason for introduction of bill/resolution:**

Relating to the moratoria on basic care and nursing facility bed capacity.

**Minutes:** 1, 2, 3

Chairman Weisz: Opened the discussion on HB 1115.
Representative Damschen
(Attachment 1)
Presented his amendment
The intent of this amendment is to allow a facility that offers both assisted living and basic care to designate an assisted living bed for a basic care bed. They are running out of money and need to be in basic care bed to qualify for Medicaid.

Chairman Weisz: Is this a facility that is one or the other or does it have both?

Representative Damschen: It has both assisted living and basic care and they would do it temporarily.

Chairman Weisz: Does everyone understand the amendment? L. Theil will you come up and make sure we are all on the same page?

L. Thiel, Dept. of Human Services
I have not seen this amendment. My first question would be whether you mean the Department of Human Services or the Department of Health.

Chairman Weisz: It says both the Dept. of Human Services and the Dept. of Health grant a short term license to allow an individual to transition from an assisted living bed to basic care bed at the same facility.

L. Thiel: I don't think I can speak to this for the Dept. of Health. It is the basic care one you want to move and that is their area.

Chairman Weisz: Yes, that is correct.

Representative Damschen: I move the amendment on HB 1115

Representative Porter: seconded

Representative Porter: I am going to support this amendment, because this raises and interesting question to give flexibility to those small rural facilities.

Chairman Weisz: Further questions or discussion? Seeing none, we will take a voice vote on the motion to adopt the amendment to HB 1115

Voice vote taken and carried to accept the amendment on HB1115

Chairman Weisz: Ok now we will take up the other amendment. I will try to explain what it does and then I will allow S. Peterson to comment on the amendment. This does 3 things in the amendment. First we are offering incentives under the direct care cost category. What we are doing under the direct cost, if you are under the upper payment limit, then you can reduce your cost on the nursing less than 2016, that is the base year, plus inflation. You get half the difference that you reduced the cost. So if your nursing costs were $100 in 2016 and they are $90 in 2017, you get $5/day that the nursing facility keeps. The other under the direct care, only relating to nursing, if you are under the upper payment limit you get a 3.5% back. That is the incentive part under direct care. Under indirect care, we are doing the same thing from a standpoint of if you reduce your costs on your indirect care, you keep half. Again 2016 is the base year. That would include an inflator, so if the legislature gives long term a 3 & 3, their base rate would go up by that 3 & 3. The other section in the bill which is section 6 on page 4 puts a limitation on property costs for current operations of $60/day and going forward for new construction the limit would be $30/day. That is the amendment. We are offering some incentives. Right now if you are under that upper payment level, there is no advantage for the facility. If they reduce cost, they just get paid less. So really until you reach that upper payment level there is no incentive for the facility, whether it is direct or indirect, to try to limit costs. Obviously they don't want to hit that upper payment limit. That is the reason for the incentive. Property rates ranged from $3.95 to $87.31. I think we have some issues that we need to address. There is no limitation on your property if you. If you build a new facility, we are going to pay for it. What this does is limit it to $60, but it does allow them to make that up under the private pay. So if the private pay wants a room in a more expensive facility, that is fine, but should the state be responsible in all cases for picking up the tab? That is what this does. It offers incentives, but it has some limitations. Currently the $60 would affect 2 facilities.

Shelly Peterson, President of LTCA
I would like to address section 6 first. There have been lots of studies on property costs. The studies in ND have been on what is the best methodology to reimburse. There currently is a limit on property, so it is not correct that you can build anything and the state will pay for it. There is a limitation. In fact in the last legislative session you established a new limitation and it is not $40 or $60 a day, it is based on a single bed occupancy and a double bed occupancy. When we came to the last session we had shown that in the last 5 years that costs were adjusted in the property component by 11.2%, but construction costs had gone

up in that same period of time 92% and remodel up 60%, so last session you increased the limitation on property, based on $237,000 for a single room and for a double room about $158,000, so there is a limitation that you based on construction and remodel costs.

(Attachment 2)
Why can a facility be $3/day and why is one $80/day? I am going to try to answer that question. This handout starts out at $40/day, but it will still provide some useful information. The bottom line is why do we have some facilities at $3/day and why do we have Eventide in Fargo at $87.33/day. Even when you look at Eventide Fargo which opened a year ago last summer at $87.33 and then you look at Good Sam in Mandan that is going to have a special preview is at $42/day. How come the $40 difference a day. I am going to address that issue. When you look at the $3/day facilities, those are facilities that are from 50 – 100 years old. Our oldest facility is over 100 years old. They have old buildings, old systems, and problems with compliance on life safety. That is why they haven't invested in their building. They are trying to get by. All of them will look at updates to their physical plant for life safety as well as patient preference. It used to be ok to have 4 people in a room. Thank goodness we don't do that anymore. We may have 2 people in a room, but people don't want anyone in their room. That will be you and I when we go into them. So facilities are updating. We have new construction codes that went into effect a year ago that were updated from 20 years ago. A new life safety code that went into effect in November of 2016 so we are dealing continually with updates in construction and life safety codes. When we look at the difference of Eventide at $89/day verse Good Sam at $42/day the one main difference in why one is so much higher than the other is because Eventide is a brand new facility. They responded to the need in Fargo. The built a brand new facility that never before existed, so you have those start-up costs of hiring a new staff. Everything is brand new in that facility as opposed to Mandan. Mandan was an existing facility. They had a 60 bed nursing home, so now you are bringing over existing staff, potentially existing equipment. You have a lot of existing costs that are not in that brand new start-up costs, so their costs are far different. Just so you know too, the land is an unallowable expense, so each facility had to come up with paying for the land on their own. A brand new building never before occupied is much more expensive. As an example, when you look at St. Gabriel's, the 72 bed community here in Bismarck, they are now at $57.46. When they opened 7 years ago they were at $85/day. That was a brand new facility, now they are down to $57. It is very difficult to go to a per/day rate when those limitations have been based on single bed and double bed occupancy. That whole concept is changing. Fargo Eventide will go down in the next 5 years, because all your start-up costs reimbursed in the first 5 years. You are including them in year one. It is hard to compare those two. The other thing is what interest rate each facility is able to negotiate. In Mandan Good Sam and Sanford's joint project we able to come up with 25% cash for the project so they got an interest rate of 3%. In the Eventide their interest rate is anywhere from 4.08 to 6.5%. There was no negotiation. They are dealing with different situations. Eventide has 96 beds and Good Sam in Mandan has 120, so you have more beds to spread your costs. There are very legitimate reasons. There is a current limitation and we have had it since 1994. It was updated last session because you recognized that it absolutely did not keep pace. We will not be able to upgrade facilities. When I look at section 6 and I appreciate that you went from $40 to $60. That helps immensely, but for Eventide and for Richardton, which is a small 20 bed facility, they won't be able to make payments. They have bond issues and they have financing issues. It is like suddenly that your bank

called you and felt you had locked in rate and they said you know what, we are going to change that to now 20%. Even though we gave you 2%, we decided we need more money. That is how this change is coming about to them. It is very difficult, so we would request at a minimum that they are grandfathered in at their costs. Their costs will go down based on their circumstances, based on the age of the building and to change it midstream when they all played according to the rules is very difficult. When we came into this session we had significant allotment cuts. Some people didn't get any allotment cuts. We had four major cuts. This is number 5 coming when we were hoping in January that maybe there would be some restoration, but we are going the opposite direction. This item on property is very troublesome for those who are impacted by it, as well as we have Watford City in western ND that is in the middle of their project. They will be licensed by July 1st, but they will not be complete. The other changes that you propose in here might be really, really good, but the last time we had major changes, and you know it is a complex system, it took 18 months to develop it, look at it, study it and come up with what the best system was, so to come up with something in a couple of hours might be good, but we would really like the department experts to sit down and look at it. There are major changes that need more study and we don't understand them. We would like to understand them first before we say it is good or bad. There are just so many changes to try to wrap our heads around at this point in time. Interest rates and the amount of money they came up with varies greatly.

Chairman Weisz: Certainly if it gets out of here and goes through appropriations and gets back to the other side there will be plenty of time to deal with that. We haven't received any other proposals or amendments in the interim either. We are open to your considerations.

S. Peterson: We are more than happy to look at this. The incentive has worked. It has been effective, but it takes time. Looking at the direct care limit. We have now doubled the number of facilities operating over that limit. We were 7 last year and now we are 15 facilities. The other option in not using contract staff is to simply stop admissions, but then the revenue stops and families get mad at you because they need help when they need help. It is not that we are opposed, it is just that if you are going to make major changes to the payment system that affects large, small, urban, rural, we will certainly look at them and provide some feedback.

Chairman Weisz: How would this effect Richardson?

S. Peterson: It is very, very difficult to operate a 20 bed facility. The only way that they can even make payroll is because they have a sales tag and last session you guys allowed sales tags to not be an offset against their income or they would not be operational.

Chairman Weisz: I just want to know how this would affect them.

S. Peterson: If you can't make your bond payment or pay your bank you are out of luck.

Chairman Weisz: Private pay can make up the difference.

S. Peterson: When you look at Richardton their impact was $12,000 a person per year to pay in addition if we offset the cost of that. That was at $40 and now it has gone up to $60,

so that is $2.65, so it won't be as great. The only thing is that I understood from legislators that you didn't like the provider assessment is because it was an extra fee on the private pay. The positive thing about the assessment was that it was a fee on the private pay and the Medicaid and we were able to access additional federal funds. This right here now is just going to be an extra fee on the private pay. When you look in Fargo at a brand new facility or Richardton. In Richardton they don't have any other options. If they want to stay in town that is where they are going to go. In Fargo they can go to other options, so in Fargo they will suddenly have financial issues because they are going to charge their private pay more and no one else in town is going to do that.

Chairman Weisz: They are currently charging more than the other facilities in Fargo.

S. Peterson: Now it would be that amount of payment plus and extra charge to the private pay.

S. Peterson: Right now amount is not as important as location. Going back to the property, Mr. Chairman, to change the rules in the middle of the game for people that have the bonding and the financing set up is going to be very difficult no matter what. For the projects that are under construction now. We have had a property limitation and that is staying in place. What are we saving? Is there a fiscal impact yet?

Chairman Weisz: No. We are looking at going forward.
26:15
S. Peterson: They are trying to do what is right. They want good quality of care and that depends on your staffing and the staffing depends on what you can pay them. They are trying to be efficient.

Chairman Weisz: We don't have any process in the system that tends to incentivize. To me these proposals say that if you can be more efficient or more creative and save money it is money in your pocket.

S. Peterson: It may incentivize, but they didn't do this before was because they didn't want to put an incentive on staff. We can't have facilities cutting staffing to save money. They are trying to get under that limit. They are trying to get under limits. Costs have been increasing and limits have not kept pace with that. Right now in nursing and therapy alone we are spending 5 million over limits. We had 7 facilities and now we have 15 trying to get under that limit. There are 15,000 open positions in ND. We are seeing people in rural ND and we have competition in urban ND and we are having a difficult time getting the staff we need. If we could do it cheaper they would. There is no incentive for being over the limit, they need to get under it.

Representative P. Anderson: When we started talking about this my first question was quality of care. Am I right on that?

S. Peterson: Right now CMS has a five star rating system on facilities and one of the rating systems is staffing. How many staff do you have per patient per day. The higher your staffing the better you are going to rank in that area. Study after study has determined that the more

staff you have makes a difference in the quality outcomes. If we start cutting direct care staff we will see a decrease in the quality of care.

Chairman Weisz: I don't believe that they will cut back on quality of care.

S. Peterson: I don't think anyone would purposely do that, absolutely not, but if you start cutting back on staffing because the money is not there, based on how an incentive is created and you don't have any other way to operated it enters into the decision. So why create an incentive that might have a negative outcome?

Chairman Weisz: But the incentive doesn't take any money away.

S. Peterson: That is why I say I need to look at it and read it so I know what it is doing. I am not an expert on how reimbursement would work, but it is major changes to a system that took years to develop. Not that things can't change, but we want to make sure that we know what we are doing and that it is the right thing.

Representative P. Anderson: What impact will the $60 have on new construction? I live in Fargo and in 5 years there is no way we are going to have enough beds. We will have to build more.

S. Peterson: That is a good question, because we haven't had a per bed fee like this. It has been a semi-private and private computation, so it is a whole new system about how you do rate setting for property. The problem is that in the first 5 years you have all of your start-up costs and you put those in there. At the beginning it is going to be high and then it goes down significantly from years 5 – 6. Anyone wanting to replace a 50- year old building, it is going to be very difficult. With this system of locked in to a per day rate it will be very difficult because of how it is totally redesigned.

Chairman Weisz: What percentage of the total is property?

S. Peterson: I think it was 18.18 on average for property.

Chairman Weisz: OK

S. Peterson: I think we are all on the same page, but there are so many unanswered questions. I think if we had data and information and fiscal impact, even as I think about the going from 40 – 60 just in my head I think that is only a $130,000 in state general funds. So we are going to save $130,00 to severely negatively impact 2 facilities that are just opening or open their buildings when we gave them approval last session and said we needed beds in certain areas.

Chairman Weisz: We have had good discussion in the past years.

S. Peterson: I wouldn't say let's put this in a study, because I think there is a lot of stuff, but I think there needs to be analysis and impact on what this would and wouldn't do. To be fair to everybody.

Chairman Weisz: Do you have the range for direct care?

S. Peterson: No, but we can check it for you. I have it on my computer.

Chairman Weisz: committee. Discussion?

S. Peterson: I appreciate your giving me the opportunity to speak and to give you some food for thought.

Chairman Weisz: Yes, we still have 50 or 55 days left. Ok committee, any discussion?

Representative P. Anderson: Based upon the discussion I can't support this amendment. I know that Fargo cannot afford to pay their bills.

Chairman Weisz: Again committee, we have to start the conversation. We have had studies ever since I have been here. It will be looked at in appropriations, it will be looked at in the senate, so it may be dramatically different or it may totally disappear. We have to start someplace.

Representative Westlind: Is there a way to amend an amendment?

Chairman Weisz: We would have to adopt the amendment first and then amend it.

Representative Schneider: How can this incentive system not negatively affect quality of care.

Chairman Weisz: I would hope they want to keep their standards up there where they need to be. If you have someone in that facility and you feel they are not being taken care of, are you going to leave them there? The intent of this is that if you can find different ways of doing this you can save money.

Representative Schneider: How do we compare to other states in our reimbursement. Are we average?

Chairman Weisz: It is hard to say, because we are the only state with rate equalization. SD spend $100,000,000 less on Medicaid than we do. Minnesota has a lot more people to spread that out, but they spend less per capita than we do. That is not really right though, because they don't have equalization of rates. We went to rate equalization in 1989. I am not sure why, but we did. Shelly said that Minnesota went up 21% last year.

Representative P. Anderson: While I look at this where they can cut back on direct care. In a city you have more than one facility to choose from that works, but in a small town what happens to those people. What happens to that only facility?

Chairman Weisz: Most of our facilities are not for profit facilities. I find it hard to believe that any facility is going to reduce their quality of care. I would certainly hope anyway. That is why they are in business. To take care of people. It just gives them an incentive to be under the upper limit. We aren't taking anything away or penalizing them.

Every time we do something for the nursing homes it increases the costs for private pay. That is what it has to be with equalization of rates. I know everyone opposed the assessment because it increased the rates for the private pay. No matter what, that is what happens anyway. We have put a lot of money into LTC and it still has increased private pay dramatically.

Vice Chairman Rohr: So if we continue on this route is it going to be sustainable?

Chairman Weisz: You need to expand that a little more. Do you mean if we pass these amendments?

Vice Chairman Rohr: If we don't do something in the direction we are going is the LTC industry sustainable?

Chairman Weisz: Both LTC and DD are becoming a pretty steep curve. It is not necessarily the fault of the facilities who have more regulations and labor costs. Everything is going up. Everyone looks at the human service budget and says you can just shave 2 or 3 hundred million off of their budget. What is the big deal, you have a 2.5 billion - dollar budget. It is not that simple. A lot of it is in these areas. I am not saying we shouldn't fund them. We have to figure out some ways to slow down the curve so that we can allow facilities the freedom to come up with ways, we are going to really struggle going forward to meet that demand.

Representative Skroch: Is there anything that we can do to reduce the amount of regulations that take so much of the effort, and staffing and paperwork in order to comply. All of these facilities are struggling with all the hoops and things they have to jump through hoops.

Chairman Weisz: We did a little bit this session when we allowed the exchange of staff to an assisted living and basic care, but the biggest share of this is federal. Some of them don't make sense, but they have to follow them anyway. We can't change federal no matter what.

Vice Chairman Rohr: I move the amendment. (See Attachment 3)

Representative Porter: second

Chairman Weisz: Further discussion
Roll call vote taken for a do pass on the amendment.
Roll call Yes 8 No 5 Absent 1
Motion carried to adopt the amendment.

Representative Westlind: I would like to see if there is a way to grandfather in the existing nursing homes like Eventide, before June, 2017. Rather than the $60 to replace that with a grandfather clause that would grandfather in all nursing homes that are in existence at this time.

Chairman Weisz: The easier way to do that would be to eliminate that whole part. You would delete everything " licensed on or before June 30".

Representative Westlind: Ok, I would like to move to delete where it says, "for rate years beginning after December 31, 2017 the limitation on allowable historical property costs per diem shall be $60 for nursing homes licensed on or before June 30, 2017".

Chairman Weisz: Ok we have a motion, is there a second?

Motion failed for lack of a second.

Chairman Weisz: I understand the concern about the grandfathering but I wanted to start the discussion.

Representative Porter: I understand where Representative Westlind was coming from, but I think the appropriations committee needs to see this in this form and see how it plugs into the incentives and how it works back and forth to make sure that it works. I think that as they find tune it they will find where that dollar amount should be. It has to play into the incentive portion of it. This bill is a long ways away from done. I know full good and well that they are going to dig into both sides of this to figure it out.

Representative Westlind: So they could actually raise that amount to 70 or 75?

Chairman Weisz: Yes, and it could disappear entirely.

Representative Porter: I move a do pass as amended with rerefer to appropriations.

Vice Chairman Rohr: seconded

Representative Porter: This bill has a long way to go and I think it is encumbant on us to send appropriations something that they can look at. I am going to put my faith in to appropriations. And see what they can do with it.

Representative Schneider: It feels like we are not doing our job. It does not look at all feasible. I don't see the long term outcome. It feels like we are passing out something that is not finished.

Chairman Weisz: Further discuss

Chairman Weisz: the clerk will call the roll for a do pass as amended and rereferal to appropriations on HB 1115.

Roll call vote Yes 10 No 3 Absent 1

Motion carried for a do pass as amended and rerefer to appropriations.

Chairman Weisz will carry the bill.

17.8061.01001
Title.

Prepared by the Legislative Council staff for
Representative Damschen
February 7, 2017

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1115

Page 1, line 20, after the semicolon insert:

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

Page 1, line 21, overstrike "d." and insert immediately thereafter "e."

Renumber accordingly

Proposed Amendments to House Bill No. 1115

Page 1, line 1, after "to" insert "create and enact a new subsection to section 50-24.4-15 of the North Dakota Century Code, relating to actual allowable historical property costs; to"

Page 1, line 1, remove the second "and" and insert immediately thereafter a semicolon

Page 1, line 2, after "23-16-01.1" insert "; subsection 3 of section 50-24.4-06; subsection 6 of section 50-24.4-07; and sections 50-24.4-10 and 50-24.4-19"

Page 1, line 3, after "capacity" insert "and ratesetting for nursing homes"

Page 2, after line 11, insert:

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

3. For purposes of determining rates, the department shall:

   a. Include, contingent upon approval of the medicaid state plan by the centers for medicare and medicaid services, allowable bad debt expenses in an amount not to exceed one hundred eighty days of resident care per year or an aggregate of three hundred sixty days of resident care for any one individual; and

   b. Include allowable bad debt expenses in the ~~property~~indirect care cost category in the report year in which the bad debt is determined to be uncollectible with no likelihood of future recovery.

   c. Notwithstanding section 50-24.4-07, include as an allowable cost any tax paid by a basic care or nursing facility due to provisions of the federal Patient Protection and Affordable Care Act [Pub. L. 111-148], as amended by the Health Care and Education Reconciliation Act of 2010 [Pub. L. 111-152].

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

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

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

1. The department shall establish procedures for determining per diem reimbursement for operating costs.

2. The department shall analyze and evaluate each nursing home's cost report of allowable operating costs incurred by the nursing home during the reporting year immediately preceding the rate year for which the payment rate becomes effective.

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

4. Each nursing home shall receive an operating cost payment rate equal to the sum of the nursing home's operating cost payment rates for each operating cost category. The operating cost payment rate for an operating cost category must be the lesser of the nursing home's historical operating cost in the category increased by the inflation rate for nursing home services used to develop the legislative appropriation for the department for the operating cost category plus an efficiency incentive established pursuant to

subsection 3 or the limit for the operating cost category increased by the same inflation rate. If a nursing home's actual historic operating costs are greater than the prospective payment rate for that rate year, there may be no retroactive cost settle-up. In establishing payment rates for one or more operating cost categories, the department may establish separate rates for different classes of residents based on their relative care needs.

5. The ~~efficiency incentives to be established by the~~ department pursuant to subsection 3 ~~for a facility with an actual rate below the limit rate for~~shall establish an indirect care ~~costs must include the lesser of two dollars and sixty cents per resident day or the amount determined by multiplying seventy percent times the difference between the actual rate, exclusive of inflation rates, and the limit rate, exclusive of current inflation rates~~care cost category incentive for a nursing home with an actual indirect care cost rate below the limit rate for indirect care costs, within the limits of legislative appropriations. The ~~efficiency~~ incentive must be included as a part of the indirect care cost rate and calculated as follows:

   a. The base year for each nursing home's indirect care limit rate shall be the 2016 reporting year;

   b. The base year limit shall be adjusted annually by the inflation rate for nursing home services used to develop the legislative appropriation for the department; and

   c. The incentive shall be equal to half of the difference between the nursing home's indirect care limit rate and the nursing home's actual indirect care cost per diem that is under the nursing home's limit rate.

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

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

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

a. The base year for each nursing home's staffing limit rate shall be the 2016 reporting year;

b. The base year limit shall be adjusted annually by the inflation rate for nursing home services used to develop the legislative appropriation for the department;

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

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

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

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

For rate years beginning after December 31, 2017, the limitation on actual allowable historical property costs per diem shall be sixty dollars for a nursing home licensed on or before June 30, 2017. The limitation on actual allowable historical property costs per diem shall be forty dollars for a nursing home first licensed after June 30, 2017. The department shall adjust the limits annually by the inflation rate for nursing home services used to develop the legislative appropriation for the department.

**SECTION 7. AMENDMENT.** Section 50-24.4-19 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.4-19. Prohibited practices.**

A nursing home is not eligible to receive medical assistance payments unless it refrains from all of the following:

1. Charging private-paying residents rates for similar services which exceed those rates which are approved by the department for medical assistance recipients, as determined by the prospective desk audit rate, except under the following circumstances: the nursing home may charge private-paying residents a property rate that does not exceed the actual allowable historical property costs less the property costs reimbursable under section 6 of this Act;

and the nursing home may charge private-paying residents a higher rate for a private room and charge for special services which are not included in the daily rate if medical assistance residents are charged separately at the same rate for the same services in addition to the daily rate paid by the department ~~of human services~~. Services covered by the payment rate must be the same regardless of payment source. Special services, if offered, must be offered to all residents and charged separately at the same rate. Residents are free to select or decline special services. Special services must not include services which must be provided by the nursing home in order to comply with licensure or certification standards and that if not provided would result in a deficiency or violation by the nursing home. Services beyond those required to comply with licensure or certification standards must not be charged separately as a special service if they were included in the payment rate for the previous reporting year. A nursing home that charges a private-paying resident a rate in violation of this chapter is subject to an action by the state or any of its subdivisions or agencies for civil damages. A private-paying resident or the resident's legal representative has a cause of action for civil damages against a nursing home that charges the resident rates in violation of this chapter. The damages awarded shall include three times the payments that result from the violation, together with costs and disbursements, including reasonable attorney's fees or their equivalent.

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

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

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

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

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

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

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

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

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

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

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

Renumber accordingly

Amendment prepared by the Department at the request of Representative Weisz.

2/8/17 DP



17.8061.01002
Title.02000

Adopted by the Human Services Committee

February 8, 2017

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1115

Page 1, line 1, after "to" insert "create and enact a new subsection to section 50-24.4-15 of the North Dakota Century Code, relating to actual allowable historical property costs; to"

Page 1, line 1, replace the second "and" with a comma

Page 1, line 2, after "23-16-01.1" insert ", subsection 3 of section 50-24.4-06; subsection 6 of section 50-24.4-07; section 50-24.4-10; and subsection 1 of 50-24.4-19"

Page 1, line 3, after "capacity" insert "and ratesetting for nursing homes"

Page 1, after line 20, insert:

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

Page 1, line 21, overstrike "d." and insert immediately thereafter "e."

Page 2, after line 11, insert:

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

3. For purposes of determining rates, the department shall:

a. Include, contingent upon approval of the medicaid state plan by the centers for medicare and medicaid services, allowable bad debt expenses in an amount not to exceed one hundred eighty days of resident care per year or an aggregate of three hundred sixty days of resident care for any one individual; and

b. Include allowable bad debt expenses in the ~~property~~indirect care cost category in the report year in which the bad debt is determined to be uncollectible with no likelihood of future recovery.

c. Notwithstanding section 50-24.4-07, include as an allowable cost any tax paid by a basic care or nursing facility due to provisions of the federal Patient Protection and Affordable Care Act [Pub. L. 111-148], as amended by the Health Care and Education Reconciliation Act of 2010 [Pub. L. 111-152].

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

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

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

2/6/17 DR
2 of 4

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

1. The department shall establish procedures for determining per diem reimbursement for operating costs.

2. The department shall analyze and evaluate each nursing home's cost report of allowable operating costs incurred by the nursing home during the reporting year immediately preceding the rate year for which the payment rate becomes effective.

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

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

2/8/17 DR

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5. The ~~efficiency incentives to be established by the~~ department, pursuant to subsection 3 ~~for a facility with an actual rate below the limit rate for,~~ shall establish an indirect care ~~costs must include the lesser of two dollars and sixty cents per resident day or the amount determined by multiplying seventy percent times the difference between the actual rate, exclusive of inflation rates, and the limit rate, exclusive of current inflation rates~~cost category incentive for a nursing home with an actual indirect care cost rate below the limit rate for indirect care costs, within the limits of legislative appropriations. The ~~efficiency~~ incentive must be included as a part of the indirect care cost rate, and calculated as follows:

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

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

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

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

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

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

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

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

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

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

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

2/8/17 DF
4 of 4

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

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

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

1. Charging private-paying residents rates for similar services which exceed those rates which are approved by the department for medical assistance recipients, as determined by the prospective desk audit rate, except under the following circumstances: the nursing home may charge private-paying residents a property rate that does not exceed the actual allowable historical property costs less the property costs reimbursable under section 6 of this Act; and the nursing home may charge private-paying residents a higher rate for a private room and charge for special services which are not included in the daily rate if medical assistance residents are charged separately at the same rate for the same services in addition to the daily rate paid by the department ~~of human services~~. Services covered by the payment rate must be the same regardless of payment source. Special services, if offered, must be offered to all residents and charged separately at the same rate. Residents are free to select or decline special services. Special services must not include services which must be provided by the nursing home in order to comply with licensure or certification standards and that if not provided would result in a deficiency or violation by the nursing home. Services beyond those required to comply with licensure or certification standards must not be charged separately as a special service if they were included in the payment rate for the previous reporting year. A nursing home that charges a private-paying resident a rate in violation of this chapter is subject to an action by the state or any of its subdivisions or agencies for civil damages. A private-paying resident or the resident's legal representative has a cause of action for civil damages against a nursing home that charges the resident rates in violation of this chapter. The damages awarded shall include three times the payments that result from the violation, together with costs and disbursements, including reasonable attorney's fees or their equivalent."

Renumber accordingly

Date: 2/8/17
Roll Call Vote #: 1

**2017 HOUSE STANDING COMMITTEE**
**ROLL CALL VOTES**
**BILL/RESOLUTION NO.** HB 1115

House Human Services Committee

☐ Subcommittee

Amendment LC# or Description: 17.8061.01001

Recommendation: ☑ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Damschen Seconded By Rep. Porter

| Representatives | Yes | No | Representatives | Yes | No |
|---|---|---|---|---|---|
| Chairman Weisz | | | Rep. P. Anderson | | |
| Vice Chairman Rohr | | | Rep. Schneider | | |
| Rep. B. Anderson | | | | | |
| Rep. D. Anderson | | | | | |
| Rep. Damschen | | | | | |
| Rep. Devlin | | | | | |
| Rep. Kiefert | | | | | |
| Rep. McWilliams | | | | | |
| Rep. Porter | | | | | |
| Rep. Seibel | | | | | |
| Rep. Skroch | | | | | |
| Rep. Westlind | | | | | |
| | | | | | |
| | | | | | |

Voice vote to accept amendment - carried

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2/8/17
Roll Call Vote #: 2

## 2017 HOUSE STANDING COMMITTEE
## ROLL CALL VOTES
## BILL/RESOLUTION NO. HB 1115

House Human Services Committee

☐ Subcommittee

Amendment LC# or Description: Added sections 3-7

Recommendation: ☑ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Rohr Seconded By Rep. Porter

| Representatives | Yes | No | Representatives | Yes | No |
|---|---|---|---|---|---|
| Chairman Weisz | ✓ | | Rep. P. Anderson | | ✓ |
| Vice Chairman Rohr | ✓ | | Rep. Schneider | | ✓ |
| Rep. B. Anderson | ✓ | | | | |
| Rep. D. Anderson | ✓ | | | | |
| Rep. Damschen | ✓ | | | | |
| Rep. Devlin | ✓ | | | | |
| Rep. Kiefert | | ✓ | | | |
| Rep. McWilliams | Abs. | | | | |
| Rep. Porter | ✓ | | | | |
| Rep. Seibel | ✓ | | | | |
| Rep. Skroch | | ✓ | | | |
| Rep. Westlind | | ✓ | | | |
| | | | | | |
| | | | | | |

Total (Yes) 8 No 5

Absent 1

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2/8/17
Roll Call Vote #: 3

## 2017 HOUSE STANDING COMMITTEE
## ROLL CALL VOTES
## BILL/RESOLUTION NO. HB 1115

House Human Services Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☑ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☑ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Porter Seconded By Rohr.

| Representatives | Yes | No | Representatives | Yes | No |
|---|---|---|---|---|---|
| Chairman Weisz | ✓ | | Rep. P. Anderson | | ✓ |
| Vice Chairman Rohr | ✓ | | Rep. Schneider | | ✓ |
| Rep. B. Anderson | ✓ | | | | |
| Rep. D. Anderson | ✓ | | | | |
| Rep. Damschen | ✓ | | | | |
| Rep. Devlin | ✓ | | | | |
| Rep. Kiefert | | ✓ | | | |
| Rep. McWilliams | abs. | | | | |
| Rep. Porter | ✓ | | | | |
| Rep. Seibel | ✓ | | | | |
| Rep. Skroch | ✓ | | | | |
| Rep. Westlind | ✓ | | | | |
| | | | | | |
| | | | | | |

Total (Yes) 10 No 3

Absent 1

Floor Assignment Weisz

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1115: Human Services Committee (Rep. Weisz, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (10 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING). HB 1115 was placed on the Sixth order on the calendar.

Page 1, line 1, after "to" insert "create and enact a new subsection to section 50-24.4-15 of the North Dakota Century Code, relating to actual allowable historical property costs; to"

Page 1, line 1, replace the second "and" with a comma

Page 1, line 2, after "23-16-01.1" insert ", subsection 3 of section 50-24.4-06; subsection 6 of section 50-24.4-07; section 50-24.4-10; and subsection 1 of 50-24.4-19"

Page 1, line 3, after "capacity" insert "and ratesetting for nursing homes"

Page 1, after line 20, insert:

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

Page 1, line 21, overstrike "d." and insert immediately thereafter "e."

Page 2, after line 11, insert:

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

3. For purposes of determining rates, the department shall:

   a. Include, contingent upon approval of the medicaid state plan by the centers for medicare and medicaid services, allowable bad debt expenses in an amount not to exceed one hundred eighty days of resident care per year or an aggregate of three hundred sixty days of resident care for any one individual; and

   b. Include allowable bad debt expenses in the ~~property~~indirect care cost category in the report year in which the bad debt is determined to be uncollectible with no likelihood of future recovery.

   c. Notwithstanding section 50-24.4-07, include as an allowable cost any tax paid by a basic care or nursing facility due to provisions of the federal Patient Protection and Affordable Care Act [Pub. L. 111-148], as amended by the Health Care and Education Reconciliation Act of 2010 [Pub. L. 111-152].

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

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

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

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

1. The department shall establish procedures for determining per diem reimbursement for operating costs.

2. The department shall analyze and evaluate each nursing home's cost report of allowable operating costs incurred by the nursing home during the reporting year immediately preceding the rate year for which the payment rate becomes effective.

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

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

5. The ~~efficiency incentives to be established by the~~ department, pursuant to subsection 3 ~~for a facility with an actual rate below the limit rate for,~~ shall establish an indirect care ~~costs must include the lesser of two dollars and sixty cents per resident day or the amount determined by multiplying seventy percent times the difference between the actual rate, exclusive of inflation rates, and the limit rate, exclusive of current inflation~~

~~rates~~cost category incentive for a nursing home with an actual indirect care cost rate below the limit rate for indirect care costs, within the limits of legislative appropriations. The ~~efficiency~~ incentive must be included as a part of the indirect care cost rate, and calculated as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Charging private-paying residents rates for similar services which exceed those rates which are approved by the department for medical assistance recipients, as determined by the prospective desk audit rate, except under the following circumstances: the nursing home may charge private-paying residents a property rate that does not exceed the actual allowable historical property costs less the property costs reimbursable under section 6 of this Act; and the nursing home may charge private-paying residents a higher rate for a private room and charge for special services which are not included in the daily rate if medical assistance residents are charged separately at the same rate for the same services in addition to the daily rate paid by the department ~~of human services~~. Services covered by the payment rate must be the same regardless of payment source. Special services, if offered, must be offered to all residents and charged separately at the same rate. Residents are free to select or decline special services. Special services must not include services which must be provided by the nursing home in order to comply with licensure or certification standards and that if not provided would result in a deficiency or violation by the nursing home. Services beyond those required to comply with licensure or certification standards must not be charged separately as a special service if they were included in the payment rate for the previous reporting year. A nursing home that charges a private-paying resident a rate in violation of this chapter is subject to an action by the state or any of its subdivisions or agencies for civil damages. A private-paying resident or the resident's legal representative has a cause of action for civil damages against a nursing home that charges the resident rates in violation of this chapter. The damages awarded shall include three times the payments that result from the violation, together with costs and disbursements, including reasonable attorney's fees or their equivalent."

Renumber accordingly

**2017 HOUSE APPROPRIATIONS**

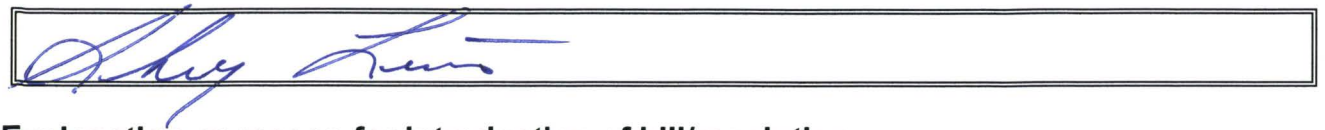
**HB 1115**

# 2017 HOUSE STANDING COMMITTEE MINUTES

**Appropriations Committee**
Roughrider Room, State Capitol

HB1115
2/9/2017
Recording Job# 28169

☐ Subcommittee
☐ Conference Committee



**Explanation or reason for introduction of bill/resolution:**
Relating to actual allowable historical property costs; and relating to the moratoria on basic care and nursing facility bed capacity and ratesetting for nursing homes.

**Minutes:**

**Representative Weisz**: Explained HB1115.

**Chairman Delzer**: How long have we had this moratorium?

**Representative Weisz**: As long as I can remember.

Representative Weisz continued with his explanation.

**Chairman Delzer**: That's both on basic care and long term?

**Representative Weisz**: Yes, it's both basic care and long term.

**Chairman Delzer**: That's section one of the bill?

**Representative Weisz**: Section one is basic care and section two is skilled facilities.

**Chairman Delzer**: Is there a fiscal note in the works?

**Representative Weisz**: They are working on a fiscal note.

**Chairman Delzer**: Maggie, do you know how long it will take?

**Maggie Anderson, Interim Executive Director, Department of Human Services**: It should be next week sometime.

Representative Weisz continued with his explanation.

**Chairman Delzer**: You're trying to say they can be listed as a basic care in a skilled care facility.

**Representative Weisz**: They could license that bed temporarily as basic care.

**Chairman Delzer**: Would they lose the bed under the moratorium?

**Representative Weisz**: That's why I consider it a short term transition. It would be up to the department to establish rules as to how long that short term is.

**Chairman Delzer**: You want to allow nursing homes to better utilize their staff.

**Representative Wiesz**: This is a short term way around the moratorium for basic care.

Representative Weisz continued with his explanation.

**Chairman Delzer**: This isn't from skilled care to basic care?

**Representative Weisz**: This is moving someone from assisted living to basic care.

**Chairman Delzer**: Either one of those are Medicaid eligible?

**Representative Weisz**: Basic care is Medicaid eligible.

**Chairman Delzer**: Only for certain parts though.

**Representative Weisz**: Certain parts, yes.

Representative Weisz continued with his explanation.

**Chairman Delzer**: So why would we need to put this in there? The inflators are the same any way, are they not?

**Representative Weisz**: This is only to determine the formula that they're using. If they don't put an inflator in, that's going to stay at the base cost of 2016.

**Chairman Delzer**: So this would not have to be rebased at any point in time?

**Representative Weisz**: That's correct. This is strictly the incentive portion.

**Chairman Delzer**: This would take the existing incentive out of code?

**Representative Weisz**: We'll get to that.

Representative Weisz continued with his explanation.

**Chairman Delzer**: Is there anything in here about the issue where they're passing through some of their corporate administrative costs? Do you take that out before you do the 50/50; so it's based on the actual nursing facility?

**Representative Weisz**: No. There was some discussion that way; but, it was felt that by putting this in, they'll no longer try to move their corporate costs down into their nursing facility. If they leave them in corporate headquarters, they'll save money.

Representative Weisz continued with his explanation.

**Chairman Delzer**: Did you change the upper payments limits at all?

**Representative Weisz**: No, we didn't touch that at all.

Representative Weisz continued with his explanation.

**Chairman Delzer**: That's all based on repayment of building costs?

**Representative Weisz**: Right. Property costs as well as the cost of putting up a new building that will depreciate.

**Chairman Delzer**: What is the property cost allowance compared to the cost? If the building costs $100,000.00, do we base it on $100,000.00 or is there a certain part that we don't pay the property cost on?

**Representative Weisz**: We do have a property cost list; I believe it's $237,000.00 per bed. There is an upper limit, you can't go beyond that; and we raised that last session. They take the cost per bed, you depreciate it out; certain startup costs are also able to be added in to that property cost up front. When a facility is completely depreciated out and has very little upkeep, you have a very low number.

Representative Weisz continued with his explanation.

**Chairman Delzer**: Are you aware of any of latest rebuilds or builds that have been above $237,000.00?

**Representative Weisz**: I'm not aware of that. I do know when we raised them was in particular in the Bowman and Watford City area. I don't know if the new facility in Fargo is at the new limit. We don't know the property cost yet for the new one in Mandan.

**Chairman Delzer**: How many facilities do we have in the process of being built right now?

**Representative Weisz**: Mandan is not licensed yet; it will be open soon. My understanding is Watford City is already under construction. Potentially, Bowman was going to build; but, my understanding is it's on hold.

**Chairman Delzer**: You're setting it at $60.00 per day?

**Representative Weisz**: The average property cost seems to average around $40.00 per day. At $60.00 there are exactly two facilities that are affected.

Representative Weisz continued with his explanation.

**Chairman Delzer**: The only way there could be a net loss is if the private pay would move out and all they had was Medicaid left?

**Representative Weisz**: That's correct. This could increase those costs somewhat more because a facility could recover their costs. They don't have to; they don't have to charge private pay more if they can figure out how to make it work. It allows them ability to charge that.

Representative Weisz continued with his explanation.

**Chairman Delzer**: I know Minnesota used to have rate equalization; they still have partial. Did you check that out?

**Representative Weisz**: They do have somewhat of a hybrid; but it's not a pure rate equalization.

**Chairman Delzer**: Did you look at what they have changed in their rate equalization?

**Representative Weisz**: I did not. The only thing I did look at was some numbers. South Dakota has no rate equalization. They're spending $100 million per year less on their Medicaid long term care than we are.

**Chairman Delzer**: What do the bed numbers match up like?

**Representative Weisz**: I didn't get that from South Dakota. Per capita in Minnesota, they're spending less than half than North Dakota is.

**Vice Chairman Kempenich**: Have you checked on Montana also?

**Representative Weisz**: I have not looked at Montana at all.

**Chairman Delzer**: If private pay that has rate equalization in North Dakota is moving to Montana, it has to be cheaper for private pay in Montana than the rate equalization is here.

**Representative Weisz**: I do know that Montana is way below North Dakota per capita spending. I don't know what their total spending is versus their bed numbers as far as Medicaid.

Representative Weisz continued with his explanation.

**Chairman Delzer**: How did this come out of your committee?

**Representative Weisz**: I believe it was 10-3.

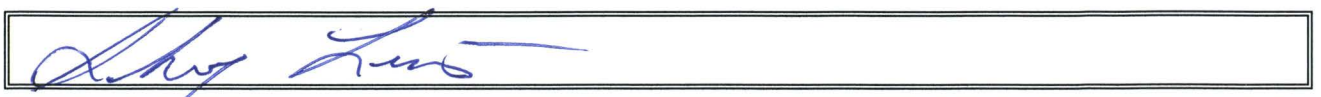
**Chairman Delzer**: Recessed the discussion.

# 2017 HOUSE STANDING COMMITTEE MINUTES

**Appropriations Committee**
Roughrider Room, State Capitol

HB1115
2/9/2017
Recording Job# 28170

☐ Subcommittee
☐ Conference Committee



**Explanation or reason for introduction of bill/resolution:**

Relating to actual allowable historical property costs; and relating to the moratoria on basic care and nursing facility bed capacity and ratesetting for nursing homes.

**Minutes:**

**Chairman Delzer**: Called the committee back to order.

**Representative Monson**: Made a motion for a "Do Pass".

**Representative Meier**: Seconded the motion.

**Representative J. Nelson**: Those places that where built with the existing property formula, how do they meet their debt obligations?

**Chairman Delzer**: They would have the opportunity to charge private pay more to stay in their facility.

**Representative J. Nelson**: Most of us in this committee voted against an assessment because of that very issue; that it was a tax on private pay people. This isn't a tax by design; but it appears to be one.

**Chairman Delzer**: If they stay in that facility, it's going to cost more. The issue on the provide tax was that we were going after federal money by charging more; that's different than this.

**Representative J. Nelson**: If a private pay resident of that facility decides that they are not going to pay $27.00 per day extra, and that facility can't fill that bed, they can't meet their obligations.

**Representative Monson**: These people have a choice of where they want to go. If they want to live in a Taj Mahal building, the private pay will pay a little more.

**Roll Call Vote**: 14 Yeas 4 Nays 3 Absent

**Motion Carried**.

**Representative Weisz**: Carried the bill.

Chairman Delzer: Closed the discussion on HB1115.

# 2017 HOUSE STANDING COMMITTEE MINUTES

**Appropriations Committee**
Roughrider Room, State Capitol

HB1115
2/16/2017
Recording Job# 28481

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

**Explanation or reason for introduction of bill/resolution:**

A BILL for an Act to amend and reenact subsection 1 of section 23-09.3-01.1 and subsection 1 of section 23-16-01.1 of the North Dakota Century Code, relating to the moratoria on basic care and nursing facility bed capacity.

**Minutes:**

**Chairman Delzer**: called the committee to order.

**Rep. Weisz**: Explained amendment.

**Chairman Delzer**: Is that just on direct?

**Rep. Weisz**: The 3% operating margin that I had amended was strictly on the direct.

**Chairman Delzer**: What are you doing now? You're giving them the operating margin on everything plus you're giving the 3.5% on the direct?

**Rep. Weisz**: The 3.5% is gone completely on this amendment. The only incentive that's left on both direct and indirect is 3%.

**Chairman Delzer**: They get the operating margin if they're above or below the upper limit?

**Rep. Weisz**: That is my understanding. The 3% doesn't matter if you're above the upper limit or below.

**Chairman Delzer**: On the indirect you're trying to do what you had proposed?

**Rep. Weisz**: Both on direct and indirect, if the base cost based on 2016, if they lower their costs going forward from that base; they get to keep 50% of the savings.

**Chairman Delzer**: They'll get the 3% and they could lower from the previous?

**Rep. Weisz**: Correct.

**Chairman Delzer**: Even our rebasing doesn't get us to 2016. Does it?

**Rep Weisz**: Rebasing was 2014. They've submitted the cost reports.

Rep. Weisz continued with his explanation.

**Chairman Delzer:** So they'd get 8%.

**Rep. Weisz:** They'll get that $10.00; they get 50%. The state gains $5.00 per day and they get to keep $5.00.

**Chairman Delzer**: Plus they'd get their 3%?

**Rep. Weisz**: Correct.

**Chairman Delzer:** What happens the second year?

Rep. Weisz continued with his explanation.

**Chairman Delzer:** Plus the operating margin.

**Rep. Weisz:** Correct. If in 2018, they'd go to $102.00, they'd lose the incentive.

**Chairman Delzer:** Do you have a guess on the fiscal note?

**Rep. Weisz:** It should have absolutely no cost. If we don't pass anything and a facility would lower its cost between 2017 and 2018, the state pays less. If the cost goes up, the state pays more regardless of whether we pass this or not.

**Chairman Delzer:** Is this a two-year program?

**Rep. Weisz:** There is no sunset.

**Chairman Delzer:** From what you've said, there's no incentive even if they're above it.

**Rep. Weisz:** There's no incentive anymore on the 3% but under this there is still an incentive for them to try and lower their direct and indirect care costs.

**Chairman Delzer:** If you're at $90.00 and you go to $89.00; does that garner you 11%?

**Rep. Weisz:** It's based on their costs. If they're at $90.00, they have to lower it below $90.00; they can't base it on another facility that might be at $150.00.

Rep. Weisz continued with his explanation.

**Chairman Delzer**: For new buildings, you're setting at $50.00?

**Rep. Weisz**: That's correct.

**Chairman Delzer**: The language in here allows them to try to recapture the difference from private pay?

**Rep. Weisz**: That's correct.

**Rep. Holman**: It looks like the property rates would change based on inflation. Is that correct?

**Chairman Delzer**: It wouldn't take effect until 2018.

**Rep. Holman**: After that, would inflation play into the property clauses?

**Rep. Weisz**: I don't believe it does that.

**Rep. Nelson**: Under the existing bill there was the possibility that some of the new construction may go into default with the implementation of this bill. Would this prevent that from occurring?

**Rep. Weisz**: The concern about going into default, it allows them to adjust their rate if they need to be for the private pay strictly on the property rate.

**Chairman Delzer:** The way the amendment is, any current or existing ones would be under the old system and only new ones built after 2018 would be under the new system. Is that correct?

**Rep. Weisz:** That is correct. The current ones would be under the $60.00 property rate limit.

**Rep. Nelson:** That situation where the $27.00 a day that one facility is projecting, the private pay resident may still accept that $27.00 a day payment or move to another facility. Would the facility be more likely to look at Medicaid residents rather than private pay in that case?

**Rep. Weisz:** Already in that region, there's already an almost $120.00 a day difference. It doesn't seem to be an issue.

Rep. Weisz continued with his explanation.

**Rep. Monson**: What happens to those that are already way below, that have been frugal and kept their rates low? They aren't able to drop much farther. There isn't much incentive for those who have frugal up to his point. Is that correct?

**Rep. Weisz**: There is one incentive that's currently in place for indirect care. There you get $2.60 per day for every amount you're under the upper payment limit until you hit the maximum of $2.60

Rep. Weisz continued with his explanation.

**Rep. Monson**: If they're at $90.00 now and dropped down to $85.00, they get to keep $2.50 and they would also get their $2.50; so they'd be back to $90.00. The effect would be that they didn't do anything. Right?

Rep. Weisz continued with his explanation.

**Chairman Delzer**: If they're below, they'd also get the 3%.

**Rep. Weisz**: They get the 3% regardless.

**Rep. Monson**: If they're at $90.00 and say they could drop it to $88.00, but what if we raise it to $92.00 this year and drop it to $88.00 the next year; would they be able to get half of that $4.00 drop?

**Rep. Weisz**: No. It's frozen at their base cost for 2016 plus their inflator. If in 2017 they went to $96.00 from $90.00 in 2016, then they drop it to $88.00; they're eligible for $2.00.

**Vice Chairman Kempenich**: Made a motion to reconsider their action.

**Rep. Pollert**: Seconded the motion.

**Voice Vote made**.

**Motion Carried**.

**Rep. Pollert**: Made a motion to move amendment 17.8061.02001.

**Vice Chairman Kempenich**: Seconded the motion.

**Voice Vote made**.

**Motion Carried**.

**Vice Chairman Kempenich**: Made a motion for a "Do Pass as Amended".

**Rep. Vigesaa**: Seconded the motion.

**Roll Call Vote**: 15 Yeas 5 Nays 1 Absent

**Motion Carried**.

Rep. Weisz carried the bill.

**Chairman Delzer**: Closed the discussion.

2/16/17 DK

1 of 2

17.8061.02001
Title.03000

Prepared by the Legislative Council staff for
Representative Weisz
February 16, 2017

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1115

Page 4, line 19, after "5." insert "a."

Page 4, line 19, remove the overstrike over "~~efficiency incentives to be established by the~~"

Page 4, line 19, remove the underscored comma

Page 4, line 20, remove the overstrike over "~~for a facility with an actual rate below the limit rate for~~"

Page 4, line 20, remove ", shall establish an"

Page 4, line 21, remove the overstrike over "~~costs must include the lesser of two dollars and sixty cents per resident~~"

Page 4, remove the overstrike over lines 22 and 23

Page 4, line 24, remove the overstrike over "~~current inflation rates~~"

Page 4, line 24, remove "cost category incentive for a nursing home with an actual indirect"

Page 4, remove line 25

Page 4, line 26, remove "appropriations"

Page 4, line 26, remove the overstrike over "~~efficiency~~"

Page 4, line 27, replace the underscored comma with ".

b. Pursuant to subsection 3 and within the limits of legislative appropriations, the department shall establish an indirect care cost category incentive for a nursing home with an actual indirect care cost rate below the limit rate for indirect care costs. The incentive must be included as part of the indirect care cost rate"

Page 4, line 28, replace "a." with "(1)"

Page 5, line 1, replace "b." with "(2)"

Page 5, line 4, replace "c." with "(3)"

Page 5, line 8, remove the overstrike over "~~direct care and~~"

Page 5, line 9, remove the overstrike over "~~direct care~~"

Page 5, line 10, remove the overstrike over "~~and~~"

Page 5, line 10, remove the overstrike over "~~categories~~"

Page 5, line 10, remove "category"

Page 5, remove lines 27 through 30

Page 6, line 5, replace "2017" with "2018"

Page 6, line 6, replace "forty" with "fifty"

2/16/17 DR
2 of 2

Page 6, line 6, replace "2017" with "2018"

Renumber accordingly

Date: 2/9/2017
Roll Call Vote #: 1

**2017 HOUSE STANDING COMMITTEE**
**ROLL CALL VOTES**
**BILL/RESOLUTION NO. HB 1115**

House Appropriations Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Representative Monson Seconded By Representative Meier

| Representatives | Yes | No | Representatives | Yes | No |
|---|---|---|---|---|---|
| Chairman Delzer | X | | | | |
| Representative Kempenich | X | | Representative Streyle | X | |
| Representative: Boehning | X | | Representative Vigesaa | X | |
| Representative: Brabandt | X | | | | |
| Representative Brandenburg | X | | | | |
| Representative Kading | X | | Representative Boe | | X |
| Representative Kreidt | A | | Representative Delmore | A | |
| Representative Martinson | | X | Representative Holman | | X |
| Representative Meier | X | | | | |
| Representative Monson | X | | | | |
| Representative Nathe | X | | | | |
| Representative J. Nelson | X | | | | |
| Representative Pollert | X | | | | |
| Representative Sanford | | X | | | |
| Representative Schatz | X | | | | |
| Representative Schmidt | A | | | | |

Total (Yes) 14 No 4

Absent 3

Floor Assignment Representative Weisz

If the vote is on an amendment, briefly indicate intent:

Date: 2/16/2017
Roll Call Vote #: 2

**2017 HOUSE STANDING COMMITTEE**
**ROLL CALL VOTES**
**BILL/RESOLUTION NO. HB1115**

House Appropriations Committee

☐ Subcommittee

Amendment LC# or Description: 17.8061.02001

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Vice Chairman Kempenich Seconded By Rep. Pollert

VOICE VOTE

| Representatives | Yes | No | Representatives | Yes | No |
|---|---|---|---|---|---|
| Chairman Delzer | | | Rep. Schatz | | |
| Vice Chairman Kempenich | | | Rep. Schmidt | | |
| Rep. Boehning | | | Rep. Streyle | | |
| Rep. Brabandt | | | Rep. Vigesaa | | |
| Rep. Brandenburg | | | Rep. Boe | | |
| Rep. Kading | | | Rep. Delmore | | |
| Rep. Kreidt | | | Rep. Holman | | |
| Rep. Martinson | | | | | |
| Rep. Meier | | | | | |
| Rep. Monson | | | | | |
| Rep. Nathe | | | | | |
| Rep. Nelson | | | | | |
| Rep. Pollert | | | | | |
| Rep. Sanford | | | | | |

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:
Motion Carried

Date: 2/16/2017
Roll Call Vote #: 2

**2017 HOUSE STANDING COMMITTEE**
**ROLL CALL VOTES**
**BILL/RESOLUTION NO. HB1115**

House Appropriations Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Pollert Seconded By Vice Chairman Kempenich

| Representatives | Yes | No | Representatives | Yes | No |
|---|---|---|---|---|---|
| Chairman Delzer | | | Rep. Schatz | | |
| Vice Chairman Kempenich | | | Rep. Schmidt | | |
| Rep. Boehning | | | Rep. Streyle | | |
| Rep. Brabandt | | | Rep. Vigesaa | | |
| Rep. Brandenburg | | | Rep. Boe | | |
| Rep. Kading | | | Rep. Delmore | | |
| Rep. Kreidt | | | Rep. Holman | | |
| Rep. Martinson | | | | | |
| Rep. Meier | | | | | |
| Rep. Monson | | | | | |
| Rep. Nathe | | | | | |
| Rep. Nelson | | | | | |
| Rep. Pollert | | | | | |
| Rep. Sanford | | | | | |

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:
Motion Carried.

Date: 2/16/2017
Roll Call Vote #: 3

**2017 HOUSE STANDING COMMITTEE**
**ROLL CALL VOTES**
**BILL/RESOLUTION NO. HB1115**

House Appropriations Committee

☐ Subcommittee

Amendment LC# or Description: 17.8061.02001

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Vice Chairman Kempenich Seconded By Rep. Vigesaa

| Representatives | Yes | No | Representatives | Yes | No |
|---|---|---|---|---|---|
| Chairman Delzer | X | | Rep. Schatz | X | |
| Vice Chairman Kempenich | X | | Rep. Schmidt | | X |
| Rep. Boehning | X | | Rep. Streyle | X | |
| Rep. Brabandt | X | | Rep. Vigesaa | X | |
| Rep. Brandenburg | X | | Rep. Boe | X | |
| Rep. Kading | X | | Rep. Delmore | | X |
| Rep. Kreidt | A | | Rep. Holman | X | |
| Rep. Martinson | | X | | | |
| Rep. Meier | | X | | | |
| Rep. Monson | X | | | | |
| Rep. Nathe | X | | | | |
| Rep. Nelson | | X | | | |
| Rep. Pollert | X | | | | |
| Rep. Sanford | X | | | | |

Total (Yes) 15 No 5

Absent 1

Floor Assignment Rep. Weisz

If the vote is on an amendment, briefly indicate intent:
Motion Carried.

## REPORT OF STANDING COMMITTEE

**HB 1115, as engrossed: Appropriations Committee (Rep. Delzer, Chairman)** recommends **DO PASS** (14 YEAS, 4 NAYS, 3 ABSENT AND NOT VOTING). Engrossed HB 1115 was placed on the Eleventh order on the calendar.

## REPORT OF STANDING COMMITTEE

**HB 1115, as engrossed: Appropriations Committee (Rep. Delzer, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (15 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1115 was placed on the Sixth order on the calendar.

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Page 4, line 19, remove the overstrike over "~~efficiency incentives to be established by the~~"

Page 4, line 19, remove the underscored comma

Page 4, line 20, remove the overstrike over "~~for a facility with an actual rate below the limit rate for~~"

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Page 5, line 10, remove "category"

Page 5, remove lines 27 through 30

Page 6, line 5, replace "2017" with "2018"

Page 6, line 6, replace "forty" with "fifty"

Page 6, line 6, replace "2017" with "2018"

Renumber accordingly

**2017 TESTIMONY**

**HB 1115**

Att 1
HB 1115
1-10-17

**Testimony**
**House Bill 1115 – Department of Human Services**
**House Human Services Committee**
**Robin Weisz, Chairman**
**January 10, 2017**

Chairman Weisz, members of the House Human Services Committee, I am LeeAnn Thiel, Administrator of Medicaid Payment and Reimbursement Services of the Medical Services Division for the Department of Human Services. I am here today in support of House Bill 1115, which was introduced at the request of the Department.

The moratoria on nursing facility beds and basic care beds have been in place since 1995 and have been extended each biennium. This bill would continue the moratorium through July 31, 2019.

2011 HB 1040, which extended the moratoria to July 31, 2013, also directed the State Health Council to review the health care bed recommendations. In 2012, the State Health Council presented a recommendation to the Health Services Interim Committee to continue the moratoria on nursing facility and basic care beds in North Dakota. The recommendation was a nursing facility bed target of 55 beds per 1,000 and a basic care bed target of 15 beds per 1,000 population aged 65 and above. Based on 2010 data, there were 57.10 nursing home beds per 1,000 and 16.49 basic care beds per 1,000. As of September 30, 2016, there are 16 nursing facilities with occupancy below 90 percent, and the basic care facility occupancy rate in all regions of the state is below 90 percent.

HB1115
1-10-19

Currently, state law allows two exceptions to the basic care bed moratorium, which are: (1) a nursing facility may convert nursing facility bed capacity to basic care beds; and (2) an entity can demonstrate the need for more basic care beds to the Department of Health and the Department of Human Services. To demonstrate a need, the facility must show that occupancy within a 50-mile radius at existing basic care facilities is at or above 90 percent.

There is no exception to the nursing facility bed moratorium. A facility must purchase or transfer beds from another facility.

The Department's 2017-2019 budget was built based on both moratoria continuing.

This concludes my testimony. I would be happy to address any questions that you may have.

HB 1115
1-10-17
att. 2

# Testimony on HB 1115
# Basic Care and Nursing Facility Moratoria
# House Human Services Committee
# January 10, 2017

Good morning Chairman Weisz and members of House Human Services Committee. My name is Shelly Peterson, President of the North Dakota Long Term Care Association (NDLTCA). We represent 210 Assisted Living, Basic Care and Nursing facilities across North Dakota. I am here to testify in support of HB 1115 regarding the basic care and nursing facility moratoria

HB 1115 proposes to continue the basic care and nursing facility moratoria through July 31, 2019. The moratorium means you don't add more licensed beds. However there is an exception process for basic care. HB 1115 continues the exception process to allow additional basic care beds under two conditions. You passed legislation in 2001 creating this exception process. We support this exception process for basic care.

1. A nursing facility can convert nursing facility beds to basic care. This is allowed once a year, if you've converted some beds to basic care and you find there isn't a demand or need, you can change these beds back to nursing facility beds after one year. Rural nursing facilities have used this provision and have converted nursing facility beds to basic care. This helps rural residents have access to basic care and remain in their local community. This provision is helpful to individuals who only needed basic care and in the past it was unavailable in their communities. This past year six small, rural basic care facilities have closed. Their closure has been caused by

another issue which will be addressed in another bill soon to be before you. Thus we recommend the provision of allowing NF's to convert nursing facility beds to basic care continue.

2. If an entity can prove to the State Department of Health and the Department of Human Services that basic care beds are not readily available within a designated area of the state or that existing basic care beds within a 50 mile radius have been occupied at ninety percent or more for the previous 12 months, you could receive "free beds".

This exception is for basic care beds only. When a facility receives basic care beds under the need process, they have 48 months to put the beds in service.

Since this law was passed in 2001 the Department of Health and Department of Human Services have received 30 applications for new basic care beds:

| | |
|---|---|
| Beds Requested | 696 Basic Care Beds |
| Beds Approved | 234 (34% of beds requested) |
| Beds Denied | 462 (66% of beds requested) |
| Beds Approved & Never Licensed | 25 |

We believe HB 1115 regarding the moratoria should continue. We also support keeping the exception provision for basic care for those who meet that criteria.

We believe the moratorium should continue for the following reasons:

1. North Dakota continues to make progress to re-distribute nursing facility beds, from low need areas to high demand areas. This is being accomplished without adding beds above the 2011 count. North Dakota nursing facility beds are reported at 60.35 beds per 1,000 persons age 65 and older. The U.S. average at this time is 41 beds per 1,000 persons age 65 and older. This information is maintained by the Health Department and was last updated on July 14, 2014.

2. The State Health Council in 2012 adopted goals on bed counts:

| | Current Bed per 1000 | Goal Bed per 1000 |
|---|---|---|
| Nursing Facility | 60.35 | 55 |
| Basic Care | 18.75 | 15 |

Basic care and nursing facility beds are being re-distributed across the state from low demand to high demand areas. This is occurring because beds are moved around through the buying and selling process. We have seen the re-distribution of beds. This has allowed some communities to "get more beds" and others to get rid of excess capacity. This has helped rural facilities who have had empty beds get some "cash" to help with their operation, which may be financially frail.

Thank you for the opportunity to testify in support of HB 1115. I would be happy to address any questions you may have at this time.

Shelly Peterson, President
North Dakota Long Term Care Association
1900 North 11th Street
Bismarck, ND 58501
(701) 222-0660

# Basic Care Facts

AH.3
HB 1115
1-10-17

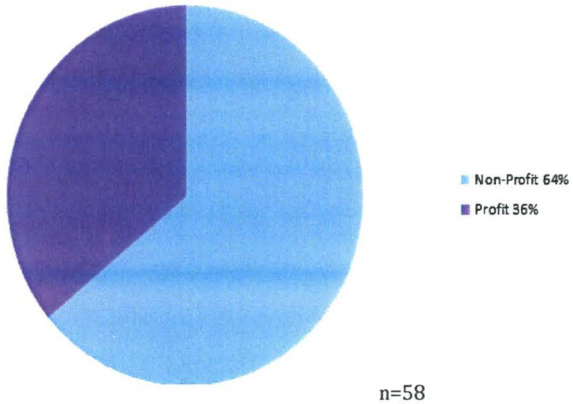
BASIC CARE AT A
**GLANCE**

**62** licensed basic care facilities

**1,818** licensed units

2016 average occupancy was **82%**

Figure 7: Ownership of Basic Care Facilities

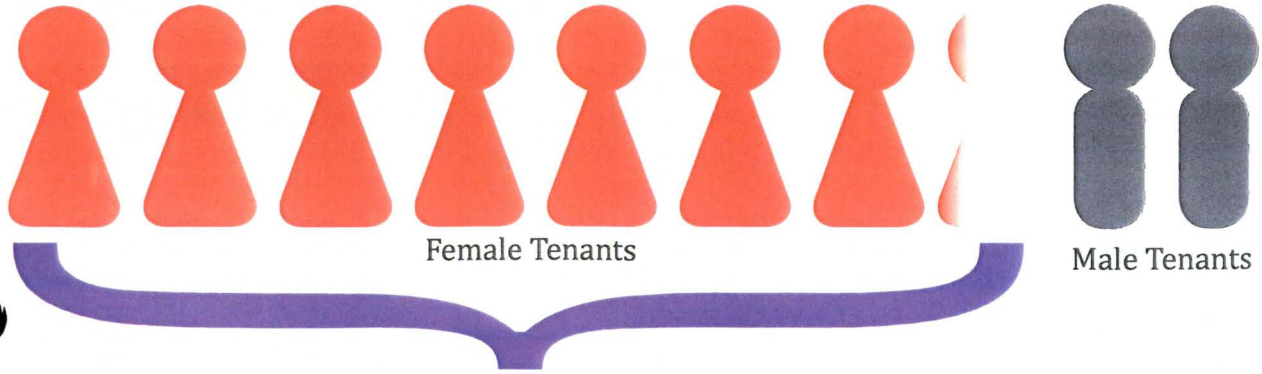



n=58

## Basic Care Facts

- A basic care facility is a congregate residential setting with **private** and **semi-private rooms,** providing **24-hour supervision** and staffing.
- Basic Care provides an **all-inclusive rate** providing room, meals, personal care services, supervision, activities, transportation, medication administration, nursing assessment, and care planning.
- Current residents range in age from **40 to 105 years old,** with the average age being 79.

Figure 8: Gender of Basic Care Residents




n=1,031

**71%** of tenants in North Dakota basic care facilities are female

# Nursing Facility Facts

## NURSING FACILITIES AT A GLANCE

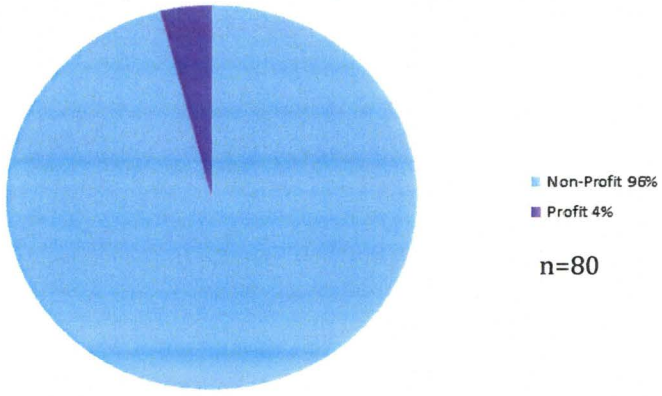
**80** licensed nursing facilities

**6,141** licensed beds

2016 average daily rate is **$258.78**

2016 average occupancy was **93.6%**

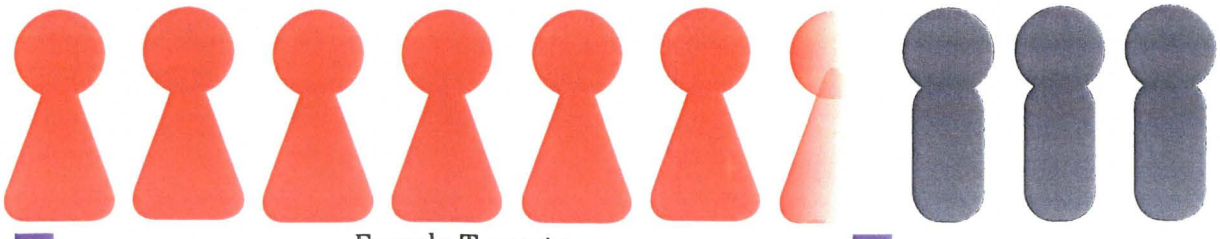
Figure 14: Ownership of Nursing Facility




## NURSING FACILITY FACTS

- Resident needs are complex and they are in need of **24-hour** nursing care.
- Most residents are admitted after a hospital stay or a directly from their home
- The most significant issues necessitating admission to a nursing facility is the **need for care throughout the day.** Residents are unable to meet their own needs for dressing, toileting, eating, an remaining safe. Most often their **medical needs are complex,** requiring continuous supervision.
- Current residents range in age from **33 to 109** years old, with the average age being 84.
- The average length of stay is **less than a year.**
- According to CMS data, in 2016 ND nursing facilities had the **second highest percentage** of residents age 95 and older, 9.24% of all residents compared to the US average in this age category of 5.18%. ND nursing facilities hold the highest record for the **85-94 age group** at 47.2%, compared to the US average of 33%.

Figure 15: Gender of Nursing Facility Residents




n=3,502

**68%** of residents in North Dakota nursing facilities are female

att. 1 HB1115
2/8/17

17.8061.01001
Title.

Prepared by the Legislative Council staff for
Representative Damschen
February 7, 2017

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1115

Page 1, line 20, after the semicolon insert:

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

Page 1, line 21, overstrike "d." and insert immediately thereafter "e."

Renumber accordingly

| Facility | Number of Beds | 1/1/2017 Prop Rate | Limit | $ Over Limit | 2016 Medicaid Days | Revenue Reduction | 2016 Private Pay Days | Private Pay % of Days | Private Pay Impact | Est Private Pay Residents # | Annual Impact Per Resident @ |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Baptist Home | 140 | 42.30 | 40.00 | 2.30 | 30,323 | 69,742.90 | 16,627 | 33% | 4.19 | 92 | $ 1,531.01 |
| St Luke's Home | 88 | 48.92 | 40.00 | 8.92 | 16,556 | 147,679.52 | 11,504 | 38% | 12.84 | 64 | $ 4,685.59 |
| Rolette Community Care Center | 40 | 45.45 | 40.00 | 5.45 | 11,531 | 62,843.95 | 1,763 | 13% | 35.65 | 10 | $ 13,010.80 |
| Bethany on 42nd | 116 | 47.38 | 40.00 | 7.38 | 19,894 | 146,817.72 | 16,596 | 37% | 8.85 | 92 | $ 3,229.00 |
| Good Samaritain Society Bismarck | 48 | 46.28 | 40.00 | 6.28 | 8,329 | 52,306.12 | 5,334 | 40% | 9.81 | 30 | $ 3,579.25 |
| St. Gabriel's Community | 72 | 57.46 | 40.00 | 17.46 | 13,001 | 226,997.46 | 8,052 | 32% | 28.19 | 45 | $ 10,289.87 |
| Eventide Fargo * | 96 | 87.33 | 40.00 | 47.33 | 16,840 | 797,047.80 | 12,236 | 39% | 65.14 | 68 | $ 23,776.01 |
| Good Samaritain Society Mandan ^ | 120 | 43.00 | 40.00 | 3.00 | 21,374 | 64,120.57 | 11,806 | 39% | 5.43 | 66 | $ 1,982.33 |
| Richardton Health Center | 20 | 62.65 | 40.00 | 22.65 | 3,782 | 85,662.30 | 2,539 | 31% | 33.74 | 14 | $ 12,314.59 |
| | | | | | | $ 1,653,218.34 | | | | 480 | |

State General Fund Impact $ 826,609.17

* days are based on 90% occupancy with 53.4% MD and 38.8% PP

# estimate is based on an average length of stay of 180 days

^ days are based on 90% occupancy with MD and PP days split on Sanford Off Collins Facility

@ based on rate impact per PP resident times 365 days.

H. C. 2 HB1115 2/8/17

Att. 3
HB1115
2/8/17

Proposed Amendments to House Bill No. 1115

Page 1, line 1, after "to" insert "create and enact a new subsection to section 50-24.4-15 of the North Dakota Century Code, relating to actual allowable historical property costs; to"

Page 1, line 1, remove the second "and" and insert immediately thereafter a semicolon

Page 1, line 2, after "23-16-01.1" insert "; subsection 3 of section 50-24.4-06; subsection 6 of section 50-24.4-07; and sections 50-24.4-10 and 50-24.4-19"

Page 1, line 3, after "capacity" insert "and ratesetting for nursing homes"

Page 2, after line 11, insert:

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

3. For purposes of determining rates, the department shall:

   a. Include, contingent upon approval of the medicaid state plan by the centers for medicare and medicaid services, allowable bad debt expenses in an amount not to exceed one hundred eighty days of resident care per year or an aggregate of three hundred sixty days of resident care for any one individual; and

   b. Include allowable bad debt expenses in the ~~property~~indirect care cost category in the report year in which the bad debt is determined to be uncollectible with no likelihood of future recovery.

   c. Notwithstanding section 50-24.4-07, include as an allowable cost any tax paid by a basic care or nursing facility due to provisions of the federal Patient Protection and Affordable Care Act [Pub. L. 111-148], as amended by the Health Care and Education Reconciliation Act of 2010 [Pub. L. 111-152].

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

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

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

1. The department shall establish procedures for determining per diem reimbursement for operating costs.

2. The department shall analyze and evaluate each nursing home's cost report of allowable operating costs incurred by the nursing home during the reporting year immediately preceding the rate year for which the payment rate becomes effective.

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

4. Each nursing home shall receive an operating cost payment rate equal to the sum of the nursing home's operating cost payment rates for each operating cost category. The operating cost payment rate for an operating cost category must be the lesser of the nursing home's historical operating cost in the category increased by the inflation rate for nursing home services used to develop the legislative appropriation for the department for the operating cost category plus an efficiency incentive established pursuant to

subsection 3 or the limit for the operating cost category increased by the same inflation rate. If a nursing home's actual historic operating costs are greater than the prospective payment rate for that rate year, there may be no retroactive cost settle-up. In establishing payment rates for one or more operating cost categories, the department may establish separate rates for different classes of residents based on their relative care needs.

5. The ~~efficiency incentives to be established by the~~ department pursuant to subsection 3 ~~for a facility with an actual rate below the limit rate for~~shall establish an indirect care ~~costs must include the lesser of two dollars and sixty cents per resident day or the amount determined by multiplying seventy percent times the difference between the actual rate, exclusive of inflation rates, and the limit rate, exclusive of current inflation rates~~care cost category incentive for a nursing home with an actual indirect care cost rate below the limit rate for indirect care costs, within the limits of legislative appropriations. The ~~efficiency~~ incentive must be included as a part of the indirect care cost rate and calculated as follows:

   a. The base year for each nursing home's indirect care limit rate shall be the 2016 reporting year;

   b. The base year limit shall be adjusted annually by the inflation rate for nursing home services used to develop the legislative appropriation for the department; and

   c. The incentive shall be equal to half of the difference between the nursing home's indirect care limit rate and the nursing home's actual indirect care cost per diem that is under the nursing home's limit rate.

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

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

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

a. The base year for each nursing home's staffing limit rate shall be the 2016 reporting year;

b. The base year limit shall be adjusted annually by the inflation rate for nursing home services used to develop the legislative appropriation for the department;

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

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

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

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

For rate years beginning after December 31, 2017, the limitation on actual allowable historical property costs per diem shall be sixty dollars for a nursing home licensed on or before June 30, 2017. The limitation on actual allowable historical property costs per diem shall be forty dollars for a nursing home first licensed after June 30, 2017. The department shall adjust the limits annually by the inflation rate for nursing home services used to develop the legislative appropriation for the department.

**SECTION 7. AMENDMENT.** Section 50-24.4-19 of the North Dakota Century Code is amended and reenacted as follows:

**50-24.4-19. Prohibited practices.**

A nursing home is not eligible to receive medical assistance payments unless it refrains from all of the following:

1. Charging private-paying residents rates for similar services which exceed those rates which are approved by the department for medical assistance recipients, as determined by the prospective desk audit rate, except under the following circumstances: the nursing home may charge private-paying residents a property rate that does not exceed the actual allowable historical property costs less the property costs reimbursable under section 6 of this Act;

and the nursing home may charge private-paying residents a higher rate for a private room and charge for special services which are not included in the daily rate if medical assistance residents are charged separately at the same rate for the same services in addition to the daily rate paid by the department ~~of human services~~. Services covered by the payment rate must be the same regardless of payment source. Special services, if offered, must be offered to all residents and charged separately at the same rate. Residents are free to select or decline special services. Special services must not include services which must be provided by the nursing home in order to comply with licensure or certification standards and that if not provided would result in a deficiency or violation by the nursing home. Services beyond those required to comply with licensure or certification standards must not be charged separately as a special service if they were included in the payment rate for the previous reporting year. A nursing home that charges a private-paying resident a rate in violation of this chapter is subject to an action by the state or any of its subdivisions or agencies for civil damages. A private-paying resident or the resident's legal representative has a cause of action for civil damages against a nursing home that charges the resident rates in violation of this chapter. The damages awarded shall include three times the payments that result from the violation, together with costs and disbursements, including reasonable attorney's fees or their equivalent.

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

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

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

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

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

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

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

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

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

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

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

Renumber accordingly

Amendment prepared by the Department at the request of Representative Weisz.