17.8089.01000

FISCAL NOTE
Requested by Legislative Council
12/23/2016

Revised
Bill/Resolution No.: HB 1130

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				$44,167,637		$58,890,182
Expenditures			$12,520,243	$12,520,243	$16,693,657	$16,693,657
Appropriations						

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).*

This bill would require an assessment to be imposed on each nursing facility located in this state. Any waiver otherwise available under this code is not applicable to this assessment. The nursing home assessment will be effective January 1, 2018 pending CMS approval.

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.*

This bill would require an assessment to be imposed on each nursing facility located in this state. Any waiver otherwise available under this code is not applicable to this assessment. The nursing home assessment will be effective January 1, 2018 pending Centers for Medicare and Medicaid’s approval.

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.*

The assessment, in the aggregate, cannot exceed five percent of aggregate net inpatient revenues for the rate year of all nursing facilities. The assessment under this chapter must be used only to support expenditures within the long - term care continuum in the department of human services. The provider assessment will be effective January 1, 2018 pending CMS approval. The revenue will be deposited in the Long - Term Care Provider Assessment Fund.

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.*

The assessment will increase the payments made on behalf of all Medicaid recipients in nursing facilities in North Dakota. These funds are matched with federal funds.

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.*

HB 1012 does not include the appropriation effects of this bill.

Name: Jennifer Scheet

Agency: Human Services

Telephone: 328-4608

Date Prepared: 02/02/2017

17.8089.01000

FISCAL NOTE
Requested by Legislative Council
12/23/2016

Bill/Resolution No.: HB 1130

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				$42,675,159		$56,900,212
Expenditures			$22,699,215	$22,699,215	$30,265,620	$30,265,620
Appropriations						

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).*

This bill would require an assessment to be imposed on each nursing facility located in this state. Any waiver otherwise available under this code is not applicable to this assessment. The nursing home assessment will be effective January 1, 2018 pending CMS approval.

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.*

This bill would require an assessment to be imposed on each nursing facility located in this state. Any waiver otherwise available under this code is not applicable to this assessment. The nursing home assessment will be effective January 1, 2018 pending Centers for Medicare and Medicaid's approval.

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.*

The assessment, in the aggregate, cannot exceed five percent of aggregate net inpatient revenues for the rate year of all nursing facilities. The assessment under this chapter must be used only to support expenditures within the long - term care continuum in the department of human services. The provider assessment will be effective January 1, 2018 pending CMS approval. The revenue will be deposited in the Long - Term Care Provider Assessment Fund.

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.*

The assessment will increase the payments made on behalf of all Medicaid recipients in nursing facilities in North Dakota. These funds are matched with federal funds.

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.*

HB 1072 includes all applicable appropriations for the impact of this bill.
HB 1012 does not include the appropriation effects of this bill.

Name: Debra A McDermott

Agency: Human Services

Telephone: 328-3695

Date Prepared: 01/13/2017

2017 HOUSE HUMAN SERVICES

HB 1130

2017 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

HB 1130
1/16/2017
26979

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature	Judy Fepple

Explanation or reason for introduction of bill/resolution:

Relating to prior assessment for nursing facilities; and to provide penalty.

Minutes:	1, 2, 3, 4, 5, 6

(Note: Unable to hear recording until page 3 where we started it again.)
Chairman Weisz: Called the committee to order.

Opened the hearing on HB 1130

Chairman Weisz: Is there any testimony in support of HB 1130?

Pam Sharp, Management and Budget
There has been a lot of discussion and this is not a slam dunk, but I am here in support of HB 1130.

Chairman Weisz: Is there further testimony in support of HB 1130?

L. Thiel
Provider Assessment Overview
(Attachment 1)

Chairman Weisz: Only the Medicaid portion?

Leanne Thiel: I will hand out another page that will give you the breakdown of Nursing Home Provider Assessment funds.
(Attachment 2)

Rep. Pollert: What about reinstating?

L. Thiel: Restoration includes reinstating

Rep Kreit: Under the assessment that you provided with a total of over $42 million, the 1st two are related to the nursing home. The rest of the things on your list are not for nursing

homes. If I was a nursing home resident and had to pay for other things that don't apply to me I would not be happy. That resident is funding everything. That is not fair.

Chairman Weisz: How much of the $42 million do we get back from the federal government?

L. Thiel: We will get 5% back from the federal government.

Representative Westlind: What about money follows the person?

M. Anderson:
Money follows the person is a grant and we used that, but it will be done this year. These are the services that we found were helpful to the people .

L. Thiel:
(Attachment #3)

Chairman Weisz: So we gain $12.5 million?

L. Thiel: Yes, but wouldn't start until January 2018.

Representative Westlind: That $15.17 is that based on an average?

L. Thiel: The $15.17 is for all providers in that class.

Representative Westlind: That means that my nursing home would be assessed at a higher rate?

L. Thiel: It has to be the same for all.

Rep. Meier: We have never had a tax before?

L. Thiel: Yes, we did on intermediate care. It was 6%.

Representative Porter: Private pay person pays 15.17 and the provider pays the 15.17. The resident pays half of that whether they are private pay or not. Resident's private pay will see their rates increase by $7.97. Will that come out of insurance or their money.

L. Thiel: LTC insurance only covers a certain amount per day, regardless of what the resident is charged.

Representative Porter: If the resident still has a tax assessment and they are paying an increased room rate, they paid for some of this service twice. Then they are charged again, so they pay tax several times. Not fair.

L. Thiel: It is general fund that allows us to draw down

Representative McWilliams: Want to clarify $7.97 times 30 days is $230 that they have to pay into their general fund for the tax.

Representative McWilliams: So if they couldn't afford this increase they would qualify for Medicaid and therefore that will increase your expenses.

M. Anderson: Any time there is an increase, there is always an increase for private pay.

Representative P. Anderson: If we don't do this what is going to happen to the quality of care?

L. Thiel: If we don't do the assessment or take it out of the general fund, the nursing homes will have more staffing challenges.

Representative P. Anderson: If the nursing homes aren't getting the dollars they need what effect will that have on quality of care.

L. Thiel: We feel they will still receive good quality care.

Rep. Krei:t About half of the people are on assistance (51%)?

L. Thiel: Yes, and that 51% has been fairly stable.

.

Rep. Kreit: What is the average decline in the resident's rates after the first allotment. The 25 million?

L. Thiel: It did go down, but only about $1/day.

Rep. Kreit: Loss of 25 million would cause?

L. Thiel: Some increased, some decreased, some stayed fairly stable.

Rep J. Nelson: Can't believe that a reduction of $25 million won't affect the quality of care. Is there a 3rd option?

L. Thiel: I don't believe that there is a 3rd option. Provider assessment would be treated the same as general fund.

Rep. Pollert: How many long term care beds do we have, 6,000? One dollar a day times 6000 doesn't make enough.

L. Thiel: $1/ day is an average. Some facilities had rates that dropped.

Chairman Weisz: Further testimony in Support of HB 1130
:30

Shelly Peterson, Long Term Care of
(Attachment 4)
Testifying in support, but several amendments. If the amendments are not implemented, we will withdraw our support and ask that you defeat the legislation.
19:46

Chairman Weisz: Are there any questions from the committee for Shelly?

Joe Lubarsky, CPA that has worked for the state off ND in the past joined us by phone. He has worked with 20 other states in designing a provider assessment programs.
(Attachment 5)
20:45

33:18
Chairman Weisz: Are there any questions from the committee?

Rep. Kreidt: Department estimates that if the state plan is approved and the necessary waivers granted, we would be able to begin this 1/1/18. Seems like a long time. Do you have some information or history that has transpired in other states? Does it this long to get something like this up and running? Could you give me some information on that?

J .Lubarsky: With the type of assessment program that the state proposed here which again meets the broad base and uniform requirements, there is technically no waiver or preapproval required from CMS. The only thing required is going to be the plan amendment in which you specify how the assessment dollars are going to be used as far as funding rate increases in addition to the Medicaid share of the assessments. The time frame for approval from CMS would be the same time frame as the state plan amendment. The state plan amendment has to go in within 90 days of the start of the rate year. I have seen typically with state plan amendments 90 – 120 days before they are approved. Again depending on the nature of the plan amendment it may be somewhat faster than that. No problem being approved before 1/1/18, and CMS approval may come before that date depending on their time frame for submitting that plan amendment.

Chairman Weisz: Further questions from the committee?

36:15
Further testimony in support of HB 1130

Daniel Kelly, CEO of the McKenzie County Healthcare Systems, Inc.
(Attachment # 6)

Chairman Weisz: Questions from the committee
40:33
Representative P. Anderson: Private pay vs. Medicaid in the nursing home. If we don't do something like this the private pay people would still be able to afford to have extra people come in and help them on a daily basis, but Medicaid could not, so there would be a difference of care.

D. Kelly: I will be frank and tell you I am not absolutely certain, but I don't believe we the option of a allowing private pay to hire people to supplement their care within a nursing facility. That wouldn't be the case. All would suffer equally.

Representative Skroch:. Just a point of clarification. What I see happening here with this assessment is that we are taking someone that is a permanent resident in a facility and wanting to provide the best care possible, but the assessment will shift some of those dollars to services that that individual will never receive. They are a private pay individual and they are in a long term stay, they will not benefit from restoring homemakers services or home and community based service, or money follows the person service or restoring them to their home again. Is it your concern as well that those moneys are being shifted to provide services outside of what benefits a long term care facility?

D. Kelly: Yes, sometimes you may acquiesce to not great situation in order to get the greater good, but to answer your question precisely my personal position would be that those that are taxed should have that care come back to them directly. It should not fund other portions of this.

Rep. Pollert: This may be a couple of questions, but we ask this question quite often in appropriations. I see in your statement that this will result in fewer staff that will result in less quality care. Some of us are under the impression because of continued federal standards which came in effect again, that you have a higher level of care required. Therefore, you can't drop staffing. So if you get less money can you hire less staff.

D .Kelly: The answer is that we could hire less staff, but the continuum of that answer is it would result in poor quality reports and it would result in potential penalties, so it has implications. When you are in a position of the devil or the deep blue sea, you have to make some choice and if you do not have the funding to pay individuals, you have not choice. You may make short term decisions that will then come back to have longer term implications.

Rep. Pollert: I have heard that SD has a private pay that is about $50 more or a little more than that. Basically I would believe those states that don't have equalization of rates are using those dollars to get the staffing up there. You are not paying for a higher level of care. You are paying for the same care whether you are private pay or Medicaid. In ND I would suspect that there is a correlation that the allotments have dropped the amount of money going to the nursing homes and that some could argue that the allotment assessment process is trying to raise that dollar value back up. There is kind of an equilibrium there except for the 1.5% that would go to help balance other programs other than long term care. That quality care is going to be there.

D. Kelly: The definition of private pay just means that they are not Medicaid, so they are not in private rooms, so literally the care that is provided is exactly the same. That is in my mind a good thing that we have in ND. I am going to answer your question slightly one off. At one point we were thinking that the provider assessment would generate an increase of about 3%. At that time I calculated what the impact would be on our private pay and it would have been about the same as if we had gotten the normal increases. When we have additional increases in costs that are recognized by the state, those costs get borne by

everybody and that could be 3%, it could be 5% and some years it could be more than that. So I think to your point although we would relish the funding to be restored out of general revenue, this at least allows us to maintain somewhat of a correct playing field and to provide the kind of care that we can be comfortable with.

Rep. J. Nelson: Since August your staff has known that there was a lot of uncertainty in the reimbursement process. Although we are just into the allotment cuts this month, has it impacted your staffing? And if it has those of us that have served in this committee understand the cost of contract nursing and the requirement that you have to meet minimum standards and how much that cost could actually increase the cost to the state. What has been happening in your staffing?

D. Kelly: I have told my staff that I am here trying to get this restored and that we will try to minimize any impact, so it has not impacted us yet. If I have to go back at some point and tell them that this is permanent, we will have to do whatever we can. I will do everything in my power to keep that from happening, but I don't know if I can circumvent a loss of $169,000 of revenue.

Rep. J. Nelson: Living in Watford City you have had some greater challenges as far as staffing. What are you currently paying for CNAs?

D. Kelly: Our CNAs get $15/hr plus benefits of about 30%.

Rep. Kreite: On December 31 you had the 2016 rate, on January 1, 2017 you had the new 2017 rate. What was the difference in the rate.

D. Kelly: I don't know.

Chairman Weisz: Are there further questions from the committee?

Chairman Weisz: Is there further support for HB 1130?

Chairman Weisz: Is there any opposition to HB 1130?
Chairman Weisz: closed the hearing.

2017 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

HB 1130
1/31/2017
27649

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature	Judy Hepple

Explanation or reason for introduction of bill/resolution:

Relating to provider assessment for nursing facilities; and to provide a penalty.

Minutes:

Chairman Weisz: called the committee to order.

Representative Devlin: I move a do not pass

Representative Porter: Seconded

Discussion

Representative D. Anderson: Do they have a time line in looking for money?

Representative P. Anderson: I am conflicted about this. I would pay the extra tax if it meant that she would receive the care she needs.

Chairman Weisz: Private pay will pay more no matter what we do. There is a disagreement about how much the increase would be whether or not we have an assessment.
If we shore up LTC private pay will still pay more.

Representative P. Anderson: You think you will find the money.

Chairman Weisz: Yes, I think so. In the end if there isn't enough, this assessment may come back.

Representative Skroch: One of my concerns is that it shifts money that is collected from residents to pay for services they will never receive.

Chairman Weisz: In a way you are right, but really it is just a decrease in the amount of general fund.

Chairman Weisz: Motion for a do not pass on HB 1130

Roll call vote taken yes 14 No 0 Absent 0

Motion carried for a do not pass

Chairman Weisz: do we have a volunteer to carry this bill?

Representative Devlin: I will carry it.

Date: 1-31-17
Roll Call Vote #: 1

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1130

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 Rep. Devlin 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	✓				

Total (Yes) 14 No 0

Absent

Floor Assignment Rep. Devlin

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

REPORT OF STANDING COMMITTEE

HB 1130: Human Services Committee (Rep. Weisz, Chairman) recommends **DO NOT PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1130 was placed on the Eleventh order on the calendar.

2017 TESTIMONY

HB 1130

#Att. 1
1-16-17
HB 1130

ND Department of Human Services
Provider Assessment Overview
House Bill 1130
January 16, 2017

42 CFR § 433.68 identifies permissible health-care related assessments. The most common provider types for a health-care related assessment are nursing facilities, hospitals and intermediate care facilities for individuals with intellectual disabilities (ICF/IID). A health-care related assessment cannot exceed 6% of provider net patient revenue.

Any provider assessment must have Centers for Medicare and Medicaid Services (CMS) approval in order for the allowable cost to be included in the Medicaid rate. This means we have to work closely with CMS on any proposed assessment.

A provider assessment will not be considered uniform and broad-based if the amount of the assessment is directly correlated to payments under the Medicaid program or the taxpayer is held harmless. CMS must approve a waiver if a provider assessment is not uniform and broad-based.

Currently in North Dakota only ICF/IID providers have a health-care related assessment. This assessment is based on licensed beds.

Based on the provider assessment bill (HB 1130) as introduced, a nursing facility provider will pay a set amount per day for each non-Medicare day. Non-Medicare days were used so that a transitional care unit which only serves Medicare clients would not be subject to the provider assessment.

Only the Medicaid portion of the provider assessment paid by a provider can be considered allowable in calculating rates. This means that the daily assessment for a Medicaid day can be included in rate setting upon CMS approval.

Current state law establishes equalized rates for a private pay individual. This means that a private pay individual cannot be charged a higher rate than an individual on medical assistance for the same services. The rates for private pay individuals will increase based on the portion of the provider assessment that is an allowable cost.

ATT. #2
1-16-17
HB 1130

Department of Human Services
Nursing Home Provider Assessment Funds
2017 - 2019 Executive Budget

Uses of Nursing Home Provider Assessment in Long Term Care:	
Nursing Home Cost Increases	26,393,649
Restore Nursing Home Rate Reductions	10,586,708
Nursing Home Inflation	2,554,576
Restore Basic Care Rate Reductions	1,844,869
Basic Care Inflation	124,778
Restore Homemaker Services Rate Reduction	293,915
Home & Community Based Services Provider Inflation	228,711
Money Follows the Person Sustainability	527,954
Restore Community of Care Funding	120,000
Total Nursing Home Provider Assessment	**42,675,160**

Att. 3 1-16-17
HB 1130

ND Department of Human Services
Medical Services Division
Nursing Facility Provider Assessment
House Bill 1130
January 16, 2017

Maximum Provider Assessment % of Revenue 5.00%

	2018 (12 mths)	2019 (6 mths)	Biennium Total
Assessment per Non-Medicare Day	$ 15.17	$ 15.17	
Estimated Average Daily Rate Increase for all Residents [1]	$ 7.97	$ 7.97	
Assessment Revenue	$ 29,445,091	$ 14,722,546	$ 44,167,637
Estimated General Fund Appropriation Increase [2]	$ 8,346,829	$ 4,173,414	$ 12,520,243
Net 2017-2019 Biennium Impact [3]			$ 31,647,394

* Federal regulations identify that a health-care related provider assessment must be uniform and broad based. The State may request a waiver from CMS for a provider assessment that is not uniform or broad based.

[1] The portion of the provider assessment attributable to Medicaid is an allowable cost for rate-setting.

[2] For Medicaid portion of provider assessment only.

[3] Estimate is assuming 2017 Legislative approval, CMS approval of State Plan Amendment and any necessary waiver is granted. The provider assessment would be effective January 1, 2018.

#4
1-16-17
HB 1130

Testimony on HB 1130

Nursing Facility Provider Assessment

House Human Service Committee

House Appropriations – Human Resource Division

January 16, 2017

Good afternoon Chairman Weisz, Chairman Pollert, members of House Human Services Committee and House Appropriations Human Resources Division. My name is Shelly Peterson, President of the North Dakota Long Term Care Association (NDLTCA). We represent 210 Assisted Living, Basic Care and Nursing Home facilities across North Dakota. I am here today to testify on HB 1130. I am testifying in support, however we are offering numerous amendments to the bill. We hope that you are open to the amendments. If you are not, we will respectfully withdraw our support and would ask you to defeat the legislation.

Last year we asked former Governor Dalrymple to reinstate the allotment cuts implemented on 1-1-17 on nursing facilities. When we made our request, Governor Dalrymple asked for funding options, as revenue was looking dismal. At that point we started a study and analysis of provider assessments (tax – surcharge – revenue enhancement, it goes by a variety of names). We contracted with a national expert on the subject, Joe Lubarsky, a CPA and President of Eljay, LLC. Mr. Lubarsky has assisted over 20 states in designing their provider assessment programs. After great study, debate and reluctance, our membership passed the following motion on 12-14-16:

> To continue to provide quality of care and support equalization of rates, as a last resort, we will support a provider assessment on nursing facilities rather than deep cuts to resident care.

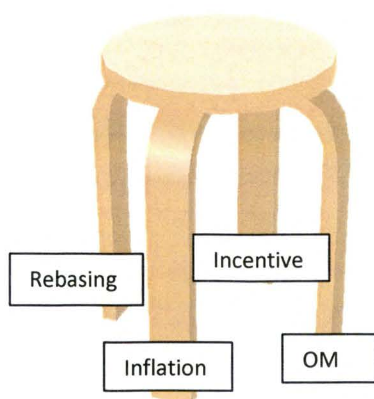
Foundation of Payment System – Equalization of Rates

For those not familiar with equalization of rates, it requires the private pay rate to be the same as the Medicaid established rate. This was a funding principle supported and proposed by the seniors of North Dakota. The original legislation was passed in 1987, further enacted in 1989 and implementation on 1-1-90.

Equalization of rates is still an important issue to seniors and families in North Dakota, and we stand in support of it. Today only North Dakota and one other state have equalization of rates.

In order for equalization of rates to work, you need a payment system that allows nursing facilities to operate with sufficient cash to pay their bills. Under this system you control 93% (Medicaid and private pay) of the revenue and the federal government (Medicare) controls the remaining 7%. What we have control of, sort of, is the expense side of the equation. On 1-1-17 four key components of our revenue were eliminated. When Medicaid eliminated these four features, the private pay rates were also reduced.

Think of payment system as a four legged stool:



1-1-16

1-1-17

In the states that don't have equalization of rates, they are allowed to charge the private pay resident any amount. They charge them more because the Medicaid rate is not sufficient to cover their costs. Do we want to go back to the system of charging the private pay more than residents receiving Medicaid? Why should the private pay be asked to spend more? That is what repeal of equalization of rates would do.

We asked Governor Dalrymple to consider a provider tax on nursing facilities, rather than deep cuts to resident care and staffing. One of our amendments clarifies the tax is allowable. It is then passed onto private pay and Medicaid residents.

Forty-three states and the District of Columbia have implemented a nursing facility provider assessment, (and it has a variety of names). The vast majority of states have gone this route rather than significant cuts to nursing facility services. States have the option of having 18 different health services taxed. In 2003, North Dakota approved a provider assessment on ICF-MR facilities. Provider assessments are a bonafide funding source, and North Dakota could access additional federal funding, North Dakota could net almost an additional $20 million under this revenue source.

Concerns with HB 1130:

1) It proposes a 5% assessment on nursing facilities without saying how the proceeds will be used (other than a general statement about long term care). It provides no protection for assuring the revenue raised will be used to restore allotment cuts and care to nursing facility residents.

2) It proposes penalties that are extensive and it makes the manager, officials and board personally liable if the nursing facility fails for any reason not to file a required return or pay an assessment due. Ninety-six percent of all nursing facilities in North Dakota are non-profit. Community leaders and church members comprise the board of

directors. Who would serve on the board if you could be held personally liable?

3) It proposes to pay for expenses not directly related to nursing facilities. Why should nursing facility residents who will ultimately pay this fee through their rates, be asked to pay HCBS services, totally unrelated to their care?

States can't guarantee a hold harmless to any nursing facility, but rates can be adjusted to cover the assessment and restore reductions.

We have prepared a set of extensive amendments that assure the assessment will be an allowable cost, that the proceeds will be used to cover the nursing facility allotment cuts and the penalty section will not be harsh, or hold individuals personally liable.

In summary, we believe a nursing facility provider assessment should be used as a last resort if no other funding source is available to fund nursing facility care. As you debate the priorities of the state, we believe in the end, care to the elderly unable to care for themselves will surface as a priority. We ask that this legislation be amended to protect nursing facility residents from paying for care important but unrelated to them. We also request that it be narrowly focused to cover the allotment cuts and an annual inflationary adjustment. Keeping it focused on just restoring the cuts, will result in keeping the fee/tax as low as possible.

We still don't necessarily like this legislation, but it is far better than a payment system that doesn't come close to covering the cost of care and it helps assure the elderly will get the quality of care each deserves.

None of us know if we will be the one whose body or mind fails. Families and individuals call upon facilities in their time of need, when they simply can't provide care any longer, let's be there for them when they need us most.

Again, our first preference is that you find the revenue to fund care for nursing facility residents just as you have for the past 27 years since you implemented equalization of rates. Even in North Dakota's most lean years after the 89 tax referral, you found the funds for us to provide the care. We have looked at the options and there are worse ones than this bill before you.

WORSE Options than a Nursing Facility Provider Tax:

1) Not restoring the cuts. Every facility will need to make further cut backs. Cutting staff is the last thing we would want to consider. Our staffing levels directly impact residents. The cook, the CNA, the housekeeper, the groundskeeper who keeps the snow off the sidewalk so family member and staff can safely enter and exit the building. Regulations require that you must have a licensed administrator and a full time Director of Nursing. They work hand-in-hand to assure the facility complies with all regulations and guides the staff with a culture of delivering outstanding care. Our system of care is delivered by thousands of employees, predominately female. In November 2016 the average entry certified nurse assistant was earning $14.27 per hour, a cook at $13.20, housekeeper at $11.77. Benefits most often includes a single health plan and some retirement benefits. She is not getting rich in a monetary value, but she is fulfilled by the purpose of her job and the difference she is making. This option of not restoring the cuts, is something I can't image you will ever consider. Your past actions, at the end of each session, is you find the money for us to care for those who are at the end of their life span and need help. During the special session you even put in your bill, "It is the intent of the 64th Legislative Assembly that if additional revenues become available before the convening of the 65th Legislative Assembly, the 65th Legislative Assembly consider, early in the regular session, restoration of funding for behavioral health, autism, and long term care."

2. Another option we've considered is, should North Dakota repeal equalization of rates? Should we be like the 48 other states and say we've done well, but the time has come, we cannot support a payment system that requires rates to be equalized. We will not restore the allotment cuts, but we will allow you to charge the private pay (38%) more, because Medicaid can't afford to restore the funding. This is a far worse option for the private pay, why should they have to pay a higher cost, far more than a provider assessment?

At the end of the day, you know best how to fund the state and its priorities. HB 1130 is one option to raise revenue, if all else fails. We request you accept our amendments and get the bill in the best shape possible.

I have a number of attachments I want to briefly review.

Joe Lubarsky, the national expert on provide assessments is on the telephone. Joe will explain to you the amendments we are proposing for your consideration.

After Joe, we have Dan Kelly, the Administrator from Mckenzie County Healthcare Systems, Watford City. Dan has experience with provider taxes from working in Missouri. We thought you might find his perspective helpful.

Thank you for considering our perspectives on this issue. We are here to work with you.

After Joe's and Dan's presentation, I would be happy to answer any questions you may have.

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

Proposed Amendments to HB 1130
Nursing Facility Provider Assessment

Page 1, line 17, after a. add "or a Medicare advantage or special needs plan."

Page 2, line 16, replace "support expenditures within the long term care continuum in the Department of Human Services." With "maintain or increase rates to nursing facilities above those in effect as of the date of the assessment."

Page 2, line 25, replace "not exceeding thirty days for making a return." With "For paying the assessment."

Page 3, line 9, replace "Offenses" with Offset"

Page 3, line 12, replace "the nursing facility is subject to a penalty of five" with "a state agency that owes a payment to the nursing facility may withhold the payment until the entire amount of the past due assessment is recovered. A state agency that owes payment to a nursing facility shall cease withholding payment due to the nursing facility if:

a. The commissioner determines that the delay in payment of the past due assessment was excusable:

b. The commissioner determines the past due assessment has been paid in full through the use of the offset described in this section:

c. The nursing facility makes an agreement satisfactory to the commissioner to pay the past due assessment; or

d. The commissioner determines that there is no past due assessment based on newly acquired evidence or a subsequent audit."

Page 3, remove lines 13 through 19

Page 3, line 20, replace “A person failing to comply with this chapter or” with “The commissioner shall report to the state department of health a nursing facility”, after “remit” insert “within six months of its due date”

Page 3, line 21, replace “to the commissioner on a timely basis is guilty of a class B” with “and the state department of health may suspend or revoke the license of the nursing facility in accordance with section 23-16-06.”

Page 3, remove line 22

Page 8, Line 7 add:

The Fund and all matching federal funds received shall be used only for the following purposes and in the following order of priority:

(a) A pass through to reimburse the Medicaid share of the quality assessment as a Medicaid allowable cost;

(b) Effective January 1, 2018, fully fund the rate methodology in effect prior to the rate reductions effective January 01, 2016 and 2017; including, but not limited to, restoring the operating margin, incentive and rebasing as detailed in the state plan prior to the rate reductions and an inflationary increase for calendar year 2018;

(c) Effective January 01, 2019, maintain the January 1, 2018 rates adjusted per the rate methodology in effect prior to the rate reductions effective January 01, 2016 and 2017 plus an inflationary increase on January 01, 2019;

All interest and income derived from any investment and/or deposit of money in the Fund shall be credited to and remain in the Fund.

(a) Any unexpended and unencumbered money remaining in the Fund at the end of any fiscal year shall remain in the Fund and shall be used to pay Medicaid rates for nursing facilities the next fiscal year.

(b) No monies in the Fund shall revert to the State general fund or to any other State fund at any time.

The provisions of this section shall become null and void, having no force and effect, if any of the following occur:

(a) The Medicaid plan amendment reflecting the payment rate adjustments specified in the previous section is not approved by the federal government; or

b) The Medicaid rates paid to nursing facilities are reduced below those established based upon the rate methodology in effect prior to the rate reductions effective January 01, 2016 and 2017 plus an inflationary adjustment.

(c) In the event that the provisions in this section do not become operative or become null and void, any and all monies in the Fund shall be returned to the nursing facilities that paid the provider assessment based upon their proportion of assessment days to total assessment days.

Sunset Provision

This legislation will sunset on June 30, 2019

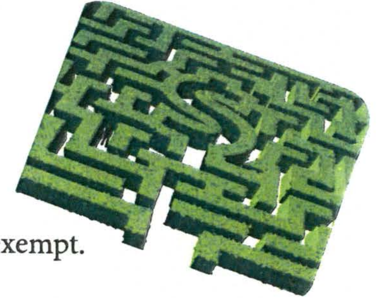
Renumber accordingly.

Implements a 5 percent Long Term Care Provider Assessment. $42.7 million revenue provides funding for the following programs:

- Proposes to go into effect on 1-1-18.
- Money Follows the Person - $527,954 assessment dollars for a total of $1.1 million increase.
- Long term care provider (for the entire LTC continuum) inflationary increase of 0 percent and 1 percent; $2.9 million is from assessment revenue for total funding of $5.7 million
- Restores nursing home rate reductions in rebasing, operating margins and incentives; $10.6 million from revenue for a total increase of $21.2 million.
- Restores basic care rate reductions with $1.8 million assessment funding and total funding of $2.1 million.
- Restores 10 percent rate reductions to homemaker services; with $293,915 assessment funding and total funding of $322,983.
- Long term care cost and caseload of $26.4 million.

Page 168 of State of ND Budget

PROVIDER ASSESSMENT FOR ND NURSING FACILITIES



- Are a local bonafide funding source.
- 18 different classes of health services and providers can be assessed.
- Must be applied to all nursing facilities, however Medicare only facilities can be exempt.
- State can't guarantee a hold harmless to any NF, but rates can be increased to cover tax and restore reductions.
- Must be uniformly imposed.
- The assessment can not exceed 6% of a nursing facility's gross revenue.
- DHS estimated the state could net almost $20 million under a 5% nursing facility provider assessment.
- Joe Lubarsky estimated we needed up to a 3.45% tax to cover NFs shortfalls.
- Today, 43 states and the District of Columbia have a nursing facility provider assessment.
- ND has had a provider assessment on ICF-MR facilities since 2003.

Pro's	Con's
• ND could net almost $20 million over 18 months. • The cost could be a pass-through to all nursing facilities. • Medicare Only Nursing facilities would be exempt from the tax. • Could be a revenue source to restore all NF Budget reductions caused by the allotment process.	• The state could use the revenue for *any* Medicaid covered services. • A penalty would be assessed if nursing facilities refused to pay the assessment. • The private pay and Medicaid rates would increase depending upon the amount of tax. • Provider Assessment could be used for Nursing Facility budget without restoring allotment cuts.

In summary, 43 states and the District of Columbia each have a provider assessment. The vast majority of states have gone this route rather than significant cuts to nursing facility resident services. How the law is written will determine how much or how little the fund is protected for Nursing Facility expenditures.

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NURSING FACILITY PAYMENT SYSTEM

EQUALIZATION OF RATES

The legislature implemented equalization of rates between Medicaid residents and self pay residents for nursing facilities in 1990. Equalization of rates requires all residents be charged the same rate for comparable services. Minnesota and North Dakota are the only states in the nation with equalization of rates. Nursing facilities are the only providers/private businesses subject to an equalized rate system in the State of North Dakota.

MINIMUM DATA SET FOR PAYMENT

The state adopted the Minimum Data Set (MDS) for its payment system on January 1, 1999. The MDS provides a wide array of information regarding the health status and care needs of each resident. The payment system has forty-eight facility specific rates. Each resident is evaluated at least quarterly and the intensity of their needs determines their rate classification.

RATE CALCULATIONS

The determination of rates is the sum of **six components**: direct care, other direct care, indirect care, property, operating margin and incentive. Except for property and incentive, each component has an established limit rate, and if the nursing home rate for that component exceeds the limit, the excess is not allowed in the rate. Facilities need to find donations or other revenue streams to cover their expenses when rates have been limited. Current limits are calculated based on the **June 30, 2010 cost report.** The limits were scheduled to be rebased using the June 30, 2014 cost report, but this will be cancelled due to allotment cuts.

Limits - The **direct care, other direct care and operating margin** limits (the maximum that will be paid) are set by arraying the facilities from least expensive to most expensive, selecting the facility at the mid-point (median facility). The **direct care, other direct care and operating margin** limits are established by adding **20%** to the cost of that median facility. The **indirect care** limit is established by adding **10%** to the cost of that median facility. The limits are then inflated annually by the legislative approved inflation factor until rebased.

Occupancy Limitation - In the June 30, 2015 cost reporting period, 14 nursing facilities reported twelve month occupancy averages at less than 90%. Together they incur $1,891,842 in penalty costs because they operate under 90% occupancy.

Direct Care Rate - Costs in the Direct Care Category include: Nursing and therapy salaries and benefits, OTC drugs, minor medical equipment and medical supplies. On January 1, 2016 the direct care limit is $172.84 per day. Seven nursing facilities currently exceed this limit. These nursing facilities spent $3,120,129 in excess of the limit, costs which will never be recouped.

Other Direct Care - Costs in the Other Direct Care Category include: Laundry, social service, and activity salaries and benefits, food, and supplies. On January 1, 2016 the other direct care limit is $28.70 per day. Nine nursing facilities currently exceed this limit. These facilities exceeding spent $391,642 in excess of the limit, costs which will never be recouped.

Indirect Care - Costs in the Indirect Care Category include: Administration, chaplain, housekeeping, dietary, and plant salaries and fringe benefits, housekeeping and dietary supplies, pharmacy, medical records, insurance, and plant operations. On January 1, 2016 the indirect limit was set at $73.82 per day. Twenty-two nursing facilities currently exceed this limit. These facilities spent $11,090,181 in excess of the limit, costs which will never be recouped.

Property - Costs in the Property Category include: Depreciation, interest expense, property taxes, lease and rental costs, start-up costs and reasonable and allowable legal expenses. The average property rate is $18.51 per resident per day, with a range of $2.63 to $64.11.

RATE CALCULATION COMPONENTS ELIMINATED DUE TO ALLOTMENT CUTS

Efficiency Incentives - A reward is provided to nursing facilities that are under the limit in indirect care. The efficiency incentive is calculated for each facility based upon their indirect costs compared to the indirect limit. Facilities are able to receive 70 cents for every dollar they are below the limit up to a maximum of $2.60 per resident day. In 2016, the average per day incentive is $2.06. Of the fifty-six nursing facilities receiving an efficiency incentive, the average incentive was $56,379 annually. As part of the allotment cuts, the efficiency incentive is being eliminated in the January 1, 2017 rates.

Operating Margin - All nursing facilities receive an operating margin of three percent based on their historical direct care costs and other direct care costs. The operating margin provides needed cash flow to cover up-front salary adjustments, rapidly rising costs, replacement of needed equipment, unforeseen expenses, and dollars to implement ever increasing regulations. In 2016, the average operating margin is $4.56 per resident per day. As part of the allotment cuts, the operating margin is eliminated in the January 1, 2017 rates.

Inflation - Because the nursing facility rate is prospective, reported costs are adjusted by an inflation factor. Inflation is a rise in price levels that are generally beyond the control of long term care facilities. An example of a price level increase is a 20% increase in health insurance. To attract and retain adequate staff, nursing facilities need to offer salary and benefit packages that reward people. Approximately 75% - 80% of a nursing facility's budget is dedicated to personnel costs. Inflation adjustments are critical for salary and benefits so nursing facilities can compete in the market place. Turnover of certified nurse assistants, the largest pool of employees, was 56% in 2014. Annual inflationary adjustments are set every legislative session. The 2016 inflationary adjustment was 3%. Facilities will not receive the legislatively approved inflationary adjustment of 3% in 2017 because of the allotment cuts.

Rebasing - A limit is establish on the maximum that will be paid in each cost category. The 2016 limits are based upon the June 30, 2010 cost reports inflated forward to 2016. Limits are inflated annually by the legislatively approved inflation factor until rebasing occurs. Limits were to be rebased on January 1, 2017 using the June 30, 2014 cost report. This has been eliminated because of the allotment cuts. In 2016, one out of three nursing facilities are exceeding at least one limit. (28 of 78)

Voter Opinion Survey

December 2016

North Dakota

AHCA®

AMERICAN HEALTH CARE ASSOCIATION

14

Methodology and Background

- **610 interviews** were completed among registered voters in North Dakota via internet survey.
- All interviews were conducted via web-based interviewing platform during November and December 2016.
- The survey was conducted by Opinion Access Corp and sponsored by the American Health Care Association to better understand the attitudes, opinions and perceptions of North Dakota voters.
- Some totals may not equal 100 percent as a result of rounding.
- In addition to sampling error, question wording and practical difficulties in conducting surveys can introduce error or bias into the findings of public opinion polls.
- Sequence of questions was designed to eliminate or reduce instrument bias. The questions and sequence can be found in the accompanying questionnaire.

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Key Findings

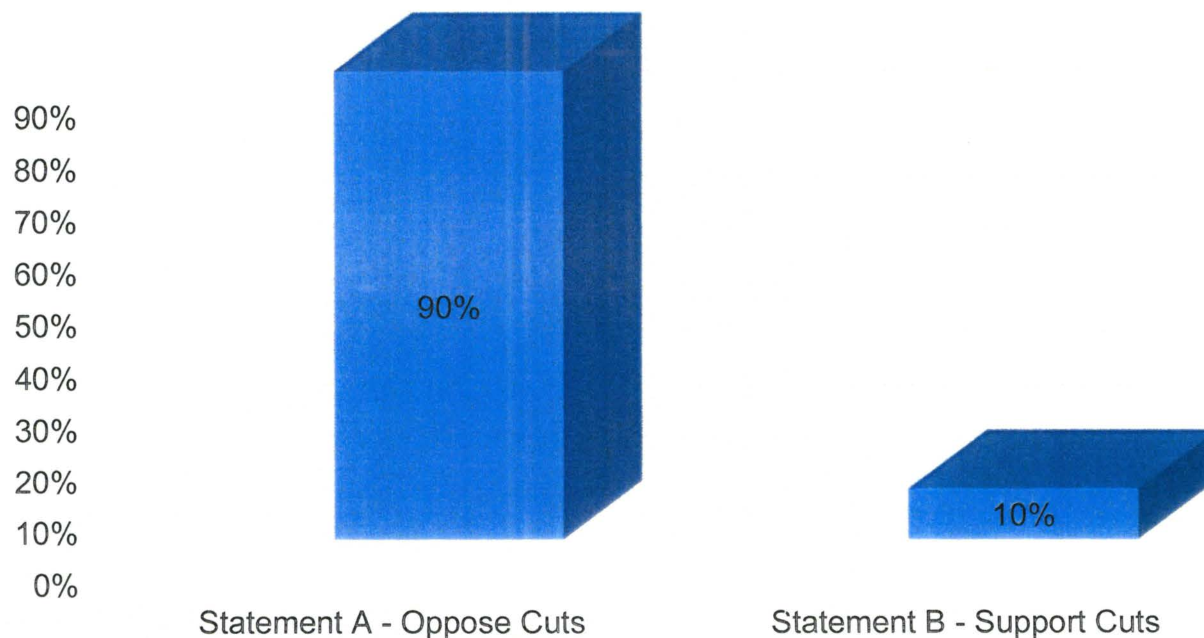
16

Most believe that continuous cuts to Medicaid are unacceptable

"Which of the following statements comes closest to your opinion?"

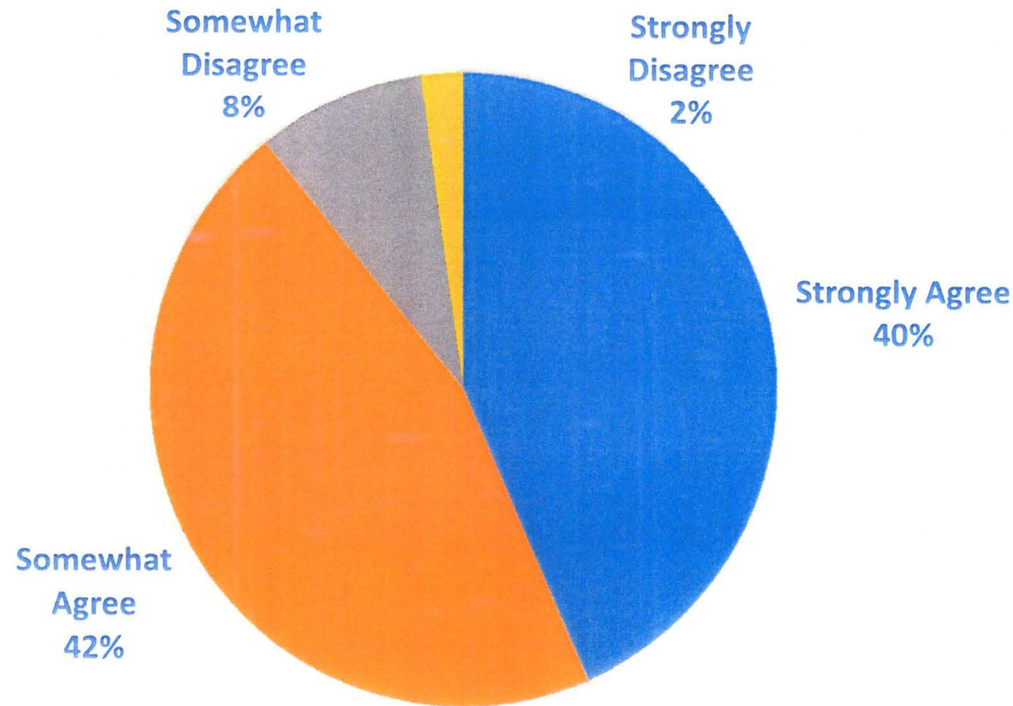
Statement A: Any proposed cuts to state Medicaid for nursing homes are unacceptable.

Statement B: Additional cuts to nursing homes are needed to help reduce the state budget deficit.



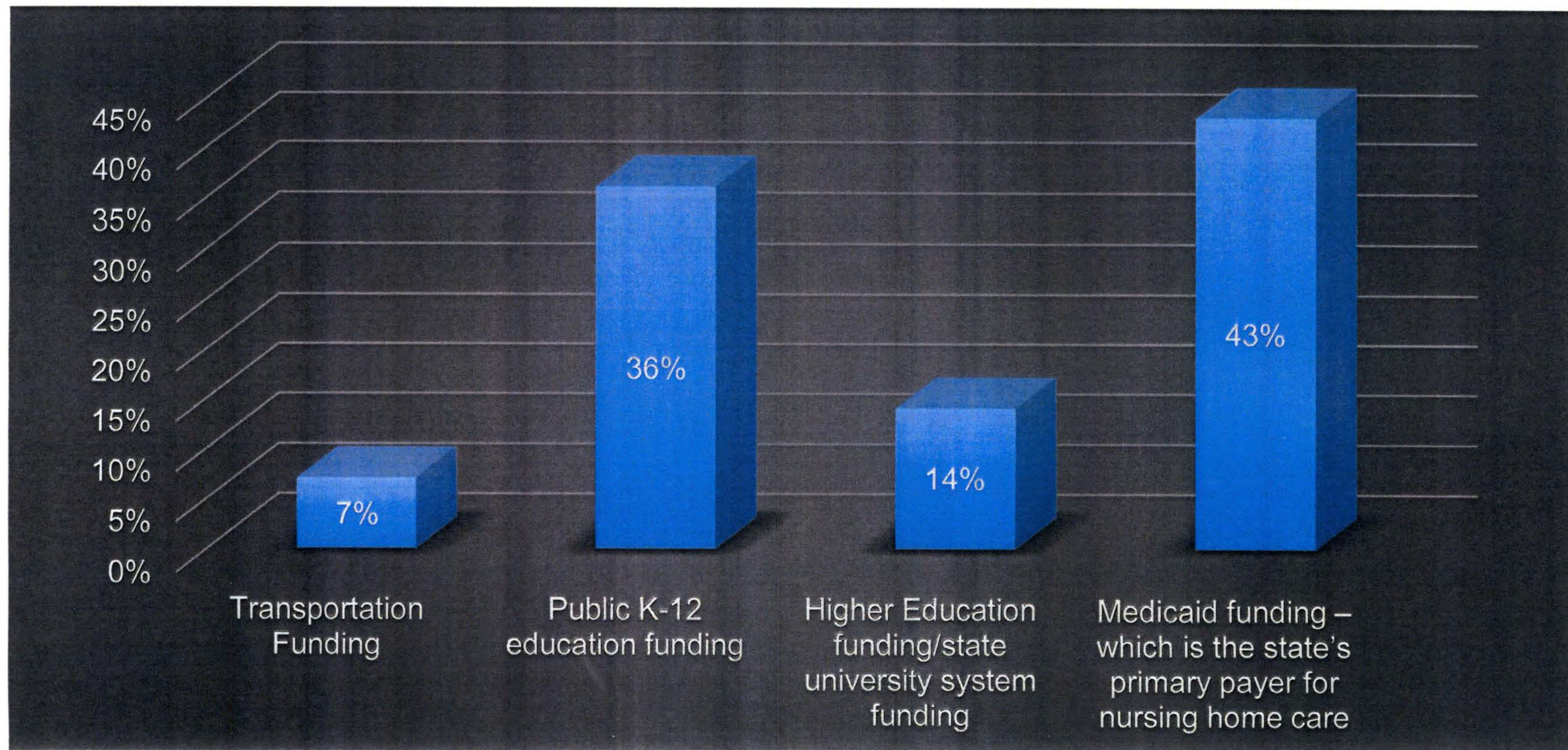
82% agree lack of government funding impacts quality care

"Do you agree or disagree that a lack of state government funding for nursing home care has a negative impact on quality care?"



Medicaid funding as highest priority for legislators

"Which of the following do you believe should be the highest priority for legislators who will soon be deliberating on the state budget?"



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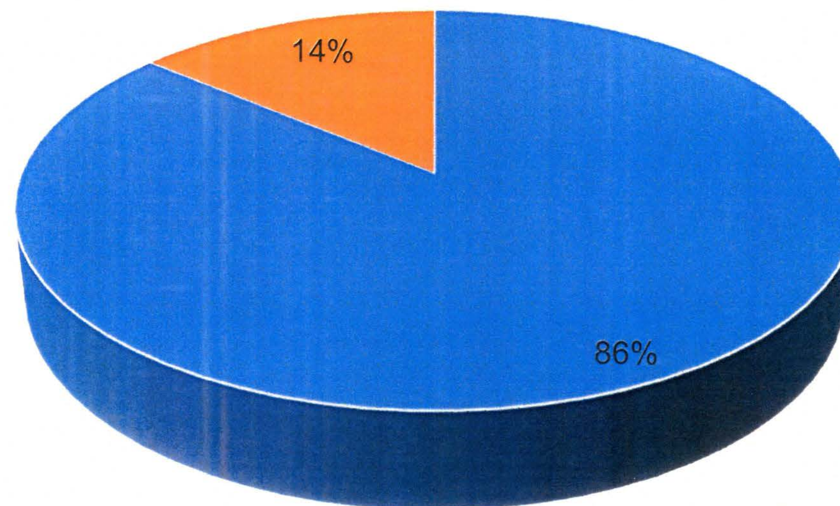
86% would support a lawmaker who opposed Medicaid cuts for nursing homes

"Which of the following statements is closest to your personal opinion?"

Statement A: I support state lawmakers who oppose Medicaid cuts for nursing homes.
Statement B: I support state lawmakers who will reduce Medicaid funding for nursing homes.

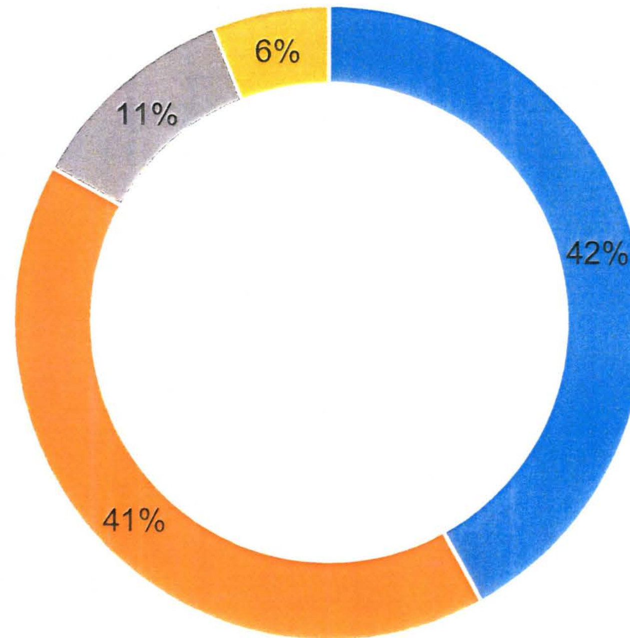


Statement A   Statement B

20

83% support legislators funding North Dakota's nursing homes as top priority

"Nursing homes in North Dakota are facing serious cuts in funding beginning early next year. These cuts are a result of the state's budget shortfall and spending cuts. Because of these cuts, nursing homes will likely have to make difficult budget decisions, such as staff reductions, and other spending measures important to the overall quality of care they offer. Do you support or oppose legislators restoring the funding in January and make funding the state's nursing homes a top priority?"



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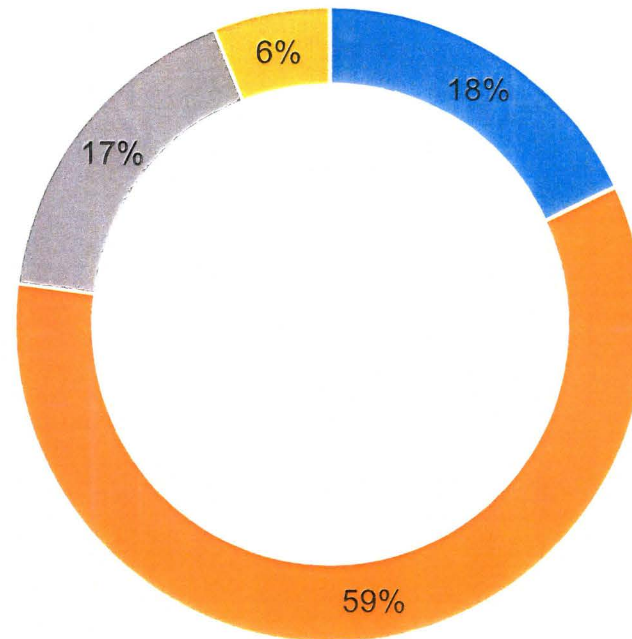
77% support nursing homes paying slightly more in taxes to offset budget shortfall

"Do you support a new, slight tax increase that nursing homes would pay, which would allow the state's Medicaid program to access additional federal funding which could offset some of the budget shortfall?"



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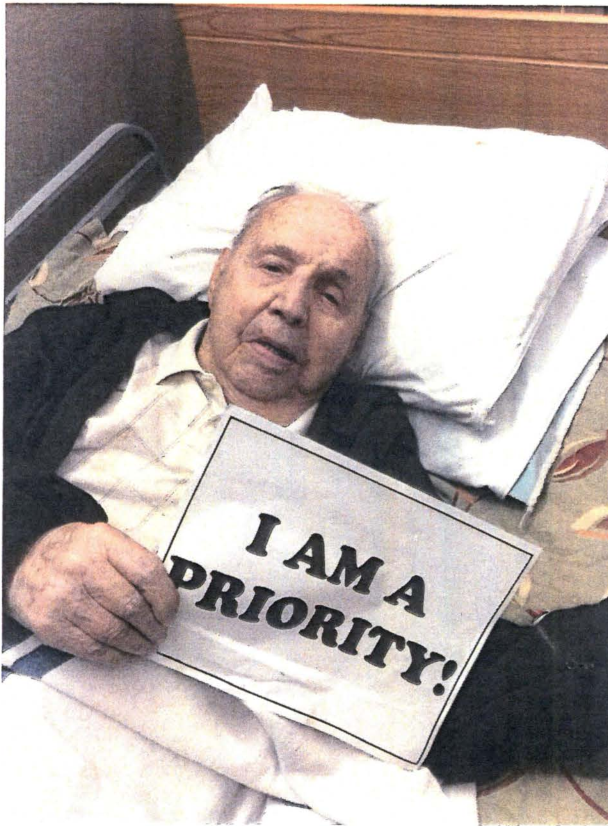
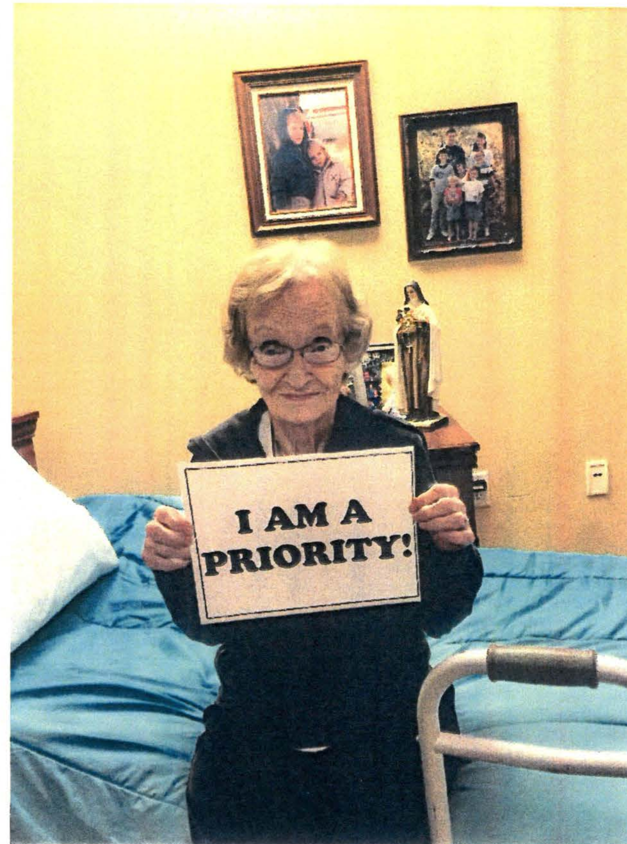
I AM A PRIORITY!





#5
HB 1130
1-16-17

Discussion of Proposed Amendments to HB 1130:

1. Page 1, line 17, after a. add "or a Medicare advantage or special needs plan."- The federal regulations allow for the exclusion of Medicare days/revenues from the assessment. CMS has interpreted that to mean states can exclude Medicare days under the traditional Medicare program and those days covered under Medicare Part C- Medicare advantage plans and special needs plans. However, the exclusion of Part C days is at each state's discretion. Failing to address it in the statute has caused issues in other states as to whether it was the intent to exclude these Part C days from the assessment
2. Page 2, line 16, replace "support expenditures within the long term care continuum in the Department of Human Services." With "maintain or increase rates to nursing facilities above those in effect as of the date of the assessment."- Federal law and regulation does not specify how provider assessments can be used; only that they can be used to fund Medicaid expenditures. Therefore it is imperative that the state statute define the purpose of the assessment and how the funds will be used. The Association's position is that they be used exclusively to support rate increases to NFs, and, as importantly, that they are not used to increase rates one year, and then in the next year, the state reduces rates due to budgetary issues or other concerns-which I've seen happen in other states
3. Page 8, Line 7 add: The Fund and all matching federal funds received shall be used only for the following purposes and in the following order of priority-For the reasons just mentioned, the statute should be very prescriptive as to how the funds are used; similar to language incorporated in other states that have provider assessment programs. The Association's position is that the assessment be used to fund the Medicaid share of the assessment, which is permissible under the regulations; to fund restoration of rate reductions that were in place on 01/01/17; and to fund inflation for the rate year. The Association's expectation was that the

state would continue to fund increases in costs using the latest cost reports for those under the limits (exclusive of inflation which would be funded by the assessment).

4. To demonstrate the need for prescriptive language, the Department's submitted budget uses the assessment and federal match to restore the rate reductions that occurred on 01/01/17; to reimburse the Medicaid share of the assessment; to fund a 1% inflationary increase only for FY19; to fund the increases in cost based upon the latest cost reports; and to fund nursing facility caseload changes. In addition, approximately $3 million plus federal match is diverted to additional funding for Basic Care and HCBS services. So you need specificity to insure the funds are being used for their intended purpose during the time frame assessments are in effect
5. We have also proposed amendments, again common to what has occurred in other states, relative to the assessment being null and void if CMS doesn't approve the state plan or there are further rate reductions after the assessment program has started.
6. Finally, a sunset provision is proposed in that provider assessments are meant to be a temporary measure during this budget cycle with the hope and intent, that if state revenues improve, there will no longer be a need to subsidize state share funding with provider assessment dollars

Key Numbers:

1. Assessments: $42.6 million-approximately 5% of revenue
2. Estimated Assessment per non-Medicare Day over the 18 month period-$15 ppd
3. Restoration of Cuts-$21.1 million-$10 per Medicaid day
4. Cost Changes-$45.3 million-Reimburse MA share of tax-$22.6 million ($14 ppd on average for the 18 month period); Cost Increases-$22.7 million-$10.49 over the two year biennium
5. Inflation FY 19-$3.6 million

#6 HB1130
1-16-17

Testimony on HB 1130

Nursing Facility Provider Assessment

House Human Services Committee

House Appropriations – Human Resource Division

January 16, 2017

Chairman Weisz, Chairman Pollert, members of House Human Services Committee and House Appropriations Committee. My name is Daniel Kelly. I am the CEO of the McKenzie County Healthcare Systems, Inc., in Watford City, North Dakota. I am here to advance our mission of providing quality care to the senior residents of North Dakota and thus, if necessary, then by default, to support HB 1130.

I recognize and sincerely respect the onerous position that this legislative assembly is placed in as you must consider the needs of the vulnerable population, particularly our seniors, in light of lessening revenues. However, I contend that funding our long-term care facilities has occurred in both times of prosperity and austerity in North Dakota. It is not our nursing home facility funding that has placed the State of North Dakota in the present budget dilemma it faces.

Without reasonable increases in reimbursement our facility will be severely impacted. Given the largest expense category is staffing, this will result in fewer staff which equates to less quality care.

For the McKenzie County Healthcare System, Inc, the allotment cuts implemented on 1-1-2017 will mean an additional reduction in revenues of $169,104.42. This is in addition to the $204,134.58 in expenses we incur but which we are not reimbursed as we are over the Indirect Spending Limits.

These allotment cuts will impact our staff. Not providing our nursing homes with the ability to offer salary increases and continued benefits may be penny wise and pound foolish. Given I must provide staffing for my facility, if I cannot retain the staff I have, I will be forced to hire traveler staff for which I pay as much as three times (3X) the cost of my employed nurses and certified nurse aids. This additional cost will be borne in future legislative sessions as those rates are established based on this increase in expenses.

There is not one nursing home administrator that I have spoken to that is thrilled by the prospect of implementing a provider assessment. I can state that while I was the CEO of Doctors Regional Medical Center in Poplar Bluff, Missouri a provider assessment was implemented that made a significant difference financially for that facility. I remained at that facility eleven years and during that time and up to this day, it has been a positive. If you have a legislative body that uses the provider assessment to further direct patient care it can be a great tool. If you have a legislative body that uses the revenue garnered by a provider assessment to supplement the operational needs of the state it becomes problematic.

In concert with those you have heard before, with the adoption of the amendments proposed by Shelly Peterson and **if** this is the **only** means by which funding can be restored to our nursing facilities then I support HB 1130.

I would be happy to answer any questions you may have.

Daniel Kelly, CEO
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