

FISCAL NOTE
Requested by Legislative Council
01/16/2017

Bill/Resolution No.: HB 1315

- 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						
Expenditures						
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).*

HB 1315 will adjust the threshold from twenty-five cents to one dollar to retroactively adjust rates for private pay individuals. The Department of Human Services will not have a fiscal impact.

- 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.*

No fiscal impact to the Department of Human Services as this adjustment pertains to private pay individuals.

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.*

- 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.*

- 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.*

Name: Jennifer Scheet

Agency: Dept of Human Services

Telephone: 328-4608

Date Prepared: 01/19/2017

2017 HOUSE HUMAN SERVICES

HB 1315

2017 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee Fort Union Room, State Capitol

HB 1315
1/23/2017
27211

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Judy Apple

Explanation or reason for introduction of bill/resolution:

Relating to adjustments of nursing home rates

Minutes:

1,

Chairman Weisz: called the committee to order.
Chairman Weisz: Opened hearing on HB 1315

Representative Devlin: Introduced HB 1315. I am happy to introduce it, but the specifics are going to have to be answered by Shelly Peterson.

Chairman Weisz: Further testimony in support of HB 1315

Shelly Peterson, Present of NDLTCA
(Attachment 1)

I am here representing all 80 nursing homes and we are all asking for support for HB 1315.

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

Chairman Weisz: Further support for HB 1315? Seeing none. Is there any testimony in opposition to HB 1315?

Hearing closed.

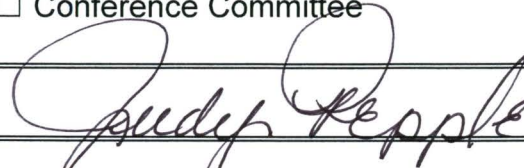
2017 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

HB 1315
1/23/2017
27256

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to adjustments of nursing home rates.

Minutes:

Chairman Weisz: Called the committee to order.

Representative Porter: I make a motion for a do pass on HB 1315

Representative Skroch: second that motion

Chairman Weisz: Discussion? Seeing none the clerk will call the roll for a do pass on HB 1315

Roll call vote taken Yes 13 No 0 Absent 1

Motion carried

Chairman Weisz: Who will carry this bill?

Representative Skroch: I will carry it.

Chairman Weisz: Adjourned.

Date: 1-23-17
Roll Call Vote #: 1

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1315

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. Porter Seconded By Rep. Skroch

Representatives	Yes	No	Representatives	Yes	No
Chairman Weisz	<input checked="" type="checkbox"/>		Rep. P. Anderson	<input checked="" type="checkbox"/>	
Vice Chairman Rohr	<u>absent</u>		Rep. Schneider	<input checked="" type="checkbox"/>	
Rep. B. Anderson	<input checked="" type="checkbox"/>				
Rep. D. Anderson	<input checked="" type="checkbox"/>				
Rep. Damschen	<input checked="" type="checkbox"/>				
Rep. Devlin	<input checked="" type="checkbox"/>				
Rep. Kiefert	<input checked="" type="checkbox"/>				
Rep. McWilliams	<input checked="" type="checkbox"/>				
Rep. Porter	<input checked="" type="checkbox"/>				
Rep. Seibel	<input checked="" type="checkbox"/>				
Rep. Skroch	<input checked="" type="checkbox"/>				
Rep. Westlind	<input checked="" type="checkbox"/>				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Skroch

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

REPORT OF STANDING COMMITTEE

HB 1315: Human Services Committee (Rep. Weisz, Chairman) recommends **DO PASS**
(13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1315 was placed on the
Eleventh order on the calendar.

2017 SENATE HUMAN SERVICES

HB 1315

2017 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

HB 1315
3/13/2017
Job Number 29092

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

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Explanation or reason for introduction of bill/resolution:

A bill relating to adjustments of nursing home rates.

Minutes:

1 Attachment

Chair J. Lee brought the committee to order and opened the hearing on HB 1315. Senator Heckaman was absent.

Shelly Peterson, President of the North Dakota Long Term Care Association (NDLTCA), (1:00-4:00) testified in favor of HB 1315. Please see attachment #1.

Representative Gary Kreidt, District 33 and primary sponsor (5:00-8:15) introduced the bill. He asked to adjust the change after the desk audit and final audit of nursing homes is completed. Right now if there is a difference of 25 cents the amount has to be paid back to the private pay resident or resident family. This has been in effect since equalization of rates came into being. He asked to raise the 25 cents to \$1 before the individual or family needs to be contacted. This doesn't affect Medicaid residents and it doesn't affect individuals if the rate goes down. In many cases a lot of time is spent trying to locate the family because the individual might not be in the facility any more. This would really help the facilities.

There was no opposing or neutral testimony.

Chair J. Lee closed the hearing on HB 1315.

2017 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

HB 1315
3/13/2017
Job Number 29097

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

A bill relating to adjustments of nursing home rates.

Minutes:

No attachments

Chair J. Lee: Opened the meeting for committee action on HB 1315.

Senator Anderson: I move do pass.

Senator Kreun: Second.

A roll call vote was taken.

Motion passes 7-0-0.

Senator Anderson will carry.

Date: 3/13 2017Roll Call Vote #: 1

**2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES**
BILL/RESOLUTION NO. 1315

Senate 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 Sen Anderson Seconded By Sen Kreun

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee (Chairman)	<u>X</u>		Senator Joan Heckaman	<u>X</u>	
Senator Oley Larsen (Vice-Chair)	<u>X</u>		Senator Merrill Piepkorn	<u>X</u>	
Senator Howard C. Anderson, Jr.	<u>X</u>				
Senator David A. Clemens	<u>X</u>				
Senator Curt Kreun	<u>X</u>				

Total (Yes) 7 No 0Absent 0Floor Assignment Sen Anderson

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

REPORT OF STANDING COMMITTEE

HB 1315: Human Services Committee (Sen. J. Lee, Chairman) recommends **DO PASS**
(7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1315 was placed on the
Fourteenth order on the calendar.

2017 TESTIMONY

HB 1315

Att. 1
HB 1315
1-23-17

Testimony on HB 1315

House Human Services Committee

January 23, 2017

Good afternoon Chairman Weisz and members of House Human Services Committee. My name is Shelly Peterson, President of the North Dakota Long Term Care Association (NDLTCA). I am here on behalf of all 80 nursing facilities and we are asking for your support of HB 1315.

I've attached a brief overview of the Nursing Facility Payment System. You will be glad to know I'm not going to go through the details of the payment system as the hearing time would not be sufficient.

What I want to visit with you about are the final rates nursing facilities receive from field audits or final rates received from desk rates.

Nursing facilities must submit an audit financial statement and year-end cost report by October 1st of each year. Provider Audit of DHS reviews the reports and they issue preliminary annual rates by November 22nd. These rate notices are then given to residents by December 1st for January 1 implementation. This assures residents receive at least a 30 day advance written notice on any rate change.

Nursing facilities follow very detailed rules regarding what cost center expenditures are coded to, allocations regarding staff and building space and numerous detailed requirements. Facilities and accounting firms follow requirements in NDCC, NDAC, the NF Rate Setting Manual, policy letters and generally accepted accounting principles.

DHS/Provider Audit completes a field audit, onsite in the nursing facility at least every six years. In the years where a complete DHS audit isn't

It is a very time consuming process for facilities, trying to refund small amounts of money. After numerous years of having the quarter per day be the requirement for private pay refunds, we ask that it be raised to a dollar.

In summary, we believe this request is reasonable and fair to the resident and facility. If you have any questions, I would be happy to answer them.

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

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 was 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. This did not occur in the 2017 rate year because of the allotment cuts.

Occupancy Limitation - In the June 30, 2016 cost reporting period, 13 nursing facilities reported twelve month occupancy averages at less than 90%. Together they incurred \$991,357 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, 2017 the direct care limit is \$172.84 per day. Fifteen nursing facilities currently exceed this limit. These nursing facilities spent \$5,506,644 in excess of the limit, costs which will never be recouped.

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#1
3/13
Pg. 1

Testimony on HB 1315
Senate Human Services Committee
March 13, 2017

Good afternoon Chairman Lee and members of Senate Human Services Committee. My name is Shelly Peterson, President of the North Dakota Long Term Care Association (NDLTCA). I am here on behalf of all 80 nursing facilities and we are asking for your support of HB 1315.

I've attached a brief overview of the Nursing Facility Payment System. You will be glad to know I'm not going to go through the details of the payment system.

What I want to visit with you about are the final rates nursing facilities receive, the time frame for receiving the final rate and the impact upon private pay.

Nursing facilities must submit an audited financial statement and year-end cost report by October 1st of each year. Provider Audit of DHS reviews the reports and they issue preliminary annual rates by November 22nd. These rate notices are then given to residents by December 1st for January 1 implementation. This assures residents receive at least a 30 day advance written notice on any rate change.

The rates that residents receive every January 1st are based on the Department of Human Services completing a desk rate review of the facilities cost report submitted.

Desk rate means the rate established by the department based upon a review of the cost report submission but not an on-site audit of the data.

DHS/Provider Audit is required to complete a field audit on-site in the nursing facility at least once every six years. In years where there is not

a field audit, the department completes a desk review. If it is decided by the department to not complete an onsite field audit then the desk review of costs becomes a facility's final rate.

Final rate means the rate established after any adjustments by the department, including, but not limited to, adjustments resulting from cost report reviews and audits. Sometimes this process results in a change in the daily resident rate that was previously charged.

A facility's final rate may not be issued by the Department 2 to 4 years later. If the final rate results in a decrease of .25 cents per day the facility must refund the resident. To our knowledge the .25 cent adjustment has not been changed since the original nursing facility payment system was implemented over 25 years ago. Thus facilities are currently required to issue a refund to private pay for a change in rate of \$.25 per day. These adjustments at most times are insignificant. For example, under the current rule, a .25 cent per day decrease for a resident that was in the facility for 60 days (which is not uncommon) results in a refund of \$18. Due to the delay in getting a final rate, it's likely the resident has passed and the estate has been closed.

After numerous years of having the refund amount be .25 cents per day we are requesting that the per day refund threshold be raised to \$1. This means a refund won't occur to the private pay unless the rate decreases over one dollar per day. If the rate happens to increase, we can't go back and charge the private pay more.

In summary, we believe this request is reasonable and fair to the resident and facility. If you have any questions, I would be happy to answer them.

Shelly Peterson, President
North Dakota Long Term Care Association

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 was 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. This did not occur in the 2017 rate year because of the allotment cuts.

Occupancy Limitation - In the June 30, 2016 cost reporting period, 13 nursing facilities reported twelve month occupancy averages at less than 90%. Together they incurred **\$991,357** 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, 2017 the direct care limit is \$172.84 per day. Fifteen nursing facilities currently exceed this limit. These nursing facilities spent **\$5,506,644** in excess of the limit, costs which will never be recouped.

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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, 2017 the other direct care limit is \$28.70 per day. Eight nursing facilities currently exceed this limit. These facilities exceeding spent \$282,304 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, 2017 the indirect limit was set at \$73.82 per day. Twenty-three nursing facilities currently exceed this limit. These facilities spent \$9,839,239 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 \$18.78 per resident per day, with a range of \$3.65 to \$62.65.

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. Fifty-six nursing facilities received an average efficiency incentive, of \$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 62% in 2016. 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 were 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. Limits were not rebased on January 1, 2017 because of the allotment cuts, nor was there any inflationary adjustment.