2023 HOUSE HUMAN SERVICES

HB 1322

2023 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Pioneer Room, State Capitol

HB 1322
1/18/2023

Relating to nursing home rate adjustments.

Chairman Weisz called the meeting to order at 10:32 AM.

Chairman Robin Weisz, Vice Chairman Matthew Ruby, Reps. Karen A. Anderson, Mike Beltz, Clayton Fegley, Kathy Frelich, Dawson Holle, Dwight Kiefert, Todd Porter, Brandon Prichard, Karen M. Rohr, and Jayme Davis and Gretchen Dobervich present. Rep. McLeod not present.

Discussion Topics:

- Medicaid rate adjustments
- Average length of stay in nursing homes
- Amendment

Rep. Kreidt introduced HB 1322, speaking in support of bill.

Shelly Peterson, President of the North Dakota Long Term Care Association, offered testimony in support of bill and proposed an amendment (#14384).

Liane Theil with the Medical Services Division in the North Dakota Department of Health and Human Services, answered questions from the committee in relation to HB 1322.

Chairman Weisz closed the hearing on HB 1322 at 10:42 AM.

Rep. Rohr moved to adopt amendment (23.0780.01001) to HB 1322.

Seconded by Vice Chairman Ruby.

Motion carries by voice vote.

Rep. Anderson moved a do pass as amended on HB 1322.

Seconded by Rep. Davis.

Roll Call Vote:

Representatives	Vote
Representative Robin Weisz	Y
Representative Matthew Ruby	Y
Representative Karen A. Anderson	Y
Representative Mike Beltz	Y
Representative Jayme Davis	Y

Representative Gretchen Dobervich	AB
Representative Clayton Fegley	Y
Representative Kathy Frelich	Y
Representative Dawson Holle	Y
Representative Dwight Kiefert	Y
Representative Carrie McLeod	AB
Representative Todd Porter	Y
Representative Brandon Prichard	Y
Representative Karen M. Rohr	Y

Motion carries 12-0-2.

Carried by Rep. Anderson.

Chairman Weisz adjourned the meeting at 10:47 AM.

Phillip Jacobs, Committee Clerk

Adopted by the House Human Services Committee

January 18, 2023

1-18-23

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1322

Page 1, line 6, remove the overstrike over "~~**Adjustments and reconsideration**~~"

Page 1, line 6, remove "**Reconsideration**"

Page 1, remove the overstrike over lines 7 and 8

Page 1, line 9, remove the overstrike over "~~rates paid by private-paying residents.~~"

Page 1, line 13, remove the overstrike over "~~2.~~"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1322: Human Services Committee (Rep. Weisz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1322 was placed on the Sixth order on the calendar.

Page 1, line 6, remove the overstrike over "~~**Adjustments and reconsideration**~~"

Page 1, line 6, remove "**Reconsideration**"

Page 1, remove the overstrike over lines 7 and 8

Page 1, line 9, remove the overstrike over "~~rates paid by private-paying residents.~~"

Page 1, line 13, remove the overstrike over "~~2.~~"

Renumber accordingly

2023 SENATE HUMAN SERVICES

HB 1322

2023 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Lincoln Room, State Capitol

HB 1322
3/1/2023

Relating to nursing home rate adjustments.

1:35 PM **Madam Chair Lee** called the hearing to order. **Senators Lee, Cleary, Clemens, K. Roers, Hogan** were present. **Senator Weston** was absent.

Discussion Topics:

- Cumulative change
- Audits and desk review lag
- Refunds

1:35 PM **Shelly Peterson, President, North Dakota Long Term Care Association,** testified in favor. #21453.

1:43 PM **Chris Jones, Commissioner Department of Health and Human Services,** provided information verbally .

1:46 PM **Madam Chair Lee** closed the hearing and will reopen it on 3/7/2023.

Patricia Lahr, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Lincoln Room, State Capitol

HB 1322
3/7/2023

Relating to nursing home rate adjustments.

2:42 PM **Vice Chairman Cleary** called the meeting to order. **Senators Cleary, Clemens, K. Roers, Hogan, Weston** were present. **Senator Lee** was absent.

Discussion Topics:

- Rate adjustment
- Reimbursement

Vice-Chairman Cleary called for discussion

Senator Hogan moves DO PASS**.**

Senator K Roers seconded the motion.

Roll call vote.

Senators	Vote
Senator Judy Lee	AB
Senator Sean Cleary	Y
Senator David A. Clemens	Y
Senator Kathy Hogan	Y
Senator Kristin Roers	Y
Senator Kent Weston	Y

The motion passed 5-0-1.

Senator Cleary will carry HB 1322

2:46 PM **Vice-Chairman Cleary** closed the meeting.

Patricia Lahr, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1322, as engrossed: Human Services Committee (Sen. Lee, Chairman) recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1322 was placed on the Fourteenth order on the calendar. This bill does not affect workforce development.

TESTIMONY

HB 1322

Testimony on HB 1322
House Human Services Committee
January 18, 2023

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

First, I am asking you to amend HB 1322. The bill identifies two sentences for elimination . DHHS had indicated they need the first sentence on lines 7, 8 and 9 to be reinstated to keep their authority to make rate adjustments. The next sentence, "Any adjustments that result in a cumulative change of more than one dollar per day from the desk rate will be included in the next subsequent cost repot to the extent not corrected by a rate adjustment made pursuant to this subsection," is what we would like to delete.

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

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

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

In summary, we are asking for your support in amending the bill and passing it. Thank you for your consideration of our request. I would be happy to answer any questions you might have.

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

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

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

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

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

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

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

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

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

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

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

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

Shelly Peterson, President
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