

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1112

2001 HOUSE HUMAN SERVICES

HB 1112

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1112

House Human Services Committee

☐ Conference Committee

Hearing Date January 15, 2001

Tape Number	Side A	Side B	Meter #
Tape 2	X		4830 to 6000
Tape 2		X	0 to 1950
Committee Clerk Signature <i>Corinne Easton</i>			

Minutes:

Chairman Price, Vice Chairman Devlin, Rep. Dosch, Rep. Galvin, Rep. Klein, Rep. Pollert, Rep. Porter, Rep. Tieman, Rep. Weiler, Rep. Weisz, Rep. Cleary, Rep. Metcalf, Rep. Niemeier, Rep. Sandvig.

Chairman Price: Opened hearing on HB 1112

Barbara Fischer: Manager, Long Term Care and Hospital Services, Department of Human Services. Support of HB 1112 and requests a DO PASS. (See written testimony)

Chairman Price: Why is the fiscal note different than your testimony?

Barbara Fischer: My testimony relates to the retained fund. They include retained funds that is identified as special funds, but there is also federal portion of basic care. Because we are looking at doing a personal care option, the breakdown of the \$301,922 is \$190,721 from federal match and \$111,201 from retained funds. Retained funds are basically general funds.

Chairman Price: And the rest is for personal care option.

Barbara Fischer: Further in the week we will have more testimony on the personal care option.

Rep. Weisz: Can you give me an example, percentage wise, say basic care facility is in the 60% bracket for occupancy - the rate difference.

Barbara Fischer: As an example, the Baptist Home of Kenmare was at a 60% occupancy, as a result of that their rate difference was \$6.52 per day. So it depends where the impact is on indirect care cost or the property rate. Bethel Lutheran which was at 61% this year and 58% last year, in 2000 their impact was \$6.97 per day and in 1999 it was \$7.57 per day.

Rep. Price: In looking at this I've noticed that we've got fewer licensed beds. Those that changed went down except for I see went up by one bed. Is this a trend that is going to continue?

Barbara Fischer: The changes that occurred mostly were decreases for facilities that moved into pilot projects. The one facility that had an increase, they were trading beds. There is a provision in the moratorium that you can transfer one bed for every two you give up. There has not been a lot of decreases in licenses for basic care facilities. Basic care facilities have been promoted as an alternative to nursing facilities, so we would expect to see increases in the future.

Chairman Price: Do you have anywhere a list of what is direct and indirect costs for a bed in a nursing home?

Barbara Fischer: These are in our administrative rules.

Chairman Price: For basic care is bed making direct or indirect?

Barbara Fischer: For basic care bed making could be either.

Chairman Price: What about a nursing home?

Barbara Fischer: For a nursing home if it was done by a certified nurses aid it would be under direct, if it was done by a none-certified nurses aid it would be indirect.

Chairman Price: Who sets the determination? Is it a North Dakota rule?

Barbara Fischer: That is a participation requirement from Medicaid. That is a federal rule.

Chairman Price: Can someone employ a housekeeper to make a bed and still have it be a direct cost?

Barbara Fischer: The housekeeper, unless they were certified as a nurse aid, those costs would then be included in indirect.

Rep. Devlin: Can you tell me the difference of the cost to the state the difference in having someone in a nursing home versus a basic care facility?

Barbara Fischer: Currently the average nursing facility rate is \$109 a day. We don't figure basic care, but it is probably in the \$45 to \$60 per day range.

Rep. Devlin: I am just trying to analyze this. If we end up getting the basic care bed certified so they aren't there, we are always going to have people in the higher priced nursing home.

Wouldn't we be further ahead to keep a higher level of vacancy in a basic care facility just to have them available than to have those beds eliminated and not being there if we needed them?

Barbara Fischer: The basic care occupancy over the years has been running under 90% average. The nursing care facility occupancy at the same time is running 95% or better, but that has been dropping over the past few years. With the changes that the long-term care task force is recommending on promoting alternatives to nursing facilities care and using more assistant living, basic care may also not be as much a demand as there is for assistant living for individuals in their own apartments. There has been a slight increase in basic care usage, but not to the point to bring it above the 90%.

Dave Zentner: Director of Medical Services. I think with this issue of occupancy, you have the same situation that exists in nursing homes. You have some nursing homes that have no

occupancy because they are located in areas where you tend to have high usage. You have other nursing homes that have tremendous amount of problems because they are located in areas where there simply aren't enough individuals available anymore to fill beds. You have a similar situation in basic care. You have some basic care facilities in locations where the demand is not there. The question is will there be a demand in the future, and that's why we look at the occupancy limits. So we're not paying for unoccupied beds that are probably never going to be occupied. It will at least force the facility to take a look at their number of beds and determine whether in deed the future holds something different so they are eventually going to fill those beds, or whether they will need to do some down sizing because of their locale. That is kind of the way I view the issue of occupancy. You may have needs in other parts of the state, but if you have a locale where you have a lot of beds but no elderly ready to fill them, and no incentive to down size, we end up then really subsidizing those empty beds.

Rep. Devlin: As a follow-up, of these dollars that are going to basic care what percentage is federal and what percentage is state?

Dave Zentner: Right now it is all state funds for basic care. You will be hearing a bill Wednesday that will propose to change that. We will Medicaid the basic care program so we will also get 70% federal, 30% state dollars for most of the cost but not all of the costs. When we go to a personal care option we can Medicaid the actual delivery of services, not the room and board costs. Part of it will be at 70-30, the other part will be 100%, if the legislature approves the bill.

Right now, from the state's standpoint it is cheaper to have someone in a nursing home for general fund dollars than it is to have them in basic care.

Rep. Niemeier: I understand what Mr. Zentner is saying about demand filling those beds.

Another issue though is staffing problems. I know some of the care facilities in the state have reduce their occupancy because of staffing problems. If we are going to reduce the reimbursement to these facilities, that it is just going to escalate the problems providing services to the residents that are already there. Do you agree with that?

Barbara Fischer: The staffing problems - the occupancy limit affects those indirect costs that aren't related to salary and fringe benefits for the direct care giver. Staffing issues is a very difficult issue.

Rep. Cleary: I wondered if you could define assistant living and basic care.

Barbara Fischer: Could I defer that definition until tomorrow, because you will be getting definitions in Bill 1111 and 1109.

Chairman Price: Closed hearing on HB 1112.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1112 b

House Human Services Committee

☐ Conference Committee

Hearing Date 01-24-01

Tape Number	Side A	Side B	Meter #
2	xx		3050--4700
Committee Clerk Signature <i>Cornie Easton</i>			

Minutes: Chair Price : Let's look at HB1112.

Rep. Weisz : With some of the things we are doing with HB1196, I would tend to oppose this bill. The rural aren't going to have the options.

Rep. Tieman : I agree with Rep. Weisz. I have two nursing homes in my area, and when this information was passed out, they would be in that problem.

Rep. Klein : I agree with both of you. I have 3 or 4 in my area.

Chair Price : (3440) There are two things at the back. There is a proposed amendment, if this bill should pass. They want the opportunity to do emergency rule making. They also want to take a look at the number of care facilities for the year 2000 that are below the 90%. There aren't too many that are above. There are 19 that are below and 15 above. I thought we had 42, but it doesn't say that. We are looking at over half will be affected by this. Remember, is we do not pass this bill, appropriations will be looking for \$302,000.

Rep. Devlin : If you keep a basic care facility open, say McClusky, at 60% occupancy, but if you close it, they will have to go to Bismarek. They won't have an alternative. We will end up paying double or triple the rates.

Rep. Metcalf : In the fiscal note, out of the \$300,000, I have \$190,000, which is federal and \$111,000 retained. Whatever retained means.

Rep. Weisz : If we do a buy down, we could create increase basic care.

Chair Price : It may happen that if Medicaid starts paying at basic care, some people may move from the nursing homes to basic care facilities. You may see new admissions to basic care. We are proceeding as if the Fed's accept the state plan amendment that would make it Medicaid payable.

Rep. Niemeier : Occupancy depends on demand and staffing, too. Those are hard to predict.

Rep. Porter : Rather than change things, we should put our efforts on getting a good comprehensive study, and then come back and fix the identified problems.

Rep. Pollert : I move a **DO NOT PASS**.

Rep. Tiegan : I second.

Rep. Niemeier : I know that they are losing a little money, but the department is there to serve the people.

Rep. Cleary : It is a small amount of money actually.

VOTE: 13 YES and 1 NO PASSED. Rep. Porter will carry the bill.

FISCAL NOTE

Requested by Legislative Council

12/14/2000

Bill/Resolution No.: HB 1112

Amendment to:

1A. 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.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures				(\$301,922)		(\$301,922)
Appropriations				(\$301,922)		(\$301,922)

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

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

Section 7 of HB 1112 would allow the Department the ability to develop a minimum occupancy requirement, which will be used when setting rates. The fiscal note is based upon a minimum occupancy of 90% for the indirect and property rates of basic care facilities. This correlates to the occupancy requirements with those currently used to determine nursing facility rates. The 80th percentile limits established by this section would not have a fiscal impact, since these rates are currently calculated using the 80th percentile limit.

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.*

The decrease in expenditures is a result of anticipated saving realized by decreasing the indirect and property rates for those facilities whose occupancy currently does not exceed 90%. Ninety-percent occupancy is calculated by taking the number of licensed beds times 365/366, times 90%. If actual occupancy is less than the product, occupancy at 90% is used to calculate the rates for indirect costs and property costs. This results in a projected decrease of expenditures of \$301,922 for the biennium.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Brenda M. Welsz	Agency:	Department of Human Services
Phone Number:	328-2397	Date Prepared:	01/12/2001

Date: 1-24-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1112

House Human Services Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Rep. Pollert Seconded By Rep. Tieman

Representatives	Yes	No	Representatives	Yes	No
Rep. Clara Sue Price, Chairman	✓		Rep. Audrey Cleary	✓	
Rep. William Devlin, V, Chairman	✓		Rep. Ralph Metcalf	✓	
Rep. Mark Dosch	✓		Rep. Carol Niemeier	✓	
Rep. Pat Galvin	✓		Rep. Sally Sandvig		✓
Rep. Frank Klein	✓				
Rep. Chet Pollert	✓				
Rep. Todd Porter	✓				
Rep. Wayne Tieman	✓				
Rep. Dave Weiler	✓				
Rep. Robin Weisz	✓				

Total (Yes) 13 No 1

Absent _____

Floor Assignment Rep. Porter

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

REPORT OF STANDING COMMITTEE (410)
January 24, 2001 12:22 p.m.

Module No: HR-12-1499
Carrier: Porter
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1112: Human Services Committee (Rep. Price, Chairman) recommends DO NOT PASS (13 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1112 was placed on the Eleventh order on the calendar.

2001 TESTIMONY

HB 1112

TESTIMONY ON HB 1112
HUMAN SERVICES COMMITTEE
JANUARY 16, 2001

Chairman Price and members of the committee, I am Barbara Fischer, Manager Long Term Care and Hospital Services with the Department of Human Services. I appear before you today in support of HB 1112 which establishes a 90% minimum occupancy requirement when determining payment rates for basic care facilities.

During the last legislative session, basic care rate setting was changed substantially based on recommendations from the Long Term Care Task Force. As a result of statutory changes which allowed for property costs to be recognized as pass through costs and the addition of an operating margin, the Department's administrative rules relating to rate setting were amended to incorporate the changes effective for the rate year beginning July 1, 1999.

Throughout the years, the Department has paralleled basic care rate setting to nursing facility rate setting whenever possible. With the changes to recognize property costs as a pass through and to include an operating margin, basic care rate setting more closely paralleled nursing facility rate setting than they ever had in the past.

The Department amended the administrative rules relating to rate setting to incorporate the statutory changes and to include a 90% occupancy requirement for basic care facilities. The rules on the 90% occupancy requirement were subsequently voided at the May 16, 2000 meeting of the Administrative Rules Committee, chaired by Representative Devlin.

The committee minutes reflect there is a 90% occupancy limit in the statutory provisions governing nursing facilities but there is no corresponding provision for basic care facilities. Further, that since a limit is set in one area of the law and not in another that a limit does not apply where the Legislative Assembly has been silent and that no change therefore can be made by rule.

The minutes go on to state "If the Department thinks this limit is appropriate, the change should be pursued through introduction of legislation." HB 1112 does just that. Paragraph 7 contains language allowing the Department to establish procedures applicable to minimum occupancy requirements in basic care facilities which is similar to the statutory authority in N.D.C.C. 50-24.4 relating to minimum occupancy requirements for nursing facilities.

Application of a 90% occupancy requirement for rate setting ensures that payments for services are not increased as a result of underutilization of a facility's licensed capacity. Costs included in the categories which would be subject to the 90% occupancy requirement are for the most part fixed costs which do not vary with the number of residents in a facility. For example, interest expense incurred bears no direct relationship to the number of individuals actually residing in the facility in any given year.

The attached schedule shows the facilities participating in the basic care assistance program and their occupancy percentages for the last 2 years.

The increased costs to the basic care assistance program as a direct result of non-application of the 90% minimum occupancy requirement for the 1999 rate year ranged from \$.15 per day to \$7.57 per day. The rates effective July 1, 2000 were increased from \$.09 per day to \$14.10 per day.

The fiscal note for this bill identifies a savings of \$111,201 in retained funds for the 01-03 biennium if the 90% minimum occupancy requirement is imposed. This was calculated in anticipation of getting federal dollars on the portion of the basic care expenditures which are to be paid under the personal care option and implementing the rate as of the first year of the biennium. Because express language is not included in the bill it will be necessary to declare this bill an emergency and to give the Department emergency rule making authority to allow for establishment of procedures to apply a minimum occupancy requirement to the rates which will be effective July 1, 2001. The earliest this can be done without any emergency clauses is for the rate year beginning July 1, 2002 and the anticipated savings would then be \$55,619 of retained funds rather than \$111,201.

The Department submits the attached amendment to allow for implementation of this bill at the beginning of the biennium.

The Department supports this bill and requests that it receive a do pass with the amendment.

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

BASIC CARE FACILITIES
Census and Occupancy History

Census and Occupancy History	2000 Licensed	1999 Licensed	Rate Year 2000				Rate Year 1999				RY 1998 1997 Reported	1996 Reported
			1999		Minimum		1998		Minimum			
			Reported	Occ %	Reported	Occ %	Reported	Occ %	Reported	Occ %		
Edgewood Vista/Chateau	42	32	9,198	60.00%	13,797	87.35%	10,203	87.35%	10,194	87.35%	9,808	
Baptist Home of Kenmare	48	60	10,537	60.14%	15,768	53.17%	11,645	53.17%	14,732	53.17%	16,554	
Bethel Lutheran	19	19	4,257	61.38%	6,242	58.46%	4,054	58.46%	4,346	58.46%	4,265	
Sherridan Memorial Home	30	30	7,091	64.76%	9,535	69.27%	7,585	69.27%	7,398	69.27%	9,047	
Exner's Basic Care, Inc	20	20	5,233	71.68%	6,570	85.59%	6,248	85.59%	6,253	85.59%	6,589	
Manor of St. Joseph	40	40	11,149	76.36%	13,140	76.54%	11,190	76.54%	10,996	76.54%	11,532	
Noonan Good Samaritan Center	32	32	9,278	79.43%	10,512	78.72%	9,194	78.72%	9,429	78.72%	10,425	
St. Catherine's Living Center	16	16	4,737	81.11%	5,256	85.91%	5,017	85.91%	4,733	85.91%	4,368	
Karrington - Bismarck	74	91	22,148	82.00%	24,309	66.68%	22,148	66.68%	22,494	66.68%	25,280	
Odd Fellows Home	43	43	13,081	83.35%	14,126	78.70%	12,352	78.70%	12,032	78.70%	10,020	
Senior Suites at Sakakawea	34	34	10,453	84.23%	11,169	85.11%	10,562	85.11%	8,985	85.11%	9,108	
Prairie Home	7	7	2,164	84.70%	2,300	92.13%	2,354	92.13%	2,220	92.13%	2,532	
Edgewood Vista	33	32	10,335	85.80%	10,841	87.75%	10,249	87.75%	10,045	87.75%	9,689	
Pembiller Nursing Center	13	13	4,097	86.34%	4,271	83.52%	3,963	83.52%	1,938	83.52%	13,748	
Gackle Care Centers, Inc.	41	41	12,927	86.38%	13,469	88.60%	13,259	88.60%	12,630	88.60%	23,594	
Kansington - Williston	71	71	22,538	86.97%	23,324	81.74%	21,183	81.74%	20,332	81.74%	14,778	
Edmore Memorial Rest Home	45	47	14,415	87.76%	14,783	84.12%	14,430	84.12%	15,464	84.12%	3,062	
Fischer's Care Center	9	9	2,897	88.01%	2,957	88.01%	2,891	88.01%	2,891	88.01%	5,176	
Evergreen Place	20	20	6,542	89.62%	6,570	87.78%	6,408	87.78%	6,439	87.78%	2,348	
Good Shepherd Home	9	9	3,066	93.33%	2,957	80.37%	2,640	80.37%	2,112	80.37%	26,709	
Harold Haaland Home	80	80	27,467	94.07%	26,280	95.50%	27,886	95.50%	27,982	95.50%	19,571	
St. Anne's Guest Home	56	56	19,410	94.96%	18,396	97.20%	19,867	97.20%	16,493	97.20%	13,545	
Borg Memorial Home	43	43	14,992	95.52%	14,126	96.02%	15,070	96.02%	15,349	96.02%	3,624	
Towner County Memorial Hosp.	10	10	3,491	95.64%	3,285	96.22%	3,512	96.22%	3,639	96.22%	10,552	
Bethel 4 Acres Home	29	29	10,126	95.66%	9,527	96.61%	10,226	96.61%	10,429	96.61%	8,880	
Maddock Memorial Home	25	25	8,819	96.65%	8,213	93.95%	8,573	93.95%	8,657	93.95%	12,397	
Redwood Village	34	34	12,038	97.01%	11,169	96.51%	11,977	96.51%	11,916	96.51%	13,939	
Leach Home	39	61	14,041	98.64%	12,812	61.43%	13,677	61.43%	14,081	61.43%	18,272	
Rock of Ages	53	53	19,103	98.75%	17,411	95.95%	18,562	95.95%	18,257	95.95%	8,563	
Terrace	40	40	14,419	98.76%	13,140	98.03%	14,312	98.03%	14,522	98.03%	3,538	
Baptist Home, Bismarck	10	10	3,609	98.88%	3,285	98.19%	3,584	98.19%	3,592	98.19%	17,019	
Evergreen Inn	51	51	18,555	99.68%	16,754	97.66%	18,179	97.66%	17,890	97.66%	7,719	
Dakota Hills Home	35	35	12,745	99.77%	11,498	99.37%	12,695	99.37%	11,986	99.37%	356,351	
	1,151	1,193	364,952	86.87%	378,104	83.98%	365,695	83.98%	360,456	83.98%	988	
Average			1,000		1,002						974	

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1112

Page 1, line 1, after "to" insert "create and enact a new section to chapter 50-24.5:
and to"

Page 2, after line 31, insert:

"SECTION 1. A new section to chapter 50-24.5 of the North Dakota Century Code is created and enacted as follows:

Department of human services - Emergency rulemaking authority. Notwithstanding subsection 6 of section 28-32-02, the department of human services may adopt interim final rules to implement this Act for the biennium beginning with the effective date of this Act and ending June 30, 2003. The department shall take appropriate measures to make the interim final rules known to every person who may be affected by them. The interim final rules are ineffective one hundred eighty days after the declared effective date unless first adopted as final rules.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly