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MEMORANDUM

TO: Long Term Care Committee - North Dakota Legislative Management

FROM: Allen C. Hoberg, Director
North Dakota Office of Administrative Hearings 

RE: Nursing Facility Private Pay Appeals

DATE: May 6, 2010

Chairman Kreidt and Members of the Committee:

I appear before you today at your request to discuss possible involvement by the Office of Administrative Hearings ("OAH") in nursing facility private pay appeals.

As you know, N.D.C.C. section 50-24.4-01.1 is the code section dealing with nursing home resident payment classifications and reconsideration procedures. Under that section, the Department of Human Services ("DHS") establishes resident payment classifications for nursing home residents (subsection 2), assigns nursing home residents to the appropriate payment classification (subsection 3), notifies nursing home residents of the assigned payment classification (subsection 4), and makes determinations on appeals by nursing home residents of assigned payment classifications (subsection 5). DHS has suggested OAH as a possible

replacement for DHS in making determinations of the assigned payment classification on appeal.

Thus, private pay residents of nursing homes have appeal rights for assigned payment classifications, but DHS does not believe that it is best suited to perform the appeal function.

Certainly, OAH could perform this appeal function in place of DHS. I am quite certain that proper procedures could be developed for OAH to do this. But, I am not certain that OAH can perform this function as well as DHS or others.

OAH's concerns with performing this appeals function are as follows:

- 1) OAH has no personnel with any expertise or experience in nursing home resident payment classifications.
- 2) OAH has no personnel with any expertise or experience in the methodology for assigning residents to appropriate classifications.
- 3) It appears that DHS decisions on these appeals are currently based only on a document review. OAH administrative law judges (ALJs) are hearing officers who conduct administrative hearings and issue decisions based on those hearings. Currently, OAH's

entire jurisdiction relates to N.D.C.C. chapter 28-32 administrative hearings and other administrative hearings for agencies and local entities not under chapter 28-32.


- 4) It appears that these appeal determinations sometimes require on-site reviews - ALJs are not qualified to do an on-site review.
- 5) The funding for OAH performance of this function is a concern. OAH currently receives no general funds or federal funds. All of our funding comes from billing client agencies and local entities that use our hearing officer services. If OAH is required to perform this function, the funding options for providing this service appear to be as follows:
 - a) bill nursing homes;
 - b) bill the appealing resident;
 - c) bill DHS;
 - d) appropriation of a set amount of funding (general or other funds) to OAH;

OAH ALJs are currently busy conducting administrative hearings of many different types for state and local agencies. It may not be wise to have an ALJ perform this function. OAH would likely have to hire or contract with someone, probably on a part-time basis, to handle these appeals. It appears that OAH would just be another location to put someone doing essentially what someone in DHS currently does. Again, OAH could do it, but is it the best option?



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As I thought about OAH performing this function, an alternative came to mind. If DHS is to be replaced in this appeals function, I would suggest a peer review within the nursing facility industry. If a further appeal is desirable after a peer review decision, an appeal to an administrative hearing conducted by an OAH ALJ could be required. If further review of the OAH hearing decision is desirable, an appeal of that decision to the district court could be required.



If the Legislative Assembly does decide to give this appeals function to OAH to perform just as DHS is performing it now, I suggest a delayed effective date to give OAH time to hire or contract with and train appropriate personnel, and to set up procedures to perform this function.

Thank you!

