

Introduced by

Senators Wardner, J. Lee

Representatives Holman, Kreidt

1 A BILL for an Act to create and enact a new chapter to title 57 of the North Dakota Century
2 Code, relating to a provider assessment for nursing facilities; and to provide an expiration date.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** A new chapter to title 57 of the North Dakota Century Code is created and
5 enacted as follows:

6 **Definitions.**

7 As used in this chapter:

- 8 1. "Business" has the meaning provided in section 31-08.1-01.
- 9 2. "Commissioner" means the state tax commissioner.
- 10 3. "Cost report" means the department of human services approved form for reporting
11 costs, statistical data, and other relevant information of the nursing facility.
- 12 4. "Net inpatient revenue" means revenue collected from inpatient nursing facility
13 services.
- 14 5. "New nursing facility" means a nursing facility first licensed after the start of the cost
15 report year that is used as the basis of assessment.
- 16 6. "Non-Medicare bed day" means a day for which the primary payer is not Medicare
17 part A or a Medicare advantage plan. A non-Medicare bed day includes any day during
18 which a resident is not in the nursing facility.
- 19 7. "Nursing facility" means a nursing facility as that term is defined in section 1919 of the
20 Social Security Act [42 U.S.C. 1396r(a)].
- 21 8. "Quarter" means one of four calendar quarters beginning January first, April first,
22 July first, or October first.

1 **Imposition of assessment.**

2 An assessment must be imposed on each nursing facility located in this state. Any waiver
3 otherwise available under this code is not applicable to this assessment.

4 **Basis of assessment.**

5 Every year, beginning January first, each nursing facility must be assessed a quarterly
6 amount based on the total number of non-Medicare bed days as reported on the cost report
7 after appropriate adjustments for the year ending June thirtieth before the assessment year. If
8 there is a change in ownership during the cost report year, the non-Medicare bed days are a
9 combination of non-Medicare bed days for the current and previous owner for that cost report
10 year. A new nursing facility with less than twelve months of patient day history during the cost
11 report year on which the assessment is based will be assessed quarterly based upon actual
12 non-Medicare bed days for the three months ending one month before the end of that quarter.

13 **Maximum assessment and use of assessment.**

14 The assessment in the aggregate cannot exceed six percent of aggregate net inpatient
15 revenue for the rate year of all nursing facilities. The assessment under this chapter must be
16 used only to increase rates paid to nursing facilities above those in effect as of January 1, 2019.

17 **Reports - Extension.**

- 18 1. On or before the last day of a quarter, each nursing facility required to pay an
19 assessment under this chapter shall complete a return for the quarter in the form and
20 manner prescribed by the commissioner. The nursing facility shall include any further
21 information the commissioner may require to enable the commissioner to correctly
22 compute and remit the assessment levied by this chapter.
- 23 2. Upon request by a nursing facility and a proper showing of the necessity, the
24 commissioner may grant to the nursing facility an extension of time for paying the
25 assessment. If an extension is granted to a nursing facility, the time the nursing facility
26 is required to make payment of the assessment liability must be extended for the
27 same period. Interest must be charged upon the amount of the deferred payment at
28 the rate of five percent per annum from the date the assessment would have been due
29 if the extension had not been granted to the date the assessment is paid.

1 3. A return must be signed by a duly authorized agent of the nursing facility and must
2 contain a written declaration the return is made and subscribed under the penalties of
3 this chapter.

4 **Payment of assessment.**

5 An assessment levied under this chapter must be paid on a quarterly basis and is due and
6 payable on the last day of the quarter. Payment is not required until the Medicaid state plan
7 amendment incorporating the assessment created under this chapter has been approved by the
8 centers for Medicare and Medicaid services.

9 **Offset.**

10 1. If a nursing facility's return or corrected return is not filed or the assessment is not paid
11 within the time required by this chapter or, if upon audit, the nursing facility is found to
12 owe an additional assessment, a state agency that owes a payment to the nursing
13 facility may withhold the payment until the entire amount of the past due assessment
14 is recovered. A state agency that owes payment to a nursing facility shall cease
15 withholding payment due to the nursing facility if:

16 a. The commissioner determines the delay in payment of the past due assessment
17 was excusable;

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

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

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

24 2. The commissioner shall report to the state department of health a nursing facility that
25 has failed to remit within six months of its due date the assessment provided by this
26 chapter and the state department of health may suspend or revoke the license of the
27 nursing facility in accordance with section 23-16-06.

28 **Records required.**

29 A nursing facility required to pay an assessment under this chapter shall preserve and
30 maintain the records as the commissioner may require for a period of five years and one month.

1 All records must be open to examination at any time by the commissioner or any of the
2 commissioner's duly authorized agents.

3 **Commissioner to administer chapter.**

4 1. The commissioner shall administer this chapter and shall enforce the assessment,
5 levy, and collection of assessments imposed under this chapter.

6 2. For the purpose of ascertaining the correctness of a return or for the purpose of
7 ascertaining the number of non-Medicare bed days of a nursing facility, the
8 commissioner shall examine or cause to be examined by an agent or representative
9 designated by the commissioner any books, papers, records, or memoranda; require
10 by subpoena the attendance and testimony of witnesses; issue and sign subpoenas;
11 administer oaths; examine witnesses and receive evidence; and compel witnesses to
12 produce for examination books, papers, records, and documents relating to any matter
13 the commissioner has the authority to investigate or determine.

14 3. If the commissioner finds an officer or manager of a nursing facility has made a
15 fraudulent return, the costs of a hearing must be assessed to the nursing facility. In all
16 other cases, the costs must be paid by the state.

17 4. The fees and mileage to be paid to witnesses and assessed as costs must be the
18 same as prescribed by law in proceedings in the district court of this state in civil
19 cases. All costs must be assessed in the manner provided by law in proceedings in
20 civil cases. If the costs are assessed to the nursing facility, the costs must be added to
21 the assessment charged against the nursing facility and must be collected in the same
22 manner. Costs assessed to the state must be certified by the commissioner to the
23 state treasurer, who shall issue warrants for the amount of the costs.

24 5. In cases of disobedience to a subpoena, the commissioner may invoke the aid of a
25 court of competent jurisdiction in requiring the attendance and testimony of witnesses
26 and production of records, books, papers, and documents. The court may issue an
27 order requiring the person to appear before the commissioner and give evidence or
28 produce records, books, papers, and documents. A failure to obey an order of the
29 court may be punished by the court as contempt.

30 6. Testimony on hearings before the commissioner may be taken by a deposition as in
31 civil cases and an individual may be compelled to appear and depose in the same

1 manner as witnesses may be compelled to appear and testify as provided by this
2 section.

3 **Lien of assessment - Collection - Action authorized.**

4 1. If a nursing facility liable to pay an assessment imposed refuses or neglects to pay the
5 assessment, the amount, including any interest or addition to the assessment,
6 together with the costs that may accrue, is a lien in favor of this state upon all property
7 and rights to property, whether real or personal, belonging to the nursing facility. In the
8 case of property in which a deceased owner, officer, or manager of a nursing facility
9 held an interest as joint tenant or otherwise with right of survivorship at the time of
10 death, the lien continues as a lien against the property in the hands of the survivor or
11 survivors to the extent of the deceased owner's, officer's, or manager's interest, which
12 must be determined by dividing the value of the entire property at the time of the
13 officer's or manager's death by the number of joint tenants or persons interested in the
14 property.

15 2. The lien attaches at the time the assessment becomes due and payable and
16 continues until the liability for the amount is satisfied. For the purposes of this
17 subsection, the words "due" and "due and payable" mean the first instant the
18 assessment becomes due.

19 3. A mortgagee, purchaser, judgment creditor, or lien claimant acquiring an interest in, or
20 lien on, any property situated in the state, before the commissioner filing in the central
21 indexing system maintained by the secretary of state, a notice of the lien provided for
22 in section 57-39.2-12, takes free of, or has priority over, the lien.

23 4. a. The commissioner shall index in the central indexing system the following data:

24 (1) The name of the nursing facility.

25 (2) The internal revenue service taxpayer identification number of the nursing
26 facility.

27 (3) The name "State of North Dakota" as claimant.

28 (4) The date and time the notice of lien was indexed.

29 (5) The amount of the lien.

30 b. The notice of lien is effective as of eight a.m. the next day following the indexing
31 of the notice. A notice of lien filed by the commissioner may be indexed in the

1 central indexing system without changing the liens original priority as to property
2 in the county in which the lien was filed.

3 5. The commissioner is exempt from the payment of the filing fees as otherwise provided
4 by law for the indexing of the notice of lien, or for satisfaction of the lien.

5 6. Upon payment of the assessment as to which the commissioner has indexed notice in
6 the central indexing system, the commissioner shall index a satisfaction of the lien in
7 the central indexing system.

8 7. Upon the request of the commissioner, the attorney general shall bring an action at
9 law or in equity, as the facts may justify, without bond, to enforce payment of any
10 assessments or to foreclose the lien in the manner provided for mortgages on real or
11 personal property. The state's attorney of the county in which the action is pending
12 shall assist the attorney general.

13 8. The remedies of this section are cumulative. Action taken by the commissioner or
14 attorney general may not be construed to be an election on the part of the state or any
15 officers of the state to pursue any remedy in this chapter to the exclusion of any other
16 remedy provided by law.

17 9. The technical, legal requirements in this section relating to assessment liens on all real
18 and personal property of the officer or manager of the nursing facility to ensure
19 payment of the assessment, including interest and other costs are self-explanatory.

20 **Commissioner may require bond.**

21 If in the commissioner's judgment it is necessary and advisable to do so in order to secure
22 the collection of the assessment levied under this chapter, the commissioner may require a
23 person subject to the assessment to file with the commissioner a bond, issued by a surety
24 company authorized to transact business in this state and approved by the insurance
25 commissioner as to solvency and responsibility in an amount the commissioner may fix, to
26 secure the payment of any assessment due or which may become due from the person. In lieu
27 of the bond securities approved by the commissioner in the amounts as the commissioner
28 prescribes may be deposited with the commissioner, which securities must be kept in the
29 custody of the commissioner and may be sold by the commissioner at public or private sale,
30 without notice to the depositor, if it becomes necessary to do so in order to recover any
31 assessment due. All moneys deposited as security with the commissioner under this section

1 must be paid by the commissioner to the state treasurer and must be credited by the state
2 treasurer to the long-term care provider assessment trust fund. If any assessment or costs
3 imposed by this chapter are not paid when due by the person depositing moneys with the
4 commissioner as security for the payment of the assessment or costs imposed by this chapter,
5 the commissioner shall certify that information to the director of the office of management and
6 budget who shall transmit the money to the commissioner who shall apply the money deposited
7 by the person or so much of that money as is necessary to satisfy the assessment due. If in the
8 commissioner's judgment it is no longer necessary to require the deposit to be maintained by
9 the person, the commissioner shall certify that information to the director of the office of
10 management and budget who shall pay the unused money to the entitled person.

11 **Correction of errors.**

12 If it appears, as a result of a mistake, an amount of assessment or interest has been paid
13 which was not due under this chapter, the amount must be credited against any assessment
14 due, or to become due, under this chapter from the person that made the erroneous payment,
15 or the amount must be refunded to the person. The person that made the erroneous payment
16 shall present a claim for refund or credit to the commissioner not later than three years after the
17 due date of the return for the period for which the erroneous payment was made or one year
18 after the erroneous payment was made, whichever is later.

19 **Long-term care provider assessment trust fund.**

- 20 1. There is a special fund in the state treasury known as the long-term care provider
21 assessment trust fund. The fund must consist of all revenue received from nursing
22 facilities for remittance to the fund under this chapter, federal matching funds, and
23 interest derived from moneys in the fund. All moneys designated for the fund from
24 whatever source derived must be deposited with the state treasurer in the long-term
25 care provider assessment trust fund.
- 26 2. The moneys in the fund may be used only for the following purposes and in the
27 following order of priority:
- 28 a. To reimburse nursing facilities subject to assessment under this chapter the
29 Medicaid share of the provider assessment as a Medicaid allowable cost.
- 30 b. To fully fund the rate methodology in effect on January 1, 2019, including the
31 operating margin, incentive, and rebasing as detailed in the Medicaid state plan

1 and inflationary increases for rates and limits effective July 1, 2019, January 1,
2 2020, and January 1, 2021.

3 c. Effective January 1, 2021, to rebase the limits using the June 30, 2018, cost
4 report and apply inflationary adjustments for 2018, 2019, 2020, and 2021.

5 3. Any unexpended and unencumbered money remaining in the fund at the end of a
6 fiscal year must be used to pay Medicaid rates for nursing facilities the next fiscal year.

7 4. Upon expiration of this Act, funds remaining in the long-term care provider assessment
8 trust fund must be returned to nursing facilities that paid the provider assessment in
9 the proportion of assessment levied on each nursing facility for the two most recent
10 quarters for which information is available in the year in which the Act expires bears to
11 the total assessments received from all assessed nursing facilities for such two
12 quarters.

13 **SECTION 2. EXPIRATION DATE.** This Act is effective through July 1, 2021, or the date the
14 executive director of the department of human services certifies to the secretary of state and
15 legislative council that the Medicaid rates paid to nursing facilities are less than those rates paid
16 on January 1, 2019, whichever is earlier, and after that date is ineffective.