

Sixty-seventh
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1090

Introduced by

Human Services Committee

(At the request of the Department of Human Services)

1 A BILL for an Act to amend and reenact sections 50-24.4-01, 50-24.4-08, 50-24.4-10,
2 50-24.4-15, and 50-24.4-19 of the North Dakota Century Code, relating to nursing home rates.

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

4 **SECTION 1. AMENDMENT.** Section 50-24.4-01 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **50-24.4-01. Definitions.**

7 For the purposes of this chapter:

8 1. "Actual allowable historical operating cost per diem" means the per diem operating
9 costs allowed by the department for the most recent reporting year.

10 2. "Actual resident day" means a billable, countable day as defined by the department.

11 3. "Department" means the department of human services.

12 4. ~~"Depreciable equipment" means the standard movable resident care equipment and~~
13 ~~support service equipment generally used in long-term care facilities.~~

14 ~~5.~~ "Direct care costs" means the cost category for allowable nursing and therapy costs.

15 ~~6-5.~~ "Final rate" means the rate established after any adjustment by the department,
16 including adjustments resulting from cost report reviews and audits.

17 ~~7-6.~~ "Fringe benefits" means workforce safety and insurance, group health or dental
18 insurance, group life insurance, retirement benefits or plans, and uniform allowances,
19 and medical services furnished at nursing home expense.

20 ~~8-7.~~ "General and administrative costs" means all allowable costs for administering the
21 facility, including salaries of administrators, assistant administrators, accounting
22 personnel, data processing personnel, security personnel, and all clerical personnel;
23 board of directors' fees; business office functions and supplies; travel, except as
24 necessary for training programs for dietitians, nursing personnel, and direct resident

care related personnel required to maintain licensure, certification, or professional standards requirements; telephone and telegraph; advertising; membership dues and subscriptions; postage; insurance, except as included as a fringe benefit; professional services such as legal, accounting, and data processing services; central or home office costs; management fees; management consultants; employee training, for any top management personnel and for other than direct resident care related personnel; and business meetings and seminars.

~~9.8.~~ "Historical operating costs" means the allowable operating costs incurred by the facility during the reporting year immediately preceding the rate year for which the payment rate becomes effective, after the department has reviewed those costs and determined them to be allowable costs under the medical assistance program, and after the department has applied appropriate limitations such as the limit on administrative costs.

~~10.9.~~ "Indirect care costs" means the cost category for allowable administration, plant, housekeeping, medical records, chaplain, pharmacy, and dietary, exclusive of food costs.

~~11.10.~~ "Managed care organization" means a Medicaid managed care organization as that term is defined in section 1903(m) of the Social Security Act [42 U.S.C. 1396b(m)].

~~12.11.~~ "Nursing home" means a facility, not owned or administered by the state government, defined in section 43-34-01 or a facility owned or administered by the state, which agrees to accept a rate established under this chapter.

~~13.12.~~ "Operating costs" means the day-to-day costs of operating the facility in compliance with licensure and certification standards.

~~14.13.~~ "Other direct care costs" means the cost category for allowable activities, social services, laundry, and food costs.

~~15.14.~~ "Payment rate" means the rate determined under section 50-24.4-06.

~~16.15.~~ "Payroll taxes" means the employer's share of Federal Insurance Contributions Act taxes, governmentally required retirement contributions, and state and federal unemployment compensation taxes.

~~17.16.~~ "Private-paying resident" means a nursing home resident on whose behalf the nursing home is not receiving medical assistance payments and whose payment rate is not

established by any governmental entity with ratesetting authority, including the veterans' administration or Medicare, or whose payment rate is not negotiated by any managed care organization contracting with a facility to provide services for the resident.

~~18-17.~~ "Rate year" means the fiscal year for which a payment rate determined under this chapter is effective, from January first to the next December thirty-first.

~~19.~~ ~~"Real estate" means improvements to real property and attached fixtures used directly for resident care.~~

~~20-18.~~ "Reporting year" means the period from July first to June thirtieth, immediately preceding the rate year, for which the nursing home submits reports required under this chapter.

~~21-19.~~ "Top management personnel" means owners, board members, corporate officers, general, regional, and district managers, administrators, nursing home administrators, and other persons performing functions ordinarily performed by such personnel.

SECTION 2. AMENDMENT. Section 50-24.4-08 of the North Dakota Century Code is amended and reenacted as follows:

50-24.4-08. Notice of increases to private-paying residents.

No increase in nursing home rates for private-paying residents is effective unless the nursing home notifies the resident or person responsible for payment of the increase in writing thirty days before the increase takes effect. A nursing home may adjust its rates without giving the notice required by this section when the purpose of the rate adjustment is to reflect a necessary change in the category of care provided to a resident. ~~If the department fails to set rates at least forty days prior to the beginning of a rate year, the time required for giving notice is decreased by the number of days by which the department was late in setting the rates, except when a facility fails to file a cost report by October first.~~

SECTION 3. AMENDMENT. Section 50-24.4-10 of the North Dakota Century Code is amended and reenacted as follows:

50-24.4-10. Operating costs.

1. The department shall establish procedures for determining per diem reimbursement for operating costs.

- 1 2. The department shall analyze and evaluate each nursing home's cost report of
2 allowable operating costs incurred by the nursing home during the reporting year
3 immediately preceding the rate year for which the payment rate becomes effective.
- 4 3. The department shall establish price limits on actual allowable historical operating cost
5 per diems based on cost reports of allowable operating costs taking into consideration
6 relevant factors including resident needs, nursing hours necessary to meet resident
7 needs, size of the nursing home, and the costs that must be incurred for the care of
8 residents in an efficiently and economically operated nursing home. For the rate year
9 beginning ~~2006~~2022, the department shall establish price limits for cost categories
10 using the June 30, ~~2003~~2021, cost report year as the base period. The price limits
11 may not fall below the median of the most recent cost report. ~~Until a new base period~~
12 ~~is established, the department shall adjust the limits annually by the inflation rate for~~
13 ~~nursing home services used to develop the legislative appropriation for the~~
14 ~~department. In determining allowable historical operating cost per diems for purposes~~
15 ~~of setting price limits and nursing home payment rates, the department shall divide the~~
16 ~~allowable historical operating costs by the actual number of resident days, except that~~
17 ~~when a nursing home is occupied at less than ninety percent of licensed capacity~~
18 ~~days, the department may establish procedures to adjust the computation of the~~
19 ~~indirect care cost per diem to an imputed occupancy level at or below ninety percent.~~
20 To encourage the development of home and community-based services as an
21 alternative to nursing home care, the department may waive the imputed occupancy
22 level requirements for a nursing home that the department determines to be providing
23 significant home and community-based services in coordination with home and
24 community-based service providers to avoid duplicating existing services. ~~The~~
25 ~~department shall establish efficiency incentives for indirect care costs. The department~~
26 ~~may establish efficiency incentives for different operating cost categories. The~~
27 ~~department shall consider establishing efficiency incentives in care-related cost~~
28 ~~categories.~~
- 29 4. ~~Each nursing home shall receive an operating cost payment rate equal to the sum of~~
30 ~~the nursing home's operating cost payment rates for each operating cost category.~~
31 ~~The operating cost payment rate for an operating cost category must be the lesser of~~

the nursing home's historical operating cost in the category increased by the inflation rate for nursing home services used to develop the legislative appropriation for the department for the operating cost category plus an efficiency incentive established pursuant to subsection 3 or the limit for the operating cost category increased by the same inflation rate. If a nursing home's actual historic operating costs are greater than the prospective payment rate for that rate year, there may be no retroactive cost settle-up. In establishing payment rates for one or more operating cost categories, the department may establish separate rates for different classes of residents based on their relative care needs.

5. ~~The efficiency incentives to be established by the department pursuant to subsection 3 for a facility with an actual rate below the limit rate for indirect care costs must include the lesser of two dollars and sixty cents per resident day or the amount determined by multiplying seventy percent times the difference between the actual rate, exclusive of inflation rates, and the limit rate, exclusive of current inflation rates. The efficiency incentive must be included as a part of the indirect care cost rate.~~The department shall include in the ratesetting system for nursing homes those costs associated with computer software and any related technology, including cloud-based services. These expenses are allowed as a direct passthrough.

6. ~~Each nursing home must receive an operating margin of at least three percent based upon the lesser of the actual direct care and other direct care costs and the limit rate prior to inflation. The operating margin will then be added to the rate for direct care and other direct care cost categories.~~

7. ~~A new base period must be established at least every four years beginning with the cost report period June 30, 2006~~2023.

SECTION 4. AMENDMENT. Section 50-24.4-15 of the North Dakota Century Code is amended and reenacted as follows:

50-24.4-15. Property-related costs.

1. The department shall include in the ratesetting system for nursing homes a fair rental value payment mechanism for the use of real and personal property ~~which provides for depreciation and related interest costs. The property cost payment mechanism must:~~

- 1 a. ~~Recognize the valuation basis of assets acquired in a bona fide transaction as an~~
2 ~~ongoing operation after July 1, 1985, limited to the lowest of:~~
 - 3 ~~(1) Purchase price paid by the purchaser;~~
 - 4 ~~(2) Fair market value at the time of sale; or~~
 - 5 ~~(3) Seller's cost basis, increased by one-half of the increase in the consumer~~
6 ~~price index for all urban consumers (United States city average) from the~~
7 ~~date of acquisition by the seller to the date of acquisition by the buyer, less~~
8 ~~accumulated depreciation.~~
- 9 b. ~~Recognize depreciation on land improvements, buildings, and fixed equipment~~
10 ~~acquired, as an ongoing operation over the estimated useful remaining life of the~~
11 ~~asset as determined by a qualified appraiser.~~
- 12 c. ~~Recognize depreciation on movable equipment acquired as an ongoing operation~~
13 ~~after August 1, 1995, over a composite remaining useful life.~~
- 14 d. ~~Provide for an interest expense limitation determined by the department and~~
15 ~~established by rule.~~
- 16 e. ~~Establish~~
- 17 2. The department shall establish a per bed property cost limitation considering single
18 and double occupancy construction. The double room limit effective July 1, 2015, is
19 one hundred fifty-six thousand seven hundred eighty-three dollars and the single room
20 limit is two hundred thirty-five thousand one hundred seventy-six dollars.
- 21 f. ~~Recognize increased lease costs of a nursing home operator to the extent the~~
22 ~~lessor has incurred increased costs related to the ownership of the facility, the~~
23 ~~increased costs are charged to the lessee, and the increased costs would be~~
24 ~~allowable had they been incurred directly by the lessee.~~
- 25 g. ~~Recognize any mandated costs, fees, or other moneys paid to the attorney~~
26 ~~general through transactions under sections 10-33-144 through 10-33-149.~~
- 27 2. ~~For rate years beginning after December 31, 2003, the limitations of paragraph 3 of~~
28 ~~subdivision a of subsection 1 do not apply to the valuation basis of assets purchased~~
29 ~~between July 1, 1985, and July 1, 2000. The provisions of this subsection may not be~~
30 ~~applied retroactively to any rate year before July 1, 2005.~~

- 1 3. ~~For rate years beginning after December 31, 2007, the limitations of subdivision e of~~
2 ~~subsection 1 do not apply to the valuation basis of assets acquired as a result of a~~
3 ~~natural disaster before December 31, 2006. The provisions of this subsection may not~~
4 ~~be applied retroactively to any rate year before January 1, 2008.~~
- 5 4. ~~The department shall include in the ratesetting system for nursing homes those costs~~
6 ~~associated with computer software and any related technology, including cloud-based~~
7 ~~services. These expenses are allowed as a direct passthrough.~~

8 **SECTION 5. AMENDMENT.** Section 50-24.4-19 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **50-24.4-19. Prohibited practices.**

11 A nursing home is not eligible to receive medical assistance payments unless it refrains
12 from all of the following:

- 13 1. Charging private-paying residents rates for similar services which exceed those rates
14 which are approved by the department for medical assistance recipients, as
15 determined by the prospective desk audit rate, except under the following
16 circumstances: the nursing home may charge private-paying residents a higher rate
17 for a private room and charge for special services which are not included in the daily
18 rate if medical assistance residents are charged separately at the same rate for the
19 same services in addition to the daily rate paid by the department of human services.
20 Services covered by the payment rate must be the same regardless of payment
21 source. Special services, if offered, must be offered to all residents and charged
22 separately at the same rate. Residents are free to select or decline special services.
23 Special services must not include services which must be provided by the nursing
24 home in order to comply with licensure or certification standards and that if not
25 provided would result in a deficiency or violation by the nursing home. Services
26 beyond those required to comply with licensure or certification standards must not be
27 charged separately as a special service if they were included in the payment rate for
28 the previous reporting year. A nursing home that charges a private-paying resident a
29 rate in violation of this chapter is subject to an action by the state or any of its
30 subdivisions or agencies for civil damages. A private-paying resident or the resident's
31 legal representative has a cause of action for civil damages against a nursing home

that charges the resident rates in violation of this chapter. The damages awarded shall include three times the payments that result from the violation, together with costs and disbursements, including reasonable attorney's fees or their equivalent.

2. Requiring an applicant for admission to the home, or the guardian or conservator of the applicant, as a condition of admission, to pay any fee or deposit ~~in excess of one hundred dollars~~, loan any money to the nursing home, or promise to leave all or part of the applicant's estate to the home.
3. Requiring any resident of the nursing home to utilize a vendor of health care services who is a licensed physician or pharmacist chosen by the nursing home.
4. Providing differential treatment on the basis of status with regard to public assistance.
5. Discriminating in admissions, services offered, or room assignment on the basis of status with regard to public assistance. Admissions discrimination shall include, but is not limited to:
 - a. Basing admissions decisions upon assurance by the applicant to the nursing home, or the applicant's guardian or conservator, that the applicant is neither eligible for nor will seek public assistance for payment of nursing home care costs.
 - b. Engaging in preferential selection from waiting lists based on an applicant's ability to pay privately.

The collection and use by a nursing home of financial information of any applicant pursuant to a preadmission screening program does not raise an inference that the nursing home is utilizing that information for any purpose prohibited by this chapter.

6. Requiring any vendor of medical care, who is reimbursed by medical assistance under a separate fee schedule, to pay any portion of the vendor's fee to the nursing home except as payment for the fair market value of renting or leasing space or equipment of the nursing home or purchasing support services, if those agreements are disclosed to the department.
7. Refusing, for more than twenty-four hours, to accept a resident returning to the resident's same bed or a bed certified for the same level of care, in accordance with a physician's order authorizing transfer, after receiving inpatient hospital services.

- 1 8. Violating any of the rights of health care facility residents enumerated in section
- 2 50-10.2-02.
- 3 9. Charging a managed care organization a rate that is less than the rate approved by
- 4 the department for a medical assistance recipient in the same classification.