

2021 HOUSE HUMAN SERVICES

HB 1065

2021 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee Pioneer Room, State Capitol

HB 1065
1/13/2021

Relating to nursing home's operating costs
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Chairman Weisz called the hearing to order at 9:03 a.m.

Representatives	Roll Call
Representative Robin Weisz	P
Representative Karen M. Rohr	P
Representative Mike Beltz	P
Representative Chuck Damschen	P
Representative Bill Devlin	P
Representative Gretchen Dobervich	P
Representative Clayton Fegley	P
Representative Dwight Kiefert	P
Representative Todd Porter	P
Representative Matthew Ruby	P
Representative Mary Schneider	P
Representative Kathy Skroch	P
Representative Bill Tveit	P
Representative Greg Westlind	P

Discussion Topics:

- Setting minimum occupancy rate
- Occupancy rate not to exceed 90%
- Reduced nursing home demands
- 60% of ND Covid deaths were in long-term care
- Visitation and Covid

LeeAnn Thiel, Assistant Director of the Medical Services Division (9:03) testified in favor and submitted testimony #670.

Shelly Peterson, President North Dakota Long-Term Care Association (9:14) testified in favor and submitted testimony #713.

Chairman Weisz adjourned at 9:44 a.m.

Tamara Krause, Committee Clerk

Testimony
House Bill 1065 – Department of Human Services
House Human Services Committee
Representative Robin Weisz, Chairman
January 13, 2021

Chairman Weisz, members of the House Human Services Committee, I am LeeAnn Thiel, Assistant Director of the Medical Services Division, for the Department of Human Services (Department). I am here today in support of House Bill 1065, which was introduced at the request of the Department.

This bill alters subsection 3 of North Dakota Century Code section 50-24.4-10. Currently this section of Century Code sets ninety percent as the minimum occupancy rate that nursing facilities must meet without any financial penalty. The Department seeks to alter this subsection such that by January 1st of each year the Department will publish what the minimum occupancy rate is for the upcoming calendar year.

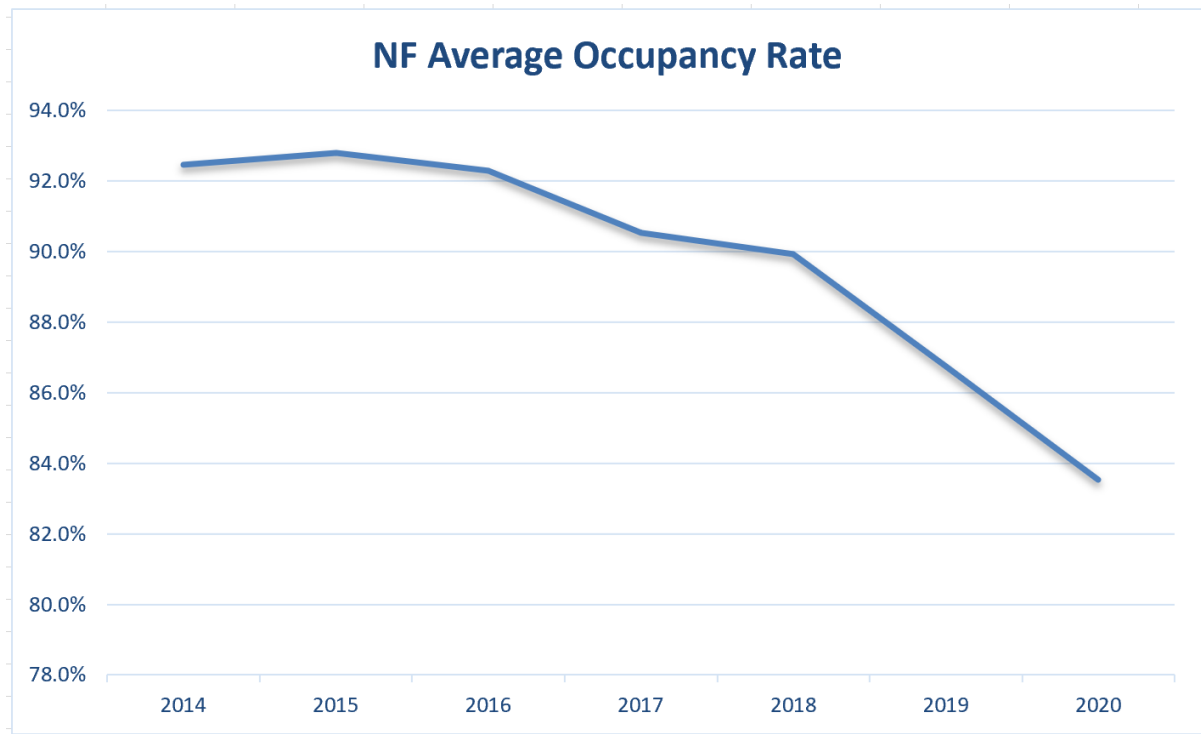
Setting a minimum occupancy rate is important so that the supply of beds is not significantly higher than the demand thereby resulting in a surplus of beds. When there is a surplus of beds in the system the State's financial liability is greater than it should be. Each biennium the Department aims to propose to the Legislature an overall appropriation that comes as close as possible to equilibrium whereby the supply is equal to the demand.

Nursing facilities do have the ability to manage their supply of licensed beds by utilizing the bed layaway system administered by the Department of Health. Nursing facilities that have excess capacity and need to decrease their bed supply to meet the minimum occupancy rate

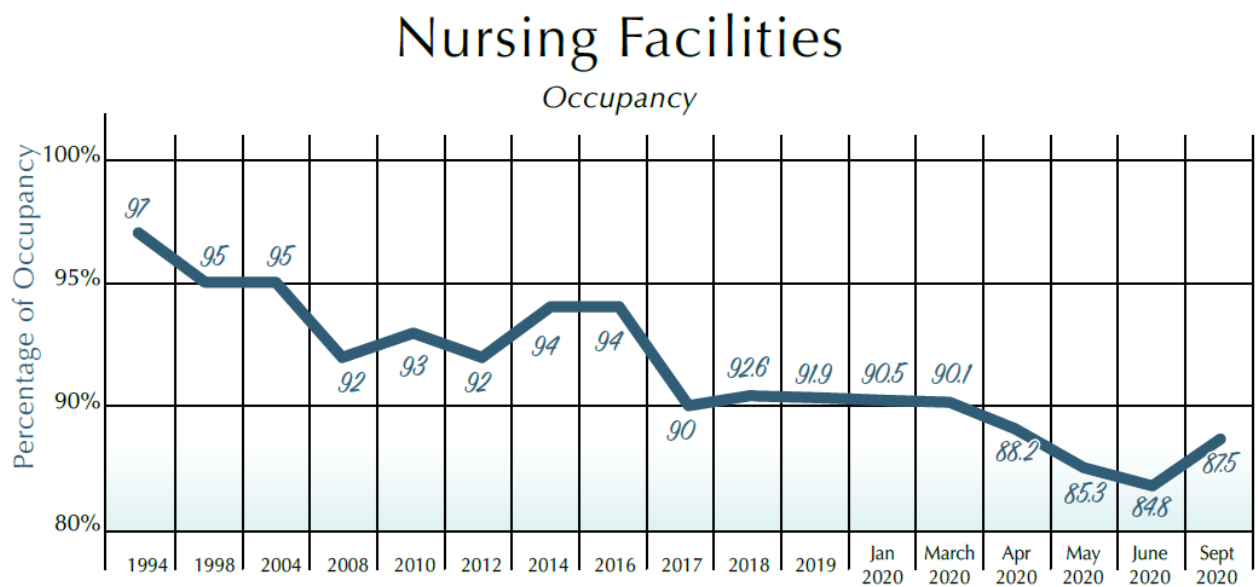
can move beds from active use to bed layaway. Beds can remain in layaway for up to four years. At the end of the fourth year if the nursing facility does not want to bring the bed back into active use it can be retired and is no longer considered in the State's total bed count. Beds can be sold between facilities as long as the total number of licensed beds in the State does not increase.

Nursing facilities that do not meet the minimum occupancy rate are penalized in the rate setting process. The indirect care and property rate per diem is generally adjusted downward for failure to meet the minimum occupancy rate.

The Department has two reasons for the proposed change to subsection 3. First, throughout the COVID-19 pandemic the Department monitored nursing facility occupancy rates. Since March 2020, occupancy rates have steadily fallen due to a combination of deaths and reduced demand. Below are two graphs that show the trend in occupancy rates over time: one using Department data and another using data from the North Dakota Long Term Care Association (NDLTCA).



Source: Department of Human Services



Source: 1994-2019 Based on Cost Report Data
January – June 2020 Based on NDLTCA Survey
September 2020 Based on HC Standard Report on September 10, 2020.
North Dakota Long Term Care Association - 2020

In a circumstance such as a national public health emergency, this proposed change would allow the Department more flexibility in setting a different minimum occupancy rate to account for extenuating circumstances. Second, the Department is proposing House Bill 1090 which will be presented to this committee shortly. House Bill 1090 changes the current payment structure of care and property for nursing facilities. While a minimum occupancy rate is still needed in the new payment models, the Department again maintains that it needs flexibility to account for extenuating circumstances under the new system.

The Department wants to reiterate that a minimum occupancy rate is important, and this bill is not meant in any way to move away from that policy. Controlling the supply of beds is critical to financial sustainability of the system and safeguarding taxpayer dollars. House Bill 1065 simply asks for more flexibility so that the Department can react appropriately as needed.

Finally, the Department is aware that the NDLTCA is submitting an amendment to House Bill 1065. The amendment asks that the occupancy rate not exceed 90%. The Department does not oppose this amendment.

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

Testimony on HB 1065
House Human Services Committee
January 13, 2021

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 in support of HB 1065 and ask that you consider a friendly amendment to HB 1065. We represent 211 long term care facilities in North Dakota, including all 79 skilled nursing facilities.

As you have heard from the Department of Human Services, they are proposing HB 1065, which would remove from century code the current 90 % occupancy limitation. The limitation works by reducing your payment if your 12 month occupancy, as submitted in your June 30th cost report, is below 90%. The greater your fall below 90% the greater amount of lost reimbursement.

In the June 30, 2020 cost report the following data was reported:

- 1) 24 of 79 nursing facilities reported occupancy below 90%.
- 2) The average statewide occupancy on June 30, 2020 was 91.6%.
- 3) The total amount of lost reimbursement caused by the occupancy limitation was \$3,734.889.
- 4) The range of lost reimbursement per nursing facility was \$505 to \$1,419,608.

When the public health emergency was declared in March 2020, we began to see an impact on occupancy. Two factors were impacting a person's decision to be admitted to a nursing facility:

- 1) Fear of contacting Covid-19 because of the risk of living in a congregated setting.
- 2) Visitation restrictions.

These two factors are still present today.

Without getting distracted on the central theme of this hearing, I thought I would share with you a little about Covid-19 and long term care. In May 2020, we asked DHS to waive the 90% occupancy limitation. DHS said because it was in statute, it was a difficult request. The legislation before you will take the 90% occupancy limitation out of statute and allows DHS to establish a yearly limitation.

Based on our current experience and devastating occupancy drop, we are asking, through our amendment, that a ceiling be set so it can't rise above 90%. Today we have 62 of 79 nursing facilities under 90% occupied, that has never happened prior to the PHE.

To protect our population all facilities purposely left beds open, so they could cohort and create Covid units to segregate those with and without the virus. Anytime anyone leaves the facility for a medical appointment or other reasons, they must evaluate and quarantine up to 14 days within the facility upon their return. This has required the use of creating more private rooms to help protect infecting others.

As you can imagine, all these moves to protect our vulnerable population impacted occupancy. So, it was probably a blessing in disguise when we began having a large amount of open beds as we needed that space to create Covid units and quarantine zones. It is also difficult to socially distance with two people in a room. Before the PHE, we had around 55%

private rooms, thank goodness we did as this helped us protect our vulnerable population. See the attachments to best see the impact.

In conclusion, we ask for your support of HB 1065 and our amendment. The amendment is important for setting a ceiling that the occupancy limitation cannot go above. Setting it higher would financially devastate many financially frail facilities.

Thank you for your consideration of this amendment to HB 1065. I would be happy to answer any questions you may have.

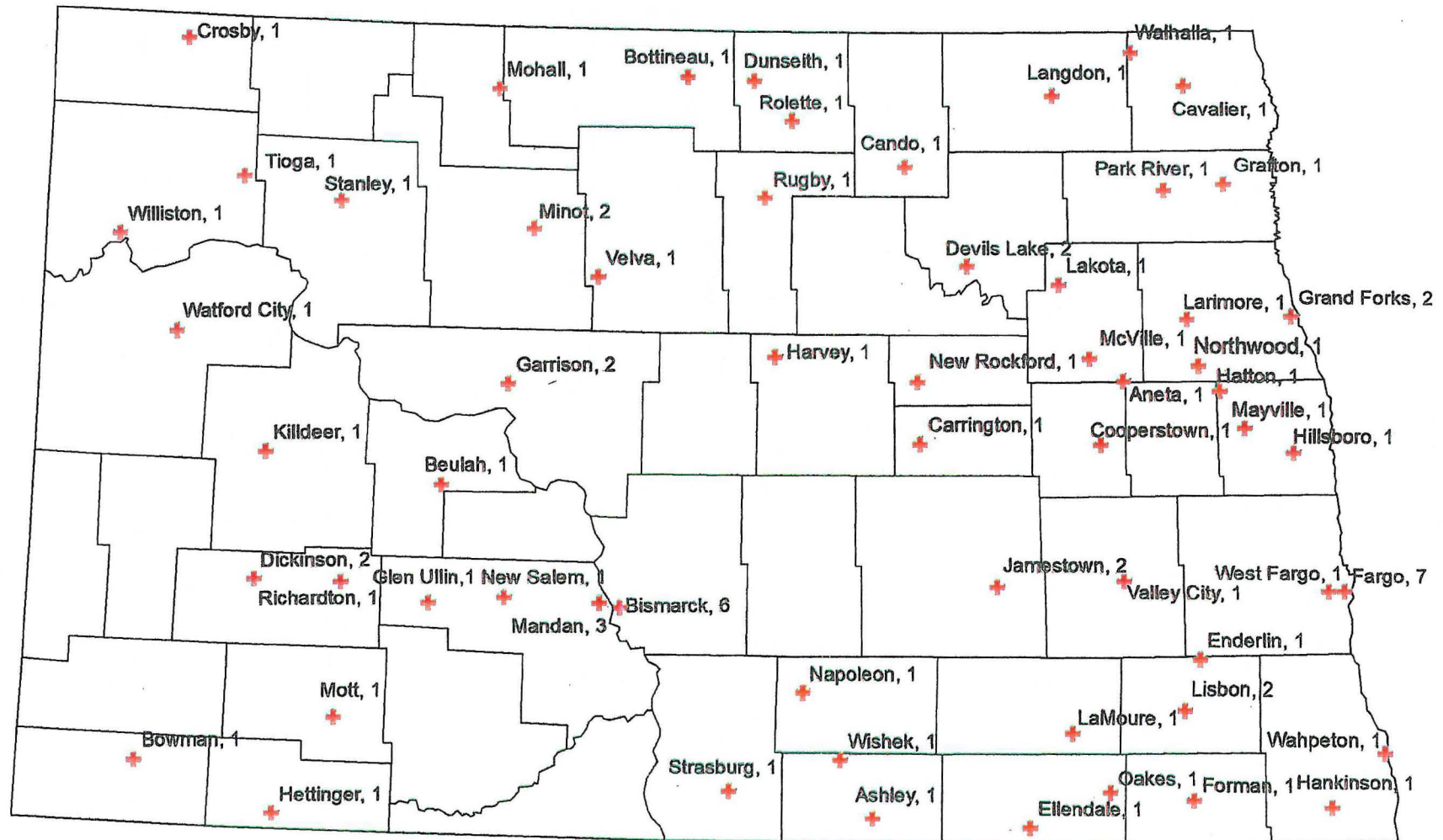
Shelly Peterson, President
North Dakota Long Term Care Association
1900 North 11th Street
Bismarck, ND 58501
(701) 222-0660

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1065

Page 1, line 22, after "rate" insert "up to a maximum of ninety percent"

Renumber accordingly

North Dakota Nursing Facilities

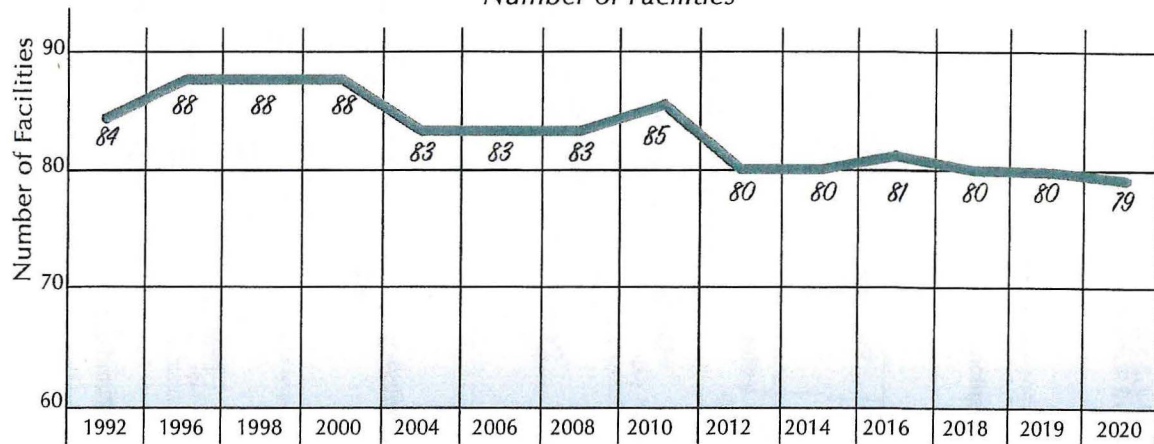


+ City (Number of Nursing Facilities)

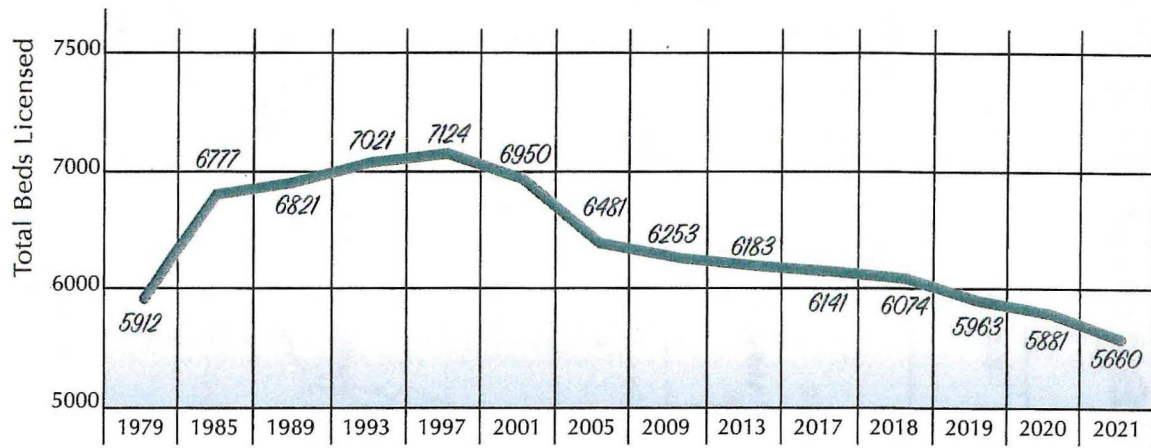
Source: ESRI, North Dakota Long Term Care Association
Created by the North Dakota Healthcare Workforce Group
on 3/28/2018

Nursing Facilities

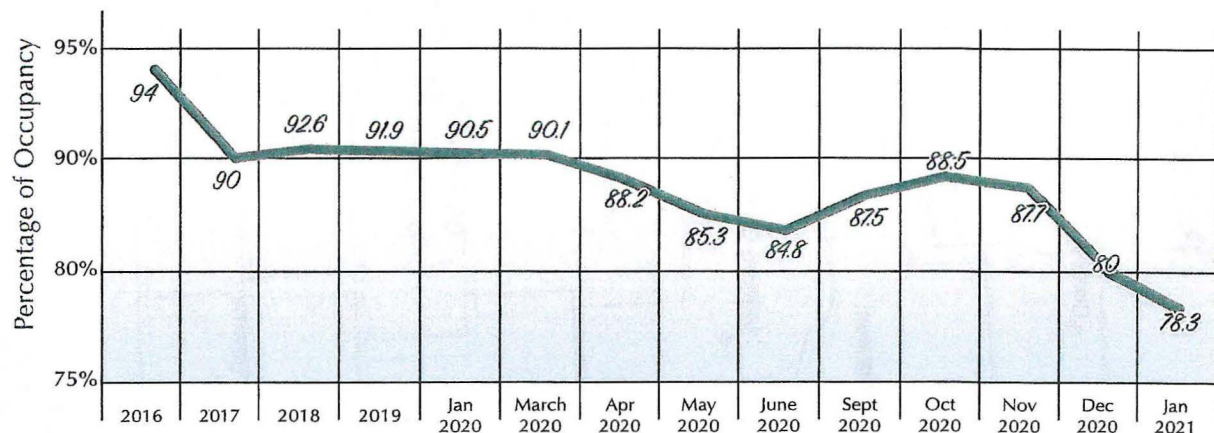
Number of Facilities



Licensed Beds



Occupancy

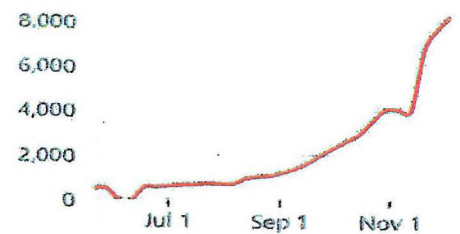


January - June 2020 Based on NDLTCA Survey
 September 2020 Based on HC Standard Report on September 10, 2020
 October 2020 Based on HC Standard Report on October 2, 2020
 November 2020 Based on HC Standard Report on November 2, 2020
 December 2020 Based on HC Standard Report on November 30, 2020
 January 2020 Based on HC Standard Report on January 11, 2021

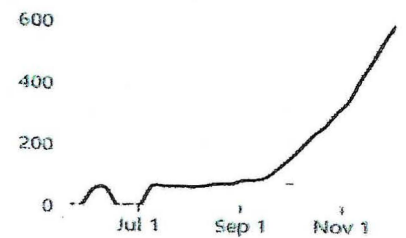
ND LTC Cases and Deaths through 12/8/20

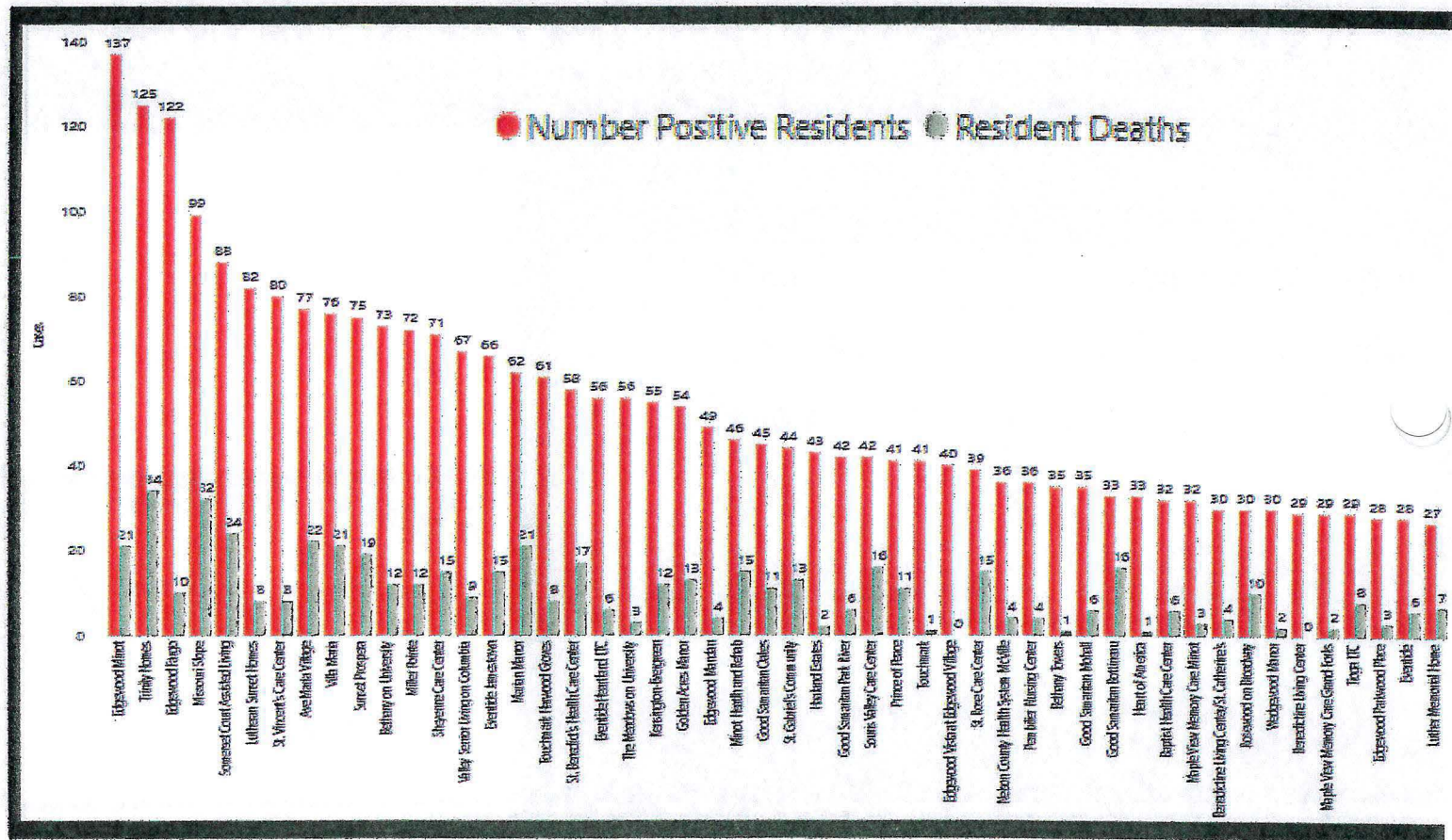
Cases and Deaths	Number (%)
Total Cases in ND	83,324
Total Cases in LTC (%)	8,471 (10%)
Staff	4,692
Residents	3,779
Total Deaths in ND	1,022
Total Deaths in LTC	613 (60%)

Cases

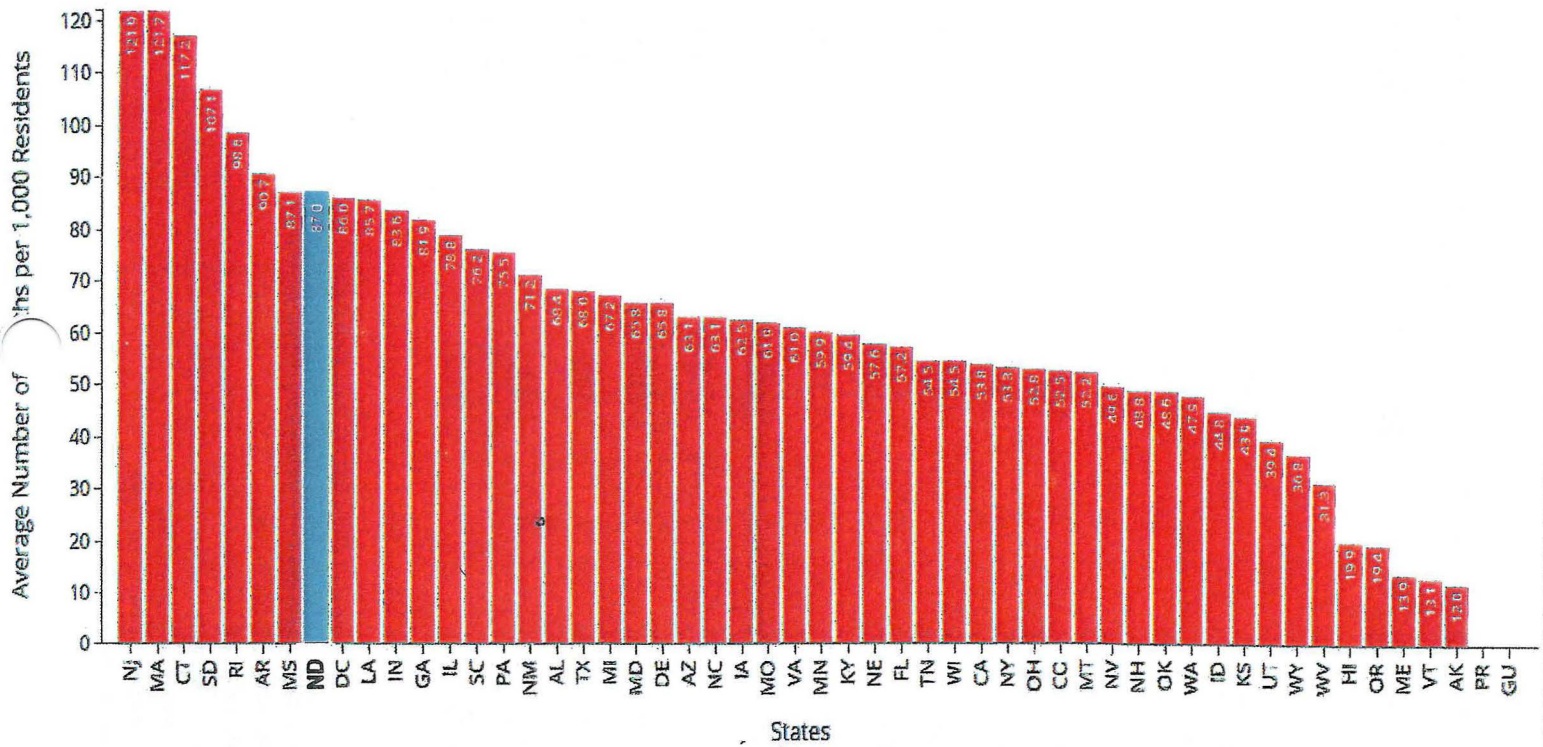


Deaths





Resident Average Deaths per 1,000 Residents – Through Week of 11/22/20



North Dakota Long Term Care Association

Assisted Living, Basic Care, Nursing Facility Death Data

	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>
January	192	247	224	241
February	195	203	174	219
March	197	191	183	242
April	185	179	217	230
May	183	176	200	201
June	184	158	180	160
July	150	147	164	158
August	169	140	186	152
September	168	172	203	215
October	219	200	195	306
November	191	188	205	n/a
December	<u>193</u>	<u>211</u>	<u>201</u>	<u>n/a</u>
	2226	2212	2332	2124 YearToDate

Please Note:

1. 2017, 2018, 2019 Death Data from Vital Records/DOH.
2. 2020 Data based on survey of assisted living, basic care and nursing facilities.
3. 20 assisted living, 13 basic care and 1 nursing facility did not report 2020 deaths.
4. The data for 2020 is preliminary and not complete. Data for 2020 will not be final until reported by Vital Records in July 2021
5. This data only includes residents who died in long term care facilities. It does not include residents that died in a hospital.
A large number of COVID deaths to long term care residents occur in a hospital.
6. In 2020 there are approximately 700 fewer residents in long term care than in 2019.
7. Cause of death is not tracked in this survey, in 2020 this data reflects all deaths not just COVID-19.



updated 11-30-2020

2021 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee Pioneer Room, State Capitol

HB 1065
2/8/2021

Relating to nursing home's operating costs
--

Chairman Weisz opened the committee hearing at 11:25 a.m.

Representatives	Attendance
Representative Robin Weisz	P
Representative Karen M. Rohr	P
Representative Mike Beltz	P
Representative Chuck Damschen	P
Representative Bill Devlin	P
Representative Gretchen Dobervich	P
Representative Clayton Fegley	P
Representative Dwight Kiefert	P
Representative Todd Porter	P
Representative Matthew Ruby	P
Representative Mary Schneider	A
Representative Kathy Skroch	P
Representative Bill Tveit	P
Representative Greg Westlind	P

Discussion Topics:

- Flexible occupancy rate
- Bed layaway program
- Maximum bed capacity

Rep. Robin Weisz (11:25) proposed **Amendment 21.8066.01001** with Christmas Tree Version of the bill #5887 & #5889.

Rep. Karen Rohr (11:29) moved to adopt **Amendment 21.8066.01001**

Rep. Kathy Skroch (11:29) second

Voice vote – Motion Carried.

Rep. Gretchen Dobervich (11:29) moved amendment to amendment stating where it says “if an Indian tribe” be changed to federally recognized tribal nation

Rep. Karen Rohr (11:30) second

Voice vote – Motion Carried.

Rep. Karen Rohr (11:30) made a motion **Do Pass as Amended**

Rep. Matthew Ruby (11:30) second

Representatives	Vote
Representative Robin Weisz	Y
Representative Karen M. Rohr	Y
Representative Mike Beltz	Y
Representative Chuck Damschen	Y
Representative Bill Devlin	Y
Representative Gretchen Dobervich	Y
Representative Clayton Fegley	Y
Representative Dwight Kiefert	Y
Representative Todd Porter	Y
Representative Matthew Ruby	Y
Representative Mary Schneider	A
Representative Kathy Skroch	Y
Representative Bill Tveit	Y
Representative Greg Westlind	Y

Motion Carried Do Pass as Amended 13-0-1

Bill Carrier: Rep. Karen Rohr

Chairman Weisz adjourned at 11:34 a.m.

Tamara Krause, Committee Clerk

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1065

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 23-16-01.1 of the North Dakota Century Code, relating to the moratorium on the expansion of long-term care bed capacity.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-16-01.1 of the North Dakota Century Code is amended and reenacted as follows:

23-16-01.1. Moratorium on expansion of long-term care bed capacity.

1. Notwithstanding sections 23-16-06 and 23-16-10, except when a facility reverts basic care beds to nursing facility beds or relicenses nursing facility beds delicensed after July 31, 2011, nursing facility beds may not be added to the state's licensed bed capacity during the period between August 1, 2019, and July 31, 2021. A nursing facility may not delicense nursing facility bed capacity, relicense nursing facility bed capacity, convert licensed nursing bed capacity to basic care bed capacity, revert licensed basic care bed capacity back to nursing facility bed capacity, or otherwise reconfigure licensed nursing facility bed capacity more than ~~one time~~two times in a twelve-month period.
2. Transfer of licensed nursing facility bed capacity from a nursing facility to another entity is permitted. The nursing facility may transfer the bed capacity either as nursing facility bed capacity or basic care bed capacity. Transferred bed capacity must become licensed by an entity within seventy-two months of transfer. Bed capacity transferred as basic care bed capacity may not be reverted to nursing facility bed capacity at any time. A receiving entity may transfer the received bed capacity to another entity within the seventy-two-month period originally established at the time the nursing facility first transferred the licensed nursing facility bed capacity. The subsequent receiving entity must license the received bed capacity within the seventy-two-month period originally established at the time of the first transfer.
3. A nursing facility may convert licensed nursing facility bed capacity to basic care. If the converted beds remain in the same facility and are not transferred, the beds may revert to nursing facility status after one year of licensure as basic care beds.
4. Nursing facility beds that are converted to basic care may be transferred as basic care beds. However, upon the transfer, the basic care beds may not be relicensed as nursing facility beds.
5. If an Indian tribe acquires nursing facility beds, the tribal facility must meet state licensing requirements for those beds within seventy-two months of

acquisition. A tribal facility may seek to participate in the medical assistance programs. Medical assistance payments may only be made to a Medicaid certified tribal facility that agrees to participate and adhere to all federal and state requirements of the medical assistance program, including participation, screening, ratesetting, and licensing requirements.

6. A nursing facility, upon prior written notice to the state department of health, may delicense a maximum of ~~twenty-five~~thirty percent of its licensed nursing facility bed capacity and have the delicensed nursing facility held for a period of forty-eight months. The total delicensed nursing facility bed capacity that may be held for a nursing facility at no time may be greater than fifty percent of the number of currently licensed beds in the nursing facility. Delicensed nursing facility bed capacity in excess of fifty percent of the nursing facility's licensed capacity may not be held and is not eligible for the provisions of subsection 7. Delicensed bed capacity not sold or relicensed at the conclusion of the forty-eight-month holding period ceases to exist.
7. During the forty-eight-month holding period established at the time of delicensure, delicensed nursing facility bed capacity that is being held for the nursing facility may be:
 - a. Relicensed by the nursing facility. Relicensing of nursing facility bed capacity may not occur for twelve months from the time of delicensure.
 - b. Transferred to another entity as nursing facility bed capacity or basic care bed capacity. The receiving entity must license the transferred bed capacity as the type of bed capacity transferred within a seventy-two-month period established at the time of transfer. Bed capacity transferred as basic care bed capacity may not be reverted to nursing facility bed capacity at any time. A receiving entity may transfer the received bed capacity to another entity within the seventy-two-month period established at the time of transfer. The subsequent receiving entity must license the received bed capacity within the seventy-two-month period established at the time of transfer.
 - c. Licensed as basic care beds by the same facility. If the licensed basic care beds remain in the same facility and are not transferred, the beds may be reverted to licensed nursing facility bed capacity after twelve months.
8. Notwithstanding any other provision of this section, a nursing facility bed transferred before July 1, 2019, must be relicensed by the receiving entity within a seventy-two-month period established at the time of transfer.
9. Notwithstanding any other provision of this section, a nursing facility bed in the layaway program before July 1, 2019, may remain in the program for forty-eight months from the time the bed was first laid away."

Renumber accordingly

DE 2/8/21
1082

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1065

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Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1065: Human Services Committee (Rep. Weisz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1065 was placed on the Sixth order on the calendar.

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Renumber accordingly

21.8066.01001
Title.

Prepared by the Legislative Council staff for
House Human Services Committee
February 8, 2021

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1065

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1. Notwithstanding sections 23-16-06 and 23-16-10, except when a facility reverts basic care beds to nursing facility beds or relicenses nursing facility beds delicensed after July 31, 2011, nursing facility beds may not be added to the state's licensed bed capacity during the period between August 1, 2019, and July 31, 2021. A nursing facility may not delicense nursing facility bed capacity, relicense nursing facility bed capacity, convert licensed nursing bed capacity to basic care bed capacity, revert licensed basic care bed capacity back to nursing facility bed capacity, or otherwise reconfigure licensed nursing facility bed capacity more than ~~one time~~two times in a twelve-month period.
2. Transfer of licensed nursing facility bed capacity from a nursing facility to another entity is permitted. The nursing facility may transfer the bed capacity either as nursing facility bed capacity or basic care bed capacity. Transferred bed capacity must become licensed by an entity within seventy-two months of transfer. Bed capacity transferred as basic care bed capacity may not be reverted to nursing facility bed capacity at any time. A receiving entity may transfer the received bed capacity to another entity within the seventy-two-month period originally established at the time the nursing facility first transferred the licensed nursing facility bed capacity. The subsequent receiving entity must license the received bed capacity within the seventy-two-month period originally established at the time of the first transfer.
3. A nursing facility may convert licensed nursing facility bed capacity to basic care. If the converted beds remain in the same facility and are not transferred, the beds may revert to nursing facility status after one year of licensure as basic care beds.
4. Nursing facility beds that are converted to basic care may be transferred as basic care beds. However, upon the transfer, the basic care beds may not be relicensed as nursing facility beds.
5. If an Indian tribe acquires nursing facility beds, the tribal facility must meet state licensing requirements for those beds within seventy-two months of

acquisition. A tribal facility may seek to participate in the medical assistance programs. Medical assistance payments may only be made to a Medicaid certified tribal facility that agrees to participate and adhere to all federal and state requirements of the medical assistance program, including participation, screening, ratesetting, and licensing requirements.

6. A nursing facility, upon prior written notice to the state department of health, may delicense a maximum of ~~twenty-five~~thirty percent of its licensed nursing facility bed capacity and have the delicensed nursing facility held for a period of forty-eight months. The total delicensed nursing facility bed capacity that may be held for a nursing facility at no time may be greater than fifty percent of the number of currently licensed beds in the nursing facility. Delicensed nursing facility bed capacity in excess of fifty percent of the nursing facility's licensed capacity may not be held and is not eligible for the provisions of subsection 7. Delicensed bed capacity not sold or relicensed at the conclusion of the forty-eight-month holding period ceases to exist.
7. During the forty-eight-month holding period established at the time of delicensure, delicensed nursing facility bed capacity that is being held for the nursing facility may be:
 - a. Relicensed by the nursing facility. Relicensing of nursing facility bed capacity may not occur for twelve months from the time of delicensure.
 - b. Transferred to another entity as nursing facility bed capacity or basic care bed capacity. The receiving entity must license the transferred bed capacity as the type of bed capacity transferred within a seventy-two-month period established at the time of transfer. Bed capacity transferred as basic care bed capacity may not be reverted to nursing facility bed capacity at any time. A receiving entity may transfer the received bed capacity to another entity within the seventy-two-month period established at the time of transfer. The subsequent receiving entity must license the received bed capacity within the seventy-two-month period established at the time of transfer.
 - c. Licensed as basic care beds by the same facility. If the licensed basic care beds remain in the same facility and are not transferred, the beds may be reverted to licensed nursing facility bed capacity after twelve months.
8. Notwithstanding any other provision of this section, a nursing facility bed transferred before July 1, 2019, must be relicensed by the receiving entity within a seventy-two-month period established at the time of transfer.
9. Notwithstanding any other provision of this section, a nursing facility bed in the layaway program before July 1, 2019, may remain in the program for forty-eight months from the time the bed was first laid away."

Renumber accordingly

Sixty-seventh
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1065

Introduced by

Human Services Committee

(At the request of the Department of Human Services)

1 A BILL ~~for an Act to amend and reenact subsection 3 of section 50-24.4-10 of the North Dakota~~
2 ~~Century Code, relating to nursing home's operating costs;~~ for an Act to amend and reenact
3 section 23-16-01.1 of the North Dakota Century Code, relating to the moratorium on the
4 expansion of long-term care bed capacity.

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

6 ~~SECTION 1. AMENDMENT.~~ Subsection 3 of section 50-24.4-10 of the North Dakota
7 ~~Century Code is amended and reenacted as follows:—~~
8 ~~3. The department shall establish limits on actual allowable historical operating cost~~
9 ~~per diems based on cost reports of allowable operating costs taking into consideration~~
10 ~~relevant factors including resident needs, nursing hours necessary to meet resident~~
11 ~~needs, size of the nursing home, and the costs that must be incurred for the care of~~
12 ~~residents in an efficiently and economically operated nursing home. For the rate year~~
13 ~~beginning 2006, the department shall establish limits for cost categories using the~~
14 ~~June 30, 2003, cost report year as the base period. The limits may not fall below the~~
15 ~~median of the most recent cost report. Until a new base period is established, the~~
16 ~~department shall adjust the limits annually by the inflation rate for nursing home~~
17 ~~services used to develop the legislative appropriation for the department. In~~
18 ~~determining allowable historical operating cost per diems for purposes of setting limits~~
19 ~~and nursing home payment rates, the department shall divide the allowable historical~~
20 ~~operating costs by the actual number of resident days, except that when a nursing~~
21 ~~home is occupied at less than ninety percent the published rate of licensed capacity~~
22 ~~days, the. Annually, the department may establish procedures to adjust the~~
23 ~~computation of the indirect care cost per diem to an imputed shall set the minimum~~
24 ~~occupancy level at or below ninety percent rate and publish the rate for the next year.~~

~~on or before January first of each year. To encourage the development of home and community-based services as an alternative to nursing home care, the department may waive the imputed occupancy level requirements for a nursing home that the department determines to be providing significant home and community-based services in coordination with home and community-based service providers to avoid duplicating existing services. The department shall establish efficiency incentives for indirect care costs. The department may establish efficiency incentives for different operating cost categories. The department shall consider establishing efficiency incentives in care-related cost categories.~~

SECTION 1. AMENDMENT. Section 23-16-01.1 of the North Dakota Century Code is amended and reenacted as follows:

23-16-01.1. Moratorium on expansion of long-term care bed capacity.

1. Notwithstanding sections 23-16-06 and 23-16-10, except when a facility reverts basic care beds to nursing facility beds or relicenses nursing facility beds delicensed after July 31, 2011, nursing facility beds may not be added to the state's licensed bed capacity during the period between August 1, 2019, and July 31, 2021. A nursing facility may not delicense nursing facility bed capacity, relicense nursing facility bed capacity, convert licensed nursing bed capacity to basic care bed capacity, revert licensed basic care bed capacity back to nursing facility bed capacity, or otherwise reconfigure licensed nursing facility bed capacity more than ~~one time~~two times in a twelve-month period.
2. Transfer of licensed nursing facility bed capacity from a nursing facility to another entity is permitted. The nursing facility may transfer the bed capacity either as nursing facility bed capacity or basic care bed capacity. Transferred bed capacity must become licensed by an entity within seventy-two months of transfer. Bed capacity transferred as basic care bed capacity may not be reverted to nursing facility bed capacity at any time. A receiving entity may transfer the received bed capacity to another entity within the seventy-two-month period originally established at the time the nursing facility first transferred the licensed nursing facility bed capacity. The subsequent receiving entity must license the received bed capacity within the seventy-two-month period originally established at the time of the first transfer.

- 1 3. A nursing facility may convert licensed nursing facility bed capacity to basic care. If the
2 converted beds remain in the same facility and are not transferred, the beds may
3 revert to nursing facility status after one year of licensure as basic care beds.
- 4 4. Nursing facility beds that are converted to basic care may be transferred as basic care
5 beds. However, upon the transfer, the basic care beds may not be relicensed as
6 nursing facility beds.
- 7 5. If an Indian tribe acquires nursing facility beds, the tribal facility must meet state
8 licensing requirements for those beds within seventy-two months of acquisition. A tribal
9 facility may seek to participate in the medical assistance programs. Medical assistance
10 payments may only be made to a Medicaid certified tribal facility that agrees to
11 participate and adhere to all federal and state requirements of the medical assistance
12 program, including participation, screening, ratesetting, and licensing requirements.
- 13 6. A nursing facility, upon prior written notice to the state department of health, may
14 delicense a maximum of ~~twenty-five~~thirty percent of its licensed nursing facility bed
15 capacity and have the delicensed nursing facility held for a period of forty-eight
16 months. The total delicensed nursing facility bed capacity that may be held for a
17 nursing facility at no time may be greater than fifty percent of the number of currently
18 licensed beds in the nursing facility. Delicensed nursing facility bed capacity in excess
19 of fifty percent of the nursing facility's licensed capacity may not be held and is not
20 eligible for the provisions of subsection 7. Delicensed bed capacity not sold or
21 relicensed at the conclusion of the forty-eight-month holding period ceases to exist.
- 22 7. During the forty-eight-month holding period established at the time of delicensure,
23 delicensed nursing facility bed capacity that is being held for the nursing facility may
24 be:
 - 25 a. Relicensed by the nursing facility. Relicensing of nursing facility bed capacity may
26 not occur for twelve months from the time of delicensure.
 - 27 b. Transferred to another entity as nursing facility bed capacity or basic care bed
28 capacity. The receiving entity must license the transferred bed capacity as the
29 type of bed capacity transferred within a seventy-two-month period established at
30 the time of transfer. Bed capacity transferred as basic care bed capacity may not
31 be reverted to nursing facility bed capacity at any time. A receiving entity may

1 transfer the received bed capacity to another entity within the seventy-two-month
2 period established at the time of transfer. The subsequent receiving entity must
3 license the received bed capacity within the seventy-two-month period
4 established at the time of transfer.

5 c. Licensed as basic care beds by the same facility. If the licensed basic care beds
6 remain in the same facility and are not transferred, the beds may be reverted to
7 licensed nursing facility bed capacity after twelve months.

8 8. Notwithstanding any other provision of this section, a nursing facility bed transferred
9 before July 1, 2019, must be relicensed by the receiving entity within a seventy-two-
10 month period established at the time of transfer.

11 9. Notwithstanding any other provision of this section, a nursing facility bed in the
12 layaway program before July 1, 2019, may remain in the program for forty-eight
13 months from the time the bed was first laid away.

2021 SENATE HUMAN SERVICES

HB 1065

2021 SENATE STANDING COMMITTEE MINUTES

Human Services Committee Sakakawea Room, State Capitol

HB 1065
3/8/2021

A BILL for an Act to amend and reenact section 23-16-01.1 of the North Dakota Century Code, relating to the moratorium on the expansion of long-term care bed capacity.

Madam Vice Chair K. Roers opened the hearing on HB 1065 at 2:32 p.m. Members present: K. Roers, Hogan, Anderson, Clemens, O. Larsen. Absent: Lee.

Discussion Topics:

- Medicaid payment structure
- Indirect and Property care rate
- Covid-19 and occupancy levels
- Long-term care payment rate
- Long-term care facilities available beds
- Long-term care facility closures

[2:32] LeeAnn Thiel, Assistant Director, Medical Services Division, DHS. Provided testimony #7853 in favor.

[2:40] Shelly Peterson, President, ND Long Term Care Association. Provided testimony #7990 in favor.

Additional written testimony: N/A

Madam Vice Chair K. Roers closed the hearing on HB 1065 at 2:57 p.m.

Justin Velez, Committee Clerk

Testimony
Engrossed House Bill 1065 – Department of Human Services
Senate Human Services Committee
Senator Judy Lee, Chairman
March 8, 2021

Chairman Lee, members of the Senate Human Services Committee, I am LeeAnn Thiel, Assistant Director of the Medical Services Division, for the Department of Human Services (Department). I am here today in support of Engrossed House Bill 1065, which was introduced at the request of the Department.

Engrossed House Bill 1065 provides nursing facilities additional flexibilities to manage their supply of licensed beds. The additional flexibilities provide nursing facilities the ability to:

- change their licensed bed capacity up to two times in a twelve-month period; and
- Put up to 30% of their licensed bed capacity into the bed layaway.

This concludes my testimony and I would be happy to answer any questions that you may have.

Testimony on HB 1065
Senate Human Services Committee
March 8, 2021

Good afternoon 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 in support of HB 1065. We represent 211 long term care facilities in North Dakota, including all 79 skilled nursing facilities.

HB 1065 was first proposed to allow the Department of Human Services to establish an occupancy limitation annually. The House was uncomfortable with the provision and instead amended the bill to allow nursing facilities to be allowed to set-aside, in a bed layaway program, 30%, (it is now 25%), of their licensed nursing facility beds in a year, but no more than 50% of their beds at any time. The second feature of HB 1065 is that it allows nursing facilities to change their bed capacity twice a year rather than just one. Although there are some federal limitations on changing bed capacity that must be followed, changing the state law would allow facilities more flexibility than they currently have. This could potentially allow a nursing facility that sets beds aside in the bed layaway program, to bring them back in service before the 12 month period. In reviewing HB 1065, I see there is another part of the statute that doesn't allow bed increases more than once a year. On page 2, lines 28 & 29 it states: Relicensed by the nursing facility. Relicensing of nursing facility bed capacity may not occur for twelve months from the time of delicensure. To allow the flexibility we are seeking, we would need to have these two sentences removed or the time frame changed to six

months. The only time facilities would want to bring beds back into service before the current year is if demand and need rebounds.

In the June 30, 2020 cost report the following data was reported:

- 1) 24 of 79 nursing facilities reported occupancy below 90%.
- 2) The average statewide occupancy on June 30, 2020 was 91.6%.
- 3) The total amount of lost reimbursement caused by the occupancy limitation was \$3,734,889.
- 4) The range of lost reimbursement for low occupancy per nursing facility was \$505 to \$1,419,608.

When the public health emergency was declared in March 2020, we began to see an impact on occupancy. Two factors were impacting a person's decision to be admitted to a nursing facility:

- 1) Fear of contacting Covid-19 because of the risk of living in a congregated setting.
- 2) Visitation restrictions.

These two factors are still present today.

Today nursing facility occupancy is 78.3%. We have over 1200 open nursing facility beds. Since October 2, 2020, occupancy has dropped 10 percentage points and we cannot seem to reach 80%. Based on our current experience and devastating occupancy drop, today we have 62 of 79 nursing facilities under 90% occupied, that has never happened prior to the PHE.

To protect our population all facilities purposely left beds open, so they could cohort and create Covid units to segregate those with and without the virus. Anytime anyone leaves the facility for a medical appointment or other reasons, they must evaluate and quarantine up to 14 days within

the facility upon their return. This has required the use of creating more private rooms to help prevent infecting others.

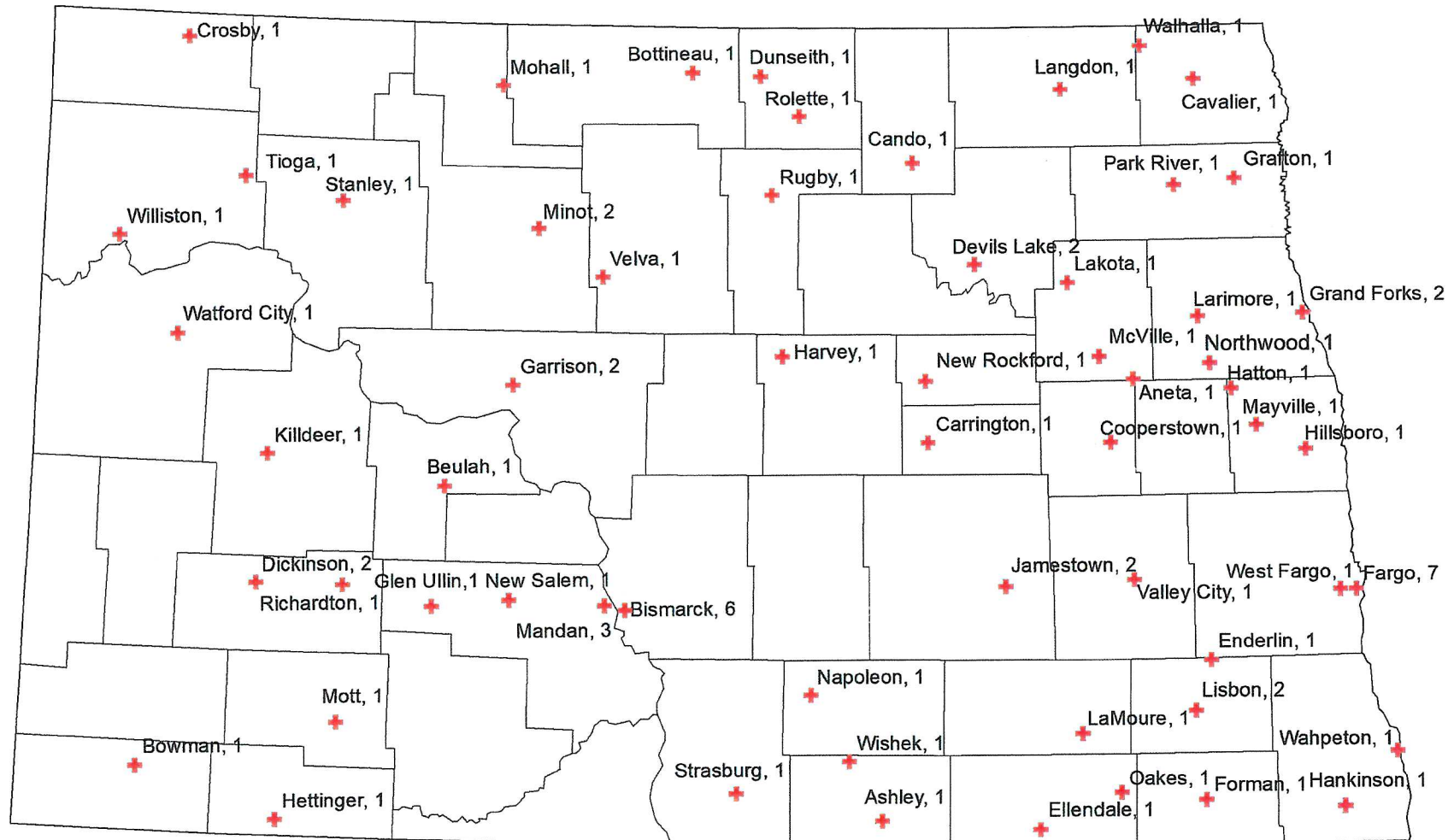
As you can imagine, all these moves to protect our vulnerable population impacted occupancy. So, it was probably a blessing in disguise when we began having a large number of open beds as we needed that space to create Covid units and quarantine zones. It is also difficult to socially distance with two people in a room. Before the PHE, we had around 58% private rooms, thank goodness we did as this helped us protect our vulnerable population. See the attachments to best see the impact.

In conclusion, we ask for your support of HB 1065 and consideration of an amendment to delete lines 28 and 29 on page 2.

Thank you for your consideration of HB 1065. I would be happy to answer any questions you may have.

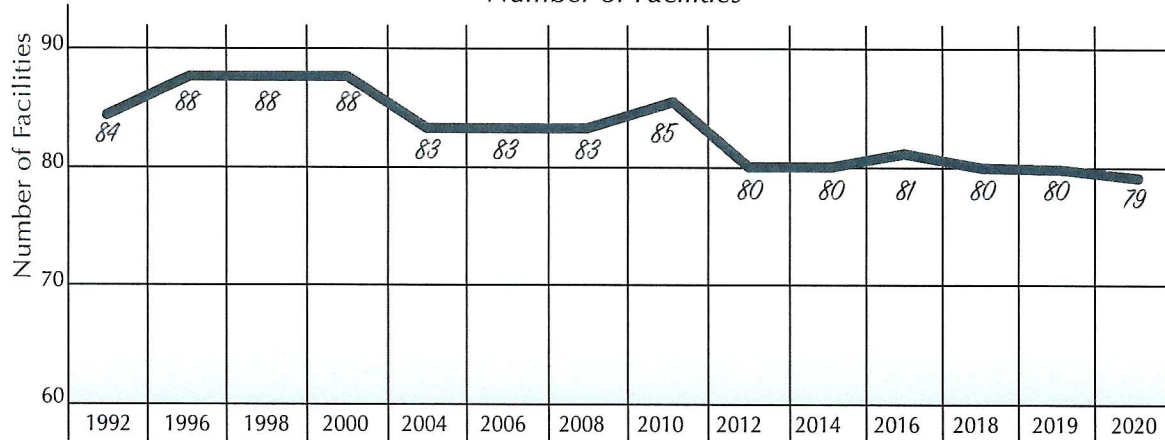
Shelly Peterson, President
North Dakota Long Term Care Association
1900 North 11th Street
Bismarck, ND 58501
(701) 222-0660

North Dakota Nursing Facilities

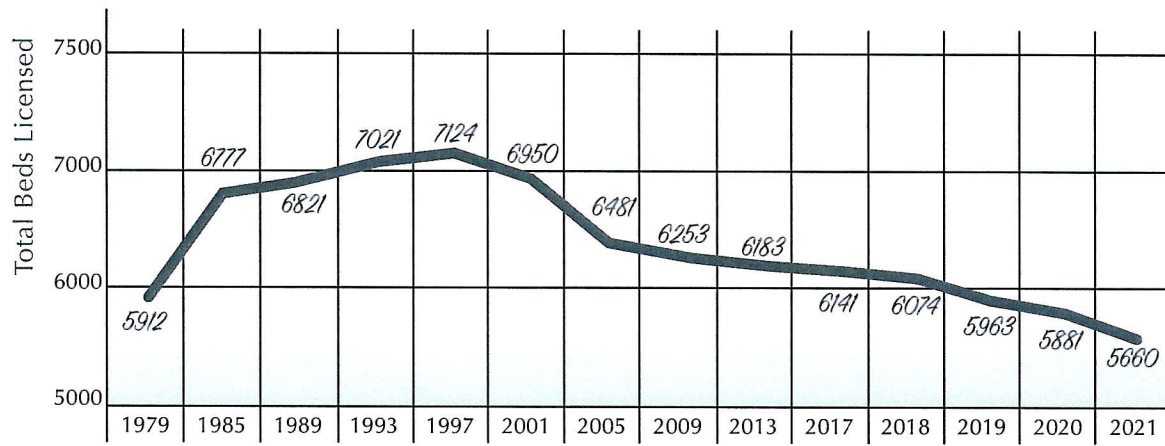


Nursing Facilities

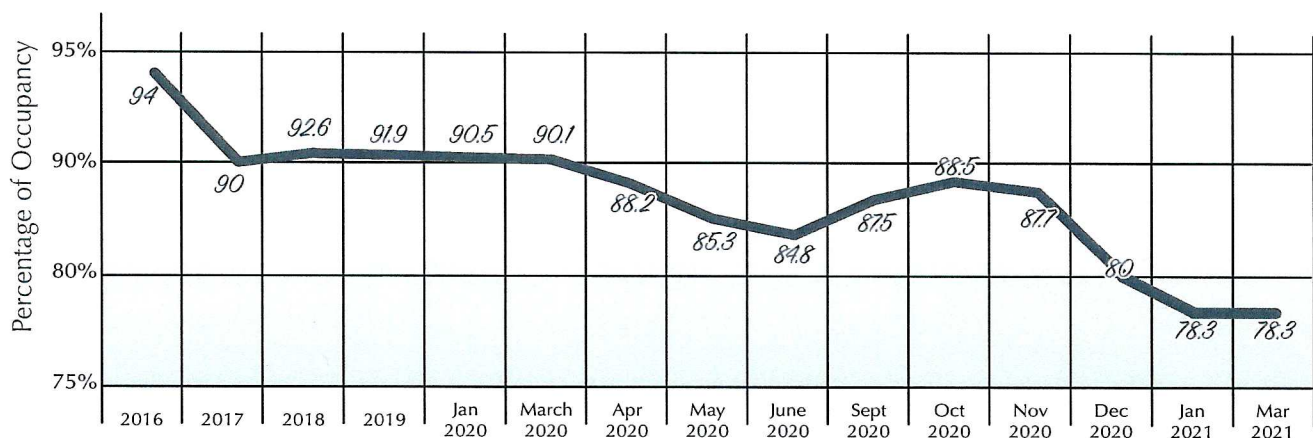
Number of Facilities



Licensed Beds



Occupancy



September 2020 Based on HC Standard Report on September 10, 2020

October 2020 Based on HC Standard Report on October 2, 2020

November 2020 Based on HC Standard Report on November 2, 2020

December 2020 Based on HC Standard Report on November 30, 2020

January 2021 Based on HC Standard Report on January 11, 2021

March 2021 Based on HC Standard Report on March 4, 2021

2021 SENATE STANDING COMMITTEE MINUTES

Human Services Committee Sakakawea Room, State Capitol

HB 1065
3/10/2021

A BILL for an Act to amend and reenact section 23-16-01.1 of the North Dakota Century Code, relating to the moratorium on the expansion of long-term care bed capacity.

Madam Chair Lee opened the discussion on HB 1065 at 2:15 p.m. Members present: Lee, Hogan, Anderson, Clemens, O. Larsen. Absent: K. Roers.

Discussion Topics:

- Relicensing date

Senator Anderson moves to **ADOPT AMENDMENT**; on page 2, line 29, strike “Twelve” and insert “Six”.

Senator Hogan seconded.

Voice Vote – motion passed

Senator Hogan moves **DO PASS, AS AMENDED**.

Senator Clemens seconded.

Senators	Vote
Senator Judy Lee	Y
Senator Kristin Roers	ABSENT
Senator Howard C. Anderson, Jr.	Y
Senator David A. Clemens	Y
Senator Kathy Hogan	Y
Senator Oley Larsen	Y

The motion passed 5-0-1

Senator Hogan will carry HB 1065.

Additional written testimony: N/A

Madam Chair Lee closed the discussion on HB 1065 at 2:20 p.m.

Justin Velez, Committee Clerk

March 10, 2021

CS
2/16
1041

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1065

Page 2, line 29, overstrike "twelve" and insert immediately thereafter "six"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1065, as engrossed: Human Services Committee (Sen. Lee, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1065
was placed on the Sixth order on the calendar.

Page 2, line 29, overstrike "twelve" and insert immediately thereafter "six"

Renumber accordingly