

2011 HOUSE HUMAN SERVICES

HB 1423

2011 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee
Fort Union Room, State Capitol

HB 1423
January 24, 2011
Job #13256

Conference Committee

Committee Clerk Signature *Ticky Crabtree*

Explanation or reason for introduction of bill/resolution:

To adjust the rate setting formula between basic care facilities and hospitals.

Minutes:

See attached Testimonies #1-4

Chairman Weisz: Called the hearing to order on HB 1423.

Rep. Gary Kreidt: From District 33, New Salem, sponsored and introduced the bill. This bill before you is in regard to basic care facilities that are attached to critical access hospitals. We have a few of those across the state of ND. There is an allotment between a basic care facility and a hospital when it comes to the rate setting formula. There is some concern that the adjustments having been quite fair in regards to the basic care facilities and of course that will then affect the rates of that facility. We feel those rates have been unusually low. Too much of the allotment goes over to the hospital side. What this bill would do would allow for an adjustment in those rates to assist out on basic care side of the hospitals. I feel this bill would allow a more fair allotment for these facilities. The experts are here and can give you the exact numbers where there are problems. We hope the committee will look favorably upon this bill.

Shelly Peterson: President of the ND Long Term Care Association testified in support of the bill. (See Testimony #1.)

Chairman Weisz: This is all in administrative rule now, is there some reason why you weren't able to work out an agreement on this with administrative rules?

Peterson: Yes, we did approach the department and asked them to simply change the rules because you never want to put something in statute unless you have to and they weren't interested in changing the rules. They declined. Very nicely though.

Chairman Weisz: Explain why under the combined hospital nursing home base cares you have a 10% base care allocation and you get the \$10,000. Then if it is strictly a hospital basic care the same 10% basic care allocation only is allowed \$5,752.

Peterson: Because the current salary limitation \$57,520 so 10% of that limit.

Chairman Weisz: And that limitation doesn't apply when a nursing facility is part of the mix.

Peterson: When the nursing facility is part of the mix then yes, you get to have a different limitation, a higher limitation. The basic care limitation is really low. If I could also hand out testimony for the ND Hospital Association as they were unable to be here this morning because they had other hearings.

Jerry Jurena: President of the ND Hospital Association. (See Testimony #2.)

LeeAnn Thiel: Administrator of Medicaid Payment and Reimbursement Services of Medical Services Division for the DHS provided information. (See Testimony #3.)

Chairman Weisz: What amendment is going to increase the fiscal you said?

Thiel: The proposed amendment by the Long Term Care Association to include to make it clear that the rules for nursing facilities would be applied to basic care facility top management compensation.

Chairman Weisz: You are not interpreting the original language as doing that. It is kind of limited to the \$61,000 that is why there is no measurable impact?

Thiel: The bill as written since it does not state which rules to look at I would have to go and assume that it would be the basic care administrative rules that (interrupted by the Chairman).

Chairman Weisz: Which would then limit it to the \$61,026 that is in the bill so that is why your (drops sentence).

Thiel: Yes.

Chairman Weisz: I assume we will have to get a revised FN if we adopt that amendment.

Thiel: If I could just comment on the reason why the department did not pursue administrative rule changes for this change. It is because of the fiscal impact we would need an appropriation for that.

Dana Schaar: Executive Director of the ND Association of Nonprofit Organizations offered neutral testimony of the bill. (See Testimony #4.)

NO OPPOSITION

Chairman Weisz: Closed the hearing on HB 1423.

2011 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee
Fort Union Room, State Capitol

HB 1423
February 1, 2011
Job #13802

Conference Committee

Committee Clerk Signature

Vicky Crabtree

Minutes:

Chairman Weisz: Opened the meeting to HB 1423. It has a fiscal note of zero. It does not have a fiscal effect because (drops sentence).

Rep. Porter: The department was not willing to change the rules. It is all administrative rules now and the department was not will to change the rules is what I had written down.

Chairman Weisz: That is correct. The committee understands what the bill does? This has nothing to do with the actual compensation it is just what is allowed on the deduction side. It is not determining their salary. Only for the purposes for the rate setting.

Rep. Holman: From Jerry Jurena it says it affects Rugby and two others. Apparently there are only three places that are (stops) that's all it says.

Chairman Weisz: Which ones? Oh Hazen ok. What are the committee's wishes?

Rep. Kilichowski: What is the reason that they won't change the administrative rule on this?

Chairman Weisz: We didn't get a response from the department, maybe they thought it was fine the way it is. Probably because there are only three facilities and they didn't want to go through the administrative rule process to tweak something to make long term care happy.

Rep. Porter: The department's testimony at the bottom of it says, "the Long Term Care Association has informed us that they will be submitting an amendment to this bill. That amendment will increase the fiscal impact to the bill". I don't remember any amendment.

Rep. Devlin: There was an amendment on the back of her testimony.

Rep. Porter: That would change the fiscal impact.

Chairman Weisz: I don't see how that would (stops).

Rep. Porter: The purpose prevents ambiguity as to which rules are being referenced.

Chairman Weisz: That is what she says, but I'm looking at how that would affect (stops).

Rep. Porter: How would that affect the fiscal? Unless they like the ambiguity.

Chairman Weisz: The only reason it would affect the fiscal note would be if you were going to expand it beyond the language in line 17 on D where it says, "combined with a nursing facility or hospital", so I don't know. You aren't going beyond that.

Rep. Holman: If we change it, how does it affect the process for establishing what has been done to establish that rate before? There must be a process for setting a rate. So, we arbitrarily just go and change or is there a formula or process that we are circumventing here?

Chairman Weisz: I can get some answers if you're not comfortable. That is a good question Rep. Holman. I'll have her come down this afternoon so we can kick that one out.

Meeting adjourned.

2011 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee
Fort Union Room, State Capitol

HB 1423
February 2, 2011
Job #13863

Conference Committee

Committee Clerk Signature	<i>Vicky Crabtree</i>
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Minutes:

Chairman Weisz: Called the meeting to order on HB 1423. Shelly if would explain the amendment and we will have the department explain fiscal effect on that.

Shelly Peterson: With Long Term Care Association. I'm handing out the proposed amendment to HB 1423. (See attachment #1.) We though HB 1423 was a simple solution to equalize salary limitations for upper management between nursing homes and basic care and hospitals and basic care. Nursing facilities have a higher limitation and basic care is very low. The impact of 1423 we were hoping would impact three hospitals attached to basic care hospital facilities. One in Rugby, one in Carrington and one in Hazen. Very narrow in focus. There is nothing in the ND Century Code impacting the rate setting system for basic care. This is a brand new addition to the statute. There is everything in administrative code. The legislation we brought before you we put a lot of new stuff into code which further than what we intended it to do. The amendment before you would clearly limit it. Give the DHS rule making authority to create rules related specifically to the compensation for taught management personnel of the basic care in a hospital. The current bill is written where it will impact at least one more facility in Fargo and that was not our intent impact anyone, but the three hospitals attached facilities.

Rep. Paur: Shelly can you give some numbers, some examples of how this is going to change (stops).

Shelly: Maggie has the fiscal note and she can tell you exactly how much the three facilities would get. Is that what you are looking for?

Rep. Paur: Yes.

Rep. Devlin: Does this give the department the authority to create a rule that says you can only pay \$15,000 a year to your top management person?

Shelly: They probably could do that. However, it is my and Maggie's understanding she would not do that. She would take what is currently in administrative code for nursing facilities. The intent would be (inaudible) by a different amount. It requires a degree of trust and it would all be recorded right here. I trust the department and Maggie.

Rep. Porter: How long will it take for the rules to catch up the thought process here today?

Shelly: The department is so busy that it may take some time to develop those rules. Sometimes it could be 9 months. The rules for basic care setting is July 1. It probably wouldn't impact it until 2012.

Maggie Anderson: From DHS. The fiscal impact for what Shelly is offering with the amendment is about \$10,000 a year. And there is 2 years in the biennium. We are not revising the fiscal note or updating a fiscal impact for the \$20,000. The Rugby facility would receive another \$2,062, Hazen would receive \$5,278 and Carrington would receive \$2,793. We visited with Shelly and are in agreement that based on the intent of the bill without the expansion, that the bill where that was going to include other facilities is what we would work with the Long Term Care Association in adopting rules. Writing the rules and taking them before the committee to be heard and enacted is generally a 9 month process. This won't be an extensive rule.

Rep. Devlin: Administrative Rules Committee as you know is a Statute Committee and they will be meeting once during the session so you could run it through an emergency rule if you would so desire.

Maggie: Do you think this would qualify as one of the criteria under emergency rules.

Rep. Porter: What if we change it so it has the wording on the second line to say, "has the authority to create emergency rules related to the top compensation" and then put the emergency clause on it. It will cover both emergency rules so you could do and the emergency clause is on it so it would be done faster. My other thought would be to come up with Century Code language along with this to have that with the emergency clause on it and have it expire on a date and then have rules take over on that date.

Maggie: I think both of those are viable options.

Rep. Devlin: Rep. Porter suggested to do the Century Code and with a certain date with an emergency clause and do the rule process after that may work better than anything else.

Maggie: If you do the Century Code piece where it would expire, would we need an emergency clause on that bill? It still would only take effect July 1 which is in the next basic care rate setting. So on that bill we wouldn't necessarily need the emergency clause.

Chairman Weisz: Right. Ok committee, we don't have to kick this bill out if you want to come up with some language. (Asked Maggie.) Could your legal come up with some language that would address (stops). And we don't need that today.

Maggie: Ok.

2011 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee
Fort Union Room, State Capitol

HB 1423
February 7, 2011
Job 3 14125

Conference Committee

Committee Clerk Signature



Minutes:

Chairman Weisz: Called the meeting to order on HB 1423. Let's take up 1423. There is a suggested amendment that Maggie testified to and Shelly that they were all on board with. I know there was some discussion of an emergency clause language. What does the committee want to do? The suggested amendments take care of everything except (stops). The amendment says, delete the entire text and insert, "The DHS has the authority to create rules related to the compensation for top management personnel of a basic care facility combined with a hospital". They can currently ask for emergency rule making authority and you don't need specific legislation. Rep. Devlin you have been on administrative rules, you can maybe clarify that a little better for us.

Rep. Devlin: The agencies can do emergency rule making now and have to bring it before the administrative rules committee, but they don't need that in legislation. The only time you need the emergency clause in my opinion is if you are actually adding something to statute. I don't know why you would need the emergency clause on the hog house bill so to speak.

Rep. Damschen: Do we really need that at all?

Chairman Weisz: My understanding is there has been some disagreement and the department wants to know on whether they can do that on a basic care facility combined with a hospital. I think that was the key. The department wants to know that the legislature is telling them yes you can do this for these types of facilities. I think you're technically correct, but it appears a little gray.

Rep. Damschen: We aren't giving them a real broad authority here.

Chairman Weisz: No.

Rep. Damschen: This is for a small number.

Chairman Weisz: Right. I think 3 facilities.

Rep. Devlin: I will move the amendment.

Rep. Holman: Second.

Chairman Weisz: (Inaudible) the amendment as is.

Voice Vote: Motion Carried

Rep. Devlin: Thinking through the emergency rule process one more time, the only thing would be is if the department wanted to put off what we are calling for in this statute until July or August, whatever the case may be. The emergency rule making authority would move that window up a little bit. What we are amending is the statute not the rule making itself. They could probably start the rule making authority quicker if we gave them the emergency clause.

Chairman Weisz: Technically they still aren't going to start anything until the bill goes into effect.

Rep. Devlin: For that reason it has no affect at all on the emergency rule making itself. Just on when they can start the process. For that reason I will move that we add the emergency clause on to this.

Rep. Anderson: Second.

Chairman Weisz: We are just moving the date of implementation up to whenever the Governor signs the bill. April or whatever.

Voice Vote: Motion Carried

Rep. Devlin: I would move a Do Pass as amended.

Rep. Hofstad: Second.

VOTE: 12 y 0 n 1 absent – Rep. Porter

DO PASS CARRIED

Bill Carrier: Rep. Paur

FISCAL NOTE
 Requested by Legislative Council
 01/19/2011

Bill/Resolution No.: HB 1423

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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$0	\$0	
Expenditures			\$0	\$0	\$0	\$0
Appropriations			\$0	\$0	\$0	\$0

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

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This Bill creates a limitation on allowable compensation for top management personnel of a basic care facility. Similar limitations to this bill already exist in the Department's administrative rules and thus there is no measurable fiscal impact.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 of this bill adds language to century code similar to that of the Department's administrative rules and thus there is no measurable fiscal impact of the proposed language.

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.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Debra A. McDermott	Agency:	Dept. of Human Services
Phone Number:	328-3695	Date Prepared:	01/21/2011

Date: 2-7-11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1423

House HUMAN SERVICES Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Devlin Seconded By Rep. Holman

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN WEISZ			REP. CONKLIN		
VICE-CHAIR PIETSCH			REP. HOLMAN		
REP. ANDERSON			REP. KILICHOWSKI		
REP. DAMSCHEN					
REP. DEVLIN					
REP. HOFSTAD					
REP. LOUSER					
REP. PAUR					
REP. PORTER					
REP. SCHMIDT					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

move hoghouse amendment
Voice vote motion carried

Date: 2-7-11
Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1923

House HUMAN SERVICES Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Devlin Seconded By Rep. Anderson

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN WEISZ			REP. CONKLIN		
VICE-CHAIR PIETSCH			REP. HOLMAN		
REP. ANDERSON			REP. KILICHOWSKI		
REP. DAMSCHEN					
REP. DEVLIN					
REP. HOFSTAD					
REP. LOUSER					
REP. PAUR					
REP. PORTER					
REP. SCHMIDT					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

*move to add
emergency clause to amendment
Voice Vote motion carried*

VR
2/7/11

February 7, 2011

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1423

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 50-24.5 of the North Dakota Century Code, relating to rulemaking authority with respect to the compensation for top management personnel of a basic care facility; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Compensation for top management personnel - Department to adopt rules.

The department of human services has the authority to create rules related to the compensation for top management personnel of a basic care facility combined with a hospital.

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

Renumber accordingly

Date: 2-7-11
Roll Call Vote # 3

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1423

House HUMAN SERVICES Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Devlin Seconded By Rep. Hofstad

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN WEISZ	✓		REP. CONKLIN	✓	
VICE-CHAIR PIETSCH	✓		REP. HOLMAN	✓	
REP. ANDERSON	✓		REP. KILICHOWSKI	✓	
REP. DAMSCHEN	✓				
REP. DEVLIN	✓				
REP. HOFSTAD	✓				
REP. LOUSER	✓				
REP. PAUR	✓				
REP. PORTER	A				
REP. SCHMIDT	✓				

Total (Yes) 12 No 0

Absent 1

Floor Assignment Rep. Paur

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

REPORT OF STANDING COMMITTEE

HB 1423: Human Services Committee (Rep. Weisz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1423 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 50-24.5 of the North Dakota Century Code, relating to rulemaking authority with respect to the compensation for top management personnel of a basic care facility; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Compensation for top management personnel - Department to adopt rules.

The department of human services has the authority to create rules related to the compensation for top management personnel of a basic care facility combined with a hospital.

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

Renumber accordingly

FISCAL NOTE

Requested by Legislative Council
01/19/2011

Bill/Resolution No.: HB 1423

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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
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Revenues				\$0	\$0	
Expenditures			\$0	\$0	\$0	\$0
Appropriations			\$0	\$0	\$0	\$0

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

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This Bill creates a limitation on allowable compensation for top management personnel of a basic care facility. Similar limitations to this bill already exist in the Department's administrative rules and thus there is no measurable fiscal impact.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 of this bill adds language to century code similar to that of the Department's administrative rules and thus there is no measurable fiscal impact of the proposed language.

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.*

- C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Debra A. McDermott	Agency:	Dept. of Human Services
Phone Number:	328-3695	Date Prepared:	01/21/2011

2011 SENATE HUMAN SERVICES

HB 1423

2011 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee
Red River Room, State Capitol

HB 1423
3-7-2011
Job Number 15023

Conference Committee

Committee Clerk Signature *W. Anderson*

Explanation or reason for introduction of bill/resolution:

Relating to rulemaking authority with respect to the compensation for top management personnel of a basic care facility; and to declare an emergency.

Minutes:

Attached testimony.

Senator Judy Lee opened the hearing on Engrossed HB 1423. There is a fiscal note with no impact on the general fund.

Attachment #1 – Written neutral testimony from Dana Schaar, Executive Director NDANO, who was not present.

Rep. Kreidt (District 33 and prime sponsor) introduced HB 1423. The reason for the bill was that there are three critical access hospitals in the state of ND that are falling under a percentage allocation that is different than other facilities across the state – Hazen, Rugby, and Carrington. He gave an example of compensation discrepancies in top management personnel in basic care facilities. This bill would bring those three facilities into line for reimbursement with the other facilities across North Dakota.

Senator Dick Dever asked for the purpose of the emergency clause.

Rep. Kreidt assumed it was to move it forward quickly and bring those facilities up to speed.

Shelly Peterson (ND LTC) testified in support of HB 1423 as amended in the House.
Attachment #2

Senator Dick Dever said that typically there would be an effective date clause with the emergency clause.

Ms. Peterson replied that whatever way they would like to do it and was the most effective to get it into effect on July 1 would be great.

Senator Spencer Berry asked why the inequity exists to begin with.

Ms. Peterson explained that generally basic care and a nursing facility are connected to each other. If you are connected to a nursing facility then you get the nursing facility salary limit. A basic care facility connected to a hospital is subjected to a lower limit because there isn't a hospital salary limit. The three facilities mentioned earlier are connected to critical access hospitals.

Senator Gerald Uglen wanted clarification that they weren't limiting salary but the amount that can be used against reimbursement.

Ms. Peterson said they were limiting what could be allowed. The facilities can pay higher but it would be an unallowable cost.

There was no opposing testimony.

LeeAnn Thiel (Dept. of Human Services, Medical Services Division) provided a proposed amendment. Attachment #3 After this was passed out of the House their legal unit suggested an amendment. Although the bill as written declares the bill an emergency it doesn't give them the authority to make the rules emergency. This amendment would allow them to be able to adopt the emergency rules effective July 1, 2011 for the rate year for the basic care facilities.

Senator Judy Lee asked about having an effective date rather than an emergency clause.

Ms. Thiel responded that when writing administrative rules there are only certain things that will allow them to write them as emergency. As this is written with just reimbursement it doesn't necessarily qualify. They don't feel that just putting an effective date would necessarily give them the authority. If the bill is not passed with the emergency clause and the proposed amendment, they could still go through with the rules but they would not be effective for the July 1, 2011 rate year for basic care facilities. It probably wouldn't take effect until they get the new rates July 1, 2012.

The hearing on HB 1423 was closed.

Senator Tim Mathern moved to accept the amendment provided by the Dept. of Human Services.

Seconded by **Senator Gerald Uglen**.

Roll call vote 5-0-0. **Amendment adopted.**

Senator Tim Mathern moved a Do Pass as Amended.

Seconded by **Senator Gerald Uglen**.

Roll call vote 5-0-0. **Motion passed.** Carrier is **Senator Gerald Uglen**.

March 8, 2011

JB
3-8-11

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1423

Page 1, line 7, after "adopt" insert "emergency"

Page 1, line 8, replace "The" with "Notwithstanding the requirements of subsection 2 of section 28-32-03, the"

Page 1, line 8, after "create" insert "emergency"

Renumber accordingly

Date: 3-7-2011

Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1423

Senate HUMAN SERVICES Committee

Check here for Conference Committee

Legislative Council Amendment Number Amendment for DHS

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment

Rerefer to Appropriations Reconsider

Motion Made By Sen. Mathern Seconded By Sen. Uglem

Senators	Yes	No	Senators	Yes	No
Sen. Judy Lee, Chairman	✓		Sen. Tim Mathern	✓	
Sen. Dick Dever	✓				
Sen. Gerald Uglem, V. Chair	✓				
Sen. Spencer Berry	✓				

Total (Yes) 5 No 0

Absent 0

Floor Assignment _____

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

Date: 3-7-2011

Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1423

Senate HUMAN SERVICES Committee

Check here for Conference Committee

Legislative Council Amendment Number 11.0641.02001 Title 03000

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Sen. Mathern Seconded By Sen. Uglen

Senators	Yes	No	Senators	Yes	No
Sen. Judy Lee, Chairman	✓		Sen. Tim Mathern	✓	
Sen. Dick Dever	✓				
Sen. Gerald Uglen, V. Chair	✓				
Sen. Spencer Berry	✓				

Total (Yes) 5 No 0

Absent 0

Floor Assignment Sen. Uglen

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

REPORT OF STANDING COMMITTEE

HB 1423, as engrossed: Human Services Committee (Sen. J. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1423 was placed on the Sixth order on the calendar.

Page 1, line 7, after "adopt" insert "emergency"

Page 1, line 8, replace "The" with "Notwithstanding the requirements of subsection 2 of section 28-32-03, the"

Page 1, line 8, after "create" insert "emergency"

Renumber accordingly

2011 TESTIMONY

HB 1423

#1

**Testimony on HB 1423
House Human Services Committee
January 24, 2011**

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. We represent assisted living facilities, basic care facilities and nursing facilities across North Dakota. I am here to testify in support HB 1423.

The purpose of this bill is to address an inequity in the amount of compensation allowed for top management personnel of basic care facilities that are part of a larger health care organization when the basic care facility is not combined with a nursing facility. These basic care facilities do not currently receive the benefit of the higher compensation limitation associated with nursing facilities because they are not a combination nursing facility/basic care facility. The bill is intended to help at least three such facilities located in Hazen, Rugby and Carrington.

The bill puts into code the department's rules on the limitation for compensation of top management personnel in a basic care facility with two additions. The first is to update the maximum defined dollar amount at line 16 to the present day value plus a 3% /3% increase as proposed in SB 2012.

The second change is to provide the nursing facility compensation limit to basic care facilities that are combined with a hospital or are a freestanding basic care facility but are part of a larger organization that has a hospital or nursing facility. This change will provide for equitable treatment of top management compensation between basic care/nursing facility combos and freestanding basic care or hospital combo facilities.

Under the current rules a CEO of a hospital, nursing home, basic care combination facility making \$100,000 with a 10% basic care allocation percentage would have \$10,000 in compensation allowed on the basic care cost report. A CEO of a hospital/basic care combination facility with a 10% basic care allocation percentage would have only \$5,752 allowed on the cost report for the basic care facility because of the differences in the compensation limits for nursing facilities and basic care facilities.

Of the sixteen basic care facilities that are considered combo facilities, three are hospital/basic care combination facilities where compensation is limited to the lower basic care compensation limit because they are not combined with a nursing facility. The remaining thirteen facilities use the higher nursing facility compensation limitation as they are combined with a nursing facility.

The draft of the bill submitted to Legislative Council included a specific reference to the top management compensation rules for nursing facilities. This specific citation was removed and is referenced only as “rule adopted by the department” on lines 19 and 20. To prevent ambiguity as to which rule adopted by the department is to be used to determine the compensation limit for top management personnel we propose that “for nursing facilities” be inserted after “department” on line 20.

Thank you for considering this legislation. The administrative code and rules for nursing facilities and basic care facilities gets quite complex. Should you have questions regarding allocations or other payment rules I've brought an expert with me—Don Thompson. Don Thompson is a CPA, a former head of the Department, Provider Audit Division and currently semi-retired, working with Eide Bailly, L.L.P.

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**Current Basic Care Rules on Compensation
with two changes proposed in HB 1423**

75-02-07.1-14. Compensation.

1. Compensation on an annual basis for top management personnel must be limited, prior to allocation, if any, to the greatest of:
 - a. The highest market-driven compensation of an administrator employed by a freestanding not-for-profit facility during the report year;
 - b. The limit set under this subsection for the previous rate year adjusted by the increase, if any, in the consumer price index, urban wage earners and clerical workers, all items, United States city average; or
 - c. ~~Thirty-three thousand seven hundred eighty-five dollars.~~ Sixty-one thousand twenty six dollars.
 - d. If the facility is combined with a nursing facility or a hospital or is an entity of a chain organization that has a licensed nursing facility or hospital, the compensation limit for top management personnel as determined by ~~chapter 75-02-06~~, the department for nursing facilities except the allocation of the compensation to the basic care facility may not exceed the greatest of subdivision a, b, or c.
2. Compensation for top management personnel employed for less than a year must be limited to an amount equal to the limitation described in subsection 1, divided by three hundred sixty-five times the number of calendar days the individual was employed.
3. Compensation includes:
 - a. Salary for managerial, administrative, professional, and other services;
 - b. Amounts paid for the personal benefit of the person, e.g., housing allowance, flat-rate automobile allowance;
 - c. The cost of assets and services the person receives from the provider;
 - d. Deferred compensation, pensions, and annuities;
 - e. Supplies and services provided for the personal use of the person;

- f. The cost of a domestic or other employee who works in the home of the person; or
 - g. Life and health insurance premiums paid for the person and medical services furnished at facility expense.
- 4. Reasonable compensation for a person with at least five percent ownership, persons on the governing board, or any person related within the third degree of kinship to top management personnel must be considered an allowable cost if services are actually performed and required to be performed. The amount to be allowed must be an amount determined by the department to be equal to the amount required to be paid for the same services if provided by a nonrelated employee to a North Dakota facility. Reasonableness also requires that functions performed be necessary in that, had the services not been rendered, the facility would have to employ another person to perform them. Reasonable hourly compensation may not exceed the amount determined under subsection 1, divided by two thousand eighty.
- 5. Costs otherwise nonallowable under this chapter may not be included as compensation.
- 6. The increase in the consumer price index means the percentage by which that consumer price index for the month of March, as prepared by the United States department of labor, exceeds that index for the month of March of the preceding year.

History: Effective July 1, 1996; amended effective July 1, 1998.

General Authority: NDCC 50-06-16, 50-24.5-02(3)

Law Implemented: NDCC 50-24.5-02(3)

Amendment to HB 1423

Page 1, Line 20, after department insert for nursing facilities.

Purpose – Prevents ambiguity as to which rules are being referenced.

#2



North Dakota Hospital Association

Vision

The North Dakota Hospital Association will take an active leadership role in major Healthcare issues.

Mission

The North Dakota Hospital Association exists to advance the health status of persons served by the membership.

**Testimony on HB 1423
House Human services Committee
January 24, 2011**

Good morning Chairman Weisz and Members of the House Human Services Committee.

I am Jerry Jurena, President of the North Dakota Hospital Association. I am here to testify in support of HB 1423.

The current allocation methodology penalizes three of the Critical Access Hospitals that have Basic Care facilities. I have firsthand knowledge of this inequity as I was the CEO of Heart of America Medical Center in Rugby for fifteen (15) years, one of the three Critical Access Hospitals. During my tenure in Rugby we made annual calls to Barb Fischer at the Department of Human Services regarding the allocation limitations. Each time we were told that the regulations were very clear and there was nothing that could be done. I believe changing the rules regarding the allocation methodology will be a positive move and long overdue in correcting the inequities in the current limitation of compensation of top management.

Again this rule change affects three Critical Access Hospitals in the state.

I am in support of HB 1423. Thank you for your consideration on HB 1423.

Jerry E. Jurena, President
North Dakota Hospital Association

Testimony
House Bill 1423 – Department of Human Services
House Human Services Committee
Representative Robin Weisz, Chairman
January 24, 2011

Chairman Weisz, members of the Human Services Committee, I am LeeAnn Thiel, Administrator of Medicaid Payment and Reimbursement Services of the Medical Services Division for the Department of Human Services.

I am here today to provide information on the fiscal note for House Bill 1423. The bill as written increases the allowable basic care compensation limit for top management personnel to \$61,026. The current limit for rates effective July 1, 2010 is \$60,744. The proposed change does not create a measurable fiscal impact to the Medicaid program.

The North Dakota Long Term Care Association has informed us that they will be submitting an amendment to this bill. That amendment will increase the fiscal impact of this bill.

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

**Testimony of Dana Schaar, NDANO Executive Director
House Human Services Committee to HB 1423
Monday, January 24, 2011**

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Chairman Weisz and Members of the Committee, my name is Dana Schaar, and I am the executive director of the North Dakota Association of Nonprofit Organizations (NDANO). We are here to offer neutral testimony on HB 1423.

NDANO is a membership organization of more than 160 nonprofit members from all across North Dakota working in many different mission areas – from human services and the environment to education and the arts.

While NDANO recognizes this bill improves the current rules regarding compensation limits, NDANO does not believe it is the role of government to set compensation standards or limitations for nonprofit organizations, whether or not they receive public funding.

The selective focus of the current administrative compensation rules is unsettling. There is no tie to organizational effectiveness or impact. Further, similar restrictions are not placed on construction companies, technology providers, or even other nonprofit organizations that secure state contracts, grants or other funding.

Charitable organizations are permitted under current federal law to pay reasonable compensation for services provided by board members, chief executive officers and other staff. Reasonable compensation is defined as the amount that would ordinarily be paid for like services by like enterprises, whether that enterprise is a for-profit or a nonprofit and whether or not that enterprise accepts public funding.¹

Also consider that nonprofit organizations must offer competitive salaries in order to recruit and retain skilled, competent, and caring staff. Nonprofits compete with a wide variety of entities for good employees. Current rules regarding compensation appear not to take into account compensation based on performance, size of operations, local control, or reasonableness.

For these reasons, NDANO encourages the Committee to consider amending the bill to eliminate rules regarding compensation limits for nonprofit organizations. Thank you for your time.

¹ Panel on the Nonprofit Sector, a final report to Congress and the Nonprofit Sector, June 2005, www.nonprofitpanel.org.

#1

Amendment to HB 1423

Page 1, Line 6, delete entire text of bill and insert The Department of Human Services has the authority to create rules related to the compensation for top management personnel of a basic care facility combined with a hospital.

March 7, 2011

Dear Madam Chair and Members of the Senate Human Services Committee:

I respectfully submit this neutral written testimony on **HB 1423** on behalf of the North Dakota Association of Nonprofit Organizations (NDANO), as I cannot be at the hearing due to an out-of-town commitment that could not be rescheduled.

NDANO is a membership organization of more than 160 nonprofit members from all across North Dakota working in many different mission areas – from human services and the environment to education and the arts.

While NDANO recognizes this bill improves the current rules regarding compensation limits, NDANO does not believe it is the role of government to set compensation standards or limitations for nonprofit organizations, whether or not they receive public funding.

The selective focus of the current administrative compensation rules is unsettling. There is no tie to organizational effectiveness or impact. Further, similar restrictions are not placed on construction companies, technology providers, or even other nonprofit organizations that secure state contracts, grants, or other funding.

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Also consider that nonprofit organizations must offer competitive salaries in order to recruit and retain skilled, competent, and caring staff. Nonprofits compete with a wide variety of entities for good employees. Current rules regarding compensation appear not to take into account compensation based on performance, size of operations, local control, or reasonableness.

For these reasons, NDANO encourages the Committee to consider amending the bill to eliminate rules regarding compensation limits for nonprofit organizations. Thank you for your consideration.

Sincerely,



Dana Schaar
Executive Director

¹ Panel on the Nonprofit Sector, a final report to Congress and the Nonprofit Sector, June 2005, www.nonprofitpanel.org.

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Testimony on HB 1423
Senate Human Services Committee
March 7, 2011

Good Morning Chairman Lee and members of the Senate Human Services Committee. My name is Shelly Peterson, President of the North Dakota Long Term Care Association. We represent assisted living facilities, basic care facilities and nursing facilities across North Dakota. I am here to testify in support HB 1423, as amended in the House.

The bill gives the Department the authority to create rules regarding compensation of top management personnel of a basic care facility that is combined with a hospital. Today, all the requirements for the basic care payment system are in rule and not contained in century code. This bill will allow the rules to be written to address this area of concern, while not putting the details in the century code. Originally we asked the Department to address this issue through their rule making authority. At the time of our request they believed the fiscal impact of the rule would be greater than \$50,000 so they were reluctant to move forward. Today the fiscal impact is far less than \$50,000, in fact we anticipate the impact to be around \$10,000 annually (Rugby at \$2,000, Hazen at \$5,200 and Carrington at \$2,800).

If passed, we anticipate the rules will address an inequity in the amount of compensation allowed for top management personnel of basic care facilities that are part of a critical access hospital. The bill is intended to help at least three such facilities located in Hazen, Rugby and Carrington.

This change would provide for equitable treatment of top management compensation between basic care facilities connect to a nursing facility and freestanding basic care facilities connected to a critical access hospital.

Thank you for considering this legislation. Should you have questions regarding allocations or other payment rules I've brought an expert with me—Don Thompson. Don Thompson is a CPA, a former head of the Department, Provider Audit Division and currently semi-retired, working with Eide Bailly, L.L.P.

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#3

PROPOSED AMENDMENT TO ENGROSSED HOUSE BILL NO. 1423

Page 1, line 7, after "adopt" insert "emergency"

Page 1, line 8, replace "The" with "Notwithstanding the requirements of subsection 2 of section 28-32-03, the"

Page 1, line 8, after "create" insert "emergency"

Renumber accordingly