

2013 HOUSE HUMAN SERVICES

HB 1170

2013 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee
Fort Union Room, State Capitol

HB 1170
January 22, 2013
17528

Conference Committee

Foralyn Gallagher

Explanation or reason for introduction of bill/resolution:

Relating to nursing and basic care facility rate setting and allowable costs in nursing home rate setting.

Minutes:

attached testimony 1, 2

Chairman Weisz: Opened the hearing on HB 1170.

Rep. Gary Kreidt: From District 33 introduced and supported the bill. He went through the bill and summarized the sections.

Chairman Weisz: (5:54) I assume you haven't seen the fiscal note. Does that appear to be a legitimate concern that we exceed the upper payment limit?

Rep. Kreidt: This would involve a facility that is pushing those upper limits. You will be mandated to have to provide the insurance and you would have to adjust your cost somewhere else and if you exceed that then you are capped.

Chairman Weisz: The fiscal note doesn't seem to allocate anything for paying the fine.

Rep. Kreidt: There probably would be facilities who would pay the fine because it is cheaper.

Shelley Peterson: President of the ND Long Term Care Association: testified in support of the bill. (See Testimony #1) (10:00 - 15:12)

Chairman Weisz: (15:12) You said there was \$8,000,000 of not allowable costs?

Shelley Peterson: No, when DHS did calculations for the rate year it showed nursing facilities were spending 8.2 million more than what Medicaid paid them. Right now we are nowhere near the limitation.

Chairman Weisz: There is roughly a million dollars that wouldn't affect the upper payment limit?

Shelley Peterson: Yes.

Rep. Oversen: (17:17) Did you say penalties are not an allowable expense for Medicare federally?

Shelley Peterson: Yes. Penalties and costs are not an allowable cost. The states have the authority to have a payment system that would have an allowable cost, the federal government just won't recognize that cost.

Rep. Oversen: You wouldn't get federal reimbursement?

Shelley Peterson: In essence yes.

Chairman Weisz: Any further questions? Any opposition?

LeeAnn Thiel: Administrator of Medicaid: gave information on the fiscal note and the Medicaid upper payment limit. (See Testimony #2) (19:57)

Chairman Weisz: (22:34) How close are we to the upper payment limits?

LeeAnn Thiel: For 2013 it was about 8.2 million above Medicaid payments.

Rep. Laning: Where do the rest of the funds come from?

LeeAnn Thiel: 50 percent from federal funds

Rep. Mooney: What is the cap?

LeeAnn Thiel: There is no cap. UPL is calculated yearly so each year stands on its own.

Chairman Weisz: Closed hearing on HB 1170.

2013 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee
Fort Union Room, State Capitol

HB 1170
February 11, 2013
Job #18719

Conference Committee

Committee Clerk Signature

Vicky Crabtree

Explanation or reason for introduction of bill/resolution:

Relating to nursing and basic care facility rate setting and allowable costs in nursing home rate setting.

Minutes:

Chairman Weisz: We will take up HB 1170. This allows expedited rate setting if long-term care picks up the insurance and in Section 2 allows them to use their penalties as allowable rate costs if they choose not to have insurance under PPACA.

Rep. Fehr: I would like to offer an amendment that deletes in Section 2, page 2, lines 13-17.

Rep. Hofstad: Second.

Rep. Fehr: The language says if an employer decides not to offer health insurance and are penalized then we are going to pick up the cost of that penalty. I have problems with that.

Rep. Mooney: Explain to me why we would want to take it off.

Rep. Fehr: We do not want to give incentive to them to not insure their employees. We want companies to provide health insurance.

VOICE VOTE: MOTION CARRIED

Rep. Fehr: I move a Do Pass as amended and re-referred to Appropriations.

Rep. Silbernagel: Second.

Chairman Weisz: I don't know what this will do to the fiscal note. There will be a new one if it passes and probably won't change it much.

ROLL CALL VOTE: 13 y 0 n 0 absent

MOTION CARRIED

House Human Services Committee
HB 1170
February 11, 2013
Page 2

Bill Carrier: Rep. Fehr

FISCAL NOTE
Requested by Legislative Council
01/14/2013

Bill/Resolution No.: HB 1170

- 1 A. **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.*

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Appropriations	\$0	\$0	\$830,922	\$830,922	\$1,182,984	\$1,182,984

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

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Townships	\$0	\$0	\$0

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

HB1170 provides nursing and basic care facilities with an expedited rate setting process to cover costs associated with the Affordable Care Act of 2010 as it relates to providing health insurance policies to the facility's employees.

- 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 provides nursing and basic care facilities with an expedited rate setting process to cover costs associated with providing health insurance to the facility's employees. Section 2 includes as an "allowable" cost, any penalty assessed under the Federal Patient Protection and Affordable Care Act of 2010 to a nursing facility that does not offer health insurance policies to its employees. Rate changes would take effect January 2014 and would only be applicable for 18 months of the 13-15 Biennium. As Nursing Facilities have equalized rates this change would also impact private payers of nursing facility care. In addition to the amounts noted above the Department estimates private pay individuals would see an increase of \$825,870 in the 13-15 biennium and \$1,175,802 in the 15-17 Biennium. Medicaid must demonstrate compliance with an annual Upper Payment Limit(UPL) for Nursing Homes, Intermediate Care Facilities, Psychiatric Residential Treatment Facilities and Hospitals (inpatient and outpatient) based on provider ownership. The UPL categories are private, state government and non-state government operated facilities. A combination of provider rate enhancements increases the likelihood of exceeding the UPL. If the Upper Payment Limit is exceeded, federal Medicaid funding is not available for expenditures for rates that exceed the limit. In order to retain federal Medicaid funding for any portion of the rate, the rates must be reduced to comply with the UPL. ND Medicaid cannot make a separate general fund payment to facilities to make up the difference between the established rate based on legislative appropriation and an adjusted rate which has been reduced to comply with the UPL (Note: for Nursing Homes, due to the equalized rates, if the UPL is met, the rates for both Medicaid and private pay would be reduced to comply with the UPL.)

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.*

The increase in revenues in each biennium is the additional federal funding the state will receive due to the increased expenditures relating to allowable expenditures.

- 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.*

The costs paid by Medicaid for nursing facility care are estimated to increase by \$1,661,844 for 18 months of the 11-13 biennium, of which \$830,922 would be from the general fund. The costs for the 15-17 biennium are estimated at \$2,365,968, of which \$1,182,984 would be general fund.

- 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.*

The Department will need an appropriation increase of \$1,661,844 in the 13-15 biennium, of which \$830,922 would be from the General Fund and \$830,922 would be from federal funds. The Department will need an appropriation increase of \$2,365,968 in 15-17 biennium, of which \$1,182,984 would be from the General Fund and \$1,182,984 would be from federal funds.

Name: Debra A. McDermott

Agency: Department of Human Services

Telephone: 701-328-1980

Date Prepared: 01/21/2013

VK
2/11/13

February 11, 2013

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1170

Page 1, line 2, remove "; and to amend and reenact"

Page 1, remove line 3

Page 1, line 4, remove "home ratesetting"

Page 1, remove lines 17 through 23

Page 2, overstrike lines 1 through 17

Renumber accordingly

Date: 2-11-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1170

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. Fehr Seconded By Rep. HOFSTAD

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN WEISZ			REP. MOONEY		
VICE-CHAIRMAN HOFSTAD			REP. MUSCHA		
REP. ANDERSON			REP. OVERSEN		
REP. DAMSCHEN					
REP. FEHR					
REP. KIEFERT					
REP. LANING					
REP. LOOYSEN					
REP. PORTER					
REP. SILBERNAGEL					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

*Remove
Lines 13-17
in Section 2*

*Voice Vote
Motion Carried*

Date: 2-11-13
 Roll Call Vote #: 2

2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1170

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. Fehr Seconded By Rep. Silbernagel

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN WEISZ			REP. MOONEY		
VICE-CHAIRMAN HOFSTAD			REP. MUSCHA		
REP. ANDERSON			REP. OVERSEN		
REP. DAMSCHEN					
REP. FEHR					
REP. KIEFERT					
REP. LANING					
REP. LOOYSEN					
REP. PORTER					
REP. SILBERNAGEL					

Total (Yes) _____ No _____

Absent _____

Floor Assignment Rep. Fehr

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

REPORT OF STANDING COMMITTEE

HB 1170: Human Services Committee (Rep. Weisz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1170 was placed on the Sixth order on the calendar.

Page 1, line 2, remove "; and to amend and reenact"

Page 1, remove line 3

Page 1, line 4, remove "home ratesetting"

Page 1, remove lines 17 through 23

Page 2, remove lines 1 through 17

Renumber accordingly

2013 HOUSE APPROPRIATIONS

HB 1170

2013 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Committee Roughrider Room, State Capitol

HB 1170
2/15/13
Job 19070

Conference Committee

Committee Clerk Signature

Meredith Traubolt

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new section to chapter 50-06 of the North Dakota Century Code, relating to nursing and basic care facility ratesetting.

Minutes:

You may make reference to "attached testimony."

Rep. Robin Weisz, District 14: Introduced the bill.

01:55

Chairman Delzer: If they aren't currently providing insurance, why would they have to next year? It's up to the employee, not the agency, to have health insurance.

Rep. Weisz: The employer has to either provide it or pay a penalty. The original bill would have had an expedited setting to either pay the penalty for the employer or allow the insurance costs. The bill in front of you took out the penalty portion, saying they could take the penalty if they wanted but we wouldn't cover it in the ratesetting.

Chairman Delzer: Is it a requirement, or they can put in for it?

Rep. Weisz: They can put in for it, it doesn't mean any of them have to do it; but if they do, the department will do an expedited ratesetting instead of waiting.

Chairman Delzer: Does the department have to do the expedited ratesetting?

Rep. Weisz: Yes, they would have to do it if someone put in.

Chairman Delzer: When does the penalty come in? The end or beginning of 2014?

Rep. Weisz: I don't know when they pay the penalty. For this bill that's not relevant anymore because we took out the provision that we would allow them to use that as part of ratesetting.

Chairman Delzer: It's still relevant as to whether or not you need an expedited ratesetting.

Rep. Weisz: At some point they pay the penalty, whether they take it in December 2014 or not.

Rep. Brandenburg: This bill deals with compliance with the Affordable Care Act?

Rep. Weisz: Correct.

Chairman Delzer: Further questions by the committee? Thank you.

2013 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Committee
Roughrider Room, State Capitol

HB 1170
2/21/2013
JOB 19301

Conference Committee

Committee Clerk Signature 

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new section to chapter 50-06 of the North Dakota Century Code, relating to nursing and basic care facility ratesetting; and to amend and reenact section 50-24.4-06 of the North Dakota Century Code, relating to allowable costs in nursing ratesetting.

Minutes:

1.

00:02

Chairman Delzer reconvenes the committee

01:42

Chairman Delzer: HB 1170 is before us, this bill has to do with ratesetting.

Representative Kreidt introduced amendment to HB1170-13.0346.02001. - Attachment #1.

05:55

Chairman Delzer: Did they have to furnish a family plan, or just a single?

Representative Kreidt: I don't have the answer to that. I understood it to be a family plan

Chairman Delzer: That's what the bill does; force the department to recognize this right up front. The \$830,000 Fiscal Note is because of the family plan and the number of facilities that do not currently offer health insurance.

06:43

Representative Kreidt described amendment .02001 does with the health care act if you do not participate you would be assessed a penalty/ fined I believe it is 2,000 per employee under the current system in North Dakota fines/penalties that are assessed to a facility are not reimbursable costs to the facility.

Representative Kreidt further explained what his amendment does is allows only if the health care act is enacted.

9:45

Representative Kreidt stated that he had visited with Representative Weisz.

Representative Kempenich: How many private pay do we have in the state?

Chairman Delzer: According to the fiscal note it states it is a 50/50.

10:31

Representative Pollert: this bill is not dealing with if they provide insurance; this is if they have to pay the \$2000 penalty?

Chairman Delzer: It would allow facilities the choice for the ones that do not currently have health insurance.

Representative Kreidt moved amendment .02001 to HB 1170, seconded by Representative Wieland

11:51

Representative Kempenich: Is the assumption that all the homes are not providing health insurance now?

Chairman Delzer: No, I think they know how many do not, and they are figuring for all of those with current staff numbers.

Representative Brandenburg: If the homes aren't currently offering insurance, now we are going to allow them to provide insurance?

Chairman Delzer: Some do, some do not, and if PPACA goes forward everyone has to offer insurance or pay a penalty.

Representative Brandenburg: This amendment would allow them to make that change?

Chairman Delzer: They have to make the change. The amendment allows the choice of insurance or penalty. The bill forces the department to recognize the cost.

13:38

Representative Skarphol: a question on the fiscal note going from \$830,000 to 1.1 million plus of general funds in one biennia is a significant increase. I am wondering the reason is for that change and should we anticipate that type of percentage increase each biennia after that. Is going to escalate at that rate or is there a reason for the initial escalation?

Representative Kreidt: I would assume after January 1, of whenever this will become effective, all facilities will offer their health insurance and would be in their rate. It would then show up in the DHS budget as the increase. There will not be a fiscal note on this except in regards to this bill in the DHS budget.

Chairman Delzer: I don't know where they come up with the 825 and 1175, but our insurance might also go up January 1.

Representative Skarphol: That's more than a 30% increase.

Representative Bellew: The first biennia are for 18 months, the second biennia are for 24 months.

15:36

Representative Nelson: I think every business has to consider during implementation of the ACA is that premiums and policies will significantly increase. This would offer them the option of not providing health insurance, and paying the penalty. I think it will be utilized across the business community. This amendment would put nursing homes in the same situation.

Representative Kempenich: It's not a penalty, it's a tax.

Chairman Delzer: Further discussion

17:26

Voice vote carries

Chairman Delzer ruled that amendment passed.

18:02

Representative Kreidt moved DPA HB 1170, seconded by Representative Wieland.

Discussion

19:45

Chairman Delzer asked of Representative Kreidt if he asked ask if you thought any of the other ones currently offering health insurance would go away from that.

Representative Kreidt: I did not. I believe if you are offering health insurance and it's built into your rate.

20:19

Representative Kempenich: We're going to see more of this.

Representative Skarphol: We changed the fiscal note fairly substantially would you repeat then the effects of the amendment have been on the fiscal note.

Chairman Delzer: The fiscal note has to be figured on as if everyone would go out and offer insurance even though this would allow them not to and in essence it should be a lower fiscal note but I understand why they use the higher number because that is what it could be.

Representative Kreidt: You have to anticipate everybody is going to provide the insurance

Representative Skarphol: So the effect of the amendment is it could be a lower cost, as opposed to more or less these assured costs.

Representative Skarphol: So the effect of the amendment is it could be a lower cost, as opposed to more or less these assured costs.

21:41

Representative Pollert: If we don't pass this bill basically they will be depending on the 4/4 inflator to cover those costs.

Representative Kreidt: That's correct

Representative Skarphol: If the result of this amendment lower the cost, is there an increased is cost to any another entity?

Representative Kreidt: I would assume if you have a significant reduction in your cost then there would be a lower rate to the residents of that facility. That is just how it works.

Chairman Delzer: The equalized rates for that facility but no there is not a cost shift to other facilities

Representative Skarphol: Would there be an increased cost to the people who would not be covered by insurance because the facility chose not to cover them?

23:20

Discussion of PPACA

28:04

Chairman Delzer called for the roll call vote.

Roll call vote 15 yeas, 7 nays, 0 absent. Motion carried.

FISCAL NOTE
Requested by Legislative Council
02/13/2013

Amendment to: HB 1170

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Amended HB1170 provides nursing and basic care facilities with an expedited rate setting process to cover costs associated with the Affordable Care Act of 2010 as it relates to providing health insurance policies to the facility's employees.

- 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.*

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Name: Debra A. McDermott

Agency: Department of Human Services

Telephone: 701-328-1980

Date Prepared: 02/14/2013

FISCAL NOTE
Requested by Legislative Council
01/14/2013

Bill/Resolution No.: HB 1170

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Name: Debra A. McDermott

Agency: Department of Human Services

Telephone: 701-328-1980

Date Prepared: 01/21/2013

2/21/13
JSTC

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1170

Page 1, line 2, after "ratesetting" insert "; and to amend and reenact section 50-24.4-06 of the North Dakota Century Code, relating to allowable costs in nursing home ratesetting"

Page 1, after line 14, insert:

"**SECTION 2. AMENDMENT.** Section 50-24.4-06 of the North Dakota Century Code is amended and reenacted as follows:

50-24.4-06. Rate determination.

1. The department shall determine prospective payment rates for resident care costs. The department shall develop procedures for determining operating cost payment rates that take into account the mix of resident needs and other factors as determined by the department.
2. The department shall establish, by rule, limitations on compensation recognized in the historical base for top management personnel. Compensation for top management personnel must be categorized as a general and administrative cost and is subject to any limits imposed on that cost category.
3. For purposes of determining rates, the department shall:
 - a. Include, contingent upon approval of the medicaid state plan by the centers for medicare and medicaid services, allowable bad debt expenses in an amount not to exceed one hundred eighty days of resident care per year or an aggregate of three hundred sixty days of resident care for any one individual; and
 - b. Include allowable bad debt expenses in the property cost category in the report year in which the bad debt is determined to be uncollectible with no likelihood of future recovery.
 - c. Notwithstanding section 50-24.4-07, include as an allowable cost, any penalty assessed under the federal Patient Protection and Affordable Care Act [Pub. L. 111-148], as amended by the Health Care and Education Reconciliation Act of 2010 [Pub. L. 111-152], to a nursing facility that does not offer health insurance policies to its employees."

Renumber accordingly

Date: 2/21/13
 Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1170**

House Appropriations Committee

Check here for Conference Committee

Legislative Council Amendment Number .02001

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

Motion Made By Rep. Kreidt Seconded By Rep. Wieland

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer			Rep. Streyle		
Vice Chairman Kempenich			Rep. Thoreson		
Rep. Bellew			Rep. Wieland		
Rep. Brandenburg					
Rep. Dosch					
Rep. Grande			Rep. Boe		
Rep. Hawken			Rep. Glasheim		
Rep. Kreidt			Rep. Guggisberg		
Rep. Martinson			Rep. Holman		
Rep. Monson			Rep. Williams		
Rep. Nelson					
Rep. Pollert					
Rep. Sanford					
Rep. Skarphol					

Total Yes _____ No _____

Absent _____

Floor Assignment _____

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

Vote vote carries

Date: 2/21/13
 Roll Call Vote #: 2

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1170**

House Appropriations 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. Kreidt Seconded By Rep. Wieland

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer		X	Rep. Streyle		X
Vice Chairman Kempenich	X		Rep. Thoreson	X	
Rep. Bellew		X	Rep. Wieland	X	
Rep. Brandenburg		X			
Rep. Dosch		X			
Rep. Grande		X	Rep. Boe	X	
Rep. Hawken	X		Rep. Glassheim	X	
Rep. Kreidt	X		Rep. Guggisberg	X	
Rep. Martinson		X	Rep. Holman	X	
Rep. Monson	X		Rep. Williams	X	
Rep. Nelson	X				
Rep. Pollert	X				
Rep. Sanford	X				
Rep. Skarphol	X				

Total Yes 15 No 7

Absent 0

Floor Assignment Rep. Nelson

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

REPORT OF STANDING COMMITTEE

HB 1170, as engrossed: Appropriations Committee (Rep. Delzer, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (15 YEAS, 7 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1170 was placed on the Sixth order on the calendar.

Page 1, line 2, after "ratesetting" insert "; and to amend and reenact section 50-24.4-06 of the North Dakota Century Code, relating to allowable costs in nursing home ratesetting"

Page 1, after line 14, insert:

"SECTION 2. AMENDMENT. Section 50-24.4-06 of the North Dakota Century Code is amended and reenacted as follows:

50-24.4-06. Rate determination.

1. The department shall determine prospective payment rates for resident care costs. The department shall develop procedures for determining operating cost payment rates that take into account the mix of resident needs and other factors as determined by the department.
2. The department shall establish, by rule, limitations on compensation recognized in the historical base for top management personnel. Compensation for top management personnel must be categorized as a general and administrative cost and is subject to any limits imposed on that cost category.
3. For purposes of determining rates, the department shall:
 - a. Include, contingent upon approval of the medicaid state plan by the centers for medicare and medicaid services, allowable bad debt expenses in an amount not to exceed one hundred eighty days of resident care per year or an aggregate of three hundred sixty days of resident care for any one individual; and
 - b. Include allowable bad debt expenses in the property cost category in the report year in which the bad debt is determined to be uncollectible with no likelihood of future recovery.
 - c. Notwithstanding section 50-24.4-07, include as an allowable cost, any penalty assessed under the federal Patient Protection and Affordable Care Act [Pub. L. 111-148], as amended by the Health Care and Education Reconciliation Act of 2010 [Pub. L. 111-152], to a nursing facility that does not offer health insurance policies to its employees."

Re-number accordingly

2013 SENATE HUMAN SERVICES

HB 1170

2013 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee
Red River Room, State Capitol

HB 1170
3/11/13
19699

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to nursing and basic care facility rate setting

Minutes:

See "attached testimony."

Chairwoman J. Lee opens the public hearing for HB 1170

Rep. Gary Kreidt dist. 33, introduces HB 1170 and is in favor of HB 1170. This will put into the statute and it makes it happen. This is for the health care act and insurance. **Chairwoman J. Lee** Clarification on Fiscal Note and the original bill and the amendment. **Senator Dever** asked if the opposition was fiscal. **Senator Larsen**: asked for a count on facilities that do not offer insurance for their employees.

(0:09:36) Shelly Peterson president of North Dakota Long Term Care Association. Testifying in support of HB 1170. Attachment #1 Dever: asked about part-time employees and the affordable care act.

(0:16:15) Leeann Thiel Administrator of Medicaid Payment and Reimbursement Services of the Medical Services Division for the Department of Human Services. Providing information on HB 1170. See Attachment #2 Senator Larsen: wanted to know out of the 4 facilities how many 50 employees or less?

Close testimony.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee
Red River Room, State Capitol

1170
3/14/13
19889

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to nursing and basic care facility rate setting

Minutes:

Chairwoman J. Lee opens the discussion

There is a discussion about why money was not in the budget.

Senator Dever motions for a do pass and rerefer to Appropriations.

Senator Larsen seconds

Senator Anderson asks Senator Dever why he doesn't like HB 1170.

There is a discussion on PACA (Patient Affordable Care Act) and employers.

DO PASS 4-1-0 and rerefered to Appropriations

Senator Dever will carry.

FISCAL NOTE
Requested by Legislative Council
02/26/2013

Amendment to: HB 1170

- 1 A. **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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$830,922	\$0	\$1,182,984
Expenditures	\$0	\$0	\$830,922	\$830,922	\$1,182,984	\$1,182,984
Appropriations	\$0	\$0	\$830,922	\$830,922	\$1,182,984	\$1,182,984

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

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

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

Reengrossed HB1170 provides nursing and basic care facilities with an expedited rate setting process to cover costs associated with the Affordable Care Act of 2010 as it relates to providing health insurance policies to the facility's employees.

- 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 provides nursing and basic care facilities with an expedited rate setting process to cover costs associated with providing health insurance to the facility's employees. Rate changes would take effect January 2014 and would only be applicable for 18 months of the 13-15 Biennium. As Nursing Facilities have equalized rates this change would also impact private payers of nursing facility care. In addition to the amounts noted above the Department estimates private pay individuals would see an increase of \$825,870 in the 13-15 biennium and \$1,175,802 in the 15-17 Biennium. Section 2 includes as an "allowable" cost, any penalty assessed under the Federal Patient Protection and Affordable Care Act of 2010 to a nursing facility that does not offer health insurance policies to its employees. Medicaid must demonstrate compliance with an annual Upper Payment Limit(UPL) for Nursing Homes, Intermediate Care Facilities, Psychiatric Residential Treatment Facilities and Hospitals (inpatient and outpatient) based on provider ownership. The UPL categories are private, state government and non-state government operated facilities. A combination of provider rate enhancements increases the likelihood of exceeding the UPL. If the Upper Payment Limit is exceeded, federal Medicaid funding is not available for expenditures for rates that exceed the limit. In order to retain federal Medicaid funding for any portion of the rate, the rates must be reduced to comply with the UPL. ND Medicaid cannot make a separate general fund payment to facilities to make up the difference between the established rate based on legislative appropriation and an adjusted rate which has been reduced to comply with the UPL (Note: for Nursing Homes, due to the equalized rates, if the UPL is met, the rates for both Medicaid and private pay would be reduced to comply with the UPL.)

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.*

The increase in revenues in each biennium is the additional federal funding the state will receive due to the increased expenditures relating to allowable expenditures.

- 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.*

The costs paid by Medicaid for nursing facility care are estimated to increase by \$1,661,844 for 18 months of the 11-13 biennium, of which \$830,922 would be from the general fund. The costs for the 15-17 biennium are estimated at \$2,365,968, of which \$1,182,984 would be general fund.

- 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.*

The Department will need an appropriation increase of \$1,661,844 in the 13-15 biennium, of which \$830,922 would be from the General Fund and \$830,922 would be from federal funds. The Department will need an appropriation increase of \$2,365,968 in 15-17 biennium, of which \$1,182,984 would be from the General Fund and \$1,182,984 would be from federal funds.

Name: Debra A. McDermott

Agency: Department of Human Services

Telephone: 701-328-1980

Date Prepared: 02/26/2013

FISCAL NOTE
Requested by Legislative Council
02/13/2013

Amendment to: HB 1170

- 1 A. **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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$830,922	\$0	\$1,182,984
Expenditures	\$0	\$0	\$830,922	\$830,922	\$1,182,984	\$1,182,984
Appropriations	\$0	\$0	\$830,922	\$830,922	\$1,182,984	\$1,182,984

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

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School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

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

Amended HB1170 provides nursing and basic care facilities with an expedited rate setting process to cover costs associated with the Affordable Care Act of 2010 as it relates to providing health insurance policies to the facility's employees.

- 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 provides nursing and basic care facilities with an expedited rate setting process to cover costs associated with providing health insurance to the facility's employees. Rate changes would take effect January 2014 and would only be applicable for 18 months of the 13-15 Biennium. As Nursing Facilities have equalized rates this change would also impact private payers of nursing facility care. In addition to the amounts noted above the Department estimates private pay individuals would see an increase of \$825,870 in the 13-15 biennium and \$1,175,802 in the 15-17 Biennium. Medicaid must demonstrate compliance with an annual Upper Payment Limit(UPL) for Nursing Homes, Intermediate Care Facilities, Psychiatric Residential Treatment Facilities and Hospitals (inpatient and outpatient) based on provider ownership. The UPL categories are private, state government and non-state government operated facilities. A combination of provider rate enhancements increases the likelihood of exceeding the UPL. If the Upper Payment Limit is exceeded, federal Medicaid funding is not available for expenditures for rates that exceed the limit. In order to retain federal Medicaid funding for any portion of the rate, the rates must be reduced to comply with the UPL. ND Medicaid cannot make a separate general fund payment to facilities to make up the difference between the established rate based on legislative appropriation and an adjusted rate which has been reduced to comply with the UPL (Note: for Nursing Homes, due to the equalized rates, if the UPL is met, the rates for both Medicaid and private pay would be reduced to comply with the UPL.)

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- 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.*

The Department will need an appropriation increase of \$1,661,844 in the 13-15 biennium, of which \$830,922 would be from the General Fund and \$830,922 would be from federal funds. The Department will need an appropriation increase of \$2,365,968 in 15-17 biennium, of which \$1,182,984 would be from the General Fund and \$1,182,984 would be from federal funds.

Name: Debra A. McDermott

Agency: Department of Human Services

Telephone: 701-328-1980

Date Prepared: 02/14/2013

FISCAL NOTE
Requested by Legislative Council
01/14/2013

Bill/Resolution No.: HB 1170

- 1 A. **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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$830,922	\$0	\$1,182,984
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Appropriations	\$0	\$0	\$830,922	\$830,922	\$1,182,984	\$1,182,984

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

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School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

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

HB1170 provides nursing and basic care facilities with an expedited rate setting process to cover costs associated with the Affordable Care Act of 2010 as it relates to providing health insurance policies to the facility's employees.

- 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 provides nursing and basic care facilities with an expedited rate setting process to cover costs associated with providing health insurance to the facility's employees. Section 2 includes as an "allowable" cost, any penalty assessed under the Federal Patient Protection and Affordable Care Act of 2010 to a nursing facility that does not offer health insurance policies to its employees. Rate changes would take effect January 2014 and would only be applicable for 18 months of the 13-15 Biennium. As Nursing Facilities have equalized rates this change would also impact private payers of nursing facility care. In addition to the amounts noted above the Department estimates private pay individuals would see an increase of \$825,870 in the 13-15 biennium and \$1,175,802 in the 15-17 Biennium. Medicaid must demonstrate compliance with an annual Upper Payment Limit(UPL) for Nursing Homes, Intermediate Care Facilities, Psychiatric Residential Treatment Facilities and Hospitals (inpatient and outpatient) based on provider ownership. The UPL categories are private, state government and non-state government operated facilities. A combination of provider rate enhancements increases the likelihood of exceeding the UPL. If the Upper Payment Limit is exceeded, federal Medicaid funding is not available for expenditures for rates that exceed the limit. In order to retain federal Medicaid funding for any portion of the rate, the rates must be reduced to comply with the UPL. ND Medicaid cannot make a separate general fund payment to facilities to make up the difference between the established rate based on legislative appropriation and an adjusted rate which has been reduced to comply with the UPL (Note: for Nursing Homes, due to the equalized rates, if the UPL is met, the rates for both Medicaid and private pay would be reduced to comply with the UPL.)

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Name: Debra A. McDermott

Agency: Department of Human Services

Telephone: 701-328-1980

Date Prepared: 01/21/2013

REPORT OF STANDING COMMITTEE

HB 1170, as engrossed: Human Services Committee (Sen. J. Lee, Chairman) recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (4 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1170 was rereferred to the **Appropriations Committee**.

2013 SENATE APPROPRIATIONS

HB 1170

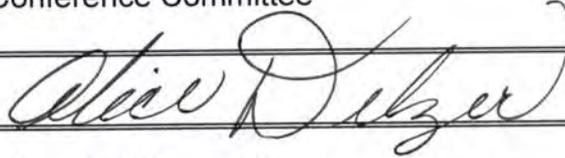
2013 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

HB 1170
03-22-2013
Job # 20344

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL relating to nursing and basic care facility rate setting

Minutes:

See attached testimony.

Chairman Holmberg called the committee to order on Friday, March 22, 2013 at 8:30 am in regards to HB 1170. Roll call was taken. All committee members were present. Sheila M. Sandness from Legislative Council and Lori Laschkewitsch from OMB were present.

Chairman Holmberg the prime sponsor of the bill is literally tied up. Shelly is here to visit with us. I told Representative Kreidt that he could come over if the subcommittee needed further information from you. The bill will be going to **our subcommittee: Senator Kilzer, Senator Gary Lee, Senator Mathern, Senator Erbele.**

Shelly Peterson, President of the ND Long Term Association (3.16-8:03) testified in favor of HB 1170 and provided written Testimony attached # 1 which states it is the desire of all basic care and nursing facilities to comply with the Federal Patient Protection and Affordable Care Act of 2010. HB 1170 will provide the funding to assure compliance on January 1, 2014. I also have attached Health System Reform-Time Testimony attached # 2, the only thing that is different is the Medicaid Expansion, which as you know with the Supreme Court action, is an option for the states. Other than that it is a really nice good summary so I just provided that because I am not the expert so I am hoping if you have questions on the Affordable Care Act, Maggie Anderson is here, or you, but it's just the desire and result of the legislation is to help to comply with it.

Senator Mathern: Moving up the salaries and benefits for these people in order to retain them, do you see this as having some effect in terms of staff retention; the salary and benefits consequence. This change now is going to affect these employees. Do you think that's going to change your situation of retention and recruitment?

Ms. Peterson: We hope so. We found in 2001 when you provided a significant wage pass-through, turn-over decreased 30%. Wages make a difference, they help families; they do decrease turn-over. And as we're able to provide maybe a greater share of health insurance, right now, when you look across the board at what percentage we are paying,

we are below the norm there so as we can improve salary and benefit packages and make it more attractive we see that it does make a difference.

Senator Kilzer: What differences did the House make in the engrossment bill?

Ms. Peterson: originally in the bill we had a provision in there that the penalty portion could be an allowable cost, so that if it was more affordable to send the individual to the exchange and the facility then took the \$2,000 penalty, that penalty cost would be an allowable cost in your cost report penalties and fines are not allowable, and that was amended out on the House side. (10.28)

Senator Kilzer: Beyond the 15-17 biennium what kind of fiscal note do you anticipate?

Leann Thiel, DHS: We would anticipate, unless there are other facilities that this would impact, that the fiscal note would carry forward into future years, for roughly the same amount inflated for any legislative increases that would apply.

Senator Holmberg: Anyone else wishing to testify? And Ralph, I am assuming your committee does want to look at this because it does impact the DHS bill. Actually the funding would be in the budget for Human Services. That was confirmed by Senator Kilzer.

The hearing was closed on HB 1170.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

HB 1170 subcommittee
March 25, 2013
Job # 20387

Conference Committee

Committee Clerk Signature

Rose Loring

Explanation or reason for introduction of bill/resolution:

This is a bill relating to allowable costs in nursing home rate-setting.

Minutes:

Legislative Council - Sheila M. Sandness
OMB - Lori Laschkewitsch

Senator Kilzer opened the first subcommittee hearing on HB 1170. Senators Lee, Erbele and Mathern were also present.

Senator Kilzer said this was the first subcommittee hearing on this bill and asked Shelly Peterson what this bill intends to accomplish and what the House changes were.

Shelly Peterson, President of the ND Long Term Association: HB 1170 is short bill with an appropriation of about a million dollars. It requires the Department of Human Services to establish an expedited rate setting process, to provide nursing and basic care facilities a rate adjust, so their costs directly related to complying with the federal Patient Protection and Affordable Care Act of 2010 (ACA), can be met. A few facilities don't have health insurance. A couple basic care facilities have less than 50 employees and it doesn't affect them. We do have concern that some facilities may be forced to pay a higher coverage of the employer share. The department does have a rule that if there is government action beyond their control it is permissible for them to do upfront rate adjustments.

Senator Kilzer: When you say the premiums are deemed to be unaffordable, is that unaffordable to the institution or to the employee.

Shelly Peterson: The coverage has to be deemed affordable to the employee. It then requires the employer to pay a greater portion.

Senator Kilzer: And that is the 9.5% **Answer:** yes.

Shelly Peterson: The change that was made in the House was they took out the allowable cost.

Senator Kilzer: The \$200,000 penalty would not be an allowable cost. Would that be reflected in any rebasing?

Shelly Peterson: No. She explained. (4:25) Current rules say it is an unallowable cost.

Senator Gary Lee: The 9.5% is set by Medicaid?

Shelly Peterson: It's part of the affordable care act. It's set by the government. The employee share cannot exceed 9.5% of their grossed income. It has to be deemed affordable. Some of our employees would have to make \$40,000/year, and they don't, so we have to increase the employers share so the employees share can be deemed affordable.

Senator Kilzer: Do the employees get a subsidy? I recall a graduated premium that the employee is responsible for in the Affordable Care Act (ACA). What isn't affordable by the employee is a subsidy from the Federal Government.

Shelly Peterson: I'm not knowledgeable about ACA and those provisions. What the cities have been doing is going to outside third party accounting firms to do that analysis. It is coming back as an issue.

Senator Mathern: There are two ways that the Affordable Care Act (ACA) affects individuals. One is in their employment situation and the other is when they are working in the market - individually getting insurance and that is where the subsidies come in. (8:36) In order for them to compensate for providers, why do we even need the bill? The DHS should be able to do what this bill does.

Shelly Peterson: Yes, the department has permissive language. She explained. There was concern by members who didn't have coverage and wanted an upfront adjustment. Normally, the department has been very good in making adjustment on government required entities. It just puts the process upfront so people know there will be a rate adjustment. Four nursing facilities don't have insurance.

Shelly Peterson: Our members like the provision of the penalty only because there is anxiety about ACA.

Senator Gary Lee: When you say these four facilities don't have a plan, does that mean they don't have insurance for their employees.

Shelly Peterson: They don't have a facility sponsored plan.

Senator Kilzer: Your organization prefers the first version of the bill? **Answer yes.**

Senator Kilzer: Any comments on fiscal note?

LeeAnn Thiel, Medical Services Division, DHS: The fiscal note is the same in the House as it is in the Senate version. She explained. (13:15)

Senator Kilzer: Our committee faces a question of policy. **In policy, if we go back to the original bill the penalties are not an allowable cost.** That is what the nursing home wants.

Senator Mathern: Is there a preference on the part of the executive budget - or is that null?

LeeAnn Thiel: It was not addressed. Health insurance is an allowable cost, penalties are not. The version that went to the House is different than what their current rate setting is.

Shelly Peterson: I agree with the statement. Do we want to open up penalties and have them be an allowable cost? Our preference is that they have an upfront rate adjustment so they have money in their rates to pay the premium the first month. My members have anxiety, at a minimum we would appreciate the bill in its current form and if you want to look at the penalties as the House did, some of our members believe their employees will get a better option.

Senator Kilzer: Who in the House requested the change?

Shelly Peterson: The policy committee took out the penalties. The appropriation put it back in. There were a couple people who felt strongly about it so it was put back in.

Discussion followed on the history of the bill and a recommendation of a do pass as it stands. (22:00) There was further discussion on the original bill versus engrossed. It was decided to wait until the next meeting to act so Senator Mathern could ask Senator Judy Lee for more information.

Senator Kilzer: Adjourn.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

HB 1170 subcommittee
March 28, 2013
Job # 20654

Conference Committee

Committee Clerk Signature

Rose Loring

Explanation or reason for introduction of bill/resolution:

This is a bill relating to allowable costs in nursing home rate-setting.

Minutes:

Legislative Council - Becky J. Keller
OMB - Lori Laschkewitsch

Senator Kilzer opened the subcommittee hearing on HB 1012. **Senators Lee, Erbele and Mathern** were present.

Rate settings for 4 nursing facilities and 3 basic care facilities who do not have a facility sponsored health plan. Two of these facilities provide a set dollar amount to go out in the market and secure individual coverage. A few of the facilities offer no coverage at all at the present time.

Senator Mathern: The implementation of the Affordable Care Act (ACA) is basically affecting every employer to some degree. It's highly regulated and the amount of reimbursement is set by the legislature whether its private pay or public pay. I'm thinking it would be better for all of these facilities, if we went back to the House version how it was introduced and give the employers a maximum latitude to either develop a plan on their own paying an additional and employees going into an exchange. Is this really a penalty or is it a tax, if they don't have health insurance. I see it more as kind of like a tax. It seems to me it's going to take four or five years before this sort of becomes part of the ongoing business plans of these organizations.

Some flexibility would be positive - this all gets absorbed within a rate setting formulas. But making sure that there are some variations out there or being open to some variations out there will give us good data in the next biennium as what really works for these organizations.

Senator Kilzer: are you saying you don't like what the policy committee has done.

Senator Mathern: I've talked to Senator Lee and asked what her to what degree that they assess the bill in light of this policy implication and she said they really never had the time

to do that. She was very comfortable with whatever way we want to go with this. As I spoke with her, she was glad to hear that we were going to that depth of long term consequence for these facilities. She was comfortable if we went with the bill as introduced. She didn't see any objection to that at all.

Senator Kilzer: Shelly (Peterson) liked the bill as introduced. Right. **Senator Mathern** As it was introduced. **Senator Kilzer** the first version.

Senator Gary Lee: Section 1 is the same in both bills I think and it just seems that the second section in the original version just offers them a little more flexibility. I am not sure why they took that out, but it offers them a different opportunity to do something I think as opposed to the first one. That was pretty much this was how you do it. It sounds like the original version will be more satisfactory to them. They could choose either one if I am looking at it right.

Senator Erbele: I would concur with Senator Lee on that. That's the way I read it and understand it.

Senator Mathern: Amend the bill and bring back to original version and offer that to the full Appropriations' committee in the Senate and then most likely would go into a conference committee and then the policy folks would have another opportunity to come to some agreement between the House and the Senate.

Senator Kilzer: I don't think there's any difference in the fiscal note as far as I can see. Does anybody else see any difference? Whether section 2 is in the bill or not?

Senator Gary Lee: Section 2, subsection c, that just allows them to put in their costs if they don't provide insurance the penalty is assessed doesn't it?

Senator Mathern: That's how I see it. That \$2000 tax would become part of the system in which we determine the rate the next time. I don't know how many people will do this. People use health insurance as a recruitment of employees so they aren't going to do this. There's another group that says purchasing under an exchange might actually be preferable to employees. But I suspect we really won't know that until this exchange is actually working, until this public policy is into effect and I think the freedom in the market, is a benefit potentially to the employee and the employer. We really don't know the products yet. So I think we ought go to the original bill and give the Policy Committees a few more options to figure out some compromise.

Senator Gary Lee: I'd assume most of these facilities would have more than 50 people. If they don't they would haven't penalties.

Senator Kilzer: She told us what the facilities are, and I think your right, they would have more than 50 employees total. (10:13) (10:13) I know it was Glen Ullin and that's a large facility that has well over 50 employees; New Salem-Elm Crest is quite large, and Wishek you said is another large facility. They are fairly large institutions. They would be subject to the and that is the reason for the bill is because of the Affordable Care Act.

Senator Mathern: Could Legislative Council draft us an amendment that takes us to the wording to take us to the original bill and then we would offer that bill to the full Appropriations Committee.

Senator Kilzer: We could do that.

Senator Mathern: Is there any technical difficulty that we should also address at the same time - with the bill? Maggie says no.

Senator Kilzer: says we'll proceed with drafting the bill back to the original version,.01000.

Any other comments before we present this to the whole committee.

Senator Mathern: I did talk to Senator Judy Lee.

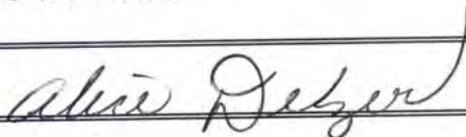
2013 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

HB 1170 Subcommittee
04-03-2013
Job # 20841

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A Subcommittee hearing re: Facility rate-setting (DHS)

Minutes:

Chairman Kilzer called the subcommittee hearing to order at 3:30 pm on Wednesday, April 03, 2013 in the Senate Conference Room. Let the record show that all conferees are present: Senator Kilzer, Senator Gary Lee, Senator Erbele and Senator Mathern.

Becky J. Keller-Legislative Council
Lori Laschkewitsch-OMB

Chairman Kilzer: This is the one brought by long term care people regarding the affordable care act and how the four institutions would qualify to use this as an expense on their rebasing.

Senator Mathern: I did speak with Senator Judy Lee and I also spoke with Representative Kreidt. Senator Lee said they didn't have the time to get into this policy discussion. If we felt this is important, that we give the facilities some options here because health care reform isn't quite clear in delineating yet, that we go back to the original bill. She felt very comfortable about that. I also contacted Shelly Peterson about their view. They also support us going back to the original bill as it was introduced. As we heard about the Medicaid extension bill this morning how that will affect the long term homes, it would be in our interest to go with the original version. Whether we pay the penalty or the insurance program they have for their employee, that those be the rate setting process and permitted. (:45-3:41)

Chairman Kilzer: In going back to the original bill are you working with the policy committee? Why did the House make the change?

Senator Mathern: This goes to conference, they would do it.

Chairman Kilzer: This wouldn't go to conference if we pass the bill as it is before us. Can you tell us Shelly why the House took off section two?

Shelly Peterson, Executive Director of the Long Term Care Association: It was removed in appropriations but not sure why they did. The facilities were to take the penalty or the tax. Because taxes are allowable costs in the views of CMS and Medicare, we have to pay a tax. She went on to explain how she thought it would work. (4:40-6:42)

Chairman Kilzer: Is that the reason you prefer the original bill?

Shelly Peterson: It gives options to facilities because there are great anxieties over the Affordable Care Act and trying to comply with it. Being able to go to the exchange might be a better option some felt, for their employees as well as the employer.

Chairman Kilzer: So if we do make the change and go back to the original bill and it goes to conference committee, you will stand behind the supporting of the original bill?

Shelly Peterson: Yes.

Senator Mathern: If we went to the original bill and changed the wording to the tax issue, would the fiscal note go down or stay the same?

LeeAnn Thiel, Administrator of Medicaid Payment and Reimbursement Services of the Medical Division for the Department of Human Services: The fiscal note was created on the assumption that all facilities would prefer to offer the options to the employees rather than taking the penalty or tax. Without knowing what facilities would prefer, the fiscal note would stay the same. We have to go under the assumption that they are going to offer the health insurance benefits instead of just paying the penalty and letting the employee go to the health exchange.

Senator Mathern: Why do you have to assume that, we had some testimony that some would actually like to go to the exchange?

LeeAnn Thiel: Because we have nothing to say how many facilities would and would not of these four. This fiscal note was just created for those four facilities based upon the survey. They currently do not have a plan that meets the affordable care act. There could be other facilities out there besides those four that choose to have their employees go to the health exchange instead of the insurance that they are offering.

Senator Gary Lee: This is designed for four facilities, but the bill affects all of the nursing homes?

LeeAnn Thiel: Yes.

Senator Mathern: I would guess some of it is the wording. (10:20-11:26)

Chairman Kilzer: I can accept the speculation on why the House did what they did. The picture you all present here is probably true. We are not the policy setting committee. In those regards I am in favor of just accepting this bill as it came to us.

Senator Mathern: I am wondering if we can let it sit a couple of days to get a bill draft going to the original bill with the tax wording change that Shelly suggested.

Chairman Kilzer: This is referred to us by a policy committee. I would have it moved out and give our stamp of approval as it leaves here.

Senator Gary Lee: Made the motion that we pass as a do pass on the bill as it is in front of us.

Senator Erbele: Second.

Chairman Kilzer: The clerk will call the roll on a Do Pass on HB 1170.

Senator Gary Lee - Yes

Senator Erbele - Yes

Senator Mathern - No

Chairman Kilzer - Yes

Chairman Kilzer: It carried. It will be brought up before the committees as a recommended do pass on HB 1170.

The hearing was closed on 1170.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

HB 1170
04-04-2013
Job # 20852

Conference Committee

Committee Clerk Signature

Alice Delzer

Explanation or reason for introduction of bill/resolution:

A BILL regarding facility rate-setting (DHS) DO PASS

Minutes:

You may make reference to "attached testimony."

Chairman Holmberg called the committee to order on Thursday, April 04, 2013 in regards to HB 1170. All committee members were present except Senator Mathern.

Allen H. Knudson- Legislative Council
Sheila Peterson - OMB

Senator Kilzer: This is a bill that is brought in to the affordable care act, if they have more than 50 employees there is the mandate. It could count as a business expense when it comes to rebasing and getting their scheduled payments for their services. Section 2 that was taken off by the House - we did not alter that. The remaining bill is section 1, and by unanimous vote by your subcommittee we recommend that the Appropriations Committee accept this bill. The 4 nursing homes are Glen Ullen, New Salem, Dunseith and Devils Lake.

Senator Kilzer moved a do pass. 2nd by Senator Gary Lee .

Chairman Holmberg: Call the roll for a Do Pass on HB 1170.

A Roll Call vote was taken. Yea:12; Nay: 0; Absent: 1.

This bill goes back to Human Services. **Senator Dever will carry the bill.**

The hearing was closed on HB 1170.

FISCAL NOTE
Requested by Legislative Council
02/26/2013

Amendment to: HB 1170

- 1 A. **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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$830,922	\$0	\$1,182,984
Expenditures	\$0	\$0	\$830,922	\$830,922	\$1,182,984	\$1,182,984
Appropriations	\$0	\$0	\$830,922	\$830,922	\$1,182,984	\$1,182,984

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

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

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

Reengrossed HB1170 provides nursing and basic care facilities with an expedited rate setting process to cover costs associated with the Affordable Care Act of 2010 as it relates to providing health insurance policies to the facility's employees.

- 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 provides nursing and basic care facilities with an expedited rate setting process to cover costs associated with providing health insurance to the facility's employees. Rate changes would take effect January 2014 and would only be applicable for 18 months of the 13-15 Biennium. As Nursing Facilities have equalized rates this change would also impact private payers of nursing facility care. In addition to the amounts noted above the Department estimates private pay individuals would see an increase of \$825,870 in the 13-15 biennium and \$1,175,802 in the 15-17 Biennium. Section 2 includes as an "allowable" cost, any penalty assessed under the Federal Patient Protection and Affordable Care Act of 2010 to a nursing facility that does not offer health insurance policies to its employees. Medicaid must demonstrate compliance with an annual Upper Payment Limit(UPL) for Nursing Homes, Intermediate Care Facilities, Psychiatric Residential Treatment Facilities and Hospitals (inpatient and outpatient) based on provider ownership. The UPL categories are private, state government and non-state government operated facilities. A combination of provider rate enhancements increases the likelihood of exceeding the UPL. If the Upper Payment Limit is exceeded, federal Medicaid funding is not available for expenditures for rates that exceed the limit. In order to retain federal Medicaid funding for any portion of the rate, the rates must be reduced to comply with the UPL. ND Medicaid cannot make a separate general fund payment to facilities to make up the difference between the established rate based on legislative appropriation and an adjusted rate which has been reduced to comply with the UPL (Note: for Nursing Homes, due to the equalized rates, if the UPL is met, the rates for both Medicaid and private pay would be reduced to comply with the UPL.)

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.*

The increase in revenues in each biennium is the additional federal funding the state will receive due to the increased expenditures relating to allowable expenditures.

- 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.*

The costs paid by Medicaid for nursing facility care are estimated to increase by \$1,661,844 for 18 months of the 11-13 biennium, of which \$830,922 would be from the general fund. The costs for the 15-17 biennium are estimated at \$2,365,968, of which \$1,182,984 would be general fund.

- 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.*

The Department will need an appropriation increase of \$1,661,844 in the 13-15 biennium, of which \$830,922 would be from the General Fund and \$830,922 would be from federal funds. The Department will need an appropriation increase of \$2,365,968 in 15-17 biennium, of which \$1,182,984 would be from the General Fund and \$1,182,984 would be from federal funds.

Name: Debra A. McDermott

Agency: Department of Human Services

Telephone: 701-328-1980

Date Prepared: 02/26/2013

FISCAL NOTE
Requested by Legislative Council
02/13/2013

Amendment to: HB 1170

- 1 A. **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.*

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

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School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

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

Amended HB1170 provides nursing and basic care facilities with an expedited rate setting process to cover costs associated with the Affordable Care Act of 2010 as it relates to providing health insurance policies to the facility's employees.

- 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.*

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Name: Debra A. McDermott

Agency: Department of Human Services

Telephone: 701-328-1980

Date Prepared: 02/14/2013

FISCAL NOTE
Requested by Legislative Council
01/14/2013

Bill/Resolution No.: HB 1170

- 1 A. **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.*

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

HB1170 provides nursing and basic care facilities with an expedited rate setting process to cover costs associated with the Affordable Care Act of 2010 as it relates to providing health insurance policies to the facility's employees.

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Name: Debra A. McDermott

Agency: Department of Human Services

Telephone: 701-328-1980

Date Prepared: 01/21/2013

Date: 4-4-13

Roll Call Vote # 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 1170

Senate Appropriations Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Adopt Amendment
 Do Pass as Amended

Do Pass
 Do Not Pass

Motion Made By Kilzer Seconded By Lee

Senators	Yes	No	Senator	Yes	No
Chariman Ray Holmberg	✓		Senator Tim Mathern	✓	
Co-Vice Chairman Bill Bowman	✓		Senator David O'Connell	✓	
Co-Vice Chair Tony Grindberg	✓		Senator Larry Robinson	✓	
Senator Ralph Kilzer	✓		Senator John Warner	✓	
Senator Karen Krebsbach	✓				
Senator Robert Erbele	✓				
Senator Terry Wanzek	✓				
Senator Ron Carlisle	✓				
Senator Gary Lee	✓				

Total (Yes) 12 No _____

Absent 1

Floor Assignment HS Dever

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

REPORT OF STANDING COMMITTEE

HB 1170, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman)
recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
Engrossed HB 1170 was placed on the Fourteenth order on the calendar.

2013 SENATE HUMAN SERVICES

HB 1170

2013 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee
Red River Room, State Capitol

HB 1170
4/8/2013
20965

Conference Committee

Committee Clerk Signature 

Explanation or reason for introduction of bill/resolution:

Relating to nursing and basic care facility rate setting

Minutes:

attachments

Chairwoman J. Lee opens the discussion on HB 1170

Shelly Peterson President of the North Dakota Long Term Care Association shares why a reconsideration of HB 1170. See **attachment #3**. Shelly also discusses the proposed amendment (.02004) **attachment #4**. **Senator Anderson** asks for clarification on that if we allow that in the state of North Dakota, that federal government could come and say that you shouldn't have allowed that and lose the 50% share. There is a discussion about the Supreme Court decision. **Senator Dever** asks if this would impact the fiscal note. **Senator Larsen** asks about average wage. There is a discussion about the expansion and impact on employers. **Senator Dever** asks how many facilities have more than 50 employees.

There is more discussion about the expansion and employers.

Senator Dever motions to reconsider HB 1170.

Senator Larsen seconds

The motioned is passed with a voice vote.

The Committee discusses amendment.

Senator Dever motions to adopt the amendment .02005

Senator Larsen seconds

The motion passed

Senator Dever motions for a Do Pass as amended that has been referred appropriations and come back with no changes to the fiscal impact.

Senate Human Services Committee
HB 1170
4/8/2013
Page 2

Senator Larsen Seconds

Do Pass 5-0-0

Senator Dever will carry.

FISCAL NOTE
Requested by Legislative Council
02/26/2013

Amendment to: HB 1170

- 1 A. **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.*

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

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

Reengrossed HB1170 provides nursing and basic care facilities with an expedited rate setting process to cover costs associated with the Affordable Care Act of 2010 as it relates to providing health insurance policies to the facility's employees.

- 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.*

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Name: Debra A. McDermott

Agency: Department of Human Services

Telephone: 701-328-1980

Date Prepared: 02/26/2013

FISCAL NOTE
Requested by Legislative Council
02/13/2013

Amendment to: HB 1170

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Name: Debra A. McDermott

Agency: Department of Human Services

Telephone: 701-328-1980

Date Prepared: 02/14/2013

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01/14/2013

Bill/Resolution No.: HB 1170

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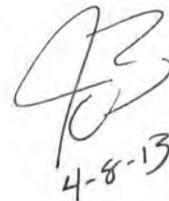
Name: Debra A. McDermott

Agency: Department of Human Services

Telephone: 701-328-1980

Date Prepared: 01/21/2013

April 8, 2013



Handwritten signature and date: 4-8-13

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1170

Page 1, line 2, after "ratesetting" insert "; and to amend and reenact section 50-24.4-06 of the North Dakota Century Code, relating to allowable costs in nursing home ratesetting"

Page 1, after line 14, insert:

"SECTION 2. AMENDMENT. Section 50-24.4-06 of the North Dakota Century Code is amended and reenacted as follows:

50-24.4-06. Rate determination.

1. The department shall determine prospective payment rates for resident care costs. The department shall develop procedures for determining operating cost payment rates that take into account the mix of resident needs and other factors as determined by the department.
2. The department shall establish, by rule, limitations on compensation recognized in the historical base for top management personnel. Compensation for top management personnel must be categorized as a general and administrative cost and is subject to any limits imposed on that cost category.
3. For purposes of determining rates, the department shall:
 - a. Include, contingent upon approval of the medicaid state plan by the centers for medicare and medicaid services, allowable bad debt expenses in an amount not to exceed one hundred eighty days of resident care per year or an aggregate of three hundred sixty days of resident care for any one individual; and
 - b. Include allowable bad debt expenses in the property cost category in the report year in which the bad debt is determined to be uncollectible with no likelihood of future recovery.
 - c. Notwithstanding section 50-24.4-07, include as an allowable cost any tax paid by a basic care or nursing facility due to provisions of the federal Patient Protection and Affordable Care Act [Pub. L. 111-148], as amended by the Health Care and Education Reconciliation Act of 2010 [Pub. L. 111-152]."

Re-number accordingly

REPORT OF STANDING COMMITTEE

HB 1170, 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 1170 was placed on the Sixth order on the calendar.

Page 1, line 2, after "ratesetting" insert "; and to amend and reenact section 50-24.4-06 of the North Dakota Century Code, relating to allowable costs in nursing home ratesetting"

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Renumber accordingly

2013 CONFERENCE COMMITTEE

HB 1170

2013 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee
Fort Union Room, State Capitol

HB 1170
April 18, 2013
Job #21261

Conference Committee

Committee Clerk Signature

Ticky Crabtree

Explanation or reason for introduction of bill/resolution:

Relating to nursing and basic care facility ratesetting.

Minutes:

Chairman Damschen called the meeting to order. I am going to have Rep. Fehr give a history of this bill.

Rep. Fehr: The bill has been shuffled back and forth and now looks very much like it did when it started. The paragraph we took out in the house went back in and then House Appropriations took it out again. When it went to the House on the 6th order that amendment failed. It went back to the Senate without the paragraph and they put it back in and tweaked the wording and here we are.

Chairman Damschen: We may have a fight on the floor.

Sen. Dever: Nursing homes and because of their pay level they may not be able to provide the insurance required. Typically they pay 60% of health care costs and the employee pays 40%. There is a provision in PPACA that says they cannot be required to pay more than 9 ½% of their salary for health insurance. Because the employees have the ability to go to the health insurance exchange under PPACA, there may be some facilities that will have them do that. They then will pay the penalty rather than paying for the health insurance. This provision allows the facilities to consider that in their allowable costs for reimbursement.

Chairman Damschen: I think in light of that our position is soft on this. I don't know if we can get this through on the floor since it has been defeated a couple of times.

Rep. Fehr: The reason why we had taken that out because there were only two facilities that didn't offer insurance. One of the concerns was if we have this in versus taking it out, maybe it encourages them to provide the insurance rather than paying the penalty. What happens on January 1 when the next round of Obama Care kicks in and the rates really go up?

Sen. Dever: I'm not sure how many of those facilities would exceed that 9 ½% so they may need to make adjustments there. I think this should go back to the House and if there develops a problem on the floor, it should be on the conference committee report not on the bill. If they adopt the conference committee report I think there should be a commitment on the part of the House to adopt the bill.

Sen. Larsen: If we take that back off then the floor has to realize that is \$2,000 per person the facility has to come up with and they have over 50 employees it won't be a substantial amount of money if they don't want to go that route.

Rep. Oversen: I move the House accede to the Senate amendments.

Sen. Dever: Second.

Rep. Fehr: We had preferred it being taken out. We have learned more about Obama Care, but we don't know a lot about it. It wasn't part of our discussion that long term care facilities having insurance would be put into a position of feeling they would have to discontinue. Our concern was the two that didn't have insurance would be looking at weighing out if they should or shouldn't offer insurance. I suspect we could get this through.

Chairman Damschen: Our original feeling was that it was rewarding facilities for not complying.

Sen. Dever: This comes about as a requirement from PPACA and we are doing the necessary adjustments to account the increased costs.

Chairman Damschen: I don't think the fiscal note is affected. Further discussion?

ROLL CALL VOTE: 6 y 0 n 0 absent

MOTION CARRIED

Bill Carrier: Rep. Fehr

Meeting closed.

FISCAL NOTE
Requested by Legislative Council
04/08/2013

Amendment to: HB 1170

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Name: Debra A. McDermott

Agency: Department of Human Services

Telephone: 701-328-1980

Date Prepared: 04/09/2013

FISCAL NOTE
Requested by Legislative Council
02/26/2013

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

Amended HB1170 provides nursing and basic care facilities with an expedited rate setting process to cover costs associated with the Affordable Care Act of 2010 as it relates to providing health insurance policies to the facility's employees.

- 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 provides nursing and basic care facilities with an expedited rate setting process to cover costs associated with providing health insurance to the facility's employees. Rate changes would take effect January 2014 and would only be applicable for 18 months of the 13-15 Biennium. As Nursing Facilities have equalized rates this change would also impact private payers of nursing facility care. In addition to the amounts noted above the Department estimates private pay individuals would see an increase of \$825,870 in the 13-15 biennium and \$1,175,802 in the 15-17 Biennium. Medicaid must demonstrate compliance with an annual Upper Payment Limit(UPL) for Nursing Homes, Intermediate Care Facilities, Psychiatric Residential Treatment Facilities and Hospitals (inpatient and outpatient) based on provider ownership. The UPL categories are private, state government and non-state government operated facilities. A combination of provider rate enhancements increases the likelihood of exceeding the UPL. If the Upper Payment Limit is exceeded, federal Medicaid funding is not available for expenditures for rates that exceed the limit. In order to retain federal Medicaid funding for any portion of the rate, the rates must be reduced to comply with the UPL. ND Medicaid cannot make a separate general fund payment to facilities to make up the difference between the established rate based on legislative appropriation and an adjusted rate which has been reduced to comply with the UPL (Note: for Nursing Homes, due to the equalized rates, if the UPL is met, the rates for both Medicaid and private pay would be reduced to comply with the UPL.)

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.*

The increase in revenues in each biennium is the additional federal funding the state will receive due to the increased expenditures relating to allowable expenditures.

- 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.*

The costs paid by Medicaid for nursing facility care are estimated to increase by \$1,661,844 for 18 months of the 11-13 biennium, of which \$830,922 would be from the general fund. The costs for the 15-17 biennium are estimated at \$2,365,968, of which \$1,182,984 would be general fund.

- 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.*

The Department will need an appropriation increase of \$1,661,844 in the 13-15 biennium, of which \$830,922 would be from the General Fund and \$830,922 would be from federal funds. The Department will need an appropriation increase of \$2,365,968 in 15-17 biennium, of which \$1,182,984 would be from the General Fund and \$1,182,984 would be from federal funds.

Name: Debra A. McDermott

Agency: Department of Human Services

Telephone: 701-328-1980

Date Prepared: 02/14/2013

FISCAL NOTE
Requested by Legislative Council
01/14/2013

Bill/Resolution No.: HB 1170

- 1 A. **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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$830,922	\$0	\$1,182,984
Expenditures	\$0	\$0	\$830,922	\$830,922	\$1,182,984	\$1,182,984
Appropriations	\$0	\$0	\$830,922	\$830,922	\$1,182,984	\$1,182,984

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

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

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

HB1170 provides nursing and basic care facilities with an expedited rate setting process to cover costs associated with the Affordable Care Act of 2010 as it relates to providing health insurance policies to the facility's employees.

- 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 provides nursing and basic care facilities with an expedited rate setting process to cover costs associated with providing health insurance to the facility's employees. Section 2 includes as an "allowable" cost, any penalty assessed under the Federal Patient Protection and Affordable Care Act of 2010 to a nursing facility that does not offer health insurance policies to its employees. Rate changes would take effect January 2014 and would only be applicable for 18 months of the 13-15 Biennium. As Nursing Facilities have equalized rates this change would also impact private payers of nursing facility care. In addition to the amounts noted above the Department estimates private pay individuals would see an increase of \$825,870 in the 13-15 biennium and \$1,175,802 in the 15-17 Biennium. Medicaid must demonstrate compliance with an annual Upper Payment Limit(UPL) for Nursing Homes, Intermediate Care Facilities, Psychiatric Residential Treatment Facilities and Hospitals (inpatient and outpatient) based on provider ownership. The UPL categories are private, state government and non-state government operated facilities. A combination of provider rate enhancements increases the likelihood of exceeding the UPL. If the Upper Payment Limit is exceeded, federal Medicaid funding is not available for expenditures for rates that exceed the limit. In order to retain federal Medicaid funding for any portion of the rate, the rates must be reduced to comply with the UPL. ND Medicaid cannot make a separate general fund payment to facilities to make up the difference between the established rate based on legislative appropriation and an adjusted rate which has been reduced to comply with the UPL (Note: for Nursing Homes, due to the equalized rates, if the UPL is met, the rates for both Medicaid and private pay would be reduced to comply with the UPL.)

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.*

The increase in revenues in each biennium is the additional federal funding the state will receive due to the increased expenditures relating to allowable expenditures.

- 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.*

The costs paid by Medicaid for nursing facility care are estimated to increase by \$1,661,844 for 18 months of the 11-13 biennium, of which \$830,922 would be from the general fund. The costs for the 15-17 biennium are estimated at \$2,365,968, of which \$1,182,984 would be general fund.

- 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.*

The Department will need an appropriation increase of \$1,661,844 in the 13-15 biennium, of which \$830,922 would be from the General Fund and \$830,922 would be from federal funds. The Department will need an appropriation increase of \$2,365,968 in 15-17 biennium, of which \$1,182,984 would be from the General Fund and \$1,182,984 would be from federal funds.

Name: Debra A. McDermott

Agency: Department of Human Services

Telephone: 701-328-1980

Date Prepared: 01/21/2013

2013 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: House Human Services

Bill/Resolution No. 1170 as (re) engrossed

Date: APRIL 18, 2013

Roll Call Vote #: 1

Action Taken

- HOUSE accede to Senate amendments
- HOUSE accede to Senate amendments and further amend
- SENATE recede from Senate amendments
- SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) 1309 - 1310

Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) HB1170 was placed on the Seventh order of business on the calendar

Motion Made by: Rep. Oversen Seconded by: Sen. Dever

Representatives	3/18			Yes	No		Senators	3/18			Yes	No
<u>C. Damschen</u>	✓			✓			<u>O. Larsen</u>	✓			✓	
<u>A. Fehr</u>	✓			✓			<u>D. Dever</u>	✓			✓	
<u>K. Oversen</u>	✓			✓			<u>T. Axness</u>	✓			✓	

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier Rep. Fehr Senate Carrier Sen. LARSEN

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

HB 1170, as engrossed: Your conference committee (Sens. Larsen, Dever, Axness and Reps. Damschen, Fehr, Oversen) recommends that the **HOUSE ACCEDE** to the Senate amendments as printed on HJ pages 1309-1310 and place HB 1170 on the Seventh order.

Engrossed HB 1170 was placed on the Seventh order of business on the calendar.

2013 TESTIMONY

HB 1170

1

Testimony on HB 1170
House Human Services Committee
January 22, 2013

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, basic care and nursing facilities. I am here to testify in support of HB 1170.

HB 1170 has two main features:

1. Requires the Department of Human Services to establish an expedited rate setting process, to provide nursing and basic care facilities a rate adjust, so their costs directly related to complying with the federal Patient Protection and Affordable Care Act of 2010, can be met.
2. Provides that penalties levied against a nursing or basic care facility for not having a "qualified health plan" under the federal Patient Protection and Affordable Care Act of 2010 are an allowable cost.

Background:

The vast majority of nursing and basic care facilities have a facility sponsored health insurance plan. A small minority (four nursing facilities, three basic care facilities) according to a recent survey do not have a facility sponsored plan. Two of these facilities provide a set dollar amount to go out in the market and secure individual coverage, with the remaining offering no coverage at this time. Some health insurance plans, of those currently providing coverage, may not contain

the “essential health benefits” and thus some long term care facilities may need to enhance their current coverage.

This legislation assures basic care and nursing facilities the ability to get their costs covered in their rates so they can provide coverage to their employees by January 1, 2014.

Should a basic care or nursing facility decide their employees would be better served by going to health insurance exchange, where they will have choice and options on a variety of plans, HB 1170 would allow the penalty assessed under the federal Patient Protection and Affordable Care Act of 2010 be an allowable cost.

Summary:

It is the desire of all basic care and nursing facilities to comply with the federal Patient Protection and Affordable Care Act of 2010. HB 1170 will provide the funding to assure compliance on January 1, 2014.

Thank you for your consideration of HB 1170.

Shelly Peterson, President
North Dakota Long Term Care Association
1900 North 11th Street • Bismarck, ND 58501 • (701) 222-0660
Cell (701) 220-1992 • www.ndltca.org • E-mail: shelly@ndltca.org

Health System Reform - Timeline

Following is a timeline description of major provisions of the *Patient Protection and Affordable Care Act* (HR 3590) as amended by the *Health Care and Education Reconciliation Act of 2010* (HR 4872):

2010

- Extension of medical liability protections under the Federal Tort Claims Act (FTCA) to officers, governing board members, employees, and contractors of free clinics.
- Fully funded practice expense Geographic Practice Cost Index (GPCI) floor increase: 2010 and 2011.
- Practice expense GPCIs increases: 2010 and 2011.
- Work GPCI floor extension: Effective for 2010.
- Administrative Simplification: The operating rules development process begins. Health Plans must adopt and implement a set of operating rules for certain electronic transactions within specified time periods on future dates.
- Small business tax credits for employer-provided insurance plans phase-in begins.
- Temporary reinsurance program for employers providing health insurance coverage to retirees over age 55 who are not eligible for Medicare.
- Temporary national high-risk pool to provide immediate access to health coverage for individuals with pre-existing medical conditions.
- Dependent coverage for children up to age 26 in all individual and group policies.
- Prohibit rescissions of coverage in all plans, except in cases of fraud.
- Prohibit lifetime limits on coverage and restrict annual limits in all individual and group health plans.
- Prohibit pre-existing condition exclusions for children in all plans. (While some ambiguities have been raised about application of this provision, implementing regulations will clarify that the prohibition on pre-existing condition exclusions for children will begin as planned in September. The America's Health Insurance Plans (AHIP) has stated it will fully comply with the regulations.)
- Require new group and individual health plans to cover certain preventive services and immunizations without cost-sharing.
- Require health plans to report medical loss ratio for plan year 2010.
- Establish process for states to review and report increases in health plan premiums and for plans to justify increases.
- Establish the Patient-Centered Outcomes Research Institute to contract with appropriate federal agencies or the private sector to conduct comparative effectiveness research (CER).
- Secretary of Health and Human Service (HHS) to provide timely feedback to PQRI participants on satisfactory submission of data.
- Extends 5 percent Medicare mental health add-on through December 31, 2010.
- Payment increase for bone density tests for 2010 and 2011.
- Establish grant program to facilitate shared decision-making among patients, caregivers, representatives, and clinicians regarding a patient's treatment options.
- Establish the Interagency Working Group of Health Care Quality for collaboration among federal departments regarding goals consistent with national priorities for quality improvement.
- Provide additional resources (authorized for 2010 through 2014) for the development of national strategy and priorities for performance improvement, development and dissemination of best practices, data aggregation, and public reporting of provider performance information.
- Authorize funds for 2010 through 2014 for the Secretary of HHS to award grants for development, improvement, updating, or expanding quality measures.
- Establish interagency National Prevention, Health Promotion and Public Health Council to develop national strategy on healthy policies; create a prevention and public health investment fund, with initial appropriation in FY 2010.
- Authorize more flexibility for graduate medical education (GME) programs to count training in outpatient settings, and didactic and scholarly activities towards GME payments beginning in 2010 and applies to previous cost reporting periods.
- Establish the National Health Care Workforce Commission to provide recommendations to Congress on health care workforce needs. Appointments to the Commission must be made by September 30, 2010.
- Authorize the awarding of state workforce development grants, and the creation of national, state, and regional centers for health workforce analysis: Effective beginning in FY 2010.
- Allow part-time service and teaching time to qualify towards the National Health Service Corps (NHSC)

service requirement, and increases the annual NHSC loan repayment amount from \$35,000 to \$50,000 in 2010.

- Increased funding for multiple Title VII health professions and diversity programs: Effective beginning in FY 2010.
- Authorize funding for Title VIII nurse education and training programs: Effective beginning in FY 2010.
- Create grant program to support nurse-managed health clinics: Effective beginning in FY 2010.
- Create a primary care extension program to educate primary care providers about preventive medicine, health promotion, chronic disease management, mental health services, and evidence-based therapies: Effective beginning in FY 2010.
- Enable student loan repayment tax relief by exempting certain state-funded student loan repayments, that are intended to increase the availability of health care services in shortage or underserved areas, along with the NHSC loan repayment program, from federal income taxation.
- Converts all new federal student lending to the federally run Direct Loan Program, ending government subsidies to private, commercial student lenders: Effective July 1, 2010.
- Require the HHS Secretary to maintain a national health care fraud and abuse data collection program for reporting certain adverse actions taken against health care providers, and submit information on the actions to the National Practitioner Data Bank (NPDB). Secretary also required to begin process to consolidate databases and transfer information collected to the NPDB.
- HHS has authority to use expedited rule-making to implement additional screening procedures for health care providers in Medicare, Medicaid, and CHIP to ensure that legitimate providers and suppliers are approved to participate in federal health care programs.
- Provide a \$250 rebate to all Medicare prescription drug plan (Part D) enrollees who enter the donut hole (coverage gap).
- Terminate the Federal CER Coordinating Council.
- Authorize FDA to establish a regulatory pathway to approve “generic” versions of biologicals (referred to as biosimilars).
- Require Medicare providers to conduct a face-to-face encounter with patient to certify Medicare eligibility for durable medical equipment or home health agency services.

2011

- Primary care/general surgery Medicare bonus (10 percent over 5 years): Effective January 1, 2011 through December 31, 2015. Primary care bonus applies to primary care physicians (family medicine, internal medicine, geriatric medicine or pediatric medicine) and practitioners (NP, CNS, or PA) for whom primary care services (HCPCS codes 99201- 99215; 99304-99340; and 99341-99350) account for at least 60 percent of Medicare allowed charges over a designated time period.
- Funding for state demonstration programs to evaluate alternative liability reform models authorized for five fiscal years.
- Physician Quality Reporting Initiative (PQRI) bonuses: Effective for 2011 through 2014, with one percent bonus in 2011 and 0.5 percent bonus in 2012, 2013, and 2014.
- Establish new PQRI option allowing physicians to submit data to the PQRI through a maintenance of certification (MOC) program, with additional PQRI 0.5 percent bonus payment for 3 years (2011-2014).
- Establish informal appeals process for determining successful participation in the PQRI.
- Plans required to provide rebates if medical loss ratios exceed required minimums.
- HHS Secretary to oversee convening of stakeholders to receive input on an ICD-9-CM to ICD-10 crosswalk by January 1, 2011.
- Coverage for Medicare wellness and preventive care services and incentives for Medicare preventive services established through elimination of coinsurance.
- Coverage for preventive services and eliminate cost-sharing for such services in Medicaid, and require coverage of tobacco cessation services for pregnant women.
- Restrictions on physician ownership of specialty hospitals: New requirements for meeting exception for physician ownership of hospital effective 18 months after enactment; to qualify for exception the physician ownership or investment and provider agreement must be in place by December 31, 2010.
- Establish Centers for Medicare and Medicaid (CMS) Innovation Center to test new Medicare payment models that improve quality and slow Medicare cost growth.
- Sets a 75 percent assumed utilization rate for Medicare practice expenses for expensive diagnostic imaging equipment priced at more than \$1 million (MRI/CT).

- Provide additional funding to establish a practice expense GPCI floor of 1.0 for frontier states (ND, SD, MT, WY) beginning January 1, 2011.
- Secretary to establish website to make public information regarding national priorities for quality improvement; strategic plans for health care quality, and other information determined by the HHS Secretary.
- Secretary of HHS to re-distribute 65 percent of current unused graduate medical education (GME) residency slots to qualifying hospitals: Effective July 1, 2011.
- Authorize increased funding for Community Health Centers.
- Authorize increased funding for the National Health Service Corps (NHSC) scholarship and loan repayment program.
- Authorize HHS Secretary to award grants to teaching health centers to establish newly accredited or expanded eligible primary care residency programs.
- Authorize training demonstration program for family nurse practitioners for careers as primary care providers in federally qualified health centers and nurse-managed health clinics.
- Require HHS Secretary to establish a comprehensive methodology and criteria for designating medically underserved populations and health professional shortage areas (HPSAs): Effective July 1, 2011.
- Begin phase-out of Medicare Part D “donut hole” (coverage gap) from 100 percent to 25 percent by 2020.
- Prohibit Medicare Advantage (MA) plans from imposing higher cost-sharing requirements for some Medicare covered benefits.
- HHS to issue guidance for manufacturers of covered drugs, biologics, and medical supplies on reporting value transfers (gifts) to physicians and academic medical centers.

2012

- Practice expense GPICs subject to budget neutrality adjustments.
- Medicare claims data release: Effective January 1, 2012.
- Administrative Simplification: Secretary of HHS to solicit input and consider additional electronic transaction standards and operating rules by January 1, 2012.
- Adoption of unique health plan identifier system must occur no later than October 1, 2012 (through rule making).
- Government Accountability Office (GAO) must issue a

report on whether new federal policies, standards, and guidelines would create causes of action against health care providers.

- Expand Medicare physician feedback program that provides reports to physicians comparing their resource use to other physicians.
- Establish Medicare shared savings program for physicians and other providers to share in savings based on a pre-determined benchmark.
- Establish independence at home demonstration program to test new payment incentive and service delivery models for home-based primary care teams designed to reduce Medicare spending and improve health outcomes.
- Secretary of HHS must issue a report on the appropriateness of the level of diabetes education in medical schools.
- Secretary of HHS to establish a Medicare graduate nurse education demonstration program.
- Transition to fiscal neutrality between regular Medicare fee for service and MA plans.
- Manufacturers of drugs, biologicals, and medical supplies required to maintain reports on transfers of value (gifts) to physicians and academic medical centers.

2013

- Public reporting of physician performance information to begin January 1, 2013.
- Administrative Simplification: Starting December 31, 2013, health plans would be required to file a certification statement with the Secretary of HHS that their data and information systems comply with the most current published standards.
- Administrative Simplification: Operating rules for eligibility and health plan claims status transactions take effect by January 1, 2013.
- Secretary of HHS to establish national pilot on Medicare payment bundling of services provided in episodes of care, including physicians’ services delivered in and outside of acute care hospital setting.
- Manufacturers of drugs, biologics, medical supplies submit reports to HHS on March 31, 2013 for the preceding calendar year on transfers of value to physicians and academic medical centers.
- Manufacturers and group purchasing organizations required to track and report ownership or investment interest held by physicians for the preceding calendar year.
- The hospital insurance (Medicare Part A) payroll tax to

be increased by 0.9 percent on high-income workers earning over \$200,000 and joint filers earning over \$250,000. In addition, a 3.8 percent Medicare tax will be imposed on net investment income from interest, dividends, annuities, royalties, rents, and taxable net gain, for individuals earning over \$200,000 and joint filers earning \$250,000.

- Eliminate the tax deduction for employers that provide prescription drug plan subsidies to Medicare Part D-eligible retirees.

2014

- Requirement for most individuals to have acceptable coverage or pay a tax penalty; tax credits and cost-sharing subsidies available.
- Health insurance exchanges established in each state for individuals and small businesses; provide choice of coverage through a multi-state plan.
- Require all qualified health benefits plans to offer at least the essential health benefits package (except grandfathered plans).
- No annual limits on dollar value of coverage.
- Penalties on employers of more than 50 employees who do not offer coverage and have at least one full-time employee who receives tax credit.
- Require guarantee issue and renewability, limited rate variation, risk adjustment in individual and small group markets, no pre-existing condition exclusions for adults.
- Ensure coverage for individuals participating in clinical trials.
- Limit any waiting periods for coverage to 90 days.
- Expand Medicaid to all individuals under 65 with incomes up to 133 percent of federal poverty level; enhanced payments for primary care physicians in 2013 and 2014.
- Create temporary reinsurance program.
- Allow states to create a Basic Health Plan.
- Enhance employer-provided employee wellness programs.
- Administrative Simplification: Operating rules for electronic funds transfers (EFT) and health care payment and remittance advice to take effect by January 1, 2014 (Health care providers, including physicians, must also comply with EFT standard for Medicare payments by January 1, 2014).
- Administrative Simplification: Financial penalties imposed against non-compliant health plans on an annual basis beginning on April 1, 2014.
- Amend the Income-Based Repayment Program to cap student loan payments for new borrowers after July 1, 2014, to 10 percent of adjusted income (rather than

15 percent) and would allow any remaining debt to be forgiven after 20 years of payments (rather than 25 years).

- Require MA plans to have medical loss ratios no lower than 85 percent.

2015

- Independent Payment Advisory Board (IPAB): First implementation year of IPAB Medicare payment recommendations.
- PQRI penalties: Effective beginning 2015 (-1.5 percent); (2016 and subsequent years, -2 percent).
- Medicare payment cost/quality value index: Effective January 1, 2015 (based on 2014 performance).
- Authorize Secretary of HHS to require participation in a maintenance of certification (MOC) program as part of the physician cost/quality index.

2016

- Multi-state compacts to allow insurers to sell policies across state lines (regulations by July 1, 2013).
- Administrative Simplification: Operating rules for health claims or equivalent encounter information, enrollment/disenrollment in a health plan, health plan premium payments, and referral certification and authorization transactions to take effect by January 1, 2016.
- Administrative Simplification: Adoption of health claims attachments standard and operating rules to take effect by January 1, 2016.

2018

- 40 percent excise tax ("Cadillac" tax) on high-cost plans, imposed on insurers and plan administrators of employer-sponsored health plans with aggregate values that exceed \$10,200 for individual coverage and \$27,500 for family coverage.

Source: AMA 2010



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#2

Testimony
House Bill 1170 – Department of Human Services
House Human Services Committee
Representative Robin Weisz, Chairman
January 22, 2013

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 (Department). I am here today to provide information on the fiscal note for House Bill 1170 and the Medicaid Upper Payment Limit.

To prepare the fiscal note, the number of nursing facilities affected was based on a survey conducted by the North Dakota Long Term Care Association, asking facilities if they currently offer health insurance to their employees. The 2013-2015 budgeted cost of group health insurance payments for Medicaid recipients was used for the monthly premium. The estimated impact for 2013-2015 to the Medicaid program for the changes proposed in House Bill 1170 would be \$1,661,844 of which \$830,922 is general funds. The estimated impact to costs for private pay individuals is \$825,870. Both estimates are for a time period of 18 months as nursing facility rates would be affected beginning January 1, 2014. There is no projected cost impact for basic care facilities because it is estimated that the facilities that do not currently offer health insurance to their employees would not be subject to the requirements of the Affordable Care Act.

The federal Medicaid regulations contain a requirement that Medicaid payments to institutional providers, including nursing facilities, in the

aggregate, cannot exceed what Medicare would pay, in the aggregate, for the same care. This is known as the Upper Payment Limit (UPL). The UPL must be calculated yearly for each type of facility: private, state-government owned, and non-state government owned.

Section 2.c of House Bill 1170 will directly impact the UPL for all three types of nursing facilities because a penalty is not an allowable cost under Medicare reasonable cost principles. If this bill and/or the cumulative impact of legislation passed during the 2013 Legislative Assembly results in the UPL being exceeded for one or more of the facility types, the Department will need to reduce the Medicaid rates to comply with the UPL. Subsequently, because of equalized rates, the rates for private pay individuals would be reduced as well.

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

HR 1170
2/21/2013
Attachment #1

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1170

Page 1, line 2, after "ratesetting" insert "; and to amend and reenact section 50-24.4-06 of the North Dakota Century Code, relating to allowable costs in nursing home ratesetting"

Page 1, after line 14, insert:

"SECTION 2. AMENDMENT. Section 50-24.4-06 of the North Dakota Century Code is amended and reenacted as follows:

50-24.4-06. Rate determination.

1. The department shall determine prospective payment rates for resident care costs. The department shall develop procedures for determining operating cost payment rates that take into account the mix of resident needs and other factors as determined by the department.
2. The department shall establish, by rule, limitations on compensation recognized in the historical base for top management personnel. Compensation for top management personnel must be categorized as a general and administrative cost and is subject to any limits imposed on that cost category.
3. For purposes of determining rates, the department shall:
 - a. Include, contingent upon approval of the medicaid state plan by the centers for medicare and medicaid services, allowable bad debt expenses in an amount not to exceed one hundred eighty days of resident care per year or an aggregate of three hundred sixty days of resident care for any one individual; and
 - b. Include allowable bad debt expenses in the property cost category in the report year in which the bad debt is determined to be uncollectible with no likelihood of future recovery.
 - c. Notwithstanding section 50-24.4-07, include as an allowable cost, any penalty assessed under the federal Patient Protection and Affordable Care Act [Pub. L. 111-148], as amended by the Health Care and Education Reconciliation Act of 2010 [Pub. L. 111-152], to a nursing facility that does not offer health insurance policies to its employees."

Renumber accordingly

P

Testimony on HB 1170
Senate Human Services Committee
March 11, 2013

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, basic care and nursing facilities. I am here to testify in support of HB 1170.

HB 1170 has one main feature:

1. Requires the Department of Human Services to establish an expedited rate setting process, to provide nursing and basic care facilities a rate adjust, so their costs directly related to complying with the federal Patient Protection and Affordable Care Act of 2010 (ACA), can be met.

Background:

The vast majority of nursing and basic care facilities have a facility sponsored health insurance plan. A small minority (four nursing facilities, three basic care facilities) according to a recent survey do not have a facility sponsored plan. Two of these facilities provide a set dollar amount to go out in the market and secure individual coverage, with the remaining offering no coverage at this time. Some health insurance plans, of those currently providing coverage, may not be "affordable" and thus some long term care facilities may need to enhance their current coverage.

The ACA, as we understand it today, states that the employee's share cannot exceed 9.5% of their gross income. Those with over 50 employees must also include part time employees who work at least 30 hours a week.

As we understand today, facilities will be required to pay 60% of the premium which would leave 40% for the employee. This 40% must be "affordable." The following example is taken from the current health insurance plan of Wishek Living Center.

1. Single. The 40% employee share for this policy would be \$2,116.80 per year, which means that employee would have to earn no less than \$22,282.11 a year for it to be affordable. If this is a part time employee who works 30 hours per week, that means the employee would have to earn \$14.29 per hour at a minimum.
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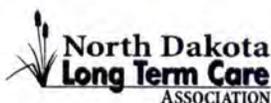
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Summary:

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Thank you for your consideration of HB 1170.

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Health System Reform - Timeline

1

Following is a timeline description of major provisions of the *Patient Protection and Affordable Care Act* (HR 3590) as amended by the *Health Care and Education Reconciliation Act of 2010* (HR 4872):

2010

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- Administrative Simplification: Operating rules for eligibility and health plan claims status transactions take effect by January 1, 2013.
- Secretary of HHS to establish national pilot on Medicare payment bundling of services provided in episodes of care, including physicians’ services delivered in and outside of acute care hospital setting.
- Manufacturers of drugs, biologics, medical supplies submit reports to HHS on March 31, 2013 for the preceding calendar year on transfers of value to physicians and academic medical centers.
- Manufacturers and group purchasing organizations required to track and report ownership or investment interest held by physicians for the preceding calendar year.
- The hospital insurance (Medicare Part A) payroll tax to

be increased by 0.9 percent on high-income workers earning over \$200,000 and joint filers earning over \$250,000. In addition, a 3.8 percent Medicare tax will be imposed on net investment income from interest, dividends, annuities, royalties, rents, and taxable net gain, for individuals earning over \$200,000 and joint filers earning \$250,000.

- Eliminate the tax deduction for employers that provide prescription drug plan subsidies to Medicare Part D-eligible retirees.

2014

- Requirement for most individuals to have acceptable coverage or pay a tax penalty; tax credits and cost-sharing subsidies available.
- Health insurance exchanges established in each state for individuals and small businesses; provide choice of coverage through a multi-state plan.
- Require all qualified health benefits plans to offer at least the essential health benefits package (except grandfathered plans).
- No annual limits on dollar value of coverage.
- Penalties on employers of more than 50 employees who do not offer coverage and have at least one full-time employee who receives tax credit.
- Require guarantee issue and renewability, limited rate variation, risk adjustment in individual and small group markets, no pre-existing condition exclusions for adults.
- Ensure coverage for individuals participating in clinical trials.
- Limit any waiting periods for coverage to 90 days.
- Expand Medicaid to all individuals under 65 with incomes up to 133 percent of federal poverty level; enhanced payments for primary care physicians in 2013 and 2014.
- Create temporary reinsurance program.
- Allow states to create a Basic Health Plan.
- Enhance employer-provided employee wellness programs.
- Administrative Simplification: Operating rules for electronic funds transfers (EFT) and health care payment and remittance advice to take effect by January 1, 2014 (Health care providers, including physicians, must also comply with EFT standard for Medicare payments by January 1, 2014).
- Administrative Simplification: Financial penalties imposed against non-compliant health plans on an annual basis beginning on April 1, 2014.
- Amend the Income-Based Repayment Program to cap student loan payments for new borrowers after July 1, 2014, to 10 percent of adjusted income (rather than

15 percent) and would allow any remaining debt to be forgiven after 20 years of payments (rather than 25 years).

- Require MA plans to have medical loss ratios no lower than 85 percent.

2015

- Independent Payment Advisory Board (IPAB): First implementation year of IPAB Medicare payment recommendations.
- PQRI penalties: Effective beginning 2015 (-1.5 percent); (2016 and subsequent years, -2 percent).
- Medicare payment cost/quality value index: Effective January 1, 2015 (based on 2014 performance).
- Authorize Secretary of HHS to require participation in a maintenance of certification (MOC) program as part of the physician cost/quality index.

2016

- Multi-state compacts to allow insurers to sell policies across state lines (regulations by July 1, 2013).
- Administrative Simplification: Operating rules for health claims or equivalent encounter information, enrollment/disenrollment in a health plan, health plan premium payments, and referral certification and authorization transactions to take effect by January 1, 2016.
- Administrative Simplification: Adoption of health claims attachments standard and operating rules to take effect by January 1, 2016.

2018

- 40 percent excise tax ("Cadillac" tax) on high-cost plans, imposed on insurers and plan administrators of employer-sponsored health plans with aggregate values that exceed \$10,200 for individual coverage and \$27,500 for family coverage.

Source: AMA 2010



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Testimony
Engrossed House Bill 1170 – Department of Human Services
Senate Human Services Committee
Senator Judy Lee, Chairman
March 11, 2013

Chairman Lee, members of the Senate 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 (Department). I am here today to provide information on the fiscal note for Engrossed House Bill 1170 and the Medicaid Upper Payment Limit.

To prepare the fiscal note, the number of nursing facilities affected was based on a survey conducted by the North Dakota Long Term Care Association, asking facilities if they currently offer health insurance to their employees. The 2013-2015 budgeted cost of group health insurance payments for Medicaid recipients was used for the monthly premium.

The estimated impact for 2013-2015 to the Medicaid program for the changes proposed in Engrossed House Bill 1170 would be \$1,661,844 of which \$830,922 is general funds. The estimated impact to costs for private pay individuals is \$825,870. Both estimates are for a time period of 18 months as nursing facility rates would be affected beginning January 1, 2014. There is no projected cost impact for basic care facilities because it is estimated that the facilities that do not currently offer health insurance to their employees would not be subject to the requirements of the Affordable Care Act.

The federal Medicaid regulations contain a requirement that Medicaid payments to institutional providers, including nursing facilities, in the aggregate, cannot exceed what Medicare would pay, in the aggregate, for the same care. This is known as the Upper Payment Limit (UPL). The UPL must be calculated yearly for each type of facility: private, state-government owned and non-state government owned. The changes proposed by this engrossed bill are not anticipated to have a negative effect on the UPL.

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

#1

Testimony on HB 1170
Senate Human Services Committee
March 22, 2013

Good morning Chairman Holmberg and members of the Senate Appropriations Committee. My name is Shelly Peterson, President of the North Dakota Long Term Care Association. We represent assisted living, basic care and nursing facilities. I am here to testify in support of HB 1170.

HB 1170 has one main feature:

1. Requires the Department of Human Services to establish an expedited rate setting process, to provide nursing and basic care facilities a rate adjust, so their costs directly related to complying with the federal Patient Protection and Affordable Care Act of 2010 (ACA), can be met.

Background:

The vast majority of nursing and basic care facilities have a facility sponsored health insurance plan. A small minority (four nursing facilities, three basic care facilities) according to a recent survey do not have a facility sponsored plan. Two of these facilities provide a set dollar amount to go out in the market and secure individual coverage, with the remaining offering no coverage at this time. Some health insurance plans, of those currently providing coverage, may not be "affordable" and thus some long term care facilities may need to enhance their current coverage.

The ACA, as we understand it today, states that the employee's share cannot exceed 9.5% of their gross income. Those with over 50 employees must also include part time employees who work at least 30 hours a week.

As we understand today, facilities will be required to pay 60% of the premium which would leave 40% for the employee. This 40% must be "affordable." The following example is taken from the current health insurance plan of Wishek Living Center.

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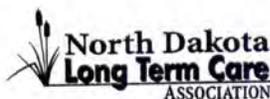
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HB 1170 - 3-12-13

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- The hospital insurance (Medicare Part A) payroll tax to

be increased by 0.9 percent on high-income workers earning over \$200,000 and joint filers earning over \$250,000. In addition, a 3.8 percent Medicare tax will be imposed on net investment income from interest, dividends, annuities, royalties, rents, and taxable net gain, for individuals earning over \$200,000 and joint filers earning \$250,000.

- Eliminate the tax deduction for employers that provide prescription drug plan subsidies to Medicare Part D-eligible retirees.

2014

- Requirement for most individuals to have acceptable coverage or pay a tax penalty; tax credits and cost-sharing subsidies available.
- Health insurance exchanges established in each state for individuals and small businesses; provide choice of coverage through a multi-state plan.
- Require all qualified health benefits plans to offer at least the essential health benefits package (except grandfathered plans).
- No annual limits on dollar value of coverage.
- Penalties on employers of more than 50 employees who do not offer coverage and have at least one full-time employee who receives tax credit.
Require guarantee issue and renewability, limited rate variation, risk adjustment in individual and small group markets, no pre-existing condition exclusions for adults.
- Ensure coverage for individuals participating in clinical trials.
- Limit any waiting periods for coverage to 90 days.
- Expand Medicaid to all individuals under 65 with incomes up to 133 percent of federal poverty level; enhanced payments for primary care physicians in 2013 and 2014.
- Create temporary reinsurance program.
- Allow states to create a Basic Health Plan.
- Enhance employer-provided employee wellness programs.
- Administrative Simplification: Operating rules for electronic funds transfers (EFT) and health care payment and remittance advice to take effect by January 1, 2014 (Health care providers, including physicians, must also comply with EFT standard for Medicare payments by January 1, 2014).
- Administrative Simplification: Financial penalties imposed against non-compliant health plans on an annual basis beginning on April 1, 2014.
- Amend the Income-Based Repayment Program to cap student loan payments for new borrowers after July 1, 2014, to 10 percent of adjusted income (rather than

15 percent) and would allow any remaining debt to be forgiven after 20 years of payments (rather than 25 years).

- Require MA plans to have medical loss ratios no lower than 85 percent.

2015

- Independent Payment Advisory Board (IPAB): First implementation year of IPAB Medicare payment recommendations.
- PQRI penalties: Effective beginning 2015 (-1.5 percent); (2016 and subsequent years, -2 percent).
- Medicare payment cost/quality value index: Effective January 1, 2015 (based on 2014 performance).
- Authorize Secretary of HHS to require participation in a maintenance of certification (MOC) program as part of the physician cost/quality index.

2016

- Multi-state compacts to allow insurers to sell policies across state lines (regulations by July 1, 2013).
- Administrative Simplification: Operating rules for health claims or equivalent encounter information, enrollment/disrollment in a health plan, health plan premium payments, and referral certification and authorization transactions to take effect by January 1, 2016.
- Administrative Simplification: Adoption of health claims attachments standard and operating rules to take effect by January 1, 2016.

2018

- 40 percent excise tax ("Cadillac" tax) on high-cost plans, imposed on insurers and plan administrators of employer-sponsored health plans with aggregate values that exceed \$10,200 for individual coverage and \$27,500 for family coverage.

Source: AMA 2010



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HB 1170
Senate Human Services Committee
April 8, 2013

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. Thank you for your reconsideration of HB 1170. I want to visit with you about a provision of the bill that was deleted in the House and thus never discussed with you. When the House Human Services Committee deleted the "penalty" provision of the bill, we decided to move on and not risk defeat of the bill, thus we never brought an amendment to you to have you consider restoring this provision. You passed the bill, we moved on to Senate Appropriations where we provided the same testimony as we had given you. It was in the Senate Appropriations sub-committee, when Senator Kilzer asked why the House deleted this provision and asked for information to better understand HB 1170, that the "penalty" was again reviewed.

After further discussion on this issue, Senate Appropriations sub-committee was open to allowing the penalty, however they felt your committee should really be the ones to determine if it should be added back in. Thus they passed the bill as originally seen by you. I asked Senator Lee to meet with me and discuss the bill, but suddenly the bill was on the Senate calendar for final passage on April 5th. Thus I appreciate Senator Lee and Larsen moving very quickly to get the bill referred back to you for another review.

HB 1170 had one main feature:

1. Requires the Department of Human Services to establish an expedited rate setting process, to provide nursing and basic care facilities a rate adjustment, so their costs directly related to complying with the federal Patient Protection and Affordable Care Act of 2010 can be met.

The amendment for your consideration this morning would allow the “penalty” to be an allowable cost. The ACA affects all businesses; however, large employers with 50 or more full-time employees will be required to do one of the following:

- Provide affordable health insurance coverage for all full-time employees. Employers who elect to provide health insurance for their employees will be subject to a \$3,000 penalty for any full-time employee who finds the coverage to be unaffordable and receives an Exchange subsidy.

“Unaffordable coverage” is defined as an employee’s “self-only” premium that exceeds 9.5 percent of the employee’s wages.

- Elect not to provide health insurance coverage, pay defined penalties and send employees to the Exchange to purchase insurance. The defined penalty is \$2,000 per employee per year, excluding the first 30 employees if at least one employee goes to an Exchange and receives subsidized coverage.

We employ a number of individuals that are considered low wage earners (cooks, dietary, aides, activity staff, CNAs, etc.). According to Job Service of North Dakota, nursing and residential care facilities in our state directly employed 15,470 employees in the most recent reporting year of 2010.

Job Service reports the average wage for nursing and residential care workers to be \$25,064 as of the first quarter of 2012. This wage is considerably lower than the statewide worker average of \$44,564 per year. Given their earnings they might qualify for the subsidies to bring the cost of coverage down. The only way to qualify for a subsidy is to go to the health insurance exchange. So even though I anticipate all long term care facilities will offer a health insurance plan, some of their current plans are not yet deemed "affordable" and some of their employees will go to the exchange to get the best deal and coverage possible. Every time an employee goes to the exchange, rather than be covered by their employer, the long term care facilities will be assessed a \$3,000 fine per person. At this time we do not know how many might be better served by the exchange, but we do know every time an employee selects that option, we will be required to pay the fine. It is this fine that we are asking to be an allowable cost. The other instance where a fine might be imposed is when the employer doesn't have a facility sponsored plan. At this point only a few of those exist and they are moving forward to put plans in place for 01/01/14 implementation.

As I mentioned earlier some health insurance plans, of those currently providing coverage do not yet meet the affordable provision. The ACA, as we understand it today, states that the employee's share cannot exceed 9.5% of their gross income. Those with over 50 employees must also include part time employees who work at least 30 hours a week.

Facilities will be required to pay 60% of the premium which would leave 40% for the employee. This 40% must be "affordable." The following example is taken from the current health insurance plan of Wishek Living Center.

1. Single. The 40% employee share for this policy would be \$2,116.80 per year, which means that employee would have to earn no less than \$22,282.11 a year for it to be affordable. If this is a part time employee who works 30 hours per week, that means the employee would have to earn \$14.29 per hour at a minimum.
2. Single/with Dependant. The 40% employee share for this policy would be \$3,829.60 per year, which means that employee would have to earn no less than \$39,258.95 a year for it to be affordable. If this is a part time employee who works 30 hours per week, that means the employee would have to earn \$25.17 per hour at a minimum. Even at full time 40 hours per week, the employee would have to earn \$18.88 per hour. The vast majority of staff (dietary aide, cook, housekeeping, CNAs and plant) do not earn this amount per hour.

The facility would have two options:

1. Send a lot of employees to the exchange resulting with the facility paying a penalty of \$3,000 per person which at this time would not be allowed on the cost report.
2. Increase the employer share of the premium, thus making the plan "affordable."

This legislation assures basic care and nursing facilities the ability to get their additional health insurance premium or penalty costs covered in their rates so they can comply with the law by January 1, 2014. Facilities are getting anxious to assure they comply. Thank you again for your reconsideration of HB 1170 with the allow ability of the penalty provision.

Shelly Peterson, President
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Health Care Reform

Calculating Your Company's Strategy

The Patient Protection and Affordable Care Act (PPACA), or Health Care Reform, will change how health care coverage is perceived and provided in the United States. As the January 1, 2014, effective date for health care reform approaches, now is the time to become aware of the options, responsibilities and potential impact this will have on your business and employees. By analyzing all available information, you will be prepared to make an informed business decision.

The PPACA affects all businesses; however, large employers with 50 or more full-time employees will be required to do one of the following:

- Provide affordable health insurance coverage for all full-time employees. Employers who elect to provide health insurance for their employees will be subject to a \$3,000 penalty for any full-time employee who finds the coverage to be unaffordable and receives an Exchange subsidy. "Unaffordable coverage" is defined as an employee's "self-only" premium that exceeds 9.5 percent of the employee's wages.
- Elect not to provide health insurance coverage, pay defined penalties and send employees to a state, regional or federal Exchange to purchase insurance. The defined penalty is \$2,000 per employee per year, excluding the first 30 employees if at least one employee goes to an Exchange and receives subsidized coverage.
- Develop a new hybrid plan. Integral to this reform, is the mandate that, by 2014 each state must operate a health care Exchange (or coop with other states) to provide individuals with a range of affordable health insurance plans to choose from. Through an Exchange, individuals who meet income guidelines will be eligible for subsidies to pay for premiums.

Calculating the "Pay or Play" Option

Multiple factors must be considered before making the decision to discontinue or retain employer-sponsored health insurance coverage. These include:

- The current and future cost of health insurance coverage vs. annual mandated penalties.
- The impact dropping health insurance coverage may have on acquisitions and employee retention.
- The Joneses Factor—what other companies do and how it affects competitive advantage.
- The potential cost savings and how that money can be used in other areas of the company.

Companies must consider how their decision will impact their employees, as well as predict how many employees would be eligible for small and large subsidies offered through an Exchange.



There is both a human resource and cost component to the decision businesses need to make. This can be complicated.

Action Steps

We anticipate new regulations and changes to Health Care Reform to be issued in the months to come, however companies need to be prepared for the Jan. 1, 2014, effective date. Health Care Reform and how you choose to proceed could have a significant financial impact on your company.

Companies should do the following while considering health insurance changes:

1. Identify someone to monitor issues and the impacts of Health Care Reform.
2. Follow what's happening with the set-up and organization of the federal and state health care Exchanges.
3. Review employee benefit plan design and possible options.

Businesses now have more choices when it comes to health care; we can help you look at the options and the impact it would have on your company.

To learn more about this new regulation and how it may affect your business, we encourage you to contact your Eide Bailly representative, or visit our website at www.eidebailly.com/HealthCareReform.

CONTACT



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April 5, 2013

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PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1170

Page 1, line 2, after "ratesetting" insert "; and to amend and reenact section 50-24.4-06 of the North Dakota Century Code, relating to allowable costs in nursing home ratesetting"

Page 1, after line 14, insert:

"SECTION 2. AMENDMENT. Section 50-24.4-06 of the North Dakota Century Code is amended and reenacted as follows:

50-24.4-06. Rate determination.

1. The department shall determine prospective payment rates for resident care costs. The department shall develop procedures for determining operating cost payment rates that take into account the mix of resident needs and other factors as determined by the department.
2. The department shall establish, by rule, limitations on compensation recognized in the historical base for top management personnel. Compensation for top management personnel must be categorized as a general and administrative cost and is subject to any limits imposed on that cost category.
3. For purposes of determining rates, the department shall:
 - a. Include, contingent upon approval of the medicaid state plan by the centers for medicare and medicaid services, allowable bad debt expenses in an amount not to exceed one hundred eighty days of resident care per year or an aggregate of three hundred sixty days of resident care for any one individual; and
 - b. Include allowable bad debt expenses in the property cost category in the report year in which the bad debt is determined to be uncollectible with no likelihood of future recovery.
 - c. Notwithstanding section 50-24.4-07, include as an allowable cost, any tax paid by a nursing facility due to provisions of the federal Patient Protection and Affordable Care Act [Pub. L. 111-148], as amended by the Health Care and Education Reconciliation Act of 2010 [Pub. L. 111-152]."

Renumber accordingly