

**Fifty-ninth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2005**

HOUSE BILL NO. 1252
(Representatives Delzer, Devlin, Kreidt)
(Senators Brown, Fischer, J. Lee)

AN ACT to amend and reenact sections 50-24.4-06 and 50-24.4-10, subsection 1 of section 50-24.4-11, sections 50-24.4-13, 50-24.4-14, 50-24.4-16, 50-24.4-19, and 50-24.4-27, and subsection 3 of section 50-24.5-02 of the North Dakota Century Code, relating to nursing home rates and basic care rates; and to repeal section 50-24.4-09 of the North Dakota Century Code, relating to interim rates for nursing homes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-24.4-06 of the North Dakota Century Code is amended and reenacted as follows:

50-24.4-06. Rate determination. The department shall determine prospective payment rates for resident care costs. ~~For rate years beginning on or after January 1, 1990, the~~ 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.

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.

SECTION 2. AMENDMENT. Section 50-24.4-10 of the North Dakota Century Code is amended and reenacted as follows:

50-24.4-10. Operating costs after ~~January 1, 1990.~~

1. ~~For rate years beginning on or after January 1, 1990, the~~ The department shall establish procedures for determining per diem reimbursement for operating costs.
2. ~~The department shall maintain access to national and state economic change indices that can be applied to the appropriate cost categories when determining the operating cost payment rate.~~
3. The department shall analyze and evaluate each nursing home's cost report of allowable operating costs incurred by the nursing home during the reporting year immediately preceding the rate year for which the payment rate becomes effective.
4. 3. The department shall establish limits on actual allowable historical operating cost per diems based on cost reports of allowable operating costs ~~for the reporting year that begins July 1, 1987,~~ taking into consideration relevant factors including resident needs, nursing hours necessary to meet resident needs, size of the nursing home, and the costs that must be incurred for the care of residents in an efficiently and economically operated nursing home. ~~The limits established by the department may not be less, in the aggregate, than the sixtieth percentile of total actual allowable historical operating cost per diems for each group of nursing homes established under this chapter based on cost reports of allowable operating costs in the previous reporting year. The limits established under this subsection remain in effect until the department establishes a new base period. For the rate year beginning 2006, the department shall establish limits for cost categories using the June 30, 2003, cost report year as the base period. The limits may not fall below the median of the~~

most recent cost report. ~~Until the~~ a new base period is established, the department shall adjust the limits annually ~~using the appropriate economic change indices established in subsection 5~~ by the inflation rate for nursing home services used to develop the legislative appropriation for the department. In determining allowable historical operating cost per diems for purposes of setting limits and nursing home payment rates, the department shall divide the allowable historical operating costs by the actual number of resident days, except that where a nursing home is occupied at less than ninety percent of licensed capacity days, the department may establish procedures to adjust the computation of the indirect care cost per diem to an imputed occupancy level at or below ninety percent. To encourage the development of home and community-based services as an alternative to nursing home care, the department may waive the imputed occupancy level requirements for a nursing home that the department determines to be providing significant home and community-based services in coordination with home and community-based service providers to avoid duplicating existing services. The department shall establish efficiency incentives ~~as appropriate~~ for indirect care costs. The department may establish efficiency incentives for different operating cost categories. The department shall consider establishing efficiency incentives in care-related cost categories. ~~The department may combine one or more operating cost categories and may use different methods for calculating payment rates for each operating cost category or combination of operating cost categories.~~

- ~~5.~~ The department shall establish a composite index or indices based on the average of the increase in the Data Resources, Incorporated, nursing home input price index and the increase in the consumer price index for all urban wage earners and clerical workers (all items, United States city average) to be applied to specific operating cost categories or combination of operating cost categories.
- ~~6.~~ 4. Each nursing home shall receive an operating cost payment rate equal to the sum of the nursing home's operating cost payment rates for each operating cost category. The operating cost payment rate for an operating cost category must be the lesser of the nursing home's historical operating cost in the category increased by the ~~appropriate index established in subsection 5~~ inflation rate for nursing home services used to develop the legislative appropriation for the department for the operating cost category plus an efficiency incentive established pursuant to subsection ~~4 3~~ or the limit for the operating cost category increased by the same ~~index~~ inflation rate. If a nursing home's actual historic operating costs are greater than the prospective payment rate for that rate year, there may be no retroactive cost settle-up. In establishing payment rates for one or more operating cost categories, the department may establish separate rates for different classes of residents based on their relative care needs.
- ~~7.~~ 5. ~~Effective July 1, 1991, the~~ The efficiency incentives to be established by the department pursuant to subsection ~~4 3~~ for a facility with an actual rate below the limit rate for indirect care costs must include the lesser of two dollars and sixty cents per resident day or the amount determined by multiplying seventy percent times the difference between the actual rate, exclusive of inflation ~~indices~~ rates, and the limit rate, exclusive of current inflation ~~indices~~ rates. The efficiency incentive must be included as a part of the indirect care cost rate.
- ~~8.~~ 6. ~~Effective July 1, 1991, each~~ Each nursing home must receive an operating margin of at least three percent based upon the lesser of the actual direct care and other direct care costs and the limit rate prior to inflation. The operating margin will then be added to the rate for direct care and other direct care cost categories.
7. A new base period must be established at least every four years beginning with the cost report period June 30, 2006.

SECTION 3. AMENDMENT. Subsection 1 of section 50-24.4-11 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~For rate years beginning on or after January 1, 1991, the~~ The department may allow a one-time adjustment to historical operating costs of a nursing home that has been found by the department to be significantly below care related minimum standards appropriate to the mix of resident needs in that nursing home when it is determined by the department that the nursing home is unable to meet minimum standards through reallocation of nursing home costs and efficiency incentives or allowances. In developing procedures to allow adjustments, the department shall specify the terms and conditions governing any additional payments made to a nursing home as a result of the adjustment. The department shall establish procedures to recover amounts paid under this section, in whole or in part, and to adjust current and future rates, for nursing homes that fail to use the adjustment to satisfy care related minimum standards.

SECTION 4. AMENDMENT. Section 50-24.4-13 of the North Dakota Century Code is amended and reenacted as follows:

50-24.4-13. Exclusion. Until procedures for determining operating cost payment rates according to mix of resident needs are established for nursing homes that exclusively provide residential services for nongeriatric individuals with physical disabilities or units within nursing homes which exclusively provide geropsychiatric services, such nursing homes or units within nursing homes may not be included in the calculation of the ~~percentiles of any group~~ limits of any cost categories. Each of these nursing homes or units within nursing homes shall receive its actual allowed historical operating cost per diem adjusted by ~~a percentage amount equal to the increase, if any, in the national or state economic change index, made available under section 50-24.4-10~~ the inflation rate for nursing home services used to develop the legislative appropriation for the department, and which the department determines to be relevant to residential services for nongeriatric individuals with physical disabilities or geropsychiatric services.

SECTION 5. AMENDMENT. Section 50-24.4-14 of the North Dakota Century Code is amended and reenacted as follows:

50-24.4-14. General and administrative costs after January 1, 1990. ~~For rate years beginning on or after January 1, 1990, all~~ All general and administrative costs must be included in general and administrative costs in total, without direct or indirect allocation to other cost categories. In a nursing home of sixty or fewer beds, part of an administrator's salary may be allocated to other cost categories to the extent justified in records kept by the nursing home. Central or home office costs representing services of consultants required by law in areas including, but not limited to, dietary, pharmacy, social services, or activities may be allocated to the appropriate department, but only if those costs are directly identified by the nursing home. Central, affiliated, or corporate office costs representing services of consultants not required by law in the areas of nursing, medical records, dietary, other care related services, and plant operations may be allocated to the appropriate operating cost category of a nursing home according to subsections 1 through 5.

1. Only the salaries, fringe benefits, and payroll taxes associated with the individual performing the service may be allocated. No other costs may be allocated.
2. The allocation must be based on direct identification and only to the extent justified in time distribution records that show the actual time spent by the consultant performing the services ~~in~~ for the nursing home.
3. The cost in subsection 1 for each consultant must not be allocated to more than one operating cost category in the nursing home. If more than one nursing home is served by a consultant, all nursing homes shall allocate the consultant's cost to the same operating category.
4. Top management personnel must not be considered consultants.

5. The consultant's full-time responsibilities are to provide the services identified in this section.

SECTION 6. AMENDMENT. Section 50-24.4-16 of the North Dakota Century Code is amended and reenacted as follows:

50-24.4-16. Special rates.

1. For nursing homes with a significant capacity increase and for newly constructed nursing homes, which first provide services on or after July 1, 1988, and which are not included in the calculation of the ~~percentile for any group~~ limits of any cost category, the department shall establish procedures for determining interim operating cost payment rates. The interim payment rate may not be in effect for more than eighteen months. The department shall establish procedures for determining the interim rate and for making a retroactive cost settle-up for periods when an interim rate was in effect.
2. As soon as is practicable following the establishment of the procedures required by subsection 1, the department shall apply the special rates for all affected facilities ~~for rate periods beginning on or after January 1, 1990.~~

SECTION 7. AMENDMENT. Section 50-24.4-19 of the North Dakota Century Code is amended and reenacted as follows:

50-24.4-19. Prohibited practices. ~~From and after January 1, 1990, a~~ A nursing home is not eligible to receive medical assistance payments unless it refrains from all of the following:

1. Charging private-paying residents rates for similar services which exceed those rates which are approved by the department for medical assistance recipients, as determined by the prospective desk audit rate, except under the following circumstances: the nursing home may charge private-paying residents a higher rate for a private room and charge for special services which are not included in the daily rate if medical assistance residents are charged separately at the same rate for the same services in addition to the daily rate paid by the department of human services. Services covered by the payment rate must be the same regardless of payment source. Special services, if offered, must be offered to all residents and charged separately at the same rate. Residents are free to select or decline special services. Special services must not include services which must be provided by the nursing home in order to comply with licensure or certification standards and that if not provided would result in a deficiency or violation by the nursing home. Services beyond those required to comply with licensure or certification standards must not be charged separately as a special service if they were included in the payment rate for the previous reporting year. A nursing home that charges a private-paying resident a rate in violation of this chapter is subject to an action by the state or any of its subdivisions or agencies for civil damages. A private-paying resident or the resident's legal representative has a cause of action for civil damages against a nursing home that charges the resident rates in violation of this chapter. The damages awarded shall include three times the payments that result from the violation, together with costs and disbursements, including reasonable ~~attorneys'~~ attorney's fees or their equivalent.
2. Requiring an applicant for admission to the home, or the guardian or conservator of the applicant, as a condition of admission, to pay any fee or deposit in excess of one hundred dollars, loan any money to the nursing home, or promise to leave all or part of the applicant's estate to the home.
3. Requiring any resident of the nursing home to utilize a vendor of health care services who is a licensed physician or pharmacist chosen by the nursing home.
4. Providing differential treatment on the basis of status with regard to public assistance.

5. Discriminating in admissions, services offered, or room assignment on the basis of status with regard to public assistance. Admissions discrimination shall include, but is not limited to:
 - a. Basing admissions decisions upon assurance by the applicant to the nursing home, or the applicant's guardian or conservator, that the applicant is neither eligible for nor will seek public assistance for payment of nursing home care costs.
 - b. Engaging in preferential selection from waiting lists based on an applicant's ability to pay privately.

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

6. Requiring any vendor of medical care, who is reimbursed by medical assistance under a separate fee schedule, to pay any portion of the vendor's fee to the nursing home except as payment for the fair market value of renting or leasing space or equipment of the nursing home or purchasing support services, if those agreements are disclosed to the department.
7. Refusing, for more than twenty-four hours, to accept a resident returning to the resident's same bed or a bed certified for the same level of care, in accordance with a physician's order authorizing transfer, after receiving inpatient hospital services.
8. Violating any of the rights of health care facility residents enumerated in section 50-10.2-02.
9. Charging a managed care organization a rate that is less than the rate approved by the department for a medical assistance recipient in the same classification.

SECTION 8. AMENDMENT. Section 50-24.4-27 of the North Dakota Century Code is amended and reenacted as follows:

50-24.4-27. Medicare certification. All nursing facilities certified under the medical assistance program shall participate in medicare part A and part B with respect to at least thirty percent of the beds in the facility unless, after submitting an application, medicare certification is denied by the federal health care financing administration. The facility shall file on behalf of each patient or assist each patient in the filing of requests for any third-party benefits to which the patient may be entitled. ~~Medicare review must be conducted at the time of the annual medical assistance review.~~ Charges for medicare-covered services provided to residents who are simultaneously eligible for medical assistance and medicare must be billed to medicare part A or part B before billing medical assistance. Medical assistance may be billed only for charges not reimbursed by medicare.

SECTION 9. AMENDMENT. Subsection 3 of section 50-24.5-02 of the North Dakota Century Code is amended and reenacted as follows:

3. Supplement, within the limits of legislative appropriation, the income of an eligible beneficiary receiving necessary basic care services to the extent that the eligible beneficiary lacks income sufficient to meet the cost of that care, provided at rates determined by the department adjusted by the inflation rate for basic care services used to develop the legislative appropriation for the department.

SECTION 10. REPEAL. Section 50-24.4-09 of the North Dakota Century Code is repealed.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1252.

House Vote: Yeas 78 Nays 12 Absent 4

Senate Vote: Yeas 36 Nays 9 Absent 2

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2005.

Approved at _____ M. on _____, 2005.

Governor

Filed in this office this _____ day of _____, 2005,

at _____ o'clock _____ M.

Secretary of State