

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION  
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1112

2001 HOUSE HUMAN SERVICES

HB 1112

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1112

House Human Services Committee

Conference Committee

Hearing Date January 15, 2001

Tape Number	Side A	Side B	Meter #
Tape 2	X		4830 to 6000
Tape 2		X	0 to 1950
Committee Clerk Signature <i>Corinne Easton</i>			

Minutes:

Chairman Price, Vice Chairman Devlin, Rep. Dosch, Rep. Galvin, Rep. Klein, Rep. Pollert, Rep. Porter, Rep. Tieman, Rep. Weiler, Rep. Weisz, Rep. Cleary, Rep. Metcalf, Rep. Niemeier, Rep. Sandvig.

Chairman Price: Opened hearing on HB 1112

Barbara Fischer: Manager, Long Term Care and Hospital Services, Department of Human Services. Support of HB 1112 and requests a DO PASS. (See written testimony)

Chairman Price: Why is the fiscal note different than your testimony?

Barbara Fischer: My testimony relates to the retained fund. They include retained funds that is identified as special funds, but there is also federal portion of basic care. Because we are looking at doing a personal care option, the breakdown of the \$301,922 is \$190,721 from federal match and \$111,201 from retained funds. Retained funds are basically general funds.

Chairman Price: And the rest is for personal care option.

Barbara Fischer: Further in the week we will have more testimony on the personal care option.

Rep. Weisz: Can you give me an example, percentage wise, say basic care facility is in the 60% bracket for occupancy - the rate difference.

Barbara Fischer: As an example, the Baptist Home of Kenmare was at a 60% occupancy, as a result of that their rate difference was \$6.52 per day. So it depends where the impact is on indirect care cost or the property rate. Bethel Lutheran which was at 61% this year and 58% last year, in 2000 their impact was \$6.97 per day and in 1999 it was \$7.57 per day.

Rep. Price: In looking at this I've noticed that we've got fewer licensed beds. Those that changed went down except for 1 see went up by one bed. Is this a trend that is going to continue?

Barbara Fischer: The changes that occurred mostly were decreases for facilities that moved into pilot projects. The one facility that had an increase, they were trading beds. There is a provision in the moratorium that you can transfer one bed for every two you give up. There has not been a lot of decreases in licenses for basic care facilities. Basic care facilities have been promoted as an alternative to nursing facilities, so we would expect to see increases in the future.

Chairman Price: Do you have anywhere a list of what is direct and indirect costs for a bed in a nursing home?

Barbara Fischer: These are in our administrative rules.

Chairman Price: For basic care is bed making direct or indirect?

Barbara Fischer: For basic care bed making could be either.

Chairman Price: What about a nursing home?

Barbara Fischer: For a nursing home if it was done by a certified nurses aid it would be under direct, if it was done by a none-certified nurses aid it would be indirect.

Chairman Price: Who sets the determination? Is it a North Dakota rule?

Barbara Fischer: That is a participation requirement from Medicaid. That is a federal rule.

Chairman Price: Can someone employ a housekeeper to make a bed and still have it be a direct cost?

Barbara Fischer: The housekeeper, unless they were certified as a nurse aid, those costs would then be included in indirect.

Rep. Devlin: Can you tell me the difference of the cost to the state the difference in having someone in a nursing home versus a basic care facility?

Barbara Fischer: Currently the average nursing facility rate is \$109 a day. We don't figure basic care, but it is probably in the \$45 to \$60 per day range.

Rep. Devlin: I am just trying to analyze this. If we end up getting the basic care bed certified so they aren't there, we are always going to have people in the higher priced nursing home. Wouldn't we be further ahead to keep a higher level of vacancy in a basic care facility just to have them available than to have those beds eliminated and not being there if we needed them?

Barbara Fischer: The basic care occupancy over the years has been running under 90% average. The nursing care facility occupancy at the same time is running 95% or better, but that has been dropping over the past few years. With the changes that the long-term care task force is recommending on promoting alternatives to nursing facilities care and using more assistant living, basic care may also not be as much a demand as there is for assistant living for individuals in their own apartments. There has been a slight increase in basic care usage, but not to the point to bring it above the 90%.

Dave Zentner: Director of Medical Services. I think with this issue of occupancy, you have the same situation that exists in nursing homes. You have some nursing homes that have no

occupancy because they are located in areas where you tend to have high usage. You have other nursing homes that have tremendous amount of problems because they are located in areas where there simply aren't enough individuals available anymore to fill beds. You have a similar situation in basic care. You have some basic care facilities in locations where the demand is not there. The question is will there be a demand in the future, and that's why we look at the occupancy limits. So we're not paying for unoccupied beds that are probably never going to be occupied. It will at least force the facility to take a look at their number of beds and determine whether in deed the future holds something different so they are eventually going to fill those beds, or whether they will need to do some down sizing because of their locale. That is kind of the way I view the issue of occupancy. You may have needs in other parts of the state, but if you have a locale where you have a lot of beds but no elderly ready to fill them, and no incentive to down size, we end up then really subsidizing those empty beds.

Rep. Devlin: As a follow-up, of these dollars that are going to basic care what percentage is federal and what percentage is state?

Dave Zentner: Right now it is all state funds for basic care. You will be hearing a bill Wednesday that will propose to change that. We will Medicaid the basic care program so we will also get 70% federal, 30% state dollars for most of the cost but not all of the costs. When we go to a personal care option we can Medicaid the actual delivery of services, not the room and board costs. Part of it will be at 70-30, the other part will be 100%, if the legislature approves the bill.

Right now, from the state's standpoint it is cheaper to have someone in a nursing home for general fund dollars than it is to have them in basic care.

Rep. Niemeyer: I understand what Mr. Zentner is saying about demand filling those beds.

Another issue though is staffing problems. I know some of the care facilities in the state have reduce their occupancy because of staffing problems. If we are going to reduce the reimbursement to these facilities, that it is just going to escalate the problems providing services to the residents that are already there. Do you agree with that?

Barbara Fischer: The staffing problems - the occupancy limit affects those indirect costs that aren't related to salary and fringe benefits for the direct care giver. Staffing issues is a very difficult issue.

Rep. Cleary: I wondered if you could define assistant living and basic care.

Barbara Fischer: Could I defer that definition until tomorrow, because you will be getting definitions in Bill 1111 and 1109.

Chairman Price: Closed hearing on HB 1112.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1112 b

House Human Services Committee

Conference Committee

Hearing Date 01-24-01

Tape Number	Side A	Side B	Meter #
2	xx		3050--4700
Committee Clerk Signature <i>Cornie Easton</i>			

Minutes: Chair Price : Let's look at HB1112.

Rep. Weisz : With some of the things we are doing with HB1196, I would tend to oppose this bill. The rural aren't going to have the options.

Rep. Tieman : I agree with Rep. Weisz. I have two nursing homes in my area, and when this information was passed out, they would be in that problem.

Rep. Klein : I agree with both of you. I have 3 or 4 in my area.

Chair Price : (3440) There are two things at the back. There is a proposed amendment, if this bill should pass. They want the opportunity to do emergency rule making. They also want to take a look at the number of care facilities for the year 2000 that are below the 90%. There aren't too many that are above. There are 19 that are below and 15 above. I thought we had 42, but it doesn't say that. We are looking at over half will be affected by this. Remember, is we do not pass this bill, appropriations will be looking for \$302,000.

Rep. Deylin : If you keep a basic care facility open, say McClusky, at 60% occupancy, but if you close it, they will have to go to Bismarck. They won't have an alternative. We will end up paying double or triple the rates.

Rep. Metcalf : In the fiscal note, out of the \$300,000, I have \$190,000, which is federal and \$111,000 retained. Whatever retained means.

Rep. Weisz : If we do a buy down, we could create increase basic care.

Chair Price : It may happen that if Medicaid starts paying at basic care, some people may move from the nursing homes to basic care facilities. You may see new admissions to basic care. We are proceeding as if the Fed's accept the state plan amendment that would make it Medicaid payable.

Rep. Niemeier: Occupancy depends on demand and staffing, too. Those are hard to predict.

Rep. Porter : Rather than change things, we should put our efforts on getting a good comprehensive study, and then come back and fix the identified problems.

Rep. Pollert : I move a **DO NOT PASS**.

Rep. Tleman : I second.

Rep. Niemeier : I know that they are losing a little money, but the department is there to serve the people.

Rep. Cleary : It is a small amount of money actually.

**VOTE: 13 YES and 1 NO PASSED. Rep. Porter will carry the bill.**

**FISCAL NOTE**  
 Requested by Legislative Council  
 12/14/2000

Bill/Resolution No.: HB 1112

Amendment to:

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>						
<b>Expenditures</b>				(\$301,922)		(\$301,922)
<b>Appropriations</b>				(\$301,922)		(\$301,922)

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

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2. Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

Section 7 of HB 1112 would allow the Department the ability to develop a minimum occupancy requirement, which will be used when setting rates. The fiscal note is based upon a minimum occupancy of 90% for the indirect and property rates of basic care facilities. This correlates to the occupancy requirements with those currently used to determine nursing facility rates. The 80th percentile limits established by this section would not have a fiscal impact, since these rates are currently calculated using the 80th percentile limit.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The decrease in expenditures is a result of anticipated saving realized by decreasing the indirect and property rates for those facilities whose occupancy currently does not exceed 90%. Ninety-percent occupancy is calculated by taking the number of licensed beds times 365/366, times 90%. If actual occupancy is less than the product, occupancy at 90% is used to calculate the rates for indirect costs and property costs. This results in a projected decrease of expenditures of \$301,922 for the biennium.

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

<b>Name:</b>	Brenda M. Welsz	<b>Agency:</b>	Department of Human Services
<b>Phone Number:</b>	328-2397	<b>Date Prepared:</b>	01/12/2001

Date: 1-24-01  
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1112

House Human Services Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do not Pass

Motion Made By Rep. Pollert Seconded By Rep. Tieman

Representatives	Yes	No	Representatives	Yes	No
Rep. Clara Sue Price, Chairman	✓		Rep. Audrey Cleary	✓	
Rep. William Devlin, V, Chairman	✓		Rep. Ralph Metcalf	✓	
Rep. Mark Dosch	✓		Rep. Carol Niemeier	✓	
Rep. Pat Galvin	✓		Rep. Sally Sandvig		✓
Rep. Frank Klein	✓				
Rep. Chet Pollert	✓				
Rep. Todd Porter	✓				
Rep. Wayne Tieman	✓				
Rep. Dave Weiler	✓				
Rep. Robin Weisz	✓				

Total (Yes) 13 No 1

Absent \_\_\_\_\_

Floor Assignment Rep. Porter

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

**REPORT OF STANDING COMMITTEE (410)**  
January 24, 2001 12:22 p.m.

**Module No: HR-12-1499**  
**Carrier: Porter**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1112: Human Services Committee (Rep. Price, Chairman) recommends DO NOT PASS (13 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1112 was placed on the Eleventh order on the calendar.**

2001 TESTIMONY

HB 1112

**TESTIMONY ON HB 1112  
HUMAN SERVICES COMMITTEE  
JANUARY 16, 2001**

Chairman Price and members of the committee, I am Barbara Fischer, Manager Long Term Care and Hospital Services with the Department of Human Services. I appear before you today in support of HB 1112 which establishes a 90% minimum occupancy requirement when determining payment rates for basic care facilities.

During the last legislative session, basic care rate setting was changed substantially based on recommendations from the Long Term Care Task Force. As a result of statutory changes which allowed for property costs to be recognized as pass through costs and the addition of an operating margin, the Department's administrative rules relating to rate setting were amended to incorporate the changes effective for the rate year beginning July 1, 1999.

Throughout the years, the Department has paralleled basic care rate setting to nursing facility rate setting whenever possible. With the changes to recognize property costs as a pass through and to include an operating margin, basic care rate setting more closely paralleled nursing facility rate setting than they ever had in the past.

The Department amended the administrative rules relating to rate setting to incorporate the statutory changes and to include a 90% occupancy requirement for basic care facilities. The rules on the 90% occupancy requirement were subsequently voided at the May 16, 2000 meeting of the Administrative Rules Committee, chaired by Representative Devlin.

The committee minutes reflect there is a 90% occupancy limit in the statutory provisions governing nursing facilities but there is no corresponding provision for basic care facilities. Further, that since a limit is set in one area of the law and not in another that a limit does not apply where the Legislative Assembly has been silent and that no change therefore can be made by rule.

The minutes go on to state "if the Department thinks this limit is appropriate, the change should be pursued through introduction of legislation." HB 1112 does just that. Paragraph 7 contains language allowing the Department to establish procedures applicable to minimum occupancy requirements in basic care facilities which is similar to the statutory authority in N.D.C.C. 50-24.4 relating to minimum occupancy requirements for nursing facilities.

Application of a 90% occupancy requirement for rate setting ensures that payments for services are not increased as a result of underutilization of a facility's licensed capacity. Costs included in the categories which would be subject to the 90% occupancy requirement are for the most part fixed costs which do not vary with the number of residents in a facility. For example, interest expense incurred bears no direct relationship to the number of individuals actually residing in the facility in any given year.

The attached schedule shows the facilities participating in the basic care assistance program and their occupancy percentages for the last 2 years.

The increased costs to the basic care assistance program as a direct result of non-application of the 90% minimum occupancy requirement for the 1999 rate year ranged from \$.15 per day to \$7.57 per day. The rates effective July 1, 2000 were increased from \$.09 per day to \$14.10 per day.

The fiscal note for this bill identifies a savings of \$111,201 in retained funds for the 01-03 biennium if the 90% minimum occupancy requirement is imposed. This was calculated in anticipation of getting federal dollars on the portion of the basic care expenditures which are to be paid under the personal care option and implementing the rate as of the first year of the biennium. Because express language is not included in the bill it will be necessary to declare this bill an emergency and to give the Department emergency rule making authority to allow for establishment of procedures to apply a minimum occupancy requirement to the rates which will be effective July 1, 2001. The earliest this can be done without any emergency clauses is for the rate year beginning July 1, 2002 and the anticipated savings would then be \$55,619 of retained funds rather than \$111,201.

The Department submits the attached amendment to allow for implementation of this bill at the beginning of the biennium.

The Department supports this bill and requests that it receive a do pass with the amendment.

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

**BASIC CARE FACILITIES**  
**Census and Occupancy History**

		2000 Licensed	1999 Licensed	Rate Year 2000			Rate Year 1999			RY 1998	1996
				1999 Reported	Minimum Occupancy	Occ %	1998 Reported	Minimum Occupancy	Occ %	1997 Reported	Reported
Edgewood Vista/Chateau	Bismarck	42	32	9,198	13,797	60.00%	10,203	10,512	87.35%	10,194	9,808
Baptist Home of Kenmare	Kenmare	48	60	10,537	15,768	60.14%	11,645	19,710	53.17%	14,732	16,554
Bethel Lutheran	Williston	19	19	4,257	6,242	61.38%	4,054	6,242	58.46%	4,346	4,265
Sheridan Memorial Home	McClusky	30	30	7,091	9,355	64.76%	7,585	9,855	69.27%	7,398	9,047
Emer's Basic Care, Inc	Jamestown	20	20	5,233	6,570	71.68%	6,248	6,570	85.59%	6,253	6,589
Manor of St. Joseph	Edgeley	40	40	11,149	13,140	76.36%	11,190	13,140	76.54%	10,996	11,532
Noonan Good Samaritan Center	Noonan	32	32	9,278	10,512	79.43%	9,194	10,512	78.72%	9,429	10,425
St. Catherine's Living Center	Wahpeton	16	16	4,737	5,256	81.11%	5,017	5,256	85.91%	4,733	4,368
Karrington - Bismarck	Bismarck	74	91	22,148	24,309	82.00%	22,148	29,894	66.68%	22,494	25,280
Odd Fellows Home	Devils Lake	43	43	13,081	14,126	83.35%	12,352	14,126	78.70%	12,032	10,020
Senior Suites at Sakakawea	Hazen	34	34	10,453	11,169	84.23%	10,562	11,169	85.11%	8,985	9,108
Prairie Home	Bowman	7	7	2,164	2,300	84.70%	2,354	2,300	92.13%	2,220	2,532
Edgewood Vista	Minot	33	32	10,335	10,841	85.80%	10,249	10,512	87.75%	10,045	9,689
Pemblier Nursing Center	Walhalla	13	13	4,097	4,271	86.34%	3,963	4,271	83.52%	1,938	
Gackle Care Centers, Inc.	Gackle	41	41	12,927	13,469	86.38%	13,259	13,469	88.60%	12,630	13,748
Kensington - Williston	Williston	71	71	22,538	23,324	86.97%	21,183	23,324	81.74%	20,332	23,594
Edmore Memorial Rest Home	Edmore	45	47	14,415	14,783	87.76%	14,430	15,440	84.12%	15,464	14,778
Fischer's Care Center	Jamestown	9	9	2,891	2,957	88.01%	2,891	2,957	88.01%	2,891	3,062
Evergreen Place	Ellendale	20	20	6,542	6,570	89.62%	6,408	6,570	87.78%	6,439	5,176
Good Shepherd Home	Watford City	9	9	3,066	2,957	93.33%	2,640	2,957	80.37%	2,112	2,348
Harold Haaland Home	Rugby	80	80	27,467	26,280	94.07%	27,886	26,280	95.50%	27,982	26,709
St. Anne's Guest Home	GrandForks	56	56	19,410	18,396	94.96%	19,867	18,396	97.20%	16,493	19,571
Borg Memorial Home	Mountain	43	43	14,992	14,126	95.52%	15,070	14,126	96.02%	15,349	13,545
Towner County Memorial Hosp.	Cando	10	10	3,491	3,285	95.64%	3,512	3,285	96.22%	3,639	3,624
Bethel 4 Acres Home	Jamestown	29	29	10,126	9,527	95.66%	10,226	9,527	96.61%	10,429	10,552
Maddock Memorial Home	Maddock	25	25	8,819	8,213	96.65%	8,573	8,213	93.95%	8,657	8,880
Redwood Village	Wilton	34	34	12,038	11,169	97.01%	11,977	11,169	96.51%	11,916	12,397
Laach Home	Wahpeton	39	61	14,041	12,812	98.64%	13,677	20,039	61.43%	14,081	13,939
Rock of Ages	Jamestown	53	53	19,103	17,411	98.75%	18,562	17,411	95.95%	18,257	18,272
Terrace	Bismarck	40	40	14,419	13,140	98.76%	14,312	13,140	98.03%	14,522	8,563
Baptist Home, Bismarck	Bismarck	10	10	3,609	3,285	98.88%	3,584	3,285	98.19%	3,592	3,538
Evergreen Inn	Dickinson	51	51	18,555	16,754	99.68%	18,179	16,754	97.66%	17,890	17,019
Dakota Hills Home	Elgin	35	35	12,745	11,498	99.77%	12,695	11,498	99.37%	11,986	7,719
		1,151	1,193	364,952	378,104	86.87%	365,695	391,901	83.98%	360,456	356,351
	Average			1,000			1,002		988	974	

**PROPOSED AMENDMENTS TO HOUSE BILL NO. 1112**

Page 1, line 1, after "to" insert "create and enact a new section to chapter 50-24.5;  
and to"

Page 2, after line 31, insert:

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

**Department of human services - Emergency rulemaking authority.** Notwithstanding subsection 6 of section 28-32-02, the department of human services may adopt interim final rules to implement this Act for the biennium beginning with the effective date of this Act and ending June 30, 2003. The department shall take appropriate measures to make the interim final rules known to every person who may be affected by them. The interim final rules are ineffective one hundred eighty days after the declared effective date unless first adopted as final rules.

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

Renumber accordingly