

2013 HOUSE HUMAN SERVICES

HB 1209

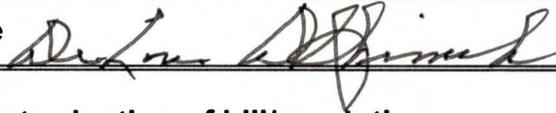
2013 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee
Fort Union Room, State Capitol

HB 1209
January 22, 2013
Job # 17529

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to compensation for top management personnel of basic care facilities.

Minutes:

Testimony #1, 2, 3

Chairman Weisz: Opened the hearing on HB 1209.

Rep. Gary Kreidt: Introduced and supported HB 1209. Has an Emergency clause. There is a limitation right now on the salaries for your top staff in basic care facilities. This is unusual. This legislation would remove that limitation except for an individual that owns 5% or more of the facility. There is a limitation of \$67,000 and that has become a deterrent. The Department of Human Services recognizes this as a problem also.

Chairman Weisz: That one has a \$435,000 fiscal note.

Shelly Peterson: President of ND Long Term Care Association testified in support of the bill. (See Testimony #1) 0:02:47 - 10:08

Rep. Oversen: So why is there a limit on top management and not the other salaries that are included in the indirect care costs?

Shelly Peterson: That is a good question. There is no limit on other salaries right now, just on top management. That whole limit on indirect. We debated bringing forward a new payment system that would change the system on how they set direct and indirect care and that probably should have been the greater issue. It is such a complex system and we could not get an agreement on what we should bring forward that is fair and reasonable. We did not have sufficient time to get consensus on that so that is why we did not bring that issue forward.

Rep. Mooney: Why was there a limitation put on salaries to begin with?

Shelly Peterson: I'm not sure.

Rep. Laning: Your testimony says that your compensation for top management is the greatest and one of them is the highest market driven compensation so don't you already have the ability to bring it up to whatever the market demands?

Shelly Peterson: Not really. The way that section reads you would think the highest market driven, you pick out the non-profit organizations and then who is free standing and that sets the limit. You look at who is nonprofit and then who is free standing; who is not connected to anybody else. That sets the limit and that facility could change every year depending who fits that criteria. Right now it is the \$69,000. One facility that happens to meet those criteria sets the limit no matter where it is located.

Rep: Laning: Are all of your salary studies conducted in North Dakota only?

Shelly Peterson: Yes. Ours is done only in ND. Basic care doesn't exist in other parts of the country. It is unique to North Dakota. We do assisted living salaries in North Dakota too and then we look at comparison to assisted living in other states. I may be able to get that. Assisted living is a private pay only so there is not any limitation for them at all.

Rep. Porter: Because it is in the private pay market; facilities can say whether they will accept Medicaid patients or not?

Shelly Peterson: For basic care assistance program 49 facilities are participating in that program. Those who do not; 100% of residents would be private pay. The vast majority do wish to participate in the basic care assistance program when they get someone because you never want to discharge someone because they ran out of money.

Rep. Porter: If they know that their going to be getting a set rate from Medicaid then they can freely choose whether or not to accept Medicaid patients in their facility.

Shelly Peterson: According to the bill of rights which impacts basic care and assisted living you are not supposed to discriminate based on payment source. If you a private facility and you don't take anyone on assistance yes you can set your compensation because you are not participating in a government program. Under the law we don't have equalization of rates so what you could do as a facility if you chose to be charge a private pay more than those on basic care assistance. We do have some facilities like that.

Rep. Porter: Inside of that system they can limit those Medicaid patients that they want in their mix. They can say we are only going to have a 5% Medicaid mix in our facility and strive to keep it at that level.

Shelly Peterson: I suppose you could. Your mix can change when people run out of money and have to go on Medicaid. So you mix starts changing. You want to accept people based on need; not based on who is paying the bill.

Rep. Weisz: In a facility that does a mix are they limited in the payment or are they limited in the actual compensation?

Shelly Peterson: The compensation would be limited so thus it wouldn't go into the payment. The facility can chose to pay more; it is just not an allowable cost then.

19:29 Dana Shaar: **Executive director of the ND Association of Nonprofit Organizations** testified in support of the bill. (See Testimony #2)

NO OPPOSITION

21:24 LeeAnn Thiel: **Administrator of Medicaid Payment and Reimbursement Services of the Medical Assistance Division of DHS** gave information on the bill. (See Testimony #3)

23:24 Chairman Weisz: You are coming up with more than one facility. Explain how you calculated the fiscal note of \$435,000.

LeeAnn Thiel: Looked at cost reports submitted to us to establish the rates. Looked at adjustments to costs by the facilities and not made by us when we looked at their cost reports.

Rep. Porter: Because these are 100% general fund dollars and no federal money involved, if we know the range of the rates why wouldn't we simplify this whole process and just say this is what we are going to pay; we don't care what you do with the money here is our top rate for basic care and go off of what we know as the current rate structure.

LeeAnn Thiel: In basic care there are two different rates. One is called a personal care rate which involves covering direct care to the residences to cover their needs. That is financed through Medicaid and would have a 50/50 federal funds and the other part of it is called the room and board rate which is 100% general funds. That is the portion of the rate that just changed to the top management compensation would affect. That is why there are no federal funds in this fiscal note.

Rep. Porter: Even with a dual component inside this rate; why wouldn't we just pick a rate and say this is what we are going to pay?

LeeAnn Thiel: My understanding that we need to be fiscally responsible. We try and set the rates within limits to compensate them for their costs. You have a wide range due to the size of the facility. We wanted to recognize the difference between them with the limits such as the indirect care limit that Shelly talked about.

Chairman Weisz: What is rate of room and board that the state is paying low to high?

LeeAnn Thiel: I do know it ranges anywhere from \$30-\$100 a day for the room and board. That is not personnel care.

Hearing closed.

2013 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee Fort Union Room, State Capitol

HB 1209
February 6, 2013
Job #18428

Conference Committee

Committee Clerk Signature

Vicky Crabtree

Explanation or reason for introduction of bill/resolution:

Relating to compensation for top management personnel of basic care facilities.

Minutes:

Chairman Weisz: 1209 committee. Can anyone explain the fiscal note on the rate setting? Eleven facilities exceeded the top management limit, ten are connected to hospitals so they aren't affected by this, and it results in one basic care facility limited under this provision. Yet we have a \$435,000 fiscal note. If only one facility is affected, can you explain that?

Shelly Peterson: It was a mystery to us too. Our data showed only one would exceed, however in talking with the LeeAnn at DHS afterwards, she indicated that what we looked at were cost reports submitted by facilities and there were cost adjustments made to the cost report prior to the submission. She had greater information and asked for it and she couldn't give it. She said there were a number of facilities that made adjustments to the cost reports and there would be six or seven salaries in the biennium that would be impacted.

Rep. Silbernagel: How many institutions are we talking about?

Chairman Weisz: Six or seven facilities and could be more in the future.

Rep. Hofstad: Are there facilities that have increased over that limit and opted out of the reimbursement?

Chairman Weisz: I assume that are those six or seven? If they are paying them more it is not showing on the cost report. Correct Shelly?

Shelly Peterson: Yes. If they choose to pay more than that limitation they can. It is not a recognized cost. Are they choosing to back out of the basic care systems programs so low income people cannot participate? Not to my knowledge.

Rep. Mooney: I talked with everyone on my side of ND. They all think it is a long overdue move and hope we move forward with it.

Rep. Laning: The salary limit is the maximum they can turn in for reimbursement, but they can exceed it if they want?

Chairman Weisz: That is correct. Those costs would be shifted to the private pay in reality.

Rep. Laning: Do we have statistics that show a turnover in employment due to salaries?

Chairman Weisz: We don't have any data that speaks specifically to that.

Rep. Muscha: I received an e-mail from one administrator that says there is a category of limitation in place that covers this area already. She was in favor.

Peterson: There are two limitations. One on the salary and one in the cost category. The limitation on indirect costs is lower than it was two years ago.

Rep. Porter: Someone had asked for an emergency clause on this.

Peterson: Yes, because of the rate setting process. The rates go into effect July 1, and we were hoping to have the limitation if it could be eliminated. It would need an emergency clause to go into the effect because the department sends out rates in May.

Chairman Weisz: On the skilled care, how do we treat administrative salaries?

Peterson: There is a limit there too.

Chairman Weisz: How does the salary limitation work?

Peterson: It is much higher than it is in basic.

Rep. Porter: I move add a Section 2, "emergency clause" in the bill.

Rep. Hofstad: Second.

VOICE VOTE: MOTION CARRIED

Rep. Porter: I have mixed feeling about this bill. Inside of the basic care realm, why we as a state says this is how much we will pay, those facilities are free to pick and choose their ratios of Medicaid recipients and fill with other payer mixes. This is much different than what we do with skilled care. I think we are ingrained in skill care committed to facilities on the skilled care side. The budget in Appropriations right now is talking about a lot of different formulas to get adequate reimbursement back to the skilled care. On the basic care side we are just another pair mix inside of a large facility. If they need to pay their upper management more than they have the ability to and are already doing it; I have hard time with this concept of doing this. We all as providers take our own little hit to subsidize the State of North Dakota within our payer mixes and don't see this as being any different.

Rep. Porter: **I move a Do Not Pass without the amendment on 1209.**

Rep. Laning: **Second.**

Chairman Weisz: I'm conflicted too.

Rep. Porter: This kind of a bill sends a stamp of approval to Appropriations that we are picking one provider group over all the rest.

ROLL CALL VOTE: 10 y 2 n 1 absent

MOTION CARRIED on a DO NOT PASS

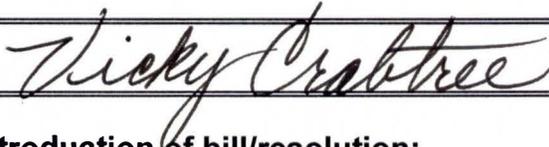
2013 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee Fort Union Room, State Capitol

HB 1209
February 11, 2013
Job 18654

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to compensation for top management personnel of basic care facilities.

Minutes:

You may make reference to "attached testimony."

Chairman Weisz called the meeting to order on HB 1209. We were asked to reconsider HB 1209.

Rep. Mooney: I move we reconsider HB 1209.

Rep. Anderson: Second.

ROLL CALL VOTE: 9 y 4 n 0 absent

MOTION CARRIED

Rep. Mooney: I received e-mails from my home place and we only have one basic care facility in our area. They are disappointed that we did not pass this.

Rep. Kiefert: I received e-mails too. (Read some of the e-mails.) The people wanted this bill to pass.

Rep. Porter: It is sending an unfair message from a policy committee to Appropriation who is dealing with all of the rates across the board. There is nothing in a basic care facility that we tell them they can't hire top notch management and pay them what they are worth. We just don't reimburse them anymore than this set level.

Rep. Looyzen: Is there fear if we don't start increasing the pay that that some health physicians may stop seeing Medicare patients?

Rep. Porter: There is always that threat that goes with this kind of a bill. The last one was with the dentists. We raised the rates and no one gets into see a dentist. We don't set the reimbursement rates for basic care like we do with skilled care where we have a one rate system and everybody pays the same. They are free to charge the private pay sector whatever they feel is necessary to make ends meet.

Rep. Laning: Some of my notes indicated we are really talking 14 of the 49 basic care facilities that are close to the limit. This bill only affect 14 and they do have flexibility in their charging where the skilled care do not.

Rep. Mooney: I make a motion to Do Pass and re-refer to Appropriations on HB 1209.

Rep. Oversen: Second.

ROLL CALL VOTE: 5 y 8 n 0 absent

MOTION FAILED

Rep. Porter: I move a Do Not Pass on HB 1209.

Rep. Fehr: Second.

ROLL CALL VOTE: 8 y 5 n 0 absent

MOTION CARRIED

Bill Carrier: Rep. Laning

FISCAL NOTE
Requested by Legislative Council
01/20/2013

Bill/Resolution No.: HB 1209

- 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	\$0	\$0	\$0
Expenditures	\$0	\$0	\$435,481	\$0	\$478,130	\$0
Appropriations	\$0	\$0	\$435,481		\$478,130	

- 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).*

HB1209 restricts the department of human services from limiting compensation for top management personnel of a basic care facility with some exceptions.

- 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 restricts the department of human services from limiting compensation for top management personnel of a basic care facility with some exceptions. These salary costs are included in the indirect core cost category and are 100% general fund.

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 costs paid by the state for basic care facilities are estimated to increase by \$435,481 in the 13-15 biennium, all of which would be from the general fund. The costs for the 15-17 biennium are estimated at \$478,130, all of which would be from the 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 \$435,481 in the 13-15 biennium, of which \$435,481 would be from the General Fund. The Department will need an appropriation increase of \$478,130 in the 15-17 biennium, of which \$478,130 would be from the General Fund.

Name: Debra A. McDermott

Agency: Department of Human Services

Telephone: 701-328-1980

Date Prepared: 01/21/2013

Date: 2-6-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1209

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. Porter 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:

*Move a Section 2
"emergency clause"*
*Voice
Vote
Motion
Carried*

Date: 2-6-13
Roll Call Vote #: 2

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1209

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. Porter Seconded By Rep. Laning

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

Total (Yes) 10 No 2

Absent 1

Floor Assignment Rep. Laning

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

Removed amendment during motion

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

2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1209

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. Mooney Seconded By Rep. Anderson

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) 9 No 4

Absent 0

Floor Assignment _____

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

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

2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1209

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. Mooney Seconded By Rep. Overen

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN WEISZ		<input checked="" type="checkbox"/>	REP. MOONEY	<input checked="" type="checkbox"/>	
VICE-CHAIRMAN HOFSTAD		<input checked="" type="checkbox"/>	REP. MUSCHA	<input checked="" type="checkbox"/>	
REP. ANDERSON	<input checked="" type="checkbox"/>		REP. OVERSEN	<input checked="" type="checkbox"/>	
REP. DAMSCHEN		<input checked="" type="checkbox"/>			
REP. FEHR		<input checked="" type="checkbox"/>			
REP. KIEFERT	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			
REP. LANING		<input checked="" type="checkbox"/>			
REP. LOOYSEN		<input checked="" type="checkbox"/>			
REP. PORTER		<input checked="" type="checkbox"/>			
REP. SILBERNAGEL		<input checked="" type="checkbox"/>			

Total (Yes) 5 No 8
 Absent 0

Floor Assignment _____

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

Failed

Date: 2-11-13
Roll Call Vote #: 3

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1209

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. Porter Seconded By Rep. Fehr

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) 8 No 5

Absent 0

Floor Assignment Rep. Laning

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

REPORT OF STANDING COMMITTEE

HB 1209: Human Services Committee (Rep. Weisz, Chairman) recommends **DO NOT PASS** (10 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HB 1209 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

HB 1209: Human Services Committee (Rep. Weisz, Chairman) recommends **DO NOT PASS** (8 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). HB 1209 was placed on the Eleventh order on the calendar.

2013 HOUSE APPROPRIATIONS

HB 1209

2013 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Committee Roughrider Room, State Capitol

HB 1209
2/21/13
Job #19306

Conference Committee

Committee Clerk Signature

Mary Brucher

Explanation or reason for introduction of bill/resolution:

A Bill for an Act to amend and reenact section 50-24.5-10 of the North Dakota Century Code relating to compensation for top management personnel of basic care facilities.

Minutes:

No attachments.

Chairman Delzer: This was a Do Not Pass out of committee. It passed the floor and it had debate on the floor. I'd like to send this back to the floor without a recommendation but I don't think we could do that because it had a Do Not Pass recommendation coming out of the policy committee and the floor overturned the policy committee. The bill amounts to allowing basic care to set whatever rate and be reimbursed for whatever rate they want to pay their managers. What are the committee's wishes?

Rep. Kreidt: This bill allows for an adjustment taking the previous limits off the basic care administrators and allowing the facilities to pay above where they are capped right now and that's in the \$60,000 range. If they have a hospital or nursing home attached that limit doesn't apply so this would level the playing field for those particular administrators. **Made a motion for a Do Pass.**

Rep. Wieland: Seconded.

Rep. Glassheim: Do we know what the salaries are if they are capped at \$60,000?

Chairman Delzer: They are not capped. They can pay more, but they can only get reimbursed up to \$64,000.

Rep. Kreidt: Facilities that exceed the limit the facility isn't recognized for that cost; you eat that cost.

Chairman Delzer: What's the average wage and what do you expect it to go too?

Rep. Kreidt: I would not expect these administrators to make hundreds of thousands of dollars.

Chairman Delzer: Do you know the average rate is? Do you know what the average rate for a nursing home administrator is?

Rep. Kreidt: The cap is \$260,000. They have to pay what they can afford though. They would probably wind up in the \$70,000-75,000 range.

Chairman Delzer: Any further discussion?

ROLL CALL VOTE: 11 YES 11 NO 0 ABSENT

Representative Grande: Made a motion for Without Committee Recommendation.

Representative Thoreson: Seconded.

ROLL CALL VOTE: 15 YES 7 NO 0 ABSENT

Representative Delzer will carry this bill.

FISCAL NOTE
Requested by Legislative Council
01/20/2013

Bill/Resolution No.: HB 1209

- 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).*

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- 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 restricts the department of human services from limiting compensation for top management personnel of a basic care facility with some exceptions. These salary costs are included in the indirect core cost category and are 100% general fund.

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

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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 \$435,481 in the 13-15 biennium, of which \$435,481 would be from the General Fund. The Department will need an appropriation increase of \$478,130 in the 15-17 biennium, of which \$478,130 would be from the General Fund.

Name: Debra A. McDermott

Agency: Department of Human Services

Telephone: 701-328-1980

Date Prepared: 01/21/2013

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

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1209**

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 11 No 11

Absent _____

Floor Assignment _____

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

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

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1209**

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 Without Recommendation

Motion Made By Rep. Grande Seconded By Rep. Thoreson

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. Delzer

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

REPORT OF STANDING COMMITTEE

HB 1209: Appropriations Committee (Rep. Delzer, Chairman) recommends BE PLACED ON THE CALENDAR WITHOUT RECOMMENDATION (15 YEAS, 7 NAYS, 0 ABSENT AND NOT VOTING). HB 1209 was placed on the Eleventh order on the calendar.

2013 SENATE HUMAN SERVICES

HB 1209

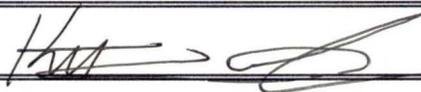
2013 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee Red River Room, State Capitol

HB 1209
03/06/2013
19505

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to compensation for top management personnel of basic care facilities.

Minutes:

See "attached testimony."

Chairwoman J Lee opens testimony on HB 1209

(0:00:40) Shelly Peterson President of the North Dakota Long Term Care association is in support of HB 1209. See Attachment #1

(0:10:00) Dana Schaar, North Dakota Association of Nonprofit Organizations. Testifies in Favor of HB 1209. See attachment #2

(0:11:31) LeeAnn Thiel, Administrator of Medicaid Payment and Reimbursement Services with the Medical Services Division for the Department of Human Services. See attachment #3

(0:14:00) Senator Anderson: Wanted clarification the difference between basic care facilities and skilled care facilities and payments.

(0:14:35) LeeAnn Thiel: there is a difference in rate from basic care facilities and skilled care facilities. Based on cost reports from the facilities.

(0:15:16) Chairwoman J. Lee: States that North Dakota has basic care; assisted living does not receive Medicaid reimbursement. In addition to the difference of basic, assisted and skilled living centers.

(0:18:38) Senator Anderson: Section 1 line 8: clarification on a basic care facility combined to with hospitals.

(0:19:06) There is a discussion about the differences in the facilities and the dollar amount limits that are currently set.

Closes the testimony

2013 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee
Red River Room, State Capitol

HB 1209
3/14/13
19892

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

"Click here to type reason for introduction of bill/resolution"

Minutes:

Chairwoman J Lee opens the discussion on HB 1209

Senator Larsen Motions for Do Pass for rerefer to Appropriations

Senator Axness seconds

Do Pass 4-1-0

Senator Larsen will carry.

FISCAL NOTE
Requested by Legislative Council
01/20/2013

Bill/Resolution No.: HB 1209

- 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	\$0	\$0	\$0
Expenditures	\$0	\$0	\$435,481	\$0	\$478,130	\$0
Appropriations	\$0	\$0	\$435,481		\$478,130	

- 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).*

HB1209 restricts the department of human services from limiting compensation for top management personnel of a basic care facility with some exceptions.

- 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 restricts the department of human services from limiting compensation for top management personnel of a basic care facility with some exceptions. These salary costs are included in the indirect core cost category and are 100% general fund.

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 costs paid by the state for basic care facilities are estimated to increase by \$435,481 in the 13-15 biennium, all of which would be from the general fund. The costs for the 15-17 biennium are estimated at \$478,130, all of which would be from the 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 \$435,481 in the 13-15 biennium, of which \$435,481 would be from the General Fund. The Department will need an appropriation increase of \$478,130 in the 15-17 biennium, of which \$478,130 would be from the General Fund.

Name: Debra A. McDermott

Agency: Department of Human Services

Telephone: 701-328-1980

Date Prepared: 01/21/2013

Date: 3-13-13
 Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1209

Senate 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 Larsen Seconded By AXNESS

Senators	Yes	No	Senator	Yes	No
Chariman Judy Lee	✓		Senator Tyler Axness	✓	
Vice Chairman Oley Larsen	✓				
Senator Dick Dever		✓			
Senator Howard Anderson, Jr.	✓				

Total (Yes) 4 No 1

Absent _____

Floor Assignment Larsen

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

REPORT OF STANDING COMMITTEE

HB 1209: 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). HB 1209 was rereferred to the Appropriations Committee.

2013 SENATE APPROPRIATIONS

HB 1209

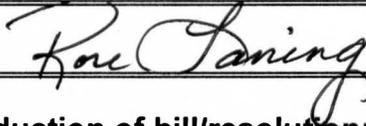
2013 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

HB 1209
March 22, 2013
Job # 20353

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act relating to compensation for top management personnel of basic care facilities.

Minutes:

Testimony attached # 1-2.

Legislative Council - Sheila M. Sandness
OMB - Lori Laschkewitsch

Chairman Holmberg opened the hearing on HB 1209. All committee members were present.

Shelly Peterson, President, North Dakota Long Term Care Association, testified in support of HB 1209 regarding the compensation set for basic care administrators. HB 1209 eliminates one of two limitations set on basic care top management compensation.

Written testimony # 1

Vice Chairman Bowman: If this is implemented and the salaries are adjusted, will this change the budget for those in all areas?

Shelly Peterson: The fiscal impact is about \$230,000 per year and that will carry forward. Right now they are paying those salaries but not getting them recognized in the cost report. Now they would be allowed to put it in there and that would carry forward up to the indirect limitation. The other limitation will still limit it in some fashion.

Senator Wanzek: What is Kinship of the third degree?

Shelly Peterson: I don't know what that means.

Chairman Holmberg: That's why we have Google. It has to do with, incest, nepotism, marriage. There is a list of prohibitions on marriage etc. in different states. In ND it's a criminal offence for first cousins to marry.

Additional written testimony:

Dana Schaar, Executive Director, ND Association of Nonprofit Organizations, #2

Senate Appropriations Committee

HB 1209

March 22, 2013

Page 2

Shelly Peterson explained what the salary range is now. (12:00)

Chairman Holmberg closed the hearing on HB 1209. The bill goes to the Human Service subcommittee.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

HB 1209 subcommittee
March 27, 2013
Job # 20566 (starting at 20:30)

Conference Committee

Committee Clerk Signature

Rosella M. Jernig

Explanation or reason for introduction of bill/resolution:

A BILL for an Act relating to compensation for top management personnel of basic care facilities.

Minutes:

Legislative Council - Becky J. Keller
OMB - Lori Laschkewitsch

Senator Kilzer opened the subcommittee hearing on HB 1135. **Senators Lee, Erbele and Mathern** were also present.

Senator Kilzer: This relates to the salary of nursing home administrators. The bill is to allow an increase in the salary of basic care nursing home administration. The fiscal note is \$435,000 for the biennium. That is an increase of \$3500/nursing home administrator/year. This would cost the state \$435,000 for the upcoming biennium.

Senator Mathern: Why would this be totally general funds?

LeeAnn Thiel, Medical Services Division, DHS: (21:30) She explained. The room and board rate is not a federal service so it's all in general funds.

Senator Mathern Why do you think they list it as 5% ownership?

LeeAnn Thiel: We're getting away from family owned and going to corporations.

Senator Mathern: Say someone gets 4% ownership of the facility. What is that worth?

LeeAnn Thiel: It's not worth a specific dollar amount. If you own the facility, you can pay yourself what you want. The 5% is how they calculate in allowable costs.

Discussion followed on private owned facilities, capital assets, rate setting.

Senator Gary Lee: How many facilities are out there?

LeeAnn Thiel: There are 68 facilities but HB 1209 would not affect all of them.

Senator Kilzer: I'm surprised that your department is not against the bill.

LeeAnn Thiel: We're neutral.

Discussion on the second limitations set on basic care top management compensation, the indirect limit. It changes every year and is \$34 this year.

Senator Kilzer: It's not the administrator?

LeeAnn Thiel: No, there's more in there. LeeAnn continued to explain (30:20). This is only for standalone basic care facility.

Senator Mathern: I'm inclined to pass this bill, but if you have concerns about the costs, we can look at the starting date.

Senator Kilzer: It would be interesting to know why it was put in originally. Was it a federal regulation?

LeeAnn Thiel: The dollar amount was put in place to limit costs.

Senator Erbele: This was a high priority in my district.

Senator Erbele moved Do Pass on HB 1209.

Senator Mathern seconded the motion.

A roll call vote was taken. Yea: 4; Nay: 0

Senator Kilzer: We will recommend a Do Pass to the full committee.
Meeting adjourned.

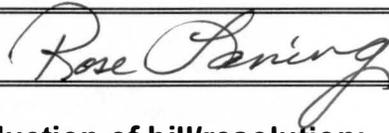
2013 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee
Harvest Room, State Capitol

HB 1209
March 28, 2013
Job # 20588

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act relating to compensation for top management personnel of basic care facilities.

Minutes:

Chairman Holmberg opened the discussion on HB 1209.

Senator Kilzer: This removes the threshold on salaries for administrators of basic care facilities. It allows basic care facilities to increase their reimbursement to their administrators. The effect is to increase the indirect costs that they can pass on to their third party payers.

There is a fiscal note with it and it's supported by the Long Term Care Association.

Senator Kilzer moved Do Pass on HB 1209.
Senator Mathern seconded the motion.

A roll call vote was taken. Yea: 11 Nay: 0 Absent: 2

The bill goes back to the Humans Services committee and Senator Larson will carry the bill on the floor.

Date: 3-28-13

Roll Call Vote # 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 1209

Senate Appropriations Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Adopt Amendment Do Pass
 Do Pass as Amended Do Not Pass

Motion Made By Kilzer Seconded By Mather

Senators	Yes	No	Senator	Yes	No
Chairman Ray Holmberg	✓		Senator Tim Mather	✓	
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) 11 No 0

Absent 2

Floor Assignment HS Lawson

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

FISCAL NOTE
Requested by Legislative Council
01/20/2013

Bill/Resolution No.: HB 1209

- 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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Expenditures	\$0	\$0	\$435,481	\$0	\$478,130	\$0
Appropriations	\$0	\$0	\$435,481		\$478,130	

- 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).*

HB1209 restricts the department of human services from limiting compensation for top management personnel of a basic care facility with some exceptions.

- 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 restricts the department of human services from limiting compensation for top management personnel of a basic care facility with some exceptions. These salary costs are included in the indirect core cost category and are 100% general fund.

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.*

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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 \$435,481 in the 13-15 biennium, of which \$435,481 would be from the General Fund. The Department will need an appropriation increase of \$478,130 in the 15-17 biennium, of which \$478,130 would be from the General Fund.

Name: Debra A. McDermott

Agency: Department of Human Services

Telephone: 701-328-1980

Date Prepared: 01/21/2013

REPORT OF STANDING COMMITTEE

HB 1209: Appropriations Committee (Sen. Holmberg, Chairman) recommends DO PASS (11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1209 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

HB 1209

JH /

Testimony on HB 1209
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 206 assisted living, basic care, and nursing facilities. I am here to ask for your support on HB 1209, regarding the compensation set for basic care administrators.

North Dakota has 68 licensed basic care facilities, spread throughout North Dakota. Between them they have 1,761 licensed beds, and on a daily basis they provide care to about 1,497 individuals. The 2012 average monthly rate for 24-hour care and services was \$3,272. This all-inclusive rate covers room, meals, personal care services, supervision, activities, transportation, medication administration, nursing assessment and care planning.

Current residents range in age from 24 to 105 years old, with the average age being 78 years old. Seventy percent of the residents are female. This is an excellent setting for individuals who have some impaired mental status, need help with medication, bathing and socialization.

Almost three quarters (74%) of all basic care facilities are non-profit organizations. Forty-nine of the sixty-eight basic care facilities (for profit and non profits) participate in the basic care assistance program, so low and moderate income individuals can get financial assistance to access basic care services. Basic care rules limit compensation of top management by the following method:

75-02-07.1-14 Compensation

1. Compensation on an annual basis for top management personnel must be limited, prior to allocation, if any, to the greatest of:

- a. The highest market-driven compensation of an administrator employed by a freestanding not-for-profit facility during the report year;
 - b. Sixty thousand nine hundred seventy-four dollars;
 - c. The limit set under this subsection for the previous rate year adjusted by the adjustment factor; or
 - d. If the facility is combined with a nursing facility or hospital, the compensation limit for top management personnel as determined by chapter 75-02-06, except the allocation of the compensation to the basic care facility may not exceed the greatest of subdivision a, b, or c.
2. Compensation for top management personnel employed for less than a year must be limited to an amount equal to the limitation described in subsection 1, divided by three hundred sixty-five times the number of calendar days the individual was employed.

In the most recent basic care cost report, eleven facilities exceeded the top management limit, however ten are connected to hospitals or nursing facilities and thus have a different limit, resulting in only one basic care facility limited under this provision today.

Administrative compensation is considered an “Indirect Care Cost,” which also has a limit. Today 14 of 50 (28%) of all basic care facilities are limited in “Indirect Care.” Attachment A shows what kind of expenses are considered “Indirect Care.” When you are limited, it means your costs are greater than the limit and none of the costs above the limit will be allowed in your rate.

Rate Year	Indirect Limit
2010	39.24
2011	36.81
2012	38.92

On a side note, the basic care payment system is old and desperately needs updating. After the 2013 session, we want to work with the department and propose a new system. In the meantime, we don't believe that the Department of Human Services needs to impose two limitations; HB 1209 will eliminate the limitation on top management, while at the same time retaining a limitation on the "Indirect Care" category.

Thank you for your consideration of HB 1209. I would be happy to answer any questions you may have.

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

Attachment A

75-02-07.1-07. Indirect care costs. Indirect care costs include all costs specifically identified in this section. Indirect care costs must be included in total, without direct or indirect allocation to other cost categories unless specifically provided for elsewhere.

1. **Administration.** Costs for administering the overall activities of the facility include:
 - a. Salary and employment benefits for administrators, except that part of an administrator's salary may be allocated to other cost categories provided adequate records identifying the hours and services provided are maintained by the facility.
 - b. Salary and employment benefits for assistant administrators, top management personnel, accounting personnel, clerical personnel, secretaries, receptionists, data processing personnel, purchasing, receiving and store personnel, and salary and employment benefits of all personnel not designated in other cost categories.
 - c. Board of directors' fees and related travel expenses.
 - d. Security personnel or services.
 - e. Supplies except as specifically provided for in the direct care and other cost centers of the indirect care cost category.
 - f. Insurance, except insurance included as a fringe benefit and insurance included as part of related party lease costs.
 - g. Telephone.
 - h. Postage and freight.
 - i. Membership dues and subscriptions.
 - j. Professional fees for services such as legal, accounting, and data processing.
 - k. Central or home office costs including property costs, but not including costs that may be allocated to other cost centers under subsection 4 of section 75-02-07.1-12.
 - l. Advertising and personnel recruitment costs.
 - m. Management consultants and fees.
 - n. Business meetings, conventions, association meetings, and seminars.
 - o. Travel.
 - p. Training, including inservice training.
 - q. Business office functions.

- r. Computer software costs, except costs that must be capitalized, and computer maintenance contracts.
- s. Working capital interest.
- t. Any costs that cannot be specifically classified to other cost categories.

2. Chaplain.

- a. Salary and employment benefits for all personnel assigned to meet the spiritual needs of the residents.
- b. Supplies and other expenses related to meeting the spiritual needs of the residents.

3. Pharmacy. Compensation for pharmacy consultants.

4. Plant operations.

- a. Salary and employment benefits for a director of plant operations, engineers, carpenters, electricians, plumbers, caretakers, vehicle drivers, and all other personnel performing tasks related to maintenance or general plant operations.
- b. Motor vehicle operating and resident transportation expenses.

5. Housekeeping.

- a. Salary and employment benefits for a director of housekeeping, housekeepers, and other cleaning personnel.
- b. Cost of cleaning supplies including soaps, waxes, polishes, household paper products such as hand towels and toilet paper, and noncapitalized cleaning equipment.
- c. Contracted services for housekeeping.

6. Dietary.

- a. Salary and employment benefits for a director of dietary, nutritionists, dieticians, cooks, and kitchen personnel involved in the preparation and delivery of food.
- b. The cost of dietary supplies and utensils including dietary paper products, silverware, and noncapitalized kitchen and dining equipment.

7. Medical records. Salary and employment benefits for personnel performing medical records maintenance.

History: Effective July 1, 1996; amended effective July 1, 2001.

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

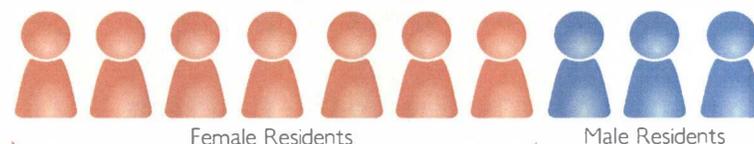
Law Implemented: NDCC 50-24.5-02(3)

Basic Care Facilities

Basic Care at a Glance:

- 70 licensed basic care facilities
- 1,827 licensed beds
- 2012 average monthly rate is \$3,272
- 2012 average occupancy is 85%

Gender of Basic Care Residents



70% of residents in North Dakota basic care facilities are female

(n=848)

Basic Care Facts:

- A basic care facility is a congregate residential setting with mostly private rooms (88%).
- The facility provides 24-hour onsite staff.
- Basic care provides an all-inclusive rate providing room, meals, personal care services, supervision, activities, transportation, medication administration, nursing assessment and care planning.
- Current residents range in age from 24 to 105 years old, with the average age being 78.

Care Needs of Basic Care Residents:

- 74% of residents have impaired mental status, ranging from early stage dementia to significant mental health issues.
- 96% of residents need full assistance with medication administration.
- 41% of residents are receiving psychoactive drugs.
- The average basic care resident is on 11 different medications.
- Most residents are independent in dressing (63%), with less than 10% requiring extensive assistance (7.5%).
- 80% of residents need assistance in bathing.
- Most residents are fully independent in eating (90%), toileting (82%) and transferring (95%).
- 65% are ambulatory and do not need any staff assistance, 57% use a walker or cane and very few use a wheelchair (7%).

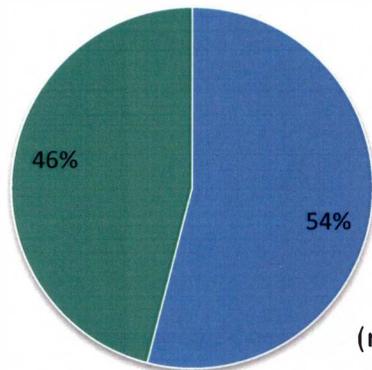
Basic Care Facilities (continued)

Top three reasons for basic care admission:

1. Unable to be or live alone
2. Assistance with daily cares
3. Mild to moderate confusion



Who Pays for Basic Care?



- Basic Care Assistance 54%
- Private Pay 46%*

*13% of residents have LTC insurance that helps pay the bill.

2013 Legislative Priorities for Basic Care

- Four percent inflationary adjustment on costs and limits.
- \$1 an hour wage/benefit pass-through for all basic care staff.
- Allow housing as an employee benefit.
- Support statewide guardianship program.
- Allow basic care bills to be paid as a priority during estate recovery.
- Increase personal needs allowance to \$100 per month with annual adjustment.
- Eliminate the basic care administrator salary limitation.
- Support the basic care moratorium and exception process.
- Continue to support the sales tax exemption for basic care.
- Support Medication Assistants I's for working in assisted living and basic care.



**North Dakota
Long Term Care**
ASSOCIATION
1900 N 11th St (701) 222.0660
Bismarck, ND 58501 www.ndltca.org

**Testimony by Dana Schaar, NDANO Executive Director
House Human Services Committee
In Support of HB 1209
Tuesday, January 22, 2013**

Chairman Weisz and Members of the Committee, my name is Dana Schaar, and I am the executive director of the North Dakota Association of Nonprofit Organizations (NDANO). We are here in support of House Bill 1209.

NDANO is a membership organization of more than 180 nonprofit members from all across North Dakota working in many different mission areas – from human services and the environment to education and the arts.

NDANO supports this legislation because we do not believe it is the role of government to set compensation limitations for nonprofit organizations. Charitable organizations are permitted under current federal law to pay reasonable compensation for services provided by board members, chief executive officers, and other staff.¹ In addition, with North Dakota's low unemployment rate, nonprofit organizations must offer competitive salaries in order to recruit and retain skilled, competent, and caring staff.

For these reasons, NDANO encourages a do pass recommendation on House Bill 1209.
Thank you.

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

#3

Testimony
House Bill 1209 – 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. I am here today to provide information on House Bill 1209, regarding the current top management personnel limitations in administrative code and the estimated cost increase.

North Dakota Administrative Code 75-02-07.1, Rate Setting for Basic Care Facilities, defines "top management personnel" as corporate officers, general, regional, and district managers, administrator, and any other person performing functions ordinarily performed by such personnel. The change proposed by HB 1209 would prevent the limit explained in the following paragraph from being applied to the compensation for the corporate officers, general, regional, and district managers, and any other person performing functions ordinarily performed by such personnel.

Administrative code currently sets the limit for top management personnel as defined above to the greater of:

1. Highest market-driven compensation of an administrator employed by a freestanding not-for-profit facility during the report year; or
2. \$64,687 as of July 1, 2012. This number is inflated by the annual inflationary increase authorized by the Legislature.



If a basic care facility is combined with a hospital or nursing facility, the management compensation limit set for nursing facilities applies to the basic care facility as well. The nursing facility top management limitation is set to the highest market-driven compensation of an administrator employed by a freestanding facility.

The fiscal impact was calculated based on the top management compensation as reported on the basic care facility cost reports used to establish the July 1, 2012, rates. The estimated impact to the Medicaid program for the changes proposed in House Bill 1209 would be \$435,481, for the 2013-2015 Biennium. The increase would be financed with general funds.



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

NDLA, S HMS - Dvorak, Kirsten

From: Lee, Judy E.
Sent: Tuesday, March 05, 2013 10:34 AM
To: NDLA, S HMS - Dvorak, Kirsten
Subject: FW: HB 1209- Basic care salary issue-Senate hearing is March 6th!

Importance: High

Please make copies for our books.

Senator Judy Lee
1822 Brentwood Court
West Fargo, ND 58078
home phone: 701-282-6512
e-mail: jlee@nd.gov

From: Becky Rortvedt [<mailto:beckyr@edgewoodvista.com>]
Sent: Tuesday, March 05, 2013 9:10 AM
To: Lee, Judy E.
Subject: FW: HB 1209- Basic care salary issue-Senate hearing is March 6th!
Importance: High

I ask for you to vote for passage of HB 1209. It is an important issue for the Basic Care facilities of ND.

HB 1209 is important because:

1. The bill corrects an inequity,
2. Only basic care and NFs have a salary limitation, however the NF salary limitation is four times higher than BC
3. Department of Human Services does NOT set a salary limitation on other Medicaid providers such as DD, hospital administrators, physicians, dentist, HCBS providers, etc.
4. If you are a basic care facility and connected to the hospital or nursing home you get the much higher limitation, it is our stand alone basic care facilities that get hit in this situation.
5. We want basic care facilities to care and serve the low income population, but then we don't allow them to be competitive and pay what they need to secure top notch staff.
6. Government should not be setting a limit on salaries on private organizations.
7. The basic care payment system is old and in need of revision, the operating limits they have today are lower than 3 years ago in 2010.
8. HB 1209 corrects an inequity, it does not give them preferential treatment, it corrects a problem .
9. On December 31, 2012, two basic care facilities closed. One facility was located in Williston, 50 elderly individuals needed to find a new place to live and receive care. The main reason for closure was they could not find staff to care for residents. Although HB 1209 would not have fixed their staffing crisis, let's fix something that we know is a problem, and will help facilities recruit management personnel.
10. Thank you and I urge a Do Pass on HB 1209.

Thank you for your consideration.

Attachment #1

**Testimony on HB 1209
Senate Human Services Committee
March 6, 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 206 assisted living, basic care, and nursing facilities. I am here to ask for your support on HB 1209, regarding the compensation set for basic care administrators.

North Dakota has 68 licensed basic care facilities, spread throughout North Dakota. Between them they have 1,761 licensed beds, and on a daily basis they provide care to about 1,497 individuals. The 2012 average monthly rate for 24-hour care and services was \$3,272. This all-inclusive rate covers room, meals, personal care services, supervision, activities, transportation, medication administration, nursing assessment and care planning.

Current residents range in age from 24 to 105 years old, with the average age being 78 years old. Seventy percent of the residents are female. This is an excellent setting for individuals who have some impaired mental status, need help with medication, bathing and socialization.

Almost three quarters (74%) of all basic care facilities are non-profit organizations. Forty-nine of the sixty-eight basic care facilities (for profit and non profits) participate in the basic care assistance program, so low and moderate income individuals can get financial assistance to access basic care services. Basic care rules limit compensation of top management by the following method:

75-02-07.1-14 Compensation

1. Compensation on an annual basis for top management personnel must be limited, prior to allocation, if any, to the greatest of:

- a. The highest market-driven compensation of an administrator employed by a freestanding not-for-profit facility during the report year;
 - b. Sixty thousand nine hundred seventy-four dollars;
 - c. The limit set under this subsection for the previous rate year adjusted by the adjustment factor; or
 - d. If the facility is combined with a nursing facility or hospital, the compensation limit for top management personnel as determined by chapter 75-02-06, except the allocation of the compensation to the basic care facility may not exceed the greatest of subdivision a, b, or c.
2. Compensation for top management personnel employed for less than a year must be limited to an amount equal to the limitation described in subsection 1, divided by three hundred sixty-five times the number of calendar days the individual was employed.

Administrative compensation is considered an “Indirect Care Cost,” which also has a limit. Today 14 of 50 (28%) of all basic care facilities are limited in “Indirect Care.” Attachment A shows what kind of expenses are considered “Indirect Care.” When you are limited, it means your costs are greater than the limit and none of the costs above the limit will be allowed in your rate.

Rate Year	Indirect Limit
2010	39.24
2011	36.81
2012	38.92

On a side note, the basic care payment system is old and desperately needs updating. After the 2013 session, we want to work with the department and propose a new system. In the meantime, we don't believe that the Department of Human Services needs to impose two limitations; HB 1209 will eliminate the limitation on top management, while at the same time retaining a limitation on the “Indirect Care” category.

In summary, HB 1209:

1. Eliminates the administrative salary limitation while retaining the overall limitation.
2. Only basic care and nursing facilities have a salary limitation, however the nursing facility salary limitation is almost four times higher than basic care.
3. Department of Human Services does NOT set a salary limitation on other Medicaid providers such as DD, hospital administrators, physicians, dentist, HCBS providers, etc.
4. If you are a basic care facility and connected to the hospital or nursing home you get the nursing facility limitation, it is our stand alone basic care facilities that get hit in this situation.
5. We want basic care facilities to care and serve the low income population, so let's not create a barrier for them to be competitive and pay what they need to secure top notch staff.
6. The basic care payment system is old and in need of revision, the operating limits they have today are lower than 3 years ago in 2010.
7. HB 1209 corrects an inequity, it does not give them preferential treatment, it corrects a problem.
8. On December 31, 2012, two basic care facilities closed. One facility was located in Williston, 50 elderly individuals needed to find a new place to live and receive care. The main reason for closure was they could not find staff to care for residents. Although HB 1209 would not have fixed their staffing crisis, let's fix something that we know is a problem and will help facilities recruit management personnel.
9. The current salary limitation is most problematic for facilities located in the four major cities.

Thank you for your consideration of HB 1209. I would be happy to answer any questions you may have.

Shelly Peterson, President
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Cell (701) 220-1992 • www.ndltca.org • E-mail: shelly@ndltca.org



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Attachment A

75-02-07.1-07. Indirect care costs. Indirect care costs include all costs specifically identified in this section. Indirect care costs must be included in total, without direct or indirect allocation to other cost categories unless specifically provided for elsewhere.

1. **Administration.** Costs for administering the overall activities of the facility include:
 - a. Salary and employment benefits for administrators, except that part of an administrator's salary may be allocated to other cost categories provided adequate records identifying the hours and services provided are maintained by the facility.
 - b. Salary and employment benefits for assistant administrators, top management personnel, accounting personnel, clerical personnel, secretaries, receptionists, data processing personnel, purchasing, receiving and store personnel, and salary and employment benefits of all personnel not designated in other cost categories.
 - c. Board of directors' fees and related travel expenses.
 - d. Security personnel or services.
 - e. Supplies except as specifically provided for in the direct care and other cost centers of the indirect care cost category.
 - f. Insurance, except insurance included as a fringe benefit and insurance included as part of related party lease costs.
 - g. Telephone.
 - h. Postage and freight.
 - i. Membership dues and subscriptions.
 - j. Professional fees for services such as legal, accounting, and data processing.
 - k. Central or home office costs including property costs, but not including costs that may be allocated to other cost centers under subsection 4 of section 75-02-07.1-12.
 - l. Advertising and personnel recruitment costs.
 - m. Management consultants and fees.
 - n. Business meetings, conventions, association meetings, and seminars.
 - o. Travel.
 - p. Training, including inservice training.
 - q. Business office functions.

- r. Computer software costs, except costs that must be capitalized, and computer maintenance contracts.
 - s. Working capital interest.
 - t. Any costs that cannot be specifically classified to other cost categories.
2. **Chaplain.**
- a. Salary and employment benefits for all personnel assigned to meet the spiritual needs of the residents.
 - b. Supplies and other expenses related to meeting the spiritual needs of the residents.
3. **Pharmacy.** Compensation for pharmacy consultants.
4. **Plant operations.**
- a. Salary and employment benefits for a director of plant operations, engineers, carpenters, electricians, plumbers, caretakers, vehicle drivers, and all other personnel performing tasks related to maintenance or general plant operations.
 - b. Motor vehicle operating and resident transportation expenses.
5. **Housekeeping.**
- a. Salary and employment benefits for a director of housekeeping, housekeepers, and other cleaning personnel.
 - b. Cost of cleaning supplies including soaps, waxes, polishes, household paper products such as hand towels and toilet paper, and noncapitalized cleaning equipment.
 - c. Contracted services for housekeeping.
6. **Dietary.**
- a. Salary and employment benefits for a director of dietary, nutritionists, dieticians, cooks, and kitchen personnel involved in the preparation and delivery of food.
 - b. The cost of dietary supplies and utensils including dietary paper products, silverware, and noncapitalized kitchen and dining equipment.
7. **Medical records.** Salary and employment benefits for personnel performing medical records maintenance.

History: Effective July 1, 1996; amended effective July 1, 2001.

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

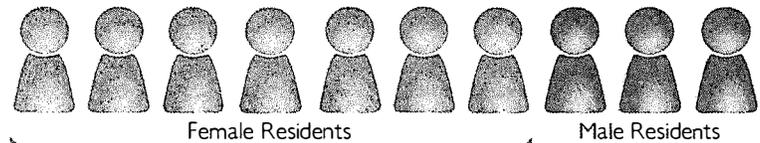
Law Implemented: NDCC 50-24.5-02(3)

Basic Care Facilities

Basic Care at a Glance:

- 70 licensed basic care facilities
- 1,827 licensed beds
- 2012 average monthly rate is \$3,272
- 2012 average occupancy is 85%

Gender of Basic Care Residents



70% of residents in North Dakota basic care facilities are female

(n=848)

Basic Care Facts:

- A basic care facility is a congregate residential setting with mostly private rooms (88%).
- The facility provides 24-hour onsite staff.
- Basic care provides an all-inclusive rate providing room, meals, personal care services, supervision, activities, transportation, medication administration, nursing assessment and care planning.
- Current residents range in age from 24 to 105 years old, with the average age being 78.

Care Needs of Basic Care Residents:

- 74% of residents have impaired mental status, ranging from early stage dementia to significant mental health issues.
- 96% of residents need full assistance with medication administration.
- 41% of residents are receiving psychoactive drugs.
- The average basic care resident is on 11 different medications.
- Most residents are independent in dressing (63%), with less than 10% requiring extensive assistance (7.5%).
- 80% of residents need assistance in bathing.
- Most residents are fully independent in eating (90%), toileting (82%) and transferring (95%).
- 65% are ambulatory and do not need any staff assistance, 57% use a walker or cane and very few use a wheelchair (7%).

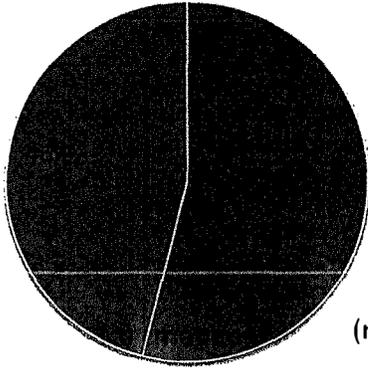
Basic Care Facilities (continued)

Top three reasons for basic care admission:

1. Unable to be or live alone
2. Assistance with daily cares
3. Mild to moderate confusion



Who Pays for for Basic Care?



(n=830)

- Basic Care Assistance 54%
- Private Pay 46%*

*13% of residents have LTC insurance that helps pay the bill.

2013 Legislative Priorities for Basic Care

- HB 1012: Four percent inflationary adjustment on costs and limits.
- HB 1012: \$1 an hour wage/benefit pass-through for all basic care staff.
- HB 1384: Allow housing as an employee benefit.
- HB 1041: Support statewide guardianship program.
- HB 1172: Allow basic care bills to be paid as a priority during estate recovery.
- HB 1012: Increase personal needs allowance to \$100 per month with annual adjustment.
- HB 1209: Eliminate the basic care administrator salary limitation.
- HB 1035: Support the basic care moratorium and exception process.
- Continue to support the sales tax exemption for basic care.
- Support Medication Assistants I's for working in assisted living and basic care.



**North Dakota
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Attachment #2

**Testimony by Dana Schaar, NDANO Executive Director
Senate Human Services Committee
In Support of HB 1209
Wednesday, March 6, 2013**

Madam Chair and Members of the Committee, my name is Dana Schaar, and I am the executive director of the North Dakota Association of Nonprofit Organizations (NDANO). We are here in support of House Bill 1209.

NDANO is a membership organization of more than 180 nonprofit members from all across North Dakota working in many different mission areas – from human services and the environment to education and the arts.

NDANO supports this legislation because we do not believe it is the role of government to set compensation limitations for nonprofit organizations. Charitable organizations are permitted under current federal law to pay reasonable compensation for services provided by board members, chief executive officers, and other staff.¹ In addition, with North Dakota's low unemployment rate, nonprofit organizations must offer competitive salaries in order to recruit and retain skilled, competent, and caring staff.

For these reasons, NDANO encourages a do pass recommendation on House Bill 1209.
Thank you.

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

Testimony
Engrossed House Bill 1209 – Department of Human Services
Senate Human Services Committee
Senator Judy Lee, Chairman
March 6, 2013

Chairman Lee, members of the Senate Human Services Committee, I am LeeAnn Thiel, Administrator of Medicaid Payment and Reimbursement Services with the Medical Services Division for the Department of Human Services. I am here today to provide information on Engrossed House Bill 1209, regarding the current top management personnel limitations in administrative code and the estimated cost increase.

North Dakota Administrative Code 75-02-07.1, Rate Setting for Basic Care Facilities, defines "top management personnel" as corporate officers, general, regional and district managers, administrators, and any other person performing functions ordinarily performed by such personnel. The change proposed by Engrossed HB 1209 would prevent the limit explained in the following paragraph from being applied to the compensation for the corporate officers, general, regional and district managers, administrators, and any other person performing functions ordinarily performed by such personnel.

Administrative code currently sets the limit for top management personnel as defined above to the greater of:

1. Highest market-driven compensation of an administrator employed by a freestanding not-for-profit facility during the report year; or

2. \$64,687 as of July 1, 2012. This number is inflated by the annual inflationary increase authorized by the Legislature.

If a basic care facility is combined with a hospital or nursing facility, the management compensation limit set for nursing facilities applies to the basic care facility as well. The nursing facility top management limitation is set to the highest market-driven compensation of an administrator employed by a freestanding facility.

The fiscal impact was calculated based on the top management compensation as reported on the basic care facility cost reports used to establish the July 1, 2012 rates. The estimated fiscal impact to the program for the changes proposed in Engrossed House Bill 1209 would be \$435,481, for the 2013-2015 Biennium. The increase would be paid for from general funds.

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

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Testimony on HB 1209
Senate Appropriations 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 207 assisted living, basic care, and nursing facilities. I am here to ask for your support on HB 1209, regarding the compensation set for basic care administrators. HB 1209, eliminates one of two limitations set on basic care top management compensation.

Background on Basic Care:

North Dakota has 68 licensed basic care facilities, spread throughout North Dakota. Between them they have 1,761 licensed beds, and on a daily basis they provide care to about 1,497 individuals. The 2012 average monthly rate for 24-hour care and services was \$3,272. This all-inclusive rate covers room, meals, personal care services, supervision, activities, transportation, medication administration, nursing assessment and care planning.

Current residents range in age from 24 to 105 years old, with the average age being 78 years old. Seventy percent of the residents are female. This is an excellent setting for individuals who have some impaired mental status, need help with medication, bathing and socialization.

Problem:

Almost three quarters (74%) of all basic care facilities are non-profit organizations. Forty-nine of the sixty-eight basic care facilities (for profit and non profits) participate in the basic care assistance program, so low and moderate income individuals can get financial assistance to access basic care services. Basic care rules limit compensation of top management by the following method:

75-02-07.1-14 Compensation

1. Compensation on an annual basis for top management personnel must be limited, prior to allocation, if any, to the greatest of:
 - a. The highest market-driven compensation of an administrator employed by a freestanding not-for-profit facility during the report year;
 - b. Sixty thousand nine hundred seventy-four dollars;

Administrative compensation is considered an “Indirect Care Cost,” which also has a limit. Today 14 of 50 (28%) of all basic care facilities are limited in “Indirect Care.” Attachment A shows what kind of expenses are considered “Indirect Care.” When you are limited, it means your costs are greater than the limit and none of the costs above the limit will be allowed in your rate.

Rate Year	Indirect Limit
2010	39.24
2011	36.81
2012	38.92

We don't believe that the Department of Human Services needs to impose two limitations; HB 1209 will eliminate the limitation on top management, while at the same time retaining a limitation on the “Indirect Care” category.

In summary, HB 1209:

1. Eliminates the administrative salary limitation while retaining the overall limitation (thus the salary is still limited).
2. Only basic care and nursing facilities have a salary limitation, however the nursing facility salary limitation is almost four times higher than basic care.
3. Department of Human Services does NOT set a salary limitation on other Medicaid providers such as DD, hospital administrators, physicians, dentist, HCBS providers, etc.

4. If you are a basic care facility and connected to the hospital or nursing home you get the nursing facility limitation, it is our stand alone basic care facilities that get hit in this situation.
5. We want basic care facilities to care and serve the low income population, so let's not create a barrier for them to be competitive and pay what they need to secure top notch staff.
6. The basic care payment system is old and in need of revision, the operating limits they have today are lower than 3 years ago in 2010.
7. HB 1209 corrects an inequity, it does not give them preferential treatment, it corrects a problem.
8. On December 31, 2012, two basic care facilities closed. One facility was located in Williston, 50 elderly individuals needed to find a new place to live and receive care. The main reason for closure was they could not find staff to care for residents. Although HB 1209 would not have fixed their staffing crisis, let's fix something that we know is a problem and will help facilities recruit management personnel.
9. The current salary limitation is most problematic for facilities located in the four major cities.

Thank you for your consideration of HB 1209. I would be happy to answer any questions you may have.

Shelly Peterson, President
North Dakota Long Term Care Association
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Attachment A

75-02-07.1-07. Indirect care costs. Indirect care costs include all costs specifically identified in this section. Indirect care costs must be included in total, without direct or indirect allocation to other cost categories unless specifically provided for elsewhere.

1. **Administration.** Costs for administering the overall activities of the facility include:

- a. Salary and employment benefits for administrators, except that part of an administrator's salary may be allocated to other cost categories provided adequate records identifying the hours and services provided are maintained by the facility.
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- c. Board of directors' fees and related travel expenses.
- d. Security personnel or services.
- e. Supplies except as specifically provided for in the direct care and other cost centers of the indirect care cost category.
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 - b. The cost of dietary supplies and utensils including dietary paper products, silverware, and noncapitalized kitchen and dining equipment.
 7. **Medical records.** Salary and employment benefits for personnel performing medical records maintenance.

History: Effective July 1, 1996; amended effective July 1, 2001.

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

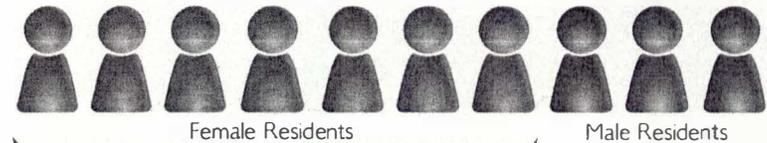
Law Implemented: NDCC 50-24.5-02(3)

Basic Care Facilities

Basic Care at a Glance:

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- 1,827 licensed beds
- 2012 average monthly rate is \$3,272
- 2012 average occupancy is 85%

Gender of Basic Care Residents



70% of residents in North Dakota basic care facilities are female

(n=848)

Basic Care Facts:

- A basic care facility is a congregate residential setting with mostly private rooms (88%).
- The facility provides 24-hour onsite staff.
- Basic care provides an all-inclusive rate providing room, meals, personal care services, supervision, activities, transportation, medication administration, nursing assessment and care planning.
- Current residents range in age from 24 to 105 years old, with the average age being 78.

Care Needs of Basic Care Residents:

- 74% of residents have impaired mental status, ranging from early stage dementia to significant mental health issues.
- 96% of residents need full assistance with medication administration.
- 41% of residents are receiving psychoactive drugs.
- The average basic care resident is on 11 different medications.
- Most residents are independent in dressing (63%), with less than 10% requiring extensive assistance (7.5%).
- 80% of residents need assistance in bathing.
- Most residents are fully independent in eating (90%), toileting (82%) and transferring (95%).
- 65% are ambulatory and do not need any staff assistance, 57% use a walker or cane and very few use a wheelchair (7%).

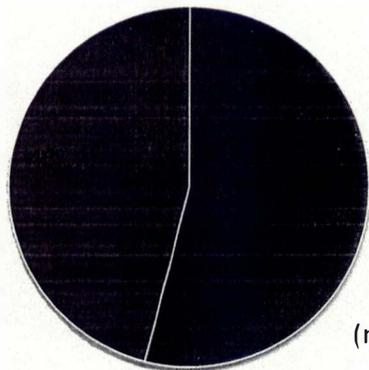
Basic Care Facilities (continued)

Top three reasons for basic care admission:

1. Unable to be or live alone
2. Assistance with daily cares
3. Mild to moderate confusion



Who Pays for for Basic Care?



(n=830)

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- Private Pay 46%*

*13% of residents have LTC insurance that helps pay the bill.

2013 Legislative Priorities for Basic Care

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- Continue to support the sales tax exemption for basic care.
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2

Testimony by Dana Schaar, NDANO Executive Director
Senate Appropriations Committee
In Support of HB 1209
Friday, March 22, 2013

Mr. Chairman and Members of the Committee, my name is Dana Schaar, and I am the executive director of the North Dakota Association of Nonprofit Organizations (NDANO). We are here in support of House Bill 1209.

NDANO is a membership organization of more than 180 nonprofit members from all across North Dakota working in many different mission areas – from human services and the environment to education and the arts.

NDANO supports this legislation because we do not believe it is the role of government to set compensation limitations for nonprofit organizations. Charitable organizations are permitted under current federal law to pay reasonable compensation for services provided by board members, chief executive officers, and other staff.¹ In addition, with North Dakota's low unemployment rate, nonprofit organizations must offer competitive salaries in order to recruit and retain skilled, competent, and caring staff.

For these reasons, NDANO encourages a do pass recommendation on House Bill 1209. Thank you.

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