

**Sixty-second Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 4, 2011**

HOUSE BILL NO. 1325  
(Representatives Kreidt, Bellew, Heller, Rohr)  
(Senator Dever)

AN ACT to amend and reenact subsection 1 of section 23-09.3-01.1 and section 23-16-01.1 of the North Dakota Century Code, relating to the moratorium on the expansion of basic care and long-term care bed capacity; and to provide an appropriation.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Subsection 1 of section 23-09.3-01.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Basic care beds may not be added to the state's licensed bed capacity during the period between August 1, ~~2009~~2011, and July 31, ~~2011~~2013, except when:
  - a. A nursing facility converts nursing facility beds to basic care;
  - b. An entity licenses bed capacity transferred as basic care bed capacity under section 23-16-01.1;
  - c. An entity demonstrates to the state department of health and the department of human services that basic care services are not readily available within a designated area of the state or that existing basic care beds within a fifty-mile radius have been occupied at ninety percent or more for the previous twelve months. In determining whether basic care services will be readily available if an additional license is issued, preference may be given to an entity that agrees to any participation program established by the department of human services for individuals eligible for services under the medical assistance program under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.]; or
  - e.d. ~~If the~~The state department of health and the department of human services grant approval of new basic care beds to an entity, ~~the~~The approved entity shall license the beds within forty-eight months from the date of approval.

**SECTION 2. AMENDMENT.** Section 23-16-01.1 of the North Dakota Century Code is amended and reenacted as follows:

**23-16-01.1. Moratorium on expansion of long-term care bed capacity.**

1. Notwithstanding sections 23-16-06 and 23-16-10, except when a facility reverts basic care beds to nursing facility beds or relicenses nursing facility beds delicensed after July 31, 2011, nursing facility beds may not be added to the state's licensed bed capacity during the period between August 1, ~~2009~~2011, and July 31, ~~2011~~2013. A nursing facility may not delicense nursing facility bed capacity, relicense nursing facility bed capacity, convert licensed nursing bed capacity to basic care bed capacity or convert, revert licensed basic care bedsbed capacity back to nursing facility bedsbed capacity, or otherwise reconfigure licensed nursing facility bed capacity more than one time in a twelve-month period ~~if the beds have been licensed as basic care.~~
2. ~~Transfers of beds~~Transfer of licensed nursing facility bed from ~~one~~a nursing facility to another entity is permitted. The nursing facility may transfer the bed capacity either as nursing facility bed capacity or basic care bed capacity. ~~Transferred nursing facility bedsbed capacity~~ must become licensed by an entity as the type of bed capacity originally transferred within forty-eight months of transfer. ~~Nursing facility beds transferred before August 1, 2005, which~~

are awaiting nursing facility licensure, may be converted to basic care licensure. Bed capacity transferred as basic care bed capacity may not be reverted to nursing facility bed capacity at any time. A receiving entity may transfer the received bed capacity to another entity within the forty-eight-month period originally established at the time the nursing facility first transferred the licensed nursing facility bed capacity. The subsequent receiving entity must license the received bed capacity within the forty-eight-month period originally established at the time of the first transfer.

3. A nursing facility may convert licensed nursing facility bed capacity to basic care. If the converted beds remain in the same facility and are not transferred, the beds may revert to nursing facility status after one year of licensure as basic care beds.
4. Nursing facility beds that are converted to basic care may be transferred as basic care beds. However, upon the transfer, the basic care beds may not be relicensed as nursing facility beds.
5. If an Indian tribe acquires nursing facility beds, the tribal facility must meet state licensing requirements for those beds within forty-eight months of acquisition. A tribal facility may seek to participate in the medical assistance programs. Medical assistance payments may only be made to a medicaid certified tribal facility that agrees to participate and adhere to all federal and state requirements of the medical assistance program, including participation, screening, ratesetting, and licensing requirements.
6. A nursing facility, upon prior written notice to the state department of health, may delicense a maximum of twenty-five percent of its licensed nursing facility bed capacity and have the delicensed nursing facility held for a period of twenty-four months. The total delicensed nursing facility bed capacity that may be held for a nursing facility at no time may be greater than fifty percent of the number of currently licensed beds in the nursing facility. Delicensed nursing facility bed capacity in excess of fifty percent of the nursing facility's licensed capacity may not be held and is not eligible for the provisions of subsection 7. Delicensed bed capacity not sold or relicensed at the conclusion of the twenty-four-month holding period ceases to exist.
7. During the twenty-four-month holding period established at the time of delicensure, delicensed nursing facility bed capacity that is being held for the nursing facility may be:
  - a. Relicensed by the nursing facility. Relicensing of nursing facility bed capacity may not occur for twelve months from the time of delicensure.
  - b. Transferred to another entity as nursing facility bed capacity or basic care bed capacity. The receiving entity must license the transferred bed capacity as the type of bed capacity transferred within the forty-eight-month period originally established at the time of delicensure. Bed capacity transferred as basic care bed capacity may not be reverted to nursing facility bed capacity at any time. A receiving entity may transfer the received bed capacity to another entity within the forty-eight-month period originally established at the time of delicensure. The subsequent receiving entity must license the received bed capacity within the forty-eight-month period originally established at the time of delicensure.
  - c. Licensed as basic care beds by the same facility. If the licensed basic care beds remain in the same facility and are not transferred, the beds may be reverted to licensed nursing facility bed capacity after twelve months.

**SECTION 3. APPROPRIATION.** There is appropriated out of any moneys in the health care trust fund in the state treasury, not otherwise appropriated, the sum of \$546,786, or so much of the sum as may be necessary, and from special funds derived from federal funds and other income, the sum of \$679,193, or so much of the sum as may be necessary, to the department of human services for the

purpose of providing for payments for nursing facilities as provided for in sections 1 and 2 of this Act, for the biennium beginning July 1, 2011, and ending June 30, 2013.

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Speaker of the House

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President of the Senate

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Chief Clerk of the House

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Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-second Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1325.

House Vote:    Yeas 93            Nays 0            Absent 1

Senate Vote:    Yeas 46            Nays 0            Absent 1

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Chief Clerk of the House

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2011.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2011.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2011,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State