

HOUSE BILL NO. 1130

Introduced by

Appropriations Committee

(At the request of the Office of Management and Budget)

1 A BILL for an Act to create and enact a new chapter to title 57 of the North Dakota Century
2 Code, relating to a provider assessment for nursing facilities; and to provide a penalty.

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

4 **SECTION 1.** A new chapter to title 57 of the North Dakota Century Code is created and
5 enacted as follows:

6 **Definitions.**

7 As used in this chapter:

- 8 1. "Business" has the meaning provided in section 31-08.1-01.
- 9 2. "Commissioner" means the state tax commissioner.
- 10 3. "Cost report" means the department of human services approved form for reporting
11 costs, statistical data, and other relevant information of the nursing facility.
- 12 4. "Net inpatient revenue" means revenue collected from inpatient nursing facility
13 services.
- 14 5. "New nursing facility" means a nursing facility first licensed after the start of the cost
15 report year which is used as the basis of assessment.
- 16 6. "Non-medicare bed day" means a day for which the primary payer is not medicare
17 part A. A non-medicare bed day includes any day when a resident is not in the nursing
18 facility.
- 19 7. "Nursing facility" means a nursing facility as that term is defined in section 1919 of the
20 Social Security Act [42 U.S.C. 1396r(a)].
- 21 8. "Quarter" means one of four calendar quarters beginning January first, April first, July
22 first, or October first.

1 **Imposition of assessment.**

2 An assessment must be imposed on each nursing facility located in this state. Any waiver
3 otherwise available under this code is not applicable to this assessment.

4 **Basis of assessment.**

5 Every year beginning January first, each nursing facility must be assessed a quarterly
6 amount based on the total number of non-medicare bed days as reported on the cost report
7 after appropriate adjustments for the year ending June thirtieth before the assessment year. If
8 there is a change in ownership during the cost report year, the non-medicare bed days are a
9 combination of non-medicare bed days for the current and prior owner for that cost report year.
10 A new nursing facility with less than twelve months of patient day history during the cost report
11 year on which the assessment is based will be assessed quarterly based upon actual
12 non-medicare bed days for the three months ending one month before the end of that quarter.

13 **Maximum assessment and use of assessment.**

14 The assessment in the aggregate cannot exceed five percent of aggregate net inpatient
15 revenues for the rate year of all nursing facilities. The assessment under this chapter must be
16 used only to support expenditures within the long-term care continuum in the department of
17 human services.

18 **Reports - Extension.**

- 19 1. On or before the last day of a quarter, each nursing facility required to pay an
20 assessment under this chapter shall make out a return for the quarter in the form and
21 manner prescribed by the commissioner. The nursing facility shall include any further
22 information the commissioner may require to enable the commissioner to correctly
23 compute and remit the assessment levied by this chapter.
- 24 2. Upon request by a nursing facility and a proper showing of the necessity, the
25 commissioner may grant to the nursing facility an extension of time not exceeding
26 thirty days for making a return. If an extension is granted to a nursing facility, the time
27 the nursing facility is required to make payment of the assessment liability must be
28 extended for the same period. Interest must be charged upon the amount of the
29 deferred payment at the rate of twelve percent per annum from the date the
30 assessment would have been due if the extension had not been granted to the date
31 the assessment is paid.

1 3. A return must be signed by a duly authorized agent of the nursing facility and must
2 contain a written declaration that the return is made and subscribed under the
3 penalties of this chapter.

4 **Payment of assessment.**

5 An assessment levied under this chapter must be paid on a quarterly basis and is due and
6 payable on the last day of the quarter. Payment is not required until the medicaid state plan
7 amendment incorporating the assessment created under this chapter has been approved by the
8 centers for medicare and medicaid services.

9 **Penalties - Offenses.**

10 1. If a nursing facility's return or corrected return is not filed or the assessment is not paid
11 within the time required by this chapter or, if upon audit, the nursing facility is found to
12 owe an additional assessment, the nursing facility is subject to a penalty of five
13 percent of the amount of assessment due, plus interest of one percent of the
14 assessment for each month of delay or fraction thereof, excepting the first month after
15 the assessment becomes due. If satisfied the delay was excusable, the commissioner
16 may waive and, if paid, refund all or any part of the penalty and interest. The penalty
17 and interest must be paid to the commissioner and disposed of in the same manner as
18 other receipts under this chapter. Unpaid penalties and interest may be enforced in the
19 same manner as the assessment imposed under this chapter.

20 2. A person failing to comply with this chapter or failing to remit the assessment provided
21 by this chapter to the commissioner on a timely basis is guilty of a class B
22 misdemeanor.

23 **Records required.**

24 A nursing facility required to pay an assessment under this chapter shall preserve and
25 maintain the records as the commissioner may require for a period of five years and one month.
26 All records must be open to examination at any time by the commissioner or any of the
27 commissioner's duly authorized agents.

28 **Officer and manager liability.**

29 1. If a business that owns or operates a nursing facility fails for any reason to file a
30 required return or to pay an assessment due, any of its officers or managers having
31 control or supervision of, or charged with the responsibility for making a return or

1 payment is personally liable for the failure. The dissolution of a business does not
2 discharge an officer's or manager's liability for a prior failure of the business to make a
3 return or remit the assessment due.

4 2. If any of the officers or managers elect not to be personally liable for the failure to file
5 the required return or to pay the assessment due, the nursing facility shall make a
6 cash deposit or post with the commissioner a bond or undertaking executed by a
7 surety company authorized to do business in this state. The cash deposit, bond, or
8 undertaking must be in an amount equal to the estimated annual assessment liability
9 of the nursing facility.

10 **Commissioner to administer chapter.**

11 1. The commissioner is charged with the administration of this chapter and shall enforce
12 the assessment, levy, and collection of assessments imposed under this chapter.

13 2. For the purpose of ascertaining the correctness of a return or for the purpose of
14 ascertaining the number of non-medicare bed days of a nursing facility, the
15 commissioner shall examine or cause to be examined by an agent or representative
16 designated by the commissioner any books, papers, records, or memoranda; require
17 by subpoena the attendance and testimony of witnesses; issue and sign subpoenas;
18 administer oaths; examine witnesses and receive evidence; and compel witnesses to
19 produce for examination books, papers, records, and documents relating to any matter
20 which the commissioner has the authority to investigate or determine.

21 3. If the commissioner finds an officer or manager of a nursing facility has made a
22 fraudulent return, the costs of a hearing must be assessed to the nursing facility. In all
23 other cases, the costs must be paid by the state.

24 4. The fees and mileage to be paid to witnesses and assessed as costs must be the
25 same as prescribed by law in proceedings in the district court of this state in civil
26 cases. All costs must be assessed in the manner provided by law in proceedings in
27 civil cases. When the costs are assessed to the nursing facility, the costs must be
28 added to the assessment charged against the nursing facility and must be collected in
29 the same manner. Costs assessed to the state must be certified by the commissioner
30 to the state treasurer, who shall issue warrants for the amount of the costs.

1 5. In cases of disobedience to a subpoena, the commissioner may invoke the aid of a
2 court of competent jurisdiction in requiring the attendance and testimony of witnesses
3 and production of records, books, papers, and documents. The court may issue an
4 order requiring the person to appear before the commissioner and give evidence or
5 produce records, books, papers, and documents. A failure to obey an order of the
6 court may be punished by the court as contempt.

7 6. Testimony on hearings before the commissioner may be taken by a deposition as in
8 civil cases and an individual may be compelled to appear and depose in the same
9 manner as witnesses may be compelled to appear and testify as provided by this
10 section.

11 **Lien of assessment - Collection - Action authorized.**

12 1. Whenever a nursing facility liable to pay an assessment or penalty imposed refuses or
13 neglects to pay the same, the amount, including any interest, penalty, or addition to
14 the assessment, together with the costs that may accrue, is a lien in favor of this state
15 upon all property and rights to property, whether real or personal, belonging to the
16 nursing facility. In the case of property in which a deceased owner, officer, or manager
17 of a nursing facility held an interest as joint tenant or otherwise with right of
18 survivorship at the time of death, the lien continues as a lien against the property in
19 the hands of the survivor or survivors to the extent of the deceased owner's, officer's,
20 or manager's interest, which interest must be determined by dividing the value of the
21 entire property at the time of the officer's or manager's death by the number of joint
22 tenants or persons interested therein.

23 2. The lien attaches at the time the assessment becomes due and payable and
24 continues until the liability for the amount is satisfied. For the purposes of this
25 subsection, the words "due" and "due and payable" mean the first instant the
26 assessment becomes due.

27 3. A mortgagee, purchaser, judgment creditor, or lien claimant acquiring an interest in, or
28 lien on, any property situated in the state, prior to the commissioner filing in the central
29 indexing system maintained by the secretary of state, a notice of the lien provided for
30 in section 57-39.2-12, takes free of, or has priority over, the lien.

31 4. a. The commissioner shall index in the central indexing system the following data:

- 1 (1) The name of the nursing facility.
- 2 (2) The internal revenue service taxpayer identification number of the nursing
- 3 facility or the social security number of the owner, officer, or manager of the
- 4 nursing facility.
- 5 (3) The name "State of North Dakota" as claimant.
- 6 (4) The date and time the notice of lien was indexed.
- 7 (5) The amount of the lien.
- 8 b. The notice of lien is effective as of eight a.m. the next day following the indexing
- 9 of the notice. A notice of lien filed by the commissioner may be indexed in the
- 10 central indexing system without changing its original priority as to property in the
- 11 county where the lien was filed.
- 12 5. The commissioner is exempt from the payment of the filing fees as otherwise provided
- 13 by law for the indexing of the notice of lien, or for its satisfaction.
- 14 6. Upon payment of the assessment as to which the commissioner has indexed notice in
- 15 the central indexing system, the commissioner shall index a satisfaction of the lien in
- 16 the central indexing system.
- 17 7. Upon the request of the commissioner, the attorney general shall bring an action at
- 18 law or in equity, as the facts may justify, without bond, to enforce payment of any
- 19 assessments and any penalties, or to foreclose the lien in the manner provided for
- 20 mortgages on real or personal property. The state's attorney of the county in which the
- 21 action is pending shall assist the attorney general.
- 22 8. The remedies of this section are cumulative. Action taken by the commissioner or
- 23 attorney general may not be construed to be an election on the part of the state or any
- 24 of its officers to pursue any remedy hereunder to the exclusion of any other remedy
- 25 provided by law.
- 26 9. The technical, legal requirements in this section relating to assessment liens on all real
- 27 and personal property of the officer or manager of the nursing facility to ensure
- 28 payment of the assessment, including penalties, interest, and other costs, are
- 29 self-explanatory.

1 **Commissioner may require bond.**

2 When in the commissioner's judgment it is necessary and advisable to do so in order to
3 secure the collection of the assessment levied under this chapter, the commissioner may
4 require a person subject to the assessment to file with the commissioner a bond, issued by a
5 surety company authorized to transact business in this state and approved by the insurance
6 commissioner as to solvency and responsibility in an amount the commissioner may fix, to
7 secure the payment of any assessment and penalties due or which may become due from the
8 person. In lieu of the bond, securities approved by the commissioner in the amounts as the
9 commissioner prescribes may be deposited with the commissioner, which securities must be
10 kept in the custody of the commissioner and may be sold by the commissioner at public or
11 private sale, without notice to the depositor, if it becomes necessary to do so in order to recover
12 any assessment and penalties due. All moneys deposited as security with the commissioner
13 under this section must be paid by the commissioner to the state treasurer and must be credited
14 by the state treasurer into a special fund to be known as the long-term care provider
15 assessment trust fund. If any assessment, penalty, or costs imposed by this chapter are not
16 paid when due, by the person depositing moneys with the commissioner as security for the
17 payment of the assessment, penalty, or costs imposed by this chapter, the commissioner shall
18 certify that information to the director of the office of management and budget who shall transmit
19 the money to the commissioner who shall apply the money deposited by the person or so much
20 thereof as is necessary to satisfy the assessment and penalties due. When in the
21 commissioner's judgment it is no longer necessary to require the deposit to be maintained by
22 the person, the commissioner shall certify that information to the director of the office of
23 management and budget who shall pay the unused money to the entitled person.

24 **Correction of errors.**

25 If it appears, as a result of a mistake, an amount of assessment, penalty, or interest has
26 been paid which was not due under this chapter, the amount must be credited against any
27 assessment due, or to become due, under this chapter from the person who made the
28 erroneous payment, or the amount must be refunded to the person. The person who made the
29 erroneous payment shall present a claim for refund or credit to the commissioner not later than
30 three years after the due date of the return for the period for which the erroneous payment was
31 made or one year after the erroneous payment was made, whichever is later.

1 **Provider assessment trust fund.**

2 There is a special fund in the state treasury known as the long-term care provider
3 assessment trust fund. The fund includes all revenue received from nursing facilities for
4 remittance to the fund under this chapter. All moneys designated for the fund from whatever
5 source derived must be deposited with the state treasurer in the long-term care provider
6 assessment fund.