

**HOUSE BILL NO. 1384**

Introduced by

Representatives Kreidt, Bellew, Hatlestad, Heller, Kempenich, Sukut

1 A BILL for an Act to create and enact a new section to chapter 50-24.5 of the North Dakota  
2 Century Code, relating to housing as an allowable expense in establishing basic care facility  
3 payment rates; and to amend and reenact sections 50-24.4-01 and 50-24.4-15 of the North  
4 Dakota Century Code, relating to housing as a cost or employee benefit in the ratesetting  
5 system for nursing homes.

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

7 **SECTION 1. AMENDMENT.** Section 50-24.4-01 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9 **50-24.4-01. Definitions.**

10 For the purposes of this chapter:

- 11 1. "Actual allowable historical operating cost per diem" means the per diem operating  
12 costs allowed by the department for the most recent reporting year.
- 13 2. "Actual resident day" means a billable, countable day as defined by the department.
- 14 3. "Department" means the department of human services.
- 15 4. "Depreciable equipment" means the standard movable resident care equipment and  
16 support service equipment generally used in long-term care facilities.
- 17 5. "Direct care costs" means the cost category for allowable nursing and therapy costs.
- 18 6. "Final rate" means the rate established after any adjustment by the department,  
19 including adjustments resulting from cost report reviews and audits.
- 20 7. "Fringe benefits" means workforce safety and insurance, group health or dental  
21 insurance, group life insurance, retirement benefits or plans, ~~and~~ uniform allowances,  
22 employee housing allowances or employee housing cost subsidies, and medical  
23 services furnished at nursing home expense.

- 1           8. "General and administrative costs" means all allowable costs for administering the  
2           facility, including salaries of administrators, assistant administrators, accounting  
3           personnel, data processing personnel, security personnel, and all clerical personnel;  
4           board of directors' fees; business office functions and supplies; travel, except as  
5           necessary for training programs for dietitians, nursing personnel, and direct resident  
6           care related personnel required to maintain licensure, certification, or professional  
7           standards requirements; telephone and telegraph; advertising; membership dues and  
8           subscriptions; postage; insurance, except as included as a fringe benefit; professional  
9           services such as legal, accounting, and data processing services; central or home  
10          office costs; management fees; management consultants; employee training, for any  
11          top management personnel and for other than direct resident care related personnel;  
12          and business meetings and seminars.
- 13          9. "Historical operating costs" means the allowable operating costs incurred by the facility  
14          during the reporting year immediately preceding the rate year for which the payment  
15          rate becomes effective, after the department has reviewed those costs and  
16          determined them to be allowable costs under the medical assistance program, and  
17          after the department has applied appropriate limitations such as the limit on  
18          administrative costs.
- 19          10. "Indirect care costs" means the cost category for allowable administration, plant,  
20          housekeeping, medical records, chaplain, pharmacy, and dietary, exclusive of food  
21          costs.
- 22          11. "Managed care organization" means a medicaid managed care organization as that  
23          term is defined in section 1903(m) of the Social Security Act [42 U.S.C. 1396b(m)].
- 24          12. "Nursing home" means a facility, not owned or administered by the state government,  
25          defined in section 43-34-01 or a facility owned or administered by the state, which  
26          agrees to accept a rate established under this chapter.
- 27          13. "Operating costs" means the day-to-day costs of operating the facility in compliance  
28          with licensure and certification standards.
- 29          14. "Other direct care costs" means the cost category for allowable activities, social  
30          services, laundry, and food costs.
- 31          15. "Payment rate" means the rate determined under section 50-24.4-06.

- 1       16. "Payroll taxes" means the employer's share of Federal Insurance Contributions Act  
2       taxes, governmentally required retirement contributions, and state and federal  
3       unemployment compensation taxes.
- 4       17. "Private-paying resident" means a nursing home resident on whose behalf the nursing  
5       home is not receiving medical assistance payments and whose payment rate is not  
6       established by any governmental entity with ratesetting authority, including the  
7       veterans' administration or medicare, or whose payment rate is not negotiated by any  
8       managed care organization contracting with a facility to provide services for the  
9       resident.
- 10      18. "Rate year" means the fiscal year for which a payment rate determined under this  
11      chapter is effective, from January first to the next December thirty-first.
- 12      19. "Real estate" means improvements to real property and attached fixtures used directly  
13      for resident care.
- 14      20. "Reporting year" means the period from July first to June thirtieth, immediately  
15      preceding the rate year, for which the nursing home submits reports required under  
16      this chapter.
- 17      21. "Top management personnel" means owners, board members, corporate officers,  
18      general, regional, and district managers, administrators, nursing home administrators,  
19      and other persons performing functions ordinarily performed by such personnel.

20      **SECTION 2. AMENDMENT.** Section 50-24.4-15 of the North Dakota Century Code is  
21      amended and reenacted as follows:

22      **50-24.4-15. Property-related costs.**

- 23      1. The department shall include in the ratesetting system for nursing homes a payment  
24      mechanism for the use of real and personal property which provides for depreciation  
25      and related interest costs. The property cost payment mechanism must:
- 26      a. Recognize the valuation basis of assets acquired in a bona fide transaction as an  
27      ongoing operation after July 1, 1985, limited to the lowest of:
- 28          (1) Purchase price paid by the purchaser;  
29          (2) Fair market value at the time of sale; or  
30          (3) Seller's cost basis, increased by one-half of the increase in the consumer  
31          price index for all urban consumers (United States city average) from the

- 1                               date of acquisition by the seller to the date of acquisition by the buyer, less  
2                               accumulated depreciation.
- 3           b.   Recognize depreciation on land improvements, buildings, and fixed equipment  
4                acquired, as an ongoing operation over the estimated useful remaining life of the  
5                asset as determined by a qualified appraiser.
- 6           c.   Recognize depreciation on movable equipment acquired as an ongoing operation  
7                after August 1, 1995, over a composite remaining useful life.
- 8           d.   Provide for an interest expense limitation determined by the department and  
9                established by rule.
- 10          e.   Establish a per bed property cost limitation considering single and double  
11                occupancy construction.
- 12          f.   Recognize increased lease costs of a nursing home operator to the extent the  
13                lessor has incurred increased costs related to the ownership of the facility, the  
14                increased costs are charged to the lessee, and the increased costs would be  
15                allowable had they been incurred directly by the lessee.
- 16          g.   Recognize any mandated costs, fees, or other moneys paid to the attorney  
17                general through transactions under sections 10-33-144 through 10-33-149.
- 18          2.   For rate years beginning after December 31, 2003, the limitations of paragraph 3 of  
19                subdivision a of subsection 1 do not apply to the valuation basis of assets purchased  
20                between July 1, 1985, and July 1, 2000. The provisions of this subsection may not be  
21                applied retroactively to any rate year before July 1, 2005.
- 22          3.   For rate years beginning after December 31, 2007, the limitations of subdivision e of  
23                subsection 1 do not apply to the valuation basis of assets acquired as a result of a  
24                natural disaster before December 31, 2006. The provisions of this subsection may not  
25                be applied retroactively to any rate year before January 1, 2008.
- 26          4.   The department shall include in the ratesetting system for nursing homes a payment  
27                mechanism to recognize as an allowable cost the subsidized cost of real and personal  
28                property, owned or operated by the nursing facility, used to provide employee housing  
29                as a fringe benefit. The subsidized cost of the employee housing may include  
30                depreciation and related interest and operating costs. The subsidized cost may not  
31                exceed seven hundred fifty dollars per month per subsidized employee.

1       **SECTION 3.** A new section to chapter 50-24.5 of the North Dakota Century Code is created  
2 and enacted as follows:

3       **Basic care facility payment rates - Housing as allowable expense.**

4       The department shall include employee housing allowances or the subsidized cost of  
5 operating employee housing as an allowable expense when establishing payment rates for a  
6 basic care facility.