Testimony
House Bill 1359 – Department of Human Services
House Human Services Committee
Representative Robin Weisz, Chairman
February 3, 2015

Chairman Weisz, members of the House 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 (Department). I am here today to provide information for House Bill 1359 on the section of North Dakota Century Code (NDCC) this bill proposes to amend.

There are two parts of a facility's basic care payment, the personal care rate and the room and board rate. Federal Medicaid participation is available only for the personal care rate. The room and board rate is funded with all general fund. Federal medical assistance percentage (FMAP) is only available for room and board costs for individuals residing in an institution. An institution is a hospital, nursing facility, intermediate care facility for individuals with intellectual disabilities, or a psychiatric residential treatment facility.

Century Code Section

This bill adds a new section relating to basic care rate setting to NDCC 50-24.4, which is titled 'Nursing Home Rates.' There are several definitions and sections in this chapter that do not apply to basic care.

NDCC 50-24.5-02 is the chapter and section that gives the Department authority to determine rates for basic care. Adding language relating to

basic care rate setting to NDCC 50-24.4 may create complications and result in unforeseen changes to basic care rate setting.

Some of the definitions in NDCC 50-24.4 are in conflict with definitions in North Dakota administrative code (NDAC) 75-02-07.1 for basic care rate setting. Following is a chart with examples of definitions which are conflicting:

	NDCC 50-24.4 Nursing Facility Definition	NDAC 75-02-07.1 Basic Care Definition
Direct Care Costs	Allowable nursing and therapy costs	Allowable resident care, **activities, social services and laundry costs**
Food and Plant Costs	Not defined	**Allowable food, utilities, and maintenance and repair costs**
Other Direct Costs	**Allowable activities, social services, laundry and food costs**	Not defined
Rate Year	January 1 to December 31	July 1 to June 30

Fiscal Impact

The fiscal impact to the Medicaid program for the changes proposed in House Bill 1359 for the 2015-2017 biennium is estimated to be $1,452,108 for twelve months of which $1,134,689 is general fund. The fiscal impact to the Medicaid program for the 2017-2019 biennium is estimated to be $3,116,836 for 24 months of which $2,433,698 is general fund.

Today, there are 51 facilities enrolled as basic care assistance providers. The lowest daily rate is $62.39 and the highest daily rate is $165.74.

There are five components of the basic care rate: direct care, indirect care, room and board, property and operating margin. Basic care rates have limits in two separate areas, direct care and indirect care. A provider could be limited in one of these categories but not in the other.

As drafted, proposed subsections 1 and 2 do not have a fiscal impact.

As drafted, proposed subsection 3 would establish the direct care and indirect care limits as follows for all providers participating in the basic care assistance program:

	Proposed	Current
Direct Care	95th Percentile Bed	80th Percentile Bed
Indirect Care	90th Percentile Bed	80th Percentile Bed

Using the 95th percentile instead of the 80th percentile for the direct care limit for July 1, 2014, would be an increase from $45.34 to $68.51. Using the 90th percentile instead of the 80th percentile for the indirect care limit for July 1, 2014, would be an increase from $42.52 to $45.39.

In July 2013, the Department contracted with Myers and Stauffer to conduct a study on various aspects of the long-term care continuum. One of the areas studied was how the limits for basic care are set. The final report discussed several methodologies that could be used for setting limits. The recommendation from the study is to use a cost-based methodology. This method would take into account all providers' costs. The analysis in the final report identified that a median plus methodology would be budget neutral and is the same methodology used in nursing

facility rate setting. Median plus means that the median cost of all providers is inflated by a percentage to calculate the limits.

Setting the limits based on percentile of beds does not take into account the range of providers' costs, rather it ranks the providers by their costs and sets the limit based on the costs of the one provider who has the bed at that percentile.

No matter the methodology chosen to establish the basic care limits, the Department needs legislative direction on whether to continue to rebase the limits each year or to use a base year and only increase the limits based on the legislatively approved inflationary increase. Under the current administrative code, the limits are "rebased" each year based on the current cost reports.

As drafted, proposed subsection 4 would allow the use of the nursing facility top management compensation limit for freestanding basic care facilities. Basic care facilities combined with a nursing facility or hospital already are allowed the nursing facility compensation limit. Over half of the basic care facilities are combined with a hospital or nursing facility. The 2015 compensation limit for nursing facilities is $233,453. The 2014 compensation limit used for freestanding basic care facilities is $68,627.

As drafted, proposed subsection 5 would allow up to 108 days of bad debt expense in the property cost category in the year it is determined to be uncollectible. Currently, bad debt is not an allowable expense in basic care rate setting. Allowing the bad debt expense in the property cost category means that it is a pass-through and not subject to any limit. The fiscal impact for this proposed change is all general fund.

As drafted, proposed subsection six would allow for an increase in the medical care leave days from 15 days to 30 days for a resident in a hospital, swing bed, nursing facility and who is expected to return to the basic care facility. Only the room and board rate is reimbursed for a medical care leave day. The fiscal impact for this proposed change is all general fund.

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