



# North Dakota Legislative Council

Prepared for the Human Services Committee  
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## STUDY OF PAYMENT RATES FOR INTERMEDIATE CARE FACILITIES - BACKGROUND MEMORANDUM

Section 54 of Senate Bill No. 2012 (2023) ([appendix](#)), provides for a study of payment rates for intermediate care facilities. The study must consider the funded percentage of costs for services including day and small group care, individual employment, in-home supports, respite care, habilitative care, independent habitation, and residential habitation.

### PREVIOUS REPORTS AND STUDIES

#### 2009-2010 Interim Rate Structure of Developmental Disability Providers Study

Section 1 of House Bill No. 1556 (2009) required the Department of Human Services (DHS) to report to the Legislative Management regarding the outcomes and recommendations from the study of the methodology and calculations for the ratesetting structure for public and private licensed developmental disabilities and home- and community-based service providers. The Legislative Management assigned the responsibility to receive this report to the Long-Term Care Committee.

#### Background Information

House Bill No. 1556 (2009) provided that during the 2009-10 interim DHS contract with an independent contractor to study the methodology and calculations for the ratesetting structure used by the department to reimburse all developmental disabilities service providers, including public and private, licensed developmental disabilities Intermediate Care Facilities for Individuals with Mental Retardation (ICF/MR), such as the Anne Carlsen Center, and home- and community-based service providers serving ICF/MR medically fragile and behaviorally challenged individuals. The study was to address reimbursement adequacy and equitability and fairness of reimbursement rates among such providers; the level of medical and supportive services required by providers to adequately serve individuals in those categories; the varying levels of medical and behavioral complexity of individuals requiring services by the providers; and any other analytical comparisons bearing upon issues of reimbursement adequacy, fairness, and equitability to such providers. The bill provided a \$200,000 appropriation, of which \$100,000 was from the general fund, to the department for conducting the study.

The committee received information from DHS regarding the state's developmental disabilities ratesetting process. The committee learned the current ratesetting process for the developmental disabilities program is a mix of a cost-based, retrospective ratesetting system with additional compensation provided for individuals who are medically fragile or behaviorally challenging. The following is a summary of the ratesetting and reimbursement process:

1. Submission of a provider budget - Each developmental disabilities service provider submits an annual budget based on allowable, reasonable, and client-rated costs to the department's Developmental Disabilities Division, and an interim rate is established.
2. Establishment of a provider budget limitation - Provider budget limitations are used to implement available appropriations and apply appropriation increases or decreases. Payments are made in the current year based on this interim rate.
3. Application of targeted appropriations - After the budget limitation and interim rate are set, targeted appropriations tied to six specific categories of adults and children who are medically fragile or behaviorally challenging are applied. These targeted appropriations are based on two assessment tools. Payments for these targeted groups are totaled by provider, and each provider is paid that provider's allotment on a quarterly basis.
4. Submission of cost reports - At the end of the provider's fiscal year, a cost report is submitted to the department's Developmental Disabilities Division. Providers are allowed 3 months with a potential of a 1-month extension to submit their cost reports.

- Audits and cost settlement - The department conducts an annual compliance audit of reported costs for each provider, and the audited, allowable costs are compared to the reimbursements received through the interim rate. Final payments are cost-settled after completion of an audit. Actual revenue received by a provider is limited to the lesser of the budget limitation or cost, whichever is less. The audit and cost settlement are a lengthy process. Some audits and cost settlements are completed approximately 20 months after the end of the fiscal year.

**Report**

The committee received reports from DHS and learned that the department contracted with Burns & Associates, Inc., to complete the study. The following is a summary of findings and recommendations by Burns & Associates, Inc.:

Assessment findings and recommendations	Discontinue use of the Oregon behavioral assessment for both children and adults  The Oregon medical assessment does have predictive value for children, but it is no better than the currently used progress assessment review to predict costs for adults  The progress assessment review is a powerful tool and predicts 43.1 percent of the current developmental disabilities expenditures
Reimbursement systems findings	North Dakota's current system is seen by providers to adequately pay in total for services and supports, but the dollars are not always distributed to the individuals who are medically fragile or behaviorally challenged  Other states that base payment on the needs of individuals do not use cost-based reimbursement systems  North Dakota's reimbursement system is slow and very resource-intensive

The committee learned Burns & Associates, Inc., offered four options for consideration by the state, two options for adults and two options for children. The following is a summary of the four options:

Adults	Option A - Revise and shorten the progress assessment review and continue the cost-based, retrospective reimbursement process  Option B - Adopt a new assessment tool, the supports intensity scale, and move to a prospective reimbursement process
Children	Option C - Pilot the child supports intensity scale, and move to a prospective reimbursement process  Option D - Continue the Oregon medical tool and add the child and adolescent level of care utilization system or other similar tools and continue the cost-based, retrospective reimbursement process

The committee learned replacing the progress assessment review with the supports intensity scale would result in high administrative costs initially because it requires new assessments to be performed on all consumers and the results of those assessments to subsequently be used to develop a resource allocation model and prospective rates. However, administrative costs would decrease in future years. The following is a 5-year summary of estimated state administrative costs for the four options:

	Options A and D		Options B and C	
	Low	High	Low	High
Year 1	\$1,422,000	\$1,665,000	\$2,459,000	\$2,879,000
Year 2	1,252,000	1,297,000	2,582,000	3,023,000
Year 3	1,314,000	1,362,000	1,586,000	1,586,000
Year 4	1,380,000	1,430,000	1,666,000	1,666,000
Year 5	1,449,000	1,501,000	818,000	818,000
Total	\$6,817,000	\$7,255,000	\$9,111,000	\$9,972,000

The committee learned the department agreed with the recommendation to move to a prospective reimbursement process using an independent ratesetting model and a resource allocation for the entire developmental disability client base. The department recommended hiring a consultant to guide the ratesetting and assessment implementation process and to begin implementation with a pilot project.

### **Audit and Reimbursement Review**

The committee learned Senate Bill No. 2423 (2009) required DHS to conduct a review of the audit and reimbursement process and a review and reconsideration of the 95 percent occupancy rule. The department established a workgroup comprised of members from developmental disabilities providers, the department, and the North Dakota Association of Community Providers. The workgroup issued a request for information to gain an understanding of the available services that could address the timing of the audits and the costs associated with an independent audit firm completing the audits of the cost reports rather than provider audit. The workgroup learned the estimated biennial cost for independent audit firms completing the audits is \$298,020 to \$471,600 compared to the department's estimated biennial cost of \$171,447. The workgroup also reviewed the 95 percent occupancy rule. The department believed the only method that would allow the elimination of the 95 percent occupancy limitation would be to no longer use the retrospective reimbursement process.

### **Recommendations**

The committee recommended Senate Bill No. 2043 which was approved by the 2011 Legislative Assembly requiring DHS to implement a prospective reimbursement pilot project for the developmental disabilities program during the 2011-13 biennium. The committee also recommended the department maintain the 95 percent occupancy rule while proceeding with the prospective reimbursement pilot project.

### **2011-12 Interim Status Report**

The 2011 Legislative Assembly directed DHS to establish a steering committee and develop a developmental disability payment system with an independent rate model utilizing the support intensity scale. During the 2011-12 interim, the Human Services Committee received testimony from representatives of DHS regarding the development of a new developmental disabilities reimbursement system. The committee learned the department had established a steering committee consisting of representatives from all interested providers and the department to guide the development of the new payment system. The department awarded a contract in the amount of \$445,903 to Johnston, Villegas-Grubbs and Associates, LLC., for development of the payment and the resource allocation model connecting funding to supports intensity scale assessed needs of clients. In addition, the department awarded contracts to The Rushmore Group in the amount of \$846,000 and the American Association of Intellectual and Developmental Disabilities in the amount of \$166,664 for completion and analysis of the supports intensity scale assessments.

The Human Services Committee learned that Johnston, Villegas-Grubbs and Associates, LLC, presented draft rates and a draft provider-specific budget impact analysis to the steering committee in June 2012. The vendor was in the process of revising the draft rates and budget impact analysis based on feedback received from the steering committee. The department will continue to work on the new developmental disability reimbursement system into the 2013-15 biennium and is expected to implement the new rate structure in the later part of the 2013-15 biennium.

### **2015-16 Interim Status Report**

During the 2013-15 biennium, the Human Services Committee determined the steering committee should address selected items prior to implementation of a new system, including reviewing concerns with ratesetting; identifying audit requirements and cost-related reporting; finalizing North Dakota Administrative Code, service descriptions, and related policies and procedures; submitting waiver and Medicaid state plan changes to Centers for Medicare and Medicaid Services (CMS); and implementing the billing module within the case management system to accommodate making payments under the new payment system. Section 14 of Senate Bill No. 2012 (2015) required DHS to provide a report to the Legislative Management regarding the activities of the developmental disabilities system reimbursement project.

The committee learned the current retrospective system does not relate the needs of the consumers to funding. Under the current system, an audit is required to be completed which is time consuming. The audit and cost settlement process can take up to 2 years to complete, which causes financial issues for some providers. The current system was labor intensive for providers and the state, and the new prospective system would allow funding to follow the consumer. The new system would allow the level of staffing to be based on the needs of the consumer. The new system would not require a cost settlement and there would be a statewide standard rate.

**Testimony from Interested Persons**

The committee received information from interested persons, including providers, organizations, and individuals. Key items expressed relating to the developmental disabilities system reimbursement project include:

- Concerns regarding the proposed new system for the developmental disability reimbursement project not differentiating a payment rate for community- and facility-based vocational services.
- Concerns regarding issues relating to the developmental disability reimbursement project not being addressed, including property costs, night staff, transition period, rates, outliers, and statement of costs.

The Department of Human Services addressed the issues and concerns provided to the committee as summarized in the following schedule:

Provider Issues	Current Status of Provider Issues
Development of a multiplier method	The development of a multiplier methodology for adults and children has been completed. The steering committee and stakeholder group recently met and have agreed on the children multiplier methodology. The department is currently preparing the budget estimates for the 2017-19 biennium, for the new multiplier methodology.
Development of an outlier process for consumers with exceptional medical or behavioral needs	Specific diagnosis conditions have been identified for an outlier process that will allow a provider to request enhanced funding if the support intensity scale does not provide enough hours and it is determined the lack of additional hours will pose a health or safety risk for that consumer. The department is including 2.5 percent of the project's budget to address potential consumer needs that may be included in this category.
Inclusion of a transition period	Consultants for the project determined there was no need for a transition period. The department does not anticipate a transition period. Additional funding will not be included for a transition period.
Determination of audit requirements and cost reports for providers	Providers with an intermediate care facility will need to submit cost reports pursuant to a CMS requirement of paying the upper payment limit. Providers that do not have an intermediate care facility will not be required to submit cost reports.
Development of community- and facility-based rates for day services	A review of rates and services provided by facility- and non-facility-based providers identified that nonfacility providers have more costs; therefore, only one rate will be allowed for day services.

In addition, the committee learned DHS resubmitted its waiver amendment to CMS due to 2015-17 biennium budget reductions. The committee learned resubmitting the waiver amendment to CMS will delay implementation of the new system until January 2017.

After the committee completed its work, DHS issued a public notice on September 22, 2016, stating that the new ratesetting system for providers of developmental disability services will not be implemented on January 1, 2017. The department stated a new rate system may provide a different reimbursement rate to providers, and more time is needed to evaluate the number of clients who may be impacted if a provider chooses to provide less support.

**2017-18 Interim Status Report**

The Health Services Committee received information regarding the new developmental disabilities payment system. The new payment system was implemented on April 1, 2018. The new system is based on a needs assessment for each individual served and rates standardized across all providers. A steering committee was created to review the new payment system. The committee was informed some providers have expressed concerns regarding administrative time required to provide the monthly billing data, and the department is considering options to simplify the process.

**2019-20 Interim Status Report**

Section 50-06-37 was amended by Senate Bill No. 2247 (2019) to provide DHS maintain the payment system based on a state-approved assessment. A steering committee of no more than 18 individuals is to be used to provide guidance for the system. The steering committee must include no more than two clients, no more than one family member of a client, a representative of DHS, and a representative of the Protection and Advocacy Project. The steering committee is to analyze appropriate data and recommend to DHS any rate adjustments, resource allocation modifications, or process assumptions. The department and the steering committee were to report developmental activities and state information to the Human Services Committee.

A representative of DHS serving on the steering committee reported DHS contracted with a vendor in April 2019 to review the new payment rate structure and methodology to determine the appropriateness of assumptions and to recommend potential adjustments to the system. Key findings of the review include:

- Increase the program support component of medically fragile residential habilitation rates to represent the hours of nursing relative to the hours of direct support professionals for each acuity tier;
- Remove the 4 percent absences factor applied to every base residential rate and replace it with a 30-day personal assistance retainer policy;
- Add a 2 percent vacancy factor to the residential and intermediate care facility rate to account to vacancy costs; and
- Provide for systemwide changes in support intensity scales and overall rate changes to mitigate support intensity scales for day services, residential habilitation services, and intermediate care facility services.

### **2021-22 Interim Status Report**

During the 21-22 interim, a representative of the Department of Health and Human Services reported to the Human Services Committee the following regarding the developmental disabilities payment system:

- Before April 2018, a retrospective payment system was utilized for developmental disability provider payments;
- The current system provides a standard rate statewide and the level of staffing is based on the needs of individuals utilizing services; and
- The Developmental Disabilities Payment Steering Committee will continue to review the payment system.

### **PROPOSED ACTION PLAN**

The committee may wish to proceed with this study as follows:

1. Gather and review information regarding the funded percentage for services including day and small group care, individual employment, in-home supports, respite care, habilitative care, independent habitation, and residential habitation;
2. Gather and review information regarding the costs of providing services at intermediate care facilities;
3. Receive comments by interested persons regarding the study of payment rates for intermediate care facilities;
4. Develop committee recommendations and prepare any legislation necessary to implement the committee recommendations; and
5. Prepare the final report for submission to the Legislative Management.

ATTACH:1