

**2013 HOUSE HUMAN SERVICES**

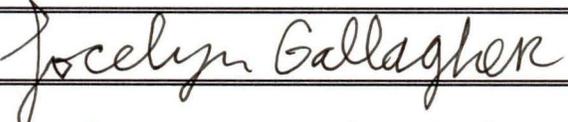
**HB 1324**

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee  
Fort Union Room, State Capitol

HB 1324  
January 29, 2013  
17908

Conference Committee



## Explanation or reason for introduction of bill/resolution:

Relating to the transfer of long term care bed capacity and to declare an emergency.

## Minutes:

Attached testimony 1

**Chairman Weisz** Opened the hearing on HB 1324.

**Shelly Peterson, President of ND Long Term Care Association:** testified in support of the bill. (See Testimony #1) We are asking that those seven words be removed from the statute.

**Chairman Weisz:** (4:57) We changed this in 2011?

**Shelly Peterson:** Yes we did inadvertently; we didn't realize that's what it would do. Once you sell a bed or transfer a bed as a nursing facility bed and the new owner gets it, that new owner has to use it as that type of bed that can't use it as a basic care bed. This language won't allow us to have that flexibility anymore.

**Chairman Weisz:** (6:27) Your interpretation is you can't transfer them within an organization?

**Shelly Peterson:** You could transfer them, but only a nursing facility bed, not a basic care bed.

**Chairman Weisz:** Even though it's within the organization?

**Shelly Peterson:** Yes, you could do that but the bed type can't change.

**Rep. Laning:** Going from nursing care to basic care is kind of a downgrade, you still cannot say 5 years from now if things change and now you want more nursing beds you can't go back up to a nursing bed if you downgrade a nursing bed, right?

**Shelly Peterson:** That is correct.

**Rep. Mooney:** Based on Rep. Laning's question, is there ever a way to bring it back from basic care to nursing level?

**Shelly Peterson:** Yes. Nursing facilities once a year can elect to take a portion of their beds and convert them to basic care. Then once a year they can make the election again. Say there is no demand in our basic care, so I want to change them back to skilled and once a year you can make that election. You can do it within a skilled facility but if you ever sold those beds as basic they can never convert back to skilled again.

**Chairman Weisz:** What is the percentage you are allowed?

**Shelly Peterson:** You can't lay away more than 50% of your beds in the layaway program.

**Rep. Gary Kriedt:** (9:53) From District 33 introduced and supported the bill. We want to remove just the one sentence that happened in 2011.

**Chairman Weisz:** Closed the hearing on HB 1324.

# 2013 HOUSE STANDING COMMITTEE MINUTES

## House Human Services Committee Fort Union Room, State Capitol

HB 1324  
February 13, 2013  
Job #18866

Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

Relating to transfer of long term care bed capacity and to declare an emergency.

### Minutes:

Chairman Weisz: We will take up 1324. This transfer back and forth of beds.

Rep. Porter: When I look at the basic care side, they don't have the rate structure the controls and minimum amount of occupancy. We are crossing a line even though imaginary it exists. We are taking a bed that has all the controls on it; a skilled nursing bed that has ND state controls on it. Whether you are on Medicaid, nursing home insurance policy or private pay, the rate is the same in a skilled care bed. ND has nothing to do with the basic bed model of care except we are an approved provider. We control the bed market out there instead of letting the free market system work on the basic care side. It bothers me to stick our nose in on the basic care side because we are just another payer. By controlling the market we put these false controls on them and then we control where these beds are going. Steele nursing home had to pull the skilled care beds out of there because they couldn't get the staff. They had to pull the beds back to where there is skilled care staff. Now the facility in Steele sits with no beds. To make that a basic skill bed facility they have to go out and buy beds. This is happening in Underwood now. We should get our noses out of this.

Chairman Weisz: (Gave a history of how they arrived to where they are today.) The 1997 or 1999 session a study was done and indicated we had more skilled care bed than we needed. We are the only state that has basic care. ND has skilled care, assisted living and basic care. We offered facilities to pay them if they took a bed out of service. The rate system is structured to penalize if you didn't have at least 90% occupancy. In 2002 another study was done that recommended we continue the moratorium on skilled care, but not on basic care. Basic care does have a certificate of need where you can get a license beyond the moratorium. Because the state was buying all of these beds then the beds had a value. When the demand for skilled beds went up then those beds went to zero in value. We have established a false sense of market and increasing costs to the facilities.

Rep. Silbernagel: I support the position Rep. Porter gave. I think as a state we are trying to micromanage something that is pretty tough to manage.

Rep. Fehr: As we are looking at the PACE program expanding as opposed to a moratorium trying to freeze something; it seems to me the PACE is doing what the moratorium in the long run was intended to do. And that is encouraging people to be in their home and not in nursing homes. And if they need to be, services are packaged and it is keeping the cost down.

Chairman Weisz: There is a lot of controversy in Appropriations on the PACE program right now and they would disagree with the argument you just made. I agree with you.

Rep. Mooney: I hear from people in all parts of the state and they say the legislation created this situation and it is working and if you pull the plug or change what you did years ago that it will create all kinds of issues. There wish is to pass this bill.

Chairman Weisz: Did they say what those issues were?

Rep. Mooney: No.

Chairman Weisz: Recess until this afternoon.

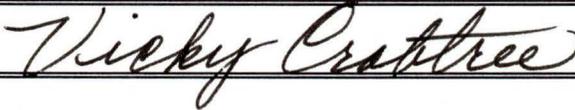
# 2013 HOUSE STANDING COMMITTEE MINUTES

## House Human Services Committee Fort Union Room, State Capitol

HB 1324  
February 18, 2013  
Job # 19098

Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

Relating to duties of sheriff & state's attorney and relating to parenting rights and responsibilities.

### Minutes:

Chairman Weisz called the meeting to order on HB 1324.

Rep. Porter: If the industry is going to fight the amendment on the previous bill and keep this false set of walls up around themselves, then to have this additional flexibility is having their cake and eat it too. I certainly don't like it.

Chairman Weisz: Does everyone understand this bill?

Rep. Fehr: I'd like an explanation.

Chairman Weisz: Currently any facility has the ability to take a skilled care bed and transfer it to a basic care bed. If a facility purchases that bed that was transferred to basic care and another facility bought it they don't have the ability to transfer it back to a skilled care bed. But, if it is within their system and never sold the bed they do have the ability to transfer it back to a skilled care bed.

Rep. Fehr: Given the bill that we just passed and if it passed it would only keep the moratorium on skilled care beds. How does this play out in that scenario?

Chairman Weisz: Assuming 1035 passes as is, this bill is no longer necessary because there won't be any reason to sell a basic care bed and no one has to worry about transferring the basic care bed back to a skilled care bed. If they license it as a basic care bed they won't be able to jump it up to a skilled care bed without this bill.

(Chairman Weisz having a conversation with Shelly Peterson in audience where there is no microphone.)

Rep. Fehr: I understand that in the previous bill we are extending the moratorium for two more years on skilled care beds.

Chairman Weisz: Correct.

Rep. Fehr: If there is a need for more skilled care beds and the moratorium is still in effect, how would we respond to that?

Chairman Weisz: This body would have to lift the moratorium or say we would allow 20 additional beds.

Rep. Porter: As you look at the testimony that came with the bill, part of what the industry is trying to address is that the system is working. On one bill they are saying we need the moratorium in place because we want to get below that 60 bed per 1,000 of skilled care. On the other side there is a bill that says we need the flexibility to work around that system too. That is why the moratorium was put in place in the first place.

Rep. Silbernagel: Do other state try to regulate and micromanage at the same time like us?

Rep. Porter: Minnesota is the only other state that has capitated rates.

Rep. Silbernagel: It seems like we are micromanaging and regulate.

Chairman Weisz: Shelly do you know when we went to capitated rates?

Shelly Peterson: (From the audience) 1987.

Rep. Silbernagel: Some motivation back then might have been when we were accelerating our de-population of the rural areas.

Chairman Weisz: We were definitely over populated on beds back then.

Rep. Mooney: Prior to the 2011 session this flexibility wasn't in place?

Chairman Weisz: When we did the bed bank in 2011; that is where they got caught in this situation. We were trying to keep from penalizing those who were under the 90

Rep. Mooney: If HB 1035 doesn't make it through the floor with the amendments and the amendments are taken out and then it passes would 1324 be a good thing to do?

Chairman Weisz: Yes, if amendments are lost on 1035 then their argument is they want the flexibility to get around the moratorium and we'd need to pass 1324.

Rep. Hofstad: I move a Do Not Pass on HB 1324.

Rep. Silbernagel: Second.

ROLL CALL VOTE: 6 y 7 n 0 absent

House Human Services Committee

HB 1324

February 18, 2013

Page 3

MOTION FAILED

Rep. Mooney: I move a Do Pass.

Rep. Anderson: Second.

ROLL CALL VOTE: 7 y 6 n 0 absent

Bill Carrier: Rep. Muscha

Date: 2-18-13  
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1324

House Human Services Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Rep. Hofstad Seconded By Rep. Silbernagel

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN WEISZ	✓		REP. MOONEY		✓
VICE-CHAIRMAN HOFSTAD	✓		REP. MUSCHA		✓
REP. ANDERSON		✓	REP. OVERSEN		✓
REP. DAMSCHEN	✓				
REP. FEHR		✓			
REP. KIEFERT		✓			
REP. LANING	✓				
REP. LOOYSEN		✓			
REP. PORTER	✓				
REP. SILBERNAGEL	✓				

Total (Yes) 6 No 7

Absent 0

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:  
Motion Failed

Date: 2-18-13  
Roll Call Vote #: 2

2013 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1324

House Human Services Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Rep. Mooney Seconded By Rep. Anderson

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN WEISZ		✓	REP. MOONEY	✓	
VICE-CHAIRMAN HOFSTAD		✓	REP. MUSCHA	✓	
REP. ANDERSON	✓		REP. OVERSEN	✓	
REP. DAMSCHEN		✓			
REP. FEHR	✓				
REP. KIEFERT	✓				
REP. LANING		✓			
REP. LOOYSEN	✓				
REP. PORTER		✓			
REP. SILBERNAGEL		✓			

Total (Yes) 7 No 6

Absent 0

Floor Assignment Rep. Muscha

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1324: Human Services Committee (Rep. Weisz, Chairman)** recommends **DO PASS** (7 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). HB 1324 was placed on the Eleventh order on the calendar.

**2013 TESTIMONY**

**HB 1324**

#1

**Testimony on HB 1324**  
**House Human Services Committee**  
**January 29, 2013**

Good morning Chairman Weisz and members of the House Human Services Committee. My name is Shelly Peterson, President of the North Dakota Long Term Care Association. The Association represents 207 assisted living, basic care and nursing facilities. I am here to testify in support of HB 1324.

Under the current law, nursing facilities are allowed to sell their beds as either a nursing facility bed or basic care bed. This was done to open up access to more basic care beds, and allow more beds to be re-distributed across North Dakota. In 2011, some flexibility regarding the ability to convert to basic care beds was lost. HB 1324 restores flexibility, so that nursing facility beds that have been sold as nursing facility beds and are waiting to be put in service could be licensed as a basic care bed.

When you buy a nursing facility bed, you have forty-eight months to put the bed in service. Demand is changing. Nursing facility beds are no longer in need (475 open beds on January 11, 2013) and thus nursing facilities would like the option to convert these nursing facility beds (in the bed bank) to basic care beds, or put them back in the market to be sold as a basic care bed.

On January 1, 2013, the Good Samaritan Society lost seven beds because they did not put them in service within forty-eight months. They were moving nursing facility beds from low demand areas to Fargo, with the hope of building a nursing facility in Fargo. Forty-eight months later, demand is changing, they are not sure if they will build a nursing facility in Fargo, however the option of changing these beds to basic care, where there is more interest and demand, is not possible under the current law. The Good Samaritan Society will lose five more beds on

July 1, 2013, as they will not be put in service by this date. Their only option is to sell these beds as nursing facility beds, where current demand and interest is low. HB 1324, with the emergency clause would allow these beds to be sold as basic care beds. If they are sold, if that is an option, the new owner would need to put the beds in service by July 1, 2013.

This law affects anyone that has purchased a nursing facility bed and is waiting to put them in service. We ask for your support in bringing back this flexibility. We are asking for an emergency clause so that the nursing facility beds currently sitting in the bed bank, set to expire before August 1, 2013 could have the option of being sold/or converted to basic care.

Thank you for your consideration of HB 1324. Approving this legislation will help communities adapt and change their plans to meet the ever changing demographics of the state.

I would be happy to answer any questions you may have.

Shelly Peterson, President  
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