

FISCAL NOTE
Requested by Legislative Council
01/29/2015

Amendment to: SB 2079

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

SB2079 extends the basic care and nursing home moratorium until July, 31, 2017 and has been amended to allow for the transfer of Nursing facility beds to Basic care beds. This Act is declared to be an emergency measure.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 2 as amended allows for the transfer of nursing facility beds to basic care beds. The fiscal estimate is based on information provided by the NDLTCA about beds that will be converted to basic care memory care due to this amendment. For calculation purposes, it was assumed the beds will be placed into service July 1, 2016. The cost of placing these beds into basic care is \$471,084 of which, \$235,544 is Federal funds and 235,540 is General fund. According to the NDLTCA, without the amendment these beds will be placed into service as nursing facility beds. The cost of beds being placed into service as nursing facility beds is \$1,603,590 of which, \$801,793 is Federal funds and \$801,797 is General fund. The cost of placing these beds into service either as nursing facility beds or basic care beds, was not included in the executive budget request for the Department.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: Debra A McDermott

Agency: Human Services

Telephone: 328-3695

Date Prepared: 01/30/2015

FISCAL NOTE
Requested by Legislative Council
01/26/2015

Bill/Resolution No.: SB 2079

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

SB2079 extends the basic care and nursing home moratorium until July, 31, 2017.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

This bill has no fiscal impact.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: Debra A McDermott

Agency: Human Services

Telephone: 328-3695

Date Prepared: 01/28/2015

2015 SENATE HUMAN SERVICES

SB 2079

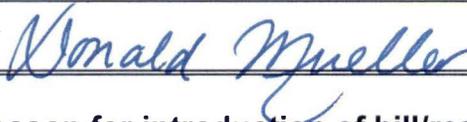
2015 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

SB 2079
1/12/2015
Job #21840

- Subcommittee
 Conference Committee

Donald Mueller



Explanation or reason for introduction of bill/resolution:

Relating to the moratoria on basic care and nursing facility bed capacity.

Minutes:

Attach #1: Testimony by LeeAnn Thiel
Attach #2: Testimony by Shelly Peterson

IN FAVOR of SB 2079

Ms. LeeAnn Thiel, Administrator of Medicaid Payment and Reimbursement of the Medical Services Division for the Department of Human Services spoke IN FAVOR of SB 2079. Attachment #1. End Testimony (3:50)

Chairman Judy Lee asked what was the going rate? What are people paying for a bed today and how long can they hold onto that bed before they use it or lose it.

Ms. Thiel responded that she did not know what the going rate was, and indicated 48 months to put the bed back into place.

Chairman Judy Lee asked if it can be either a nursing home or a basic care bed that can be banked for 48 months.

Ms. Thiel responded yes, unless they use the bed layaway which was passed 2 bienniums ago, then they can put the bed in layaway for 24 months and bring it back out. The basic care layaway don't transfer ownership to anyone else, they retain ownership, delicense it and hold on to it until they decide whether they want to bring it back online or sell it. The 48 months applies to when a facility sells or transfers to another entity.

Senator Warner asked for clarification regarding nursing home facility being synonymous with skilled care.

Ms. Thiel indicated that skilled care is the medicare term for nursing facility.

Shelly Peterson president of the North Dakota Long Term Care Association spoke IN FAVOR of SB 2079, with amendments. Reference Attachment #2. During testimony, Ms. Peterson answered Chairman Judy Lee earlier question that beds are selling from \$10,000 to \$15,000, although previously as high as \$25,000.

Ms. Peterson's testimony ends (15:38)

Chairman Judy Lee asked for clarification of the section referred to in the amendment. Senator Howard Anderson, Jr. clarified the section after line 24 on page 2, as did Ms. Peterson. Subsection 1, line 16; subsection 2, amend, adding 7 words to that section. Will need to bring the paragraph back into the bill.

Senator Warner asked how many beds Good Sam has lost, and would there be any purpose or possibility of making this retroactive.

Ms. Peterson indicated that Good Sam originally transferred 78 skilled beds to Fargo. They started losing beds last year. They have probably lost 8 but the big bulk of the beds will be lost in the next 24 months. Not necessary to do retroactive, but emergency clause may help.

Senator Howard Anderson, Jr. asked that since a facility can convert beds, once they have them as skilled bed, why can't they convert them to basic, or does the health department say that you have to keep them for a certain number of years before you can do that?

Ms. Peterson responded that you are allowed if you are a skilled nursing facility to convert your nursing facility beds once a year to basic care, and every year you can make that election. If you have nursing home beds, and are hoping to sell them to someone who wants basic care beds which you can't do right now, if they sell those as basic care beds that were originally skilled, the new owner that purchases them as basic care can never convert them back to skilled. Once you purchase as basic care they have to stay as basic.

Chairman Judy Lee stated the goal is not to have the same flexibility for basic care as for skilled care beds.

Ms. Peterson indicated that is correct. Only Nursing Homes have that flexibility to take beds to a lower level. You can take beds to a lower level but can't take a lower level basic care bed and move it to a skilled bed.

Senator Dever asked what to expect if we eliminate the moratoria?

Ms. Peterson answered if you eliminated the nursing facility moratorium, would anyone want to build a nursing home in ND? Possibly some out-of-state corporations. In basic care, you may have some company develop a dementia unit, where that's what they are trying to do now but they need to get the licensure as a basic care facility. The issue is that we think moratoria is good and have flexibility to redistribute beds from low demand areas to urban areas, and we developed the buying and selling of beds. People have thousands of dollars invested into the buying and selling of beds, and now to eliminate that for new providers coming in would be a disadvantage in this process. We like the moratoria, but feel there should be more availability to get basic skilled beds, because there are probably 7 providers that are trying to purchase basic care dementia beds which is the greatest demand area.

Senator Dever indicated that the interest to the state is two-fold: proper care to our citizens, and that more beds would provide greater interest in filling those beds, with greater expenses to Medicaid.

Ms. Peterson indicated that if we continue to have all the nursing home beds that we have, which are the most expensive, the average cost right now is \$249.70 per day, so the more the public interest and public dollars, more we take those out of service and make alternatives, redistribute to those who need them at a lesser cost, it serves the greater good.

Chairman Judy Lee provided the history, where previously the only reimbursement available was nursing homes and people in a nursing home who didn't need the care that we see skilled care facilities offering today, which is part of the reason for basic care.

Ms. Peterson stated that North Dakota is unique that no other state offers basic care. 60% of all individuals in basic care are on assistance, which means they need help, so it serves a very useful purpose for people whose money have run out and they need that level of care or otherwise they may be in a skilled facility.

Chairman Judy Lee asked what the average cost today of a basic care bed?

Ms. Peterson estimates \$125 per day, versus \$249.70 a day, so almost double.

Senator Warner asked that the intern, Femi, to provide a typed up amendment with the emergency clause.

OPPOSED TO SB 2079
No one opposed SB 2079.

NEUTRAL to SB 2079
No one testified Neutral to SB 2079

Closed Hearing on SB 2079.

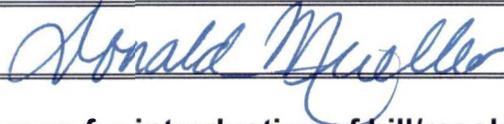
2015 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

SB 2179
1/13/2015
J# 21912

- Subcommittee
 Conference Committee

Donald Mueller



Explanation or reason for introduction of bill/resolution:

Relating to the moratoria on basic care and nursing facility bed capacity.

Minutes:

"Click to enter attachment information."

"Click here to type your minutes"

This meeting was committee work that addresses SB 2179.

The discussion at the table regarded the proposed amendment for SB 2179. By Shelly Peterson, Long Term Care Association.

Senator Howard Anderson, Jr. indicated he couldn't remember why we had that language on their originally to keep the same kind of bed.

You can transfer from a skilled nursing bed to a basic bed, but not the other direction.

Chairman Judy Lee indicated that it doesn't seem reasonable. You can make it less restrictive but not more restrictive.

Senator Howard Anderson, Jr. stated that it was because we thought we had too many filled beds.

Senator Dever discussed section 2 and section 3 being consolidated.

Senator Howard Anderson, Jr. indicated this would be worked out with the Legislative Council. The legislative intern, Femi, was provided instruction as to the wording of the amendment.

Chairman Judy Lee if we pass the amendment in substance, are you comfortable with that? The committee members indicated yes.

Senator Warner moved to Adopt the Amendment as prepared for SB 2079.
Seconded by V. Chairman Oley Larsen.
No Discussion

Roll Call Vote #1 to Adopt the Amendment as prepared for SB 2079
6 yes, 0 No, 0 Absent

Senator Warner moved a "Do Pass" recommendation to SB 2079 as amended
Seconded by V. Chairman Oley Larsen
No Discussion

Roll Call Vote #2 to recommend "Do Pass" to SB 2079 as amended.
6 yes, 0 no, 0 Absent
Carried by Senator Dever

Further Notes after the meeting closed:

The Department of Human Services indicated there will be a fiscal note attached after the amendment. Therefore, the bill will need to be "Reconsidered", and then re-referred to Appropriations.

2015 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

SB 2079
1/21/2015
22309

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the moratoria on basic care and nursing facility bed capacity.

Minutes:

"Click to enter attachment information."

These minutes are from committee work on January 21, 2015.

Julie Leer, Department of Human Services, indicated that the bill as presented did not have a fiscal impact. The Long Term Care Association requested amendment. The Department of Human Services is here to discuss what the amendment might have.

Chairman Judy Lee asked for refresh review from Shelly Peterson.

Shelly Peterson, Long Term Care Association provided the summary of the amendment. SB 2079 simply continues the moratorium for basic care and assisted living and they offered an amendment. In 2011, when we created the bed layaway program, there were seven words that were put into the statute that whenever you transfer a bed or put it aside, whatever you transferred that bed as has to remain as that bed. There are two corporations that have set beds aside and as the law is written now, they have to use those beds only as nursing home beds. They are losing 30 of those beds on 03/01/15. They are not arguing about that and they will simply evaporate from the system because they did not put them into service within the 48 months. They have since reconsidered their business plan for Fargo, and Fargo has a development of a brand new nursing home. The real need are dementia basic care beds. They have 29 beds still sitting in Fargo that they don't want to sell as nursing facility bed and want to expand their basic care facility bed for those dementia care services. They can't do that now. Our position on that is that a nursing facility bed averages \$250 per day, where basic care bed with state dollars is \$70 per day, so it is far cheaper level of care and a great needed level of care. We were asking the committee to accept the amendment so that beds that were originally transferred as a nursing home bed could be used as basic care. We now have great demand in the state more so for basic care beds than any other thing. Sanford in Bismarck sold 9 beds to New Perspectives in West Fargo, they made the deal, they sent it to the Health Department and the department stopped the transaction as those were skilled beds and couldn't be sold as

basic care beds. This amendment would allow New Perspectives, a new company out of state that wants to move into West Fargo and do a dementia unit to use the 9 beds that they originally purchased. If this doesn't happen, then Sanford will give money back and New Perspective will have to go hunt for new beds. This allows flexibility for those beds that are banked right now where we don't have as much of need for skilled beds but we do for basic skill beds. Our position was that there shouldn't be a fiscal impact because we are taking skilled beds forever out of service, they can never be converted back to a skilled bed. When we proposed the bed layaway program in 2011, we put those 11 words in statute not recognizing what it meant; that once a skilled bed, can't ever change it. In the bed layaway program, nursing homes can lay beds aside for up-to 2 years, and when they lay those nursing home beds aside after two years, they can convert those to basic care. But not the other way.

Senator Warner indicated that we discussed putting an emergency clause when we amended it. Would there be purpose to put this retroactive?

Ms. Peterson indicated said we aren't asking for retroactive. The Health Department has a rule on beds that you have to do it on the first day of the beginning of each quarter, so the soonest that they could sell these beds would be April 1st, and then 45 advance notice. They have all kinds of rules. The thought behind the emergency provision would be that at least New Perspective and Sanford would know they could make their deal.

Senator Warner stated philosophically he was opposed to retroactive, so this is not a problem.

Senator Howard Anderson, Jr. asked what about the fiscal note.

LeeAnn Theil, Department of Human Services, spoke that the fiscal cost depends on how the beds are placed into service. If these 38 beds are placed into services basic care memory card beds, the cost would be \$500,000 to Department of Human Services. According to the Long Term Care Association, if they don't get that, then they'll placed into service as nursing home beds, and then the cost would be approximately \$1.6 million.

Chairman Judy Lee said, wouldn't you assume that if they were banked, they might be used. It's not like a 0 number that we are dealing with and then there's a surprise that they are going to use the beds for one thing or another. How does the Department of Human Services view the cost of the beds that are banked? How do you address those when you are doing your budget for us to understand next time.

Ms. Theil responded, when building the budget, we look at the beds that are currently served that will be placed into service in the biennium that we are budgeting for.

Chairman Judy Lee asked do you put any money for those beds that are banked that have the ability to go active but you don't necessarily know about them at the time you are preparing your budget?

Ms. Theil responded if we have a good understanding that they will be back into service, we don't automatically assume, say that 25% of those in the bed bank, will come back into service.

Chairman Judy Lee stated so you have to have a proactive statement to you that it is likely that there would be 25 beds that are going to be used otherwise you don't put any money in for the beds. Is that correct?

Ms. Theil responded that the department does build for some growth, but not necessarily based upon how many beds are in the bed bank.

Chairman Judy Lee said we could have a major fiscal impact, when really the beds were there anyways.

Senator Warner indicated it is really a negative fiscal impact. **Chairman Judy Lee** confirmed this. There's no contingency budget.

Chairman Judy Lee requested the Department of Human Services for a formal request for fiscal note for SB 2079.

Senator Dever made a motion that the Senate Human Services Committee reconsider the action by which we amended and passed SB 2079. The motion was seconded by **V. Chairman Oley Larsen**. No further discussion.

Roll Call Vote

6 yes, 0 No, 0 Absent

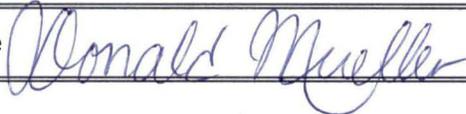
2015 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

SB 2079
1/27/2015
22645

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the moratoria on basic care and nursing facility bed capacity.

Minutes:

"Click to enter attachment information."

These are minutes from the Senate Human Services Committee on January 27, 2015.

Ms. Maggie Anderson (DHS) , this is a Department of Human Services bill to extend the moratorium, and then Long Term Care Association asked for amendment to add 7 words. There would be basic care beds coming into service that the department had not anticipated in the budget. If the amendment wasn't to happen, the risk is those beds would be lost, and so they would bring them into service as nursing home beds, and the department doesn't have those in their budget either as they hadn't anticipated that. The fiscal note on the amendment will not have any dollars but there will be a narrative explanation. We are not requesting additional funds.

Senator Warner made a motion for a recommendation from the Senate Human Services Committee to DO PASS as Amended of the reconsidered bill SB 2079. The motion was seconded by **V. Chairman Oley Larsen**.

Roll Call Vote

6 Yes, 0 No, 0 Absent. Motion passed.

Senator Dever will carry the bill to the floor.

January 13, 2015

TJD
1/14/15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2079

Page 1, line 1, replace "subsection" with "subsections"

Page 1, line 1, after "1" insert "and 2"

Page 1, line 3, replace the first period with "; and to declare an emergency."

Page 2, line 14, replace "Subsection" with "Subsections"

Page 2, line 14, after the first "1" insert "and 2"

Page 2, line 15, replace "is" with "are"

Page 2, after line 24, insert:

- "2. Transfer of licensed nursing facility bed capacity from a nursing facility to another entity is permitted. The nursing facility may transfer the bed capacity either as nursing facility bed capacity or basic care bed capacity. Transferred bed capacity must become licensed by an entity as the type of bed capacity originally transferred within forty-eight months of transfer. Bed capacity transferred as basic care bed capacity may not be reverted to nursing facility bed capacity at any time. A receiving entity may transfer the received bed capacity to another entity within the forty-eight-month period originally established at the time the nursing facility first transferred the licensed nursing facility bed capacity. The subsequent receiving entity must license the received bed capacity within the forty-eight-month period originally established at the time of the first transfer.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

Date: 01/13 2015
Roll Call Vote #: 1

**2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB2019**

Senate Human Services Committee

Subcommittee

Amendment LC# or Description: 15.8045.01001 Title .02000

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Warner Seconded By Larsen

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee (Chairman)	✓		Senator Tyler Axness	✓	
Senator Oley Larson (V-Chair)	✓		Senator John M. Warner	✓	
Senator Howard C. Anderson, Jr.	✓				
Senator Dick Dever	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

Date: 01/13 2015
 Roll Call Vote #: 2

**2015 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB2079**

Senate Human Services Committee

Subcommittee

Amendment LC# or Description: 15. 8045. 01001 Title .02000

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Warner Seconded By Larsen

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee (Chairman)	✓		Senator Tyler Axness	✓	
Senator Oley Larson (V-Chair)	✓		Senator John M. Warner	✓	
Senator Howard C. Anderson, Jr.	✓				
Senator Dick Dever	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Dever

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

Date: 01/21 2015
Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB2079

Reconsider

Senate Human Services Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Dever Seconded By Larsen

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee (Chairman)	✓		Senator Tyler Axness	✓	
Senator Oley Larson (V-Chair)	✓		Senator John M. Warner	✓	
Senator Howard C. Anderson, Jr.	✓				
Senator Dick Dever	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

Date: 01/27 2015
Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB2079

Senate Human Services Committee

Subcommittee

Amendment LC# or Description: 15.8045.01001 Title .02000

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider

Motion Made By Warner Seconded By Larson

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee (Chairman)	✓		Senator Tyler Axness	✓	
Senator Oley Larson (V-Chair)	✓		Senator John M. Warner	✓	
Senator Howard C. Anderson, Jr.	✓				
Senator Dick Dever	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Dever

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

REPORT OF STANDING COMMITTEE

SB 2079: Human Services Committee (Sen. J. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2079 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "subsection" with "subsections"

Page 1, line 1, after "1" insert "and 2"

Page 1, line 3, replace the first period with "; and to declare an emergency."

Page 2, line 14, replace "Subsection" with "Subsections"

Page 2, line 14, after the first "1" insert "and 2"

Page 2, line 15, replace "is" with "are"

Page 2, after line 24, insert:

- "2. Transfer of licensed nursing facility bed capacity from a nursing facility to another entity is permitted. The nursing facility may transfer the bed capacity either as nursing facility bed capacity or basic care bed capacity. Transferred bed capacity must become licensed by an entity ~~as the type of bed capacity originally transferred~~ within forty-eight months of transfer. Bed capacity transferred as basic care bed capacity may not be reverted to nursing facility bed capacity at any time. A receiving entity may transfer the received bed capacity to another entity within the forty-eight-month period originally established at the time the nursing facility first transferred the licensed nursing facility bed capacity. The subsequent receiving entity must license the received bed capacity within the forty-eight-month period originally established at the time of the first transfer.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

2015 HOUSE HUMAN SERVICES

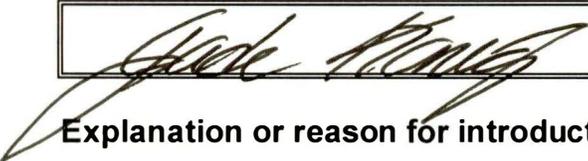
SB 2079

2015 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

SB 2079
3/16/2015
24886

- Subcommittee
 Conference Committee



Explanation or reason for introduction of bill/resolution:

Relating to moratoria on basic care and nursing facility bed capacity, declare an emergency

Minutes:

Attachment 1, 2

Chairman Weisz: Opened the hearing on SB 2079.

LeeAnn Thiel Administrator of Medicaid Payment and Reimbursement Services of the Medical Services for DHS: Testified in support of the bill. (See Testimony #1)

Chairman Weisz: Do you know why the emergency clause?

Thiel: That was for the removal of those eight words.

Rep. Porter: In the last biennium how many beds were converted?

Thiel: The Health Dept. can answer that question. They have one opportunity each year to do that and I believe there is quite a few that do go back and forth.

Rep. Porter: On the amendment this expands the ability of the nursing facilities to transfer beds back and forth then or what exactly is the outcome from the department stand point to meet the goals of the 55 beds per thousand and the 15 beds per thousand populations?

Thiel: The eight words were removed really relate to two facilities that did their first transfer and transferred them as nursing facility beds and now based upon the current language they cannot now convert them to basic care and transfer and sell them again. This only limits them if they transfer them the first time as a nursing facility they have to stay that way.

Rep. Porter: How many times should the same bed be able to be sold then?

Thiel: I don't know that there is a limit. There is a limit on the 48 months that they have to put it back in service but they can transfer, sell it as many times as long as they get within those 48 months.

Rep. Porter: So under this language then they can not only transfer and sell it as many times as they can under the 48 months they can convert it and reconvert it between the two types as many times as they would want?

Thiel: They do have limits. They can only change the type once a year.

Chairman Weisz: You can't convert from basic care to nursing skilled?

Thiel: I believe you can only if it was an originally a nursing facility bed and it stays within that facility.

Chairman Weisz: If it stays within the facility, but then this language does eliminate that then.

Thiel: If these eight words were removed once these beds are transferred as basic care then they would never have the opportunity to take them back as a nursing facility.

Rep. Fehr: If this does not pass, what happens?

Thiel: It would mean that there is no limit on the number of licenses beds for nursing facilities and basic care that could be in North Dakota. So a company could come in and build wherever they want and they would just be able to license the beds. Today they would currently have to go and find those beds, either purchase or transfer them from another facility if they are part of a corporation.

Rep. Fehr: The department wouldn't have any other restriction on it, they would be obligated to license anybody who applied?

Thiel: The department of health actually licenses them and as long as they meet all the licensing requirements they would be licensed as a nursing facility or a basic care facility.

Rep. Porter: If a facility would build and didn't meet our existing occupancy requirements how would that affect their reimbursements?

Thiel: They would be a licensed nursing facility. Nursing facility is the only one that has an occupancy limitation within its rate setting. They would be limited by the 90 percent occupants limitation if they did not have at least 90 percent occupancy.

Rep. Porter: If you were running a business and you couldn't guarantee yourself 90 percent occupants it would be pretty difficult to think that you would be successful in running your business plan on a skilled care basis.

Thiel: Before any facility or corporation came into the state to build a new one they would defiantly look at that and see if that fits within their model. They could actually make money at that.

Rep. Porter: On the basic side even though we restrict them from being able to just build a basic care facility, on the reimbursement side they aren't at all mandated into the Medicaid system or have any guaranteed participation from the department of human services unless they chose to.

Thiel: No, there are some licensed basic care facilities that do not participate in the basic cares assistance program which is the run through. They would access Medicaid funding and Medicaid recipients would be able to stay there.

Rep. Porter: So in those models then they are actually kind of a free market model but the only restriction is that they can't just build a facility they have to go out and purchase a bed from somebody else if they don't have any beds in their allocation. Or they have to come in and show you 90 percent occupancy in order to get the beds. So they show that to you or who do they show that 90 percent demand to?

Thiel: There is a committee between the department of health and the department of human services who meets when we receive a request for beds under the moratorium exemption.

Rep. Porter: Why would the department of human services be on a committee for basic care when they may not even want to participate with you?

Thiel: When they come in and ask for those beds under the exception rule that is not one of the questions that we ask is whether or not they intend to participate in the Medicaid program. Our hope is that all facilities will.

Chairman Weisz: I know part of the reasons for the opposition for getting rid of the moratorium is that it is going to increase utilization on the department's perspective of Medicaid now you just said you wanted to participate in Medicaid if they come on. I find that a little curious.

Shelly Peterson, President of the ND Long Term Care Association: Testified in support of the bill. (See Testimony #2)

Rep. Porter: I don't think it was ever the intent of the state of North Dakota to create and underground market for nursing home beds. That all the sudden was created by this. I am more of a free market person at least on the basic care side. We don't regulate basic care, we don't mandate, they participate in basic care. If someone has that much money laying around that they don't care if their facility is full or not and they just want to put in basic care I am the guy that says you know this the risk you take have at it. On page 1, sub 1, that allows up to five beds to be laid away per year. How often can the same facility lay away the same five beds per year to meet the 90 percent for the other reimbursement component without ever being forced to then put them out either in the actual other component of this bill?

Peterson: You need at least five beds in order to operate a basic care facility. Lets say you are a 50 bed facility and I want to take five and create a basic care. You have to be at least licensed for five. Once a year then you don't sell them because they are in your

existing facility so once a year you tell the health department I converted these last year I want to maintain them. You are not selling them you are just using them as basic care beds for that period of time. In the lay away program you are limited, after two years if you converted some of those beds to basic care you have to decide what you are going to do with them. You can bring them back and operate them as basic care but you have to do something with them.

Rep. Porter: After a year of converting you can keep it there forever and hold it forever in that cloud. You are never forced to do anything with them they are just out in the cloud. That helps you meet the 90 percent occupancy requirement because that occupancy requirement is only based on your skill cared beds on what we reimburse.

Peterson: You are only allowed to do that once a year, but those beds must be either put back in service or sold before the end of that two year period. You have two years to think about what to do with that bed but at the end of that two year period unless you bring them back in or you have to sell them or convert them to basic care. If you bring them back as basic care they are basic care beds. So you can't manipulate or play that game except for that two year period where you are given kind of a grace period to see what they want to do with those beds.

Chairman Weisz: But you can bring them back in as skilled care again.

Peterson: You could, but if you haven't dealt with your occupancy issue you are probably going to fall below 90 percent.

Chairman Weisz: You can at least do it every other year.

Peterson: You can't.

Chairman Weisz: Why can't you?

Peterson: The attorney general and the state health department said you cannot play that game. There is also a provision in there that you cannot convert any more than 25 percent of your beds in one year or a maximum of 50 but those beds you have to do something with those beds at the end of the time period. No one has requested it nor did we ever anticipate that people would because of the provision that you have to do something permanent with those beds. What we are finding is people are setting beds aside for two years and before the end of that two year period they put them out on the market or they transfer them to Fargo.

Rep. Porter: That kind of then gets into the next part of this where they transfer them to Fargo to hold.

Peterson: Then they have 48 months and they are losing them.

Rep. Porter: But why shouldn't they lose them.

Peterson: We agree with you. We are not suggesting through this language that they transfer them back. We are not suggesting that they resell them, what we are suggesting is that they transfer all these beds to Fargo, they have been losing them because they did not put them in service, but what people can now do in the bed lay away program is everyone else can convert those beds to basic care and what good Sam would like to do is convert those beds that are sitting in Fargo, before the 48 month period, and put them into basic care where they need them. If not then what they consider doing is they have campus here with extra space they would put beds in service in Bismarck.

Chairman Weisz: You made the point that one according the health counsel we are over stocked on basic care beds and yet you just stated that you we have this big basic care shortage particularly in dementia. One of the reasons for the change in the language is so that the new facility can get the basic care beds. So then the other indication was that our little commodity market was working but obviously it's not, because again this facility now is struggling to get beds which you admitted is a desperate need in that area of the state at least.

Peterson: Right now there are 12 basic beds for sale. There is continually the buying and selling of beds out on the market, but the state health counsel said we feel we don't feel there is a correct distribution but we think since we are at 18 beds per thousand that maybe we shouldn't. But we are finding in Fargo is that even though they are supposedly over bedded there is a great demand for dementia care basic care bed.

Chairman Weisz: We are the only basic care state, so we just pulled 16 out of the air?

Peterson: That was the state health counsel. There wasn't anything to evaluate how we do it. Is it the right number, I don't know.

Rep. Porter: I want to focus just on the basic care and your numbers are different than the department's numbers. You are at 18 per thousand and they are 16 per thousand with a target of 15 per thousand. I am not sure where you guys are all getting your numbers but they are different. My question relates back to in this conversation we talk a lot about Fargo and we have this I-29 corridor and we have a state in Minnesota that does not restrict basic care. If we continue to have this business restriction in place, aren't we risking then that these facilities are just going to locate in Moorhead and take the business and we are never going to have that business in the valley anyway. They can look at it and say you know what I can make my business model fly at 80 percent occupancy basic care, not skilled. I can make this facility pay for itself, make it fly at 80 percent, I can locate it right here in Moorhead and not have to deal with this moratorium and all these other things in the state of North Dakota. I am worried that we set this fence up that we are going to push these things right to that boarder community and we are going to be losing the jobs and the business and the property taxes that they pay and all the other stuff that goes along with the basic care facility located in our state so that I question one. Question two is when you look at your 50 mile radius how does that compute then when you are in West Fargo, ND. Does that include the occupancy and the beds and the facilities in Moorhead or does it just run up to that Red River and hits a wall?

Peterson: The ND is only state in the nation with basic care. I don't know what would be the comparable service in Minnesota but there isn't a comparable one to our basic care. We have assisted living and Minnesota has assisted living and there is not any limit on assisted living and there has been a great development of assisted living across North Dakota to meet that demand. The thing that is different and unique about basic care in North Dakota that not any other state has and why new perspectives wants to build in West Fargo verses Moorhead is because we do have the public assistance program for low income people and you can get paid for people who don't have any money who have access to assisted living. North Dakota is attractive from that perspective because not any other state has what we term as basic care.

Rep. Porter: How do we know as a state that the swiipe of the big wide brush and 90 percent is the correct number for the business model of basic care when we don't regulate it, we just pay rent like any other renter? The state of North Dakota doesn't care on the basic care side on equalization and those types of things, so how do we know that the 90 percent number that is in there to go and plead your case to have a business model is the right number? The other argument that I hear back from people is that assisted living in Minnesota is hugely different than assisted living in North Dakota that they are able to offer other services and nursing services and still qualify to be at home and in assisted living as in North Dakota the second you need one extra little service they boot you out and you are in skilled care instantly and you can't get back into assisted living or basic care. It is a huge difference in how they are viewed. Going back I still can't get my mind around our nose being in basic care. I don't know that anybody knows that 90 percent is the right number as far as a business model is concerned and yet we still keep coming back time after time after time saying just put the moratorium in place and this will all sort itself out and it doesn't seem to be.

Peterson: You bring up two very good points. The issue on our criteria of who can go into assisted living verses Minnesota and who can go into assisted living, the hearing just before this was on assisted living and in there is specific criteria on if you meet certain extensive nursing skilled care you must be in essence discharged and there is a 30 day notice and a process of communicating with families. But yes North Dakota is very specific on levels of care and who is appropriate and where it is believed people should be. One of the reasons behind that is for if you allow everyone to stay in assisted living because no one wants to move out. But if we allowed everyone to stay when they needed skilled care then we would soon become skilled nursing facilities out there and we wouldn't have the staff and the over site and we would lose that independent more assisted living model. So North Dakota has gone a totally different direction.

Rep. Mooney: What is purpose of moratorium?

Peterson: It was to control the growth.

Rep. Mooney: Basic care though is not a reimbursed situation as far as Medicaid is concerned its reimbursed in a different way, correct?

Peterson: Basic care as also reimbursed by the B-CAP program for low income individuals. In HB 1359 that was the limit issue where 39 percent of all the basic care facilities are

operating over limits. There is a payment system. It is kind of a poor payment system but low income people are serviced and probably of those participating in the basic cares systems program I think 51 out of 71 are. Right now about 60 percent of those are on B-CAP assistance and we are seeing growth in those numbers.

Rep. Mooney: On the 50 mile radius, is it appropriate?

Peterson: The state health counsel had that special group that evaluated it in 2012. It might be worthwhile to have them talk about it and present on why they came to that conclusion.

Rep. Mooney: What happens if this bill does not pass? What happens to the functionality as is or to the public at large?

Peterson: The moratorium wouldn't be there. So you could potentially have anyone build or develop so we could increase institutional capacity. Would they? I don't know. Rural facilities no who have had a market for better or worse on selling their excess capacity would no longer have that market, because if you can just add beds then those rural facilities that have gained so much by downsizing and selling their beds and getting some money and then having the ultimate good thing of redistribution of those beds to the more urban sites where there is a more greater demand. There would no longer be any value for that. The issue on the flexibility, it would really be nice have good Sam use our existing beds and not sell them over and over but use them in Fargo for our basic care and it would be good for the redistribution to have new perspectives get the basic care beds that they thought were behind and right now that flexibility does exist in your bed lay away program that you created and it is often confused with this issue on transfers so making them all have the same rules would be beneficial. Down side potentially more beds, costs more money, we would be going up in institutional care, potentially.

NO OPPOSITION

HEARING CLOSED

2015 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

SB 2079
4/1/2015
Job # 25717

- Subcommittee
 Conference Committee

Committee Clerk Signature



Minutes:

Chairman Weisz: Opened the meeting for SB 2079.

Rep. Porter: I completely understand and support the skilled care situation. I do have concerns about moratorium on Basic Care. I move an amendment on SB 2079 to remove Section 1.

Rep. Rich Becker: Second.

Rep. Seibel: I'll resist the motion.

Rep. Mooney: I also resist the motion based on the premise of last session which we created the moratorium and now to pull the plug on it would be a mistake in that infrastructure that they have to live with. I do not want to be the one who does that to them.

Rep. Muscha: I also resist as in Ransom and Barnes County they do not want this.

Rep. Damschen: I also resist the motion.

Vote Yes 3 No 10 Absent 0

Motion Fails

Rep. Mooney: made a motion of **Do Pass**.

Rep. Oversen: seconded the motion

Vote Yes 10 No 3 Absent 0

Carrier is Rep Mooney

Meeting Closed

Date: 4-1-15
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2079

House Human Services Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Rep. Porter Seconded By Rep. Rich Becker

Representatives	Yes	No	Representatives	Yes	No
Chairman Weisz	✓		Rep. Mooney		✓
Vice-Chair Hofstad		✓	Rep. Muscha		✓
Rep. Bert Anderson		✓	Rep. Oversen		✓
Rep. Dick Anderson		✓			
Rep. Rich S. Becker		✓			
Rep. Damschen		✓			
Rep. Fehr	✓				
Rep. Kiefert		✓			
Rep. Porter	✓				
Rep. Seibel		✓			

Total (Yes) 3 No 10
Absent _____
Floor Assignment _____
Motion Failed

If the vote is on an amendment, briefly indicate intent:
Remove Section 1

Date: 4-1-15
 Roll Call Vote #: 2

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2079**

House Human Services Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Mooney Seconded By Rep. Oversen

Representatives	Yes	No	Representatives	Yes	No
Chairman Weisz	✓	✓	Rep. Mooney	✓	
Vice-Chair Hofstad	✓		Rep. Muscha	✓	
Rep. Bert Anderson	✓		Rep. Oversen	✓	
Rep. Dick Anderson	✓				
Rep. Rich S. Becker	✓				
Rep. Damschen	✓				
Rep. Fehr	✓	✓			
Rep. Kiefert	✓				
Rep. Porter	✓	✓			
Rep. Seibel	✓				

Total (Yes) 10 No 3

Absent _____

Floor Assignment Rep. Mooney

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

REPORT OF STANDING COMMITTEE

SB 2079, as engrossed: Human Services Committee (Rep. Weisz, Chairman)
recommends **DO PASS** (10 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed SB 2079 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

SB 2079

Attach #1

SB2079

01/12/2015

J# 21840

Testimony
Senate Bill 2079 – Department of Human Services
Senate Human Services Committee
Judy Lee, Chairman
January 12, 2015

Chairman Lee, members of the Senate 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. I am here today in support of Senate Bill 2079, which was introduced at the request of the Department.

The moratoria on nursing facility beds and basic care beds have been in place since 1995 and have been extended each biennium. This bill would continue the moratorium through July 31, 2017.

2011 HB 1040, which extended the moratoria to July 31, 2013, also directed the State Health Council to review the health care bed recommendations. In 2012, the State Health Council presented a recommendation to the Health Services Interim Committee to continue the moratoria on nursing facility and basic care beds in North Dakota. The recommendation was a nursing facility bed target of 55 beds per 1,000 and a basic care bed target of 15 beds per 1,000 population aged 65 and above. Based on 2010 data, there were 57.10 nursing home beds per 1,000 and 16.49 basic care beds per 1,000. As of September 30, 2014, there are 29 nursing facilities with occupancy below 90 percent.

Currently, state law allows two exceptions to the basic care bed moratorium, which are: (1) a nursing facility may convert nursing facility bed capacity to basic care beds; and (2) an entity can demonstrate the

need for more basic care beds to the Department of Health and the Department of Human Services. To demonstrate a need, the facility must show that occupancy within a 50-mile radius at existing basic care facilities is at or above 90 percent.

There is no exception to the nursing facility bed moratorium. A facility must purchase or transfer beds from another facility.

The Department's 2015-2017 budget was built based on both moratoria continuing.

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

*Attach #2
SB 2079
Peterson
J# 21840
01/12/15*

**Testimony on SB 2079
Basic Care and Nursing Facility Moratorium
Senate Human Services Committee
January 12, 2015**

Good morning Chairman Lee and members of the Senate Human Services Committee. My name is Shelly Peterson, President of the North Dakota Long Term Care Association (NDLTCA). We represent over 200 Assisted Living, Basic Care and nursing facilities across North Dakota. I am here to testify in support of SB 2079 regarding the basic care and nursing facility moratorium. We offer one amendment which we believe will help move beds to high demand areas and maintain the full integrity of the moratorium.

SB 2079 proposes to continue the basic care and nursing facility moratorium through July 31, 2017. SB 2079 also provides for an exception process to allow additional basic care beds under the following conditions:

1. A nursing facility can convert nursing facility beds to basic care. This is allowed once a year, thus if you've converted some beds to basic care and you find there isn't a demand or need, you can change these beds back to nursing facility beds after one year. A number of rural nursing facilities have used this provision and set aside at least five beds for basic care. This helps rural residents have access to basic care and remain in their local community.

2. If an entity can prove to the State Department of Health and the Department of Human Services that basic care beds are not readily available within a designated area of the state or that existing basic care beds within a 50 mile radius have been occupied at ninety percent or more for the previous 12 months, you could receive "free beds".

This exemption process is for basic care beds only. When a facility receives basic care beds under the need process, they have 48 months to put the beds in service.

We believe SB 2079 regarding the moratorium should continue.

We believe the moratorium should continue for the following reasons:

1. North Dakota is considered to still have a high bed count when you consider the beds per 1,000 elderly. North Dakota nursing facility beds are reported at 60.35 beds per 1,000 persons age 65 and older. The U.S. average at this time is 41 beds per 1,000 persons age 65 and older. This is the information states use to compare themselves regarding the need for additional nursing facility beds. As you can see under this standard, North Dakota is considered to have a high number of nursing facility beds.

2. During the 2011-2012 interim, the Legislature directed the State Health Council to review the current nursing facility and basic care bed recommendations and determine if changes should be made to better serve the population of North Dakota. On April 10, 2012, the State Health Council adopted new recommendations:
 - a. The moratorium on nursing facilities and basic care beds should continue;
 - b. The goal for nursing facility beds was set at 55 nursing facility beds per 1,000 population age 65 and older
 - c. The goal for basic care beds was set at 15 basic care beds per 1,000 population age 65 and older.
 - d. We recommend reconsideration of the provision to allow for new and additional basic care beds.

Today, nursing facilities are at 60.35 beds per 1,000 elderly (65+) and basic care is at 18.75 beds per 1,000 elderly.

Beds are being re-distributed across the state from low demand to high demand areas. This is occurring because beds are moved around through the buying and selling process. We have seen the re-distribution of beds. This has allowed some communities to "get more beds" and others to get rid of excess capacity. This has helped rural facilities who have had empty beds get some "cash" to help with their operation, which may be financially frail.

During the 2011 Legislative Session, you passed a law allowing nursing facilities to temporarily decrease their licensed bed capacity. They can lay these beds aside for a maximum of two years. This option allows a nursing facility to temporarily take beds out of service and see if they are needed. This allows a facility to right size their organization.

At the end of the two year lay away period, the nursing facility has four options:

1. Bring those nursing facility beds back into service within their own facility;
2. Convert those nursing facility beds to basic care beds and bring them back into their facility;
3. Sell as nursing facility beds;
4. Sell as basic care beds.

If the nursing facility does not take any action at the end of the two year period, the beds cease to exist. After the two year period, if you sell the beds as basic or skilled, the new owner has an additional two years to relicense the beds in the new location.

When a nursing facility is not in the bed layaway program they are still allowed to sell their beds as either nursing facility or basic care beds, except in one circumstance. That circumstance was inadvertently changed in the 2011 session when the bed layaway program was implemented.

Once you sell or transfer a bed you have 48 months to put that bed in service. When you are in that 48 month waiting period you can only sell that bed as a nursing facility bed, not basic care.

What they would like to do, is re-sell or re-distribute those nursing home beds as basic care. Beds which are less expensive and in demand. When we crafted language for the bed layaway program we added seven words which took this flexibility away.

The Good Samaritan Society has lost a number of nursing facility beds, and others are facing the same issue. Nursing home beds are not in demand, but dementia basic care beds are in need. Beds would still need to be put in service within the

2.4

original 48 month period. Expensive skilled nursing facility beds would forever go out of service and the pent up demand for basic care dementia beds could be better met.

This feature would allow the needed bed to be put in service in the appropriate location at the appropriate level of care needed to meet the future needs of the citizens of North Dakota.

As I indicated previously, this flexibility provision was inadvertently lost in the 2011 session, when the bed set aside program was implemented. We ask for your support in bringing this flexibility back to better meet the needs of the basic care dementia population.

Thank you for the opportunity to testify in support of SB 2079 and offer an amendment. I would be happy to address any questions you may have at this time.

Shelly Peterson, President
North Dakota Long Term Care Association
1900 North 11th Street
Bismarck, ND 58501
(701) 222-0660
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www.ndltca.org

Attachments:

Amendment to SB 2079

Amendment to SB 2079

Section 3 Amendment- Subsection 2 f section 23-16-01.1 of the North Dakota Century Code is amended and reenacted as follows:

Transfer of licensed nursing facility bed capacity from a nursing facility to another entity is permitted. The nursing facility may transfer the bed capacity either as nursing facility bed capacity or basic care bed capacity. Transferred bed capacity must become licensed by and entity ~~as the type of bed capacity originally transferred~~ within forty-eight months of transfer.

#1
SB 2079
3-16-15

Testimony
Engrossed Senate Bill 2079 – Department of Human Services
House Human Services Committee
Representative Weisz, Chairman
March 16, 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. I am here today in support of Engrossed Senate Bill 2079, which was introduced at the request of the Department.

The moratoria on nursing facility beds and basic care beds have been in place since 1995 and have been extended each biennium. This bill would continue the moratorium through July 31, 2017.

2011 HB 1040, which extended the moratoria to July 31, 2013, also directed the State Health Council to review the health care bed recommendations. In 2012, the State Health Council presented a recommendation to the Health Services Interim Committee to continue the moratoria on nursing facility and basic care beds in North Dakota. The recommendation was a nursing facility bed target of 55 beds per 1,000 and a basic care bed target of 15 beds per 1,000 population aged 65 and above. Based on 2010 data, there were 57.10 nursing home beds per 1,000 and 16.49 basic care beds per 1,000. As of September 30, 2014, there are 29 nursing facilities with occupancy below 90 percent.

Currently, state law allows two exceptions to the basic care bed moratorium, which are: (1) a nursing facility may convert nursing facility bed capacity to basic care beds; and (2) an entity can demonstrate the

need for more basic care beds to the Department of Health and the Department of Human Services. To demonstrate a need, the facility must show that occupancy within a 50-mile radius at existing basic care facilities is at or above 90 percent.

There is no exception to the nursing facility bed moratorium. A facility must purchase or transfer beds from another facility.

This bill was amended by the Senate based on testimony provided by the ND Long Term Care Association. On page 2, line 28; eight words were removed. Currently, transferred nursing facility beds can only be sold or transferred further as nursing facility beds. This amendment allows a nursing facility with transferred nursing facility beds to sell or transfer those beds as basic care.

The Department's 2015-2017 budget was built based on both moratoria continuing.

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

2
SB 2079
3-16-15

**Testimony on SB 2079
Basic Care and Nursing Facility Moratorium
House Human Services Committee
March 16, 2015**

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 (NDLTCA). We represent 211 Assisted Living, Basic Care and nursing facilities across North Dakota. I am here to testify in support of Engrossed SB 2079 regarding the basic care and nursing facility moratorium.

SB 2079 proposes to continue the basic care and nursing facility moratorium through July 31, 2017. SB 2079 also continues the exception process to allow additional basic care beds under the following conditions:

1. A nursing facility can convert nursing facility beds to basic care. This is allowed once a year, if you've converted some beds to basic care and you find there isn't a demand or need, you can change these beds back to nursing facility beds after one year. A number of rural nursing facilities have used this provision and set aside at least five beds for basic care. This helps rural residents have access to basic care and remain in their local community.
2. If an entity can prove to the State Department of Health and the Department of Human Services that basic care beds are not readily available within a designated area of the state or that existing basic care beds within a 50 mile radius have been occupied at ninety percent or more for the previous 12 months, you could receive "free beds".

This exemption process is for basic care beds only. When a facility receives basic care beds under the need process, they have 48 months to put the beds in service.

We believe SB 2079 regarding the moratorium should continue. We also support keeping the "free bed" provision for those who meet that criteria.

We believe the moratorium should continue for the following reasons:

1. North Dakota is considered to still have a high bed count when you consider the beds per 1,000 elderly. North Dakota nursing facility beds are reported at 60.35 beds per 1,000 persons age 65 and older. The U.S. average at this time is 41 beds per 1,000 persons age 65 and older. This is the information states use to compare themselves regarding the need for additional nursing facility beds. As you can see under this standard, North Dakota is considered to have a high number of nursing facility beds.
2. During the 2011-2012 interim, the Legislature directed the State Health Council to review the current nursing facility and basic care bed recommendations and determine if changes should be made to better serve the population of North Dakota. On April 10, 2012, the State Health Council adopted new recommendations:
 - a. The moratorium on nursing facilities and basic care beds should continue;
 - b. The goal for nursing facility beds was set at 55 nursing facility beds per 1,000 population age 65 and older
 - c. The goal for basic care beds was set at 15 basic care beds per 1,000 population age 65 and older.
 - d. We recommend reconsideration of the provision to allow for new and additional basic care beds.

Today, nursing facilities are at 60.35 beds per 1,000 elderly (65+) and basic care is at 18.75 beds per 1,000 elderly.

Beds are being re-distributed across the state from low demand to high demand areas. This is occurring because beds are moved around through the buying and selling process. We have seen the re-distribution of beds. This has allowed some communities to “get more beds” and others to get rid of excess capacity. This has helped rural facilities who have had empty beds get some “cash” to help with their operation, which may be financially frail.

During the 2011 Legislative Session, you passed a law allowing nursing facilities to temporarily decrease their licensed bed capacity. They can lay these beds aside for a maximum of two years. This option allows a nursing facility to temporarily take beds out of service and see if they are needed. This allows a facility to right size their organization and gives them two years for the transition.

At the end of the two year lay away period, the nursing facility has four options:

1. Bring those nursing facility beds back into service within their own facility;
2. Convert those nursing facility beds to basic care beds and bring them back into their facility;
3. Sell as nursing facility beds;
4. Sell as basic care beds.

If the nursing facility does not take any action at the end of the two year period, the beds cease to exist. After the two year period, if you sell the beds as basic or skilled, the new owner has an additional two years to relicense the beds in the new location.

When a nursing facility is not in the bed layaway program they are still allowed to sell their beds as either nursing facility or basic care beds, except in one circumstance. That circumstance was inadvertently changed in the 2011 session when the bed layaway program was implemented. See on page 2, subsection 2 of Section 2, the law currently states transferred bed capacity must become licensed

by an entity as the type of bed originally transferred within the 48 months of transfer.

Once you sell or transfer a bed you have 48 months to put that bed in service. When you are in that 48 month waiting period you can only sell that bed as a nursing facility bed not basic care (because of those 7 words, "as the type of bed originally transferred").

The beds that are in greatest demand now are basic care beds for dementia care.

The Good Samaritan Society transferred a number of beds from their rural facilities to Fargo beginning over 5 years ago. They have lost a number of those beds, including 30 on March 1, 2015. Originally they were hoping to build a nursing facility in Fargo, but the demand has changed as they would now like to expand their basic care facility in Fargo.

A new company, New Perspectives, is planning on building a senior living community in West Fargo. They have been in the planning stages for a couple of years and late last year purchased some beds from Sanford Health to build a basic care dementia unit. Recently all parties found out the beds they purchased can only be used as nursing facility beds, because "those beds were originally transferred as nursing home beds" and can't be used or sold as basic care because of the seven words. Without deleting these seven words in subsection 2, Good Samaritan will be unable to add basic care beds in Fargo and New Propectives will need to find basic care beds from someone else.

Nursing home beds are not in demand, but dementia basic care beds are in need. Beds would still need to be put in service within the original 48 month period. We support these beds be used for basic care , as this is where the need is and more expensive skilled nursing facility beds would forever go out of service. There is a demand for basic care dementia beds and regular basic care beds in Fargo. At the beginning of this Legislative session Cass County Social Services

called me and talked about the difficulty of finding placement for individuals in need of basic care and asked what they could do to help solve the problem.

Getting rid of these seven words would allow the needed beds to be put in service in the appropriate location at the appropriate level of care needed to meet the future needs of the citizens of North Dakota. The moratorium works because you have allowed the buying and selling of beds which creates the re-distribution. I don't believe it was your intent and certainly not ours to create, this restriction on the re-distribution of beds. When you create the bed layaway program in 2011, this flexibility provision was inadvertently lost. We ask for your support in bringing this flexibility back to better meet the needs of the basic care dementia population.

Thank you for the opportunity to testify in support of SB 2079. I would be happy to address any questions you may have at this time.

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