

FISCAL NOTE
Requested by Legislative Council
04/03/2015

Amendment to: SB 2083

- 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).*

SB2083 relates to changes made to assisted living facility licensing, including licensing after receiving a penalty, provisional licensure, tenancy criteria and continuing education.

- 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.*

SB2083 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: 04/06/2015

FISCAL NOTE
Requested by Legislative Council
12/23/2014

Bill/Resolution No.: SB 2083

- 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						
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Name: Debra A. McDermott

Agency: Human Services

Telephone: 328-3695

Date Prepared: 01/02/2015

2015 SENATE HUMAN SERVICES

SB 2083

2015 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

SB 2083
1/12/2015
Job #21818

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to assisted living facilities licensing; and to repeal section 50-32-02.1 of the North Dakota Century Code, relating to assisted living facilities.

Minutes:

Attach #1: Testimony by Julie Schwab, Department of Human Services
Attach #2: Testimony by Shelly Peterson
Attach #3: Proposed amendments by Shelly Peterson
Attach #4: Testimony by Char Christianson

"Click here to type your minutes"

Fiscal note indicates no fiscal impact.

In support of SB 2083

Julie Schwab, Director of Medical Services Division of Department of Human Services testified IN FAVOR of SB 2083 (refer to attach #1, testimony) (testimony ends 7:53)

Acronym Terms: AL = Assisted Living

Senator Dever asked for reminder in the difference in the involvement of Department of Human Services and Department of Health in assisted living facilities.

Ms. Schwab answered that the Department of Health would have oversight over the medication involvement, such as medication errors and administration, and they also have the food and lodging portion.

Senator Dever stated that this bill addresses medication errors.

Ms. Schwab answered that those are some of the errors that were reported that we reported to the Health Department.

Chairman Judy Lee asking if the assisted living facilities are based on a residential model whereas skilled care and basic care are based on a medical model and so that's why there are some of the differences in requirements as wells as who licenses whom?

Ms. Schwab responded that is a good representation.

Senator Howard Anderson, Jr. asked if we are developing another level of nursing care, as we move this more and more toward requiring a care plan, reporting medication errors which in an assisted living facility is the resident themselves many times, only occasionally do they require assistance from the assisted living personnel. Senator Howard Anderson, Jr. asked for further discussion about that transition and a regulated model toward assisted living.

Ms. Schwab responded that because medication administration is a service that is an option in Assisted Living, we believe there needs to be some oversight of the medication administration within those facilities, simply because when there is medication errors, there can be a quick decline in health and safety needs to be monitored by the department.

Senator Howard Anderson, Jr. asked about a medication error that needs to be recorded, we use the medical model that the dose varies more than 30 minutes from when it was originally scheduled to be administered, are we talking about the same model here?

Ms. Schwab responded that initially, we were talking about any medication error, but we note some differing opinions, and the department is still considering different models for reporting trends.

Chairman Judy Lee asked about the background of people involved. What kind of investigation takes place at Department of Human Services or Health Department of the worthiness of the person administering?

Ms. Schwab referred to Karen Tescher.

Ms. Karen Tescher testified, Department of Human Services, licensing for assisted living, the Human Services portion. Requirements for individual who starts with assisted living, there are no specific requirements within the state law or administrative code. Once they become administrator, there are educational requirements every year for those individuals.

Chairman Judy Lee asked if someone wants to open an assisted living facility and see this as a business, how do you know that I'm not a crook, and that I'm not going to mess up the assistance living facility. I have experience with personal fraud and theft that occurred with a family member. What kind of monitoring is in place? Is there an individual who does this? I'm not so concerned about a company, like Bethany or Eventide or Missouri Slope, as a big organization, I have confidence in the diverse group of people who are involved in moving this forward, but if I want to open an assisted living facility on my own, how do you know I'm not crooked?

Ms. Schwab referred to some of the other facilities that serve Medicaid and Medicare clients, they are required to enroll as providers so the checks are done, but if they are individual facility that does not take in those kind of moneys, then there are no requirements that follow those protections.

Chairman Judy Lee indicated it is a risk that the family takes when they put them into a residential facility. Occasionally in smaller facilities and even highly regarded facility,

sometimes you will have a staff person who is not honest and a good person. If a person who owns the facility sees it as a business opportunity versus providing professional services and make money but not at the expense of the people.

Ms. Schwab stated there aren't any of those protections at this time, to her knowledge.

Shelly Peterson Testimony (attach #2), (18:00), testified in FAVOR of SB 2083.

In regards to the prior question of background checks, it is required by law to do a comprehensive background check, check registries, and other registers for exploitation. Reference (attach #3) for proposed amendments.

42% of resident's contract with medication management services, from prior question stated earlier.

Testimony ends (32:30)

Chairman Judy Lee asked for clarifications on the marked up bill. Specifically, number 8 on your testimony, which is talking about page 6, delete all of line 7 and 8 except for the word "results", help me understand what you would like. Stop with the word "results". Ms. Peterson indicated that is correct.

Senator Warner asked for clarification on medication assistance.

Ms. Peterson indicated that on the last page, sentence 12, behind medication assistance II, insert medication assistant III.

Senator Dever asked for clarification on page 4, regarding the sentence "annually compile a written report on substantiated complaints. Is there a definition of what that is?

Ms. Peterson responded that the Department of Human Services does have a definition of substantiated complaints as well as non-substantiated complaints. There is a process of investigation and based on the results of the evidence gathered, the department determines if it is substantiated or not.

Senator Dever asked if her support of this bill contingent on any or all of the amendments being adopted?

Ms. Peterson indicated that they believe the amendments are important, would like to see them all included, but we will work with the committee.

Chairman Judy Lee requests that Department of Human Services and Shelly Peterson work together and respond accordingly. Ms. Peterson indicated they had indeed met together, and are working through the issues, and will continue those discussions. Chairman Judy Lee stated that no decision will be made today, but hope that the Department of Human Services and organization can discuss and find common ground.

Peterson indicated that the major concern is the reporting of medication errors, as this would overwhelm the Department of Health. This is really important to us.

V. Chairman Oley Larsen asked for clarification on page 3, line 23 and 24, there is an overstrike on 2 or 3 people. Was that an oversight where on page 6 line 25 and 26 of your testimony, is this the same?

Ms. Peterson indicated it was their intention to keep this out, as it is outdated language. The Department of Human Services moved it to another section, but it just is not applicable.

Senator Warner asked for clarification on substantiated complaints, what is the burden of proof process if it is substantiated. Some complaints must tip into criminal complaints. Is the assisted living agencies or one of the departments or strictly up to the family to report criminal complaint?

Ms. Peterson indicated that they are obligated to report under the Adult Protective Services to report abuse and neglect, exploitation. So this would be reported to Department of Human Services including crimes. In section 4, it states that the department will have rule making authority to better outline that process, which would include better definitions.

Ends Shelly Peterson testimony.

Begin Testimony **Char Christenson**, an RN and Director of Nursing at Golden Acres Manor and Golden Acres Estates in Carrington, ND (41:50) testified IN FAVOR with the suggested amendments. (Attach #4). Testimony ends (45:45)

Senator Warner asked if we go back to Medication Assistant I, II, and III, and that III is a student nurse, are ones and twos student nurses as well?

Ms. Christenson responded that I and II are certified nursing assistants that have taken further education and have passed tests to become medication administration I and II. Their oversight is the Department of Health. Medication Assistant III are student nurses who have reached that point in education where they can apply for being put on the registry and they are on the registry of North Dakota Board of Nursing.

Senator Warner asked is there a distinction on who can give injections.

Ms. Christenson indicated that yes, that is spelled out in their practice. A III can do this, as well as some II's.

Chairman Judy Lee asked about schools who does the training?

Ms. Christenson indicated Minot State, most widely used, as well as several others. There are a few schools that do do that, but the need is high in rural areas.

Senator Howard Anderson, Jr. asked if there are adequate facility because the medication I needs to be overseen by a nurse at some point? Who provides this specific training for the administration of medications? Assisted living facilities don't typically have nurses on contract.

Ms. Christenson responded that they do have to have oversight, it is a delegated service medication administration. There must be policies and procedures in place that guide Medication I, II, or III as to what they can and can't do. They must have availability of nurses oversight and access to a nurse at all times, but they don't have to be onsite.

Senator Warner asked in regard to medical assistance III, are there duties that would normally be done only by nurses which they can do if they are employed by the facility?

Ms. Christenson responded that they do have to have nurses, so a medical aide cannot just do it if the service was not delegated to them by a nurse.

Senator Warner clarified.
End of Ms. Christenson testimony.

Testimony by **Dr. Constance Kalonec**, Executive Director of ND Board of Nursing spoke in FAVOR. (no written testimony). We did have circumstances where some nurses were disciplined by the Board because they worked at facilities that did not have policies and procedures to the level that was needed for their practice. We also support the changes on page 6 for medication administration, including III.

V. Chairman Oley Larsen stated that they have a job corp facility in Minot and career and technical classed for high school students learning this skill. A lot of these folks will go to assisted living facilities and gaining employment. Can a C.N.A. administer these services?

Dr. Kalonec referred to C.N.A., that is a separate certification, so they would have to take those courses for that certification.

Senator Dever recalled creation of medical assistance III because it didn't fit anywhere else where we had people providing services in facilities with no license or oversight and then we created the registry under the board of nursing for that oversight. I don't recall that they would be student nurses in their education process. Are there certain requirements to become a medical assistant III?

Ms. Kalonec indicated they must be student nurses, or others, but majority are student nurses for III, and they may work to the level of the education. Gave examples of scope of education to provide level of service. II and III medical assistants were provided to the Department of Health, and the III's are now at the Board of Nursing. We also have a category called Technician for surgical technicians, the dialysis techs, the cardiac techs, that have a subscribed scope of practice that they are educated to provide and must have regulatory oversight.

Senator Dever remembered that one of the persons who testified was from Larimore.

Ms. Kalonec stated she was not sure about that.

Senator Dever indicated his concern if the medical assistant III has the proper oversight (Board of Nursing is the oversight, as Chairman Judy Lee indicated). They are not licensed but registered and must have oversight by nurse.

Kolonic stated that the oversight is defined by their education level, interpreted by their facility.

Opposed

No testimony opposing SB 2083

Neutral

No testimony neutral for SB 2083.

Public Hearing for SB 2083 Closed.

Changes being described will be amenable to Department of Human Services and Long Term Care association.

SB 2083 on hold.

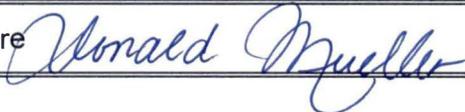
2015 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

SB 2083
1/21/2015
22306

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to assisted living facilities licensing; and to repeal section 50-32-02.1 of the North Dakota Century Code, relating to assisted living facilities.

Minutes:

Attach #1: Proposed Amendments

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

Karen Tescher, Department of Human Services, Medical Services Division, read and provided an explanation of the proposed amendments (see attach #1). (ends 8:01)

Chairman Judy Lee asked if the Department of Human Services had visited with Shelly Peterson with the Long Term Care Association and whether there was agreement.

Ms. Tescher indicated they were sent to Ms. Peterson and there was no response.

Julie Leer, attorney with the Department of Human Services, did get a response from Ms. Peterson, and that she had no problem with this version.

V. Chairman Oley Larsen stated that we are just cleaning things up, no changes.

Chairman Judy Lee clarified that there are fewer restrictions that they thought were onerous.

Senator Axness asked for clarification on page 6, line 6, sentence structure with the word "the".

Ms. Leer provided clarification of the grammar correction.

Senator Howard Anderson, Jr. made a motion to adopt the amendments. The motion was seconded by **V. Chairman Oley Larsen**.

Roll Call Vote

6 Yes, 0 No, 0 Absent.

Senator Howard Anderson, Jr. made a motion that the Senate Human Services committee recommend a DO PASS as Amended. The motion was seconded by **V. Chairman Oley Larsen**.

Roll Call Vote

6 Yes, 0 No, 0 Absent

Senator Howard Anderson, Jr. will carry the bill.

January 21, 2015

TD
1/21/15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2083

- Page 3, line 25, after "writing" insert "within"
- Page 3, line 25, remove "in advance"
- Page 4, line 27, replace the second underscored comma with an underscored semicolon
- Page 4, line 28, replace the first underscored comma with "; or"
- Page 4, line 28, remove ", or who has a known active"
- Page 4, line 29, remove "substance abuse problem"
- Page 4, line 30, replace "represent" with "advertise or hold"
- Page 4, line 30, after "itself" insert "out to the public"
- Page 4, line 31, remove ", such as Alzheimer's disease, or"
- Page 5, line 1, replace "dementia" with "without additional licensure as a basic care or nursing facility"
- Page 5, line 29, after "A" insert "service"
- Page 5, line 29, replace "of care which includes" with "that identifies"
- Page 5, line 29, after "requiring" insert "third-party"
- Page 5, line 30, replace "exceeding those normally delivered in" with "to ensure the tenant meets the tenancy criteria of"
- Page 6, line 6, after "the" insert "most recent"
- Page 6, line 7, remove "and with its plans to correct any survey results that demonstrate consumer"
- Page 6, line 8, replace "dissatisfaction" with "during the facility's license review"
- Page 6, line 12, after the second underscored comma insert "medication assistant III,"
- Page 6, line 20, replace "report any" with "have policies and procedures for receiving, investigating, and correcting"
- Page 6, line 20, replace "administration error to" with "errors. The policies must include the process for reporting significant medication errors or a pattern of errors as may be required by the state board of nursing or"

Renumber accordingly

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

**2015 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2083**

Senate Human Services Committee

Subcommittee

Amendment LC# or Description: 15.8044.01001 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 Anderson 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 _____

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

Date: 01/21 2015
Roll Call Vote #: 2

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB2083

Senate Human Services Committee

Subcommittee

Amendment LC# or Description: 15.8044.01001 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 Anderson 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 Anderson

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

REPORT OF STANDING COMMITTEE

SB 2083: 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 2083 was placed on the Sixth order on the calendar.

Page 3, line 25, after "writing" insert "within"

Page 3, line 25, remove "in advance"

Page 4, line 27, replace the second underscored comma with an underscored semicolon

Page 4, line 28, replace the first underscored comma with "; or"

Page 4, line 28, remove ", or who has a known active"

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Page 5, line 1, replace "dementia" with "without additional licensure as a basic care or nursing facility"

Page 5, line 29, after "A" insert "service"

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Re-number accordingly

2015 HOUSE HUMAN SERVICES

SB 2083

2015 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

SB 2083
3/16/2015
Job #24885

- Subcommittee
 Conference Committee

Committee Clerk Signature

Hicky Crabtree

Explanation or reason for introduction of bill/resolution:

Relating to assisted living facilities licensing

Minutes:

Testimonies 1-2

Chairman Weisz opened the hearing on SB 2083.

Karen Tescher: Assistant Director of the Long Term Care Continuum in Medical Services in the DHS testified in support of the bill. (See Testimony #1)

11:05

Chairman Weisz: You mentioned that reference to Alzheimer's and dementia was taken out and now it is just talking memory care. Do we have currently a definition for what memory care services are?

Tescher: I'll get back to you on that.

Chairman Weisz: There really should be a definition. In subsection 2, I assume you are saying they may not serve someone who needs extensive skilled nursing care or who needs restraints, correct?

Tescher: That is correct.

Rep. Rich Becker: On page 1 the third paragraph, what are some of the reasons for the increase in complaints and concerns?

Tescher: We have had 24 complaints in the last two years. Some complaints have involved tenants who live in assisted living and looks like there care are higher than can be given the oversight needed in an assisted living facility. Some complaints are against staff. There have been a number of facilities involved.

Rep. Rich Becker: Are many of these 24 complaints from smaller communities?

Tescher: Many of them came from larger communities.

Rep. Rich Becker: Will there be resistance among the people that you represent at the assisted living facilities towards what you are recommending?

Tescher: We have had good relations with the Long Term Care Association that represents most of the assisted living facilities in ND. We have found cooperation with the directors of these facilities and they want to do the right thing.

Damschen: Is there a process in place for a residence that develops problems that are beyond the scope of the facility and there is no alternative spot available?

Tescher: The facilities when they do find they have someone that is over and above the care they can provide they work with the family and look at basic care or skilled nursing facility for that person.

Damschen: In the meantime would they continue on at that facility?

Tescher: When we talked about third party contracts in here, the family can make sure that other staff is hired to come in and do the extra care until a more appropriate setting can be found.

Bert Anderson: Of the 71 licensed assisted living facilities and the 24 complaints, how many of the 71 did the complaints come from?

Tescher: Eleven different facilities involved in those complaints.

Rep. Mooney: On the eleven what are the demographics?

Tescher: All across the state.

Rep. Mooney: In the case where you have an assisted living facility that is actually connected to a long term care and/or hospital situation; does that qualify them to include memory capacity?

Tescher: Not necessarily because the staffing levels and the expectations are different in an assisted living versus a skilled nursing facility even if they are connected. It wouldn't say because they are attached then they qualify.

22:15

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

NO OPPOSITION

Chairman Weisz closed the hearing.

2015 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

SB 2083
3/24/2015
Job #25375

- Subcommittee
 Conference Committee

Committee Clerk Signature *Kenneth M. Torkler*

Minutes:

Chairman Weisz: Let's look at 2083. This came to us because there was some issues last biennium. This is an attempt, I guess, to address some of those issues. I will say that one of the reasons that assisted living, I think, has worked so well is because we've had very minimal regulations, and it's become a wonderful model in the state. I'm struggling with some of this.

Rep. Porter: Other than the Hospice complaint I've heard, the other complaint is in regards to an elderly husband and wife that live in assisted living and want to stay in assisted living, but wouldn't meet the requirements, based on the new definitions inside of this bill, regarding bed bound, with limited potential for improvement. And not being on hospice. If they choose to hire a home health care agency or in-home type nursing capabilities, if the person is bed bound with limited potential for improvement, even though the other spouse is not, then they would have to find other arrangements and move up to something else other than what is here. I missed the hearing, but I know that I've had calls in regard to some of this, all of a sudden I'm getting kicked out of assisted living because I'm being bumped up to the next level even though they won't let me hire a home health agency or a nursing service or somebody, and I want to stay here in my home. Now, if I was at home, and still owned my own home, I could do that. But we take that away once you enter the facility mode.

Chairman Weisz: Let us go section by section.

Rep. B. Anderson: The testimony from the Human Service Department said they had received a number of complaints, and out of the 71 assisted living centers, they had only received complaints from 11 of them. And out of those 11, there were only 24 complaints. That's less than one per month per year. And then in testimony from the Long Term Care Association, it said, based upon a survey, the N.D. assisted living facilities exceeded all 11 measures of quality compared to their counterparts in other states.

Chairman Weisz: The issue that came up really had to do with the argument that the person in the facility needed a higher level of care than assisted living could provide. So, instead of kicking them out, they kept them, and then there became an issue because I

believe they ran off, and family members were upset at the facility. Obviously there was misunderstanding between the family and what they thought the facility was supposed to do. Anyway, it became quite an issue. As Rep. Porter pointed out, you could be at home and have home health care cover your needs, but you can't be in this assisted living facility and have home health care come in and provide those services. Again, assisted living had been openly minimally regulated outside of really your health code, your fire, safety, health code areas, to allow the flexibilities. They weren't to hold themselves out to be skilled facility or basic care, but that seems to be at least part of the reason this is in front of us, not that they're doing it, but that there's the perception by some that they truly are a basic care facility, or have that ability to handle levels of care that they're not equipped to. That seems to be what brought this forward where the Department felt they needed some more ability to regulate.

Rep. Porter: It always amazes me that when you have a memory care licensure requirement, that you have to then go into another component of the law and say that you can't do this without having that license, even though it's clear that you're not supposed to do it without having the license. One of the other issues that came up in this realm is that husband and wife living in that area; the assisted living facility making accommodations for one of the two spouses with memory issues, and then being told they can't live there as their home any longer together because it violates the existing law. So you get into these areas where, if they were at home or if they were renting an apartment or anything else, they could hire home health care, or have Angel Care come out. They could do a multitude of things to stay in their home. Once they've decided to move into an assisted living facility, then they can no longer use those outside services to stay together in that assisted living facility, they're bumped up in the system to higher levels of care, and basically separated. So it is an issue.

Chairman Weisz: There is no definition of memory care. If you do have someone has minor dementia that might be in there, what does it mean to offer them services? If they're helping them with taking their pills, which they can do, does that now all of a sudden qualify as memory care services because they have some mild dementia? I was a little concerned because there wasn't any specific definition that says, at this point, it becomes. So does anybody that has any, could they be put under that and say, well, because you're whatever, providing meals even. I assume that's not the intent. I know there's at least part of the issue came in, and that could be found on page 3, number 3. The one thing the Department does feel like they're very limited in their ability to either license them or just not. So this does give them the ability to have provisional licenses up to 180 days. I'm not so sure that's, maybe a good idea. The way they seem to look at it is either your license or they got to take it away, and that was part of the issue. They lost their license in the facility, and then, now what. Everything got ugly, and what do you do with the residents? Things kind of deteriorated. So that part certainly makes some sense; to give them the flexibility at least so that, you know, we've got a problem here, but you don't necessarily have to pull your license while we resolve the issue. To me, assisted living has worked so well, mostly because we stayed out of it, and it's been an excellent model, and there has been a few issues, but we've added a ton of requirements here.

Rep. Porter: I do see on Page 5, subsection F that a service plan that identifies third-party contracts through their home health agency or other third-party services. But I still haven't

found where the tenancy criteria of the assisted living facility to make sure that the tenant still meets the tenancy criteria of the assisted living facility. Is that each facility sets that tenancy criteria, or is that something set by the state? Page 4, line 14.

Chairman Weisz: So it is unique within each facility. "must address the specific needs that can be met within the facility and the conditions under which a tenant may be required to move out of the facility."

Rep. Porter: Except lines 23-26, where you couldn't hire a nurse or a nursing service and stay in assisted living.

Chairman Weisz: It says if they're bedbound, then they're out.

Rep. Porter: It also says, who requires extensive skilled nursing care, at the end of line 25, line 26.

Chairman Weisz: A question for you Shelly. Currently, what was just mentioned, being bedbound. Do you feel what are some facilities working within that, and what's your impression that would automatically, regardless of why they're bedbound, should automatically kick them out of assisted living?

Shelly Peterson, Pres., N.D. Long Term Care Association: Each facility is supposed to have their own admission and discharge criteria, and that would be one of the criteria that they must discharge them based on definition of what a skilled nursing facility is, what a basic care and what a nursing home is. If you wouldn't pass the bill, there are still those other definitions in statute that would require to discharge when a person needs 24-hour care. However, that provision on the contracts; it currently does allow an assisted living facility or a person residing within there to employ a home health agency or visiting nurses to help them meet the criteria, so that third party could come in, assist them with bathing or dressing. It becomes a life safety issue if they can't exit the building. Is there someone in there that can help them when they need that care. And so the concern is if a person requires much more extensive care, and they're becoming a danger to themselves by staying there, they require more care, and there have been two chief complaints. One is people staying in there longer than they should, and not getting the care and services. And #2 is medication administration.

Chairman Weisz: Currently under the basic care and skilled facility requirements, if they are bedbound, it would automatically move them up to basic care?

Peterson: And if they are bedbound, they might even need skilled care. It depends on what other services, generally when they are bedbound, there are other needs and services that you have. And what happens if, let's say for instance, we did allow everyone to stay in assisted living and get the services to keep them there, and age in place, what we would soon see is that everyone in assisted living, it would look like a mini-nursing home because people do want to stay there, and then we would need increased staffing, increased nurses. And it wouldn't be that assisted living environment where you need care and services. The other issue you brought up was dementia care, if I can address that. We talked about there is not a clear understanding of if we have people with cognitive

impairments in assisted living, can they stay there? Right now, based on a survey we conducted, one-third of the people living in assisted living have some type of cognitive impairment from mild confusion to maybe a mental health diagnosis, but they're being cared for very well in assisted living. The key is that the facility is not holding itself out to the public as a special care dementia unit. Where you can have a locked secured unit where they can't exit, because we might have wandering in that situation. But many people that are currently living there safely do have maybe some memory issues, but they can stay there as long as we're not holding ourselves out as that special care dementia unit.

Chairman Weisz: So just to clarify again, if this bill goes away, for example, you're still obviously, the facility is still limited to the basic care and skilled facility rules, so they're still not going to be able to have bedbound residents.

Peterson: That would be my understanding.

Rep. Porter: That component of who requires extensive skilled nursing care; so if patient and family think that they need to hire a home health care agency, then does that in itself constitute skilled nursing care because their services can't be provided by the assisted living facility; they can only be provided by a licensed nurse? How is that figured out?

Peterson: That's a good question, because originally in the bill, it said that every assisted living facility needed to get the signed contracts that were between the residents and their third party. And we thought that was very intrusive, and that they still had the right to enter into contracts without us having to get a copy. But what we thought was important, that we're aware of it so that we can see that the person is getting the necessary care and services. But when do they need that third party vs. when can the facility provide that? Right now, probably every assisted living facility has a nurse on staff eight hours a day, some 24 hours a day because of med administration and other issues. So it would depend on each facility and how much care they're comfortable giving within their definition of who we accept based on the criteria we've established. So, some may say early on, nope, we don't have a nurse that frequently; you're going to have to contract for it. Others may say, we have the nursing staff, and we'll charge you this amount for us to go in this frequently within your facility. So there is a great variety out there, which is sometimes the beauty of it, too.

Rep. Porter: On page 4, though, I understand the contracting component later on, on page 5, sub F. I'm talking about the exclusions and telling them they can't be there any longer on page 4, line end of 25 start of 26. It says, who requires extensive skilled nursing care; or who needs restraints. So, if the nursing service that's there, whether it be eight hours a day, 12 hours a day or 24 hours a day, isn't enough for the patient, or the resident, and the family hires a third-party contractor, they can't do that anyway because it says they can't stay there because they now need extensive skilled nursing care. And I think those two conflict with each other. Even though it's opening it up, saying that the family sure can do that and contract, they're still going to get kicked out of their home, and that concerns me.

Peterson: Potentially yes. So I would suggest that if you're uncomfortable with that, delete those sections. Because right now, I think it is subject to interpretation. What does that

mean? How extensive is it? The Department of Human Services, this is an agency bill; they're the ones that brought it forward, based on concerns and issues.

Rep. Rich Becker: I'm hoping we don't do anything to break something that is not broken. I speak with personal experience with both a mother-in-law go through this kind of a situation, and an aunt where I was the executor. I can't compliment enough the location that I had familiarity with. They worked with us. They worked hard to keep couples together. They worked extremely hard to almost go on the edge of ordering to work with us to keep them in assisted living. My own personal experience, if that's any indication of how it is elsewhere in the state, the system is very good and I hope we keep it that way.

Chairman Weisz: On medication administration, and we've got plenty on that. Currently, for example, if you don't have a nurse on staff, and I assume the facility doesn't hold itself out and say we do medication administration, correct?

Peterson: You can have a medication assistant that works under the supervision of a nurse so that the nurse does not need to necessarily be in the building.

Chairman Weisz: But that's a service that you would pay for. And not every facility would necessarily even have that service, correct?

Peterson: The vast majority of them do medication administration because it is very popular, and it is something to get easily confused on. But they do not have to. Or you could have a family member set up your medication if you wanted to. You could do self-administration. And we developed a medication assistant training program, a kit to help people understand the whole role of medication assistants, nurses, to improve the complaints and concerns that were in that area, to help facilities. But I agree with Rep. Becker; it is a great model. People love it. And when we compared ourselves nationally to what's going on, North Dakota ranked really high. So we wanted to be responsive to the Department in their issues and concerns, and try to support something that was reasonable and not too intrusive. Because we don't want to lose that model, either.

Rep. Porter: I'm not real comfortable with page 4, line 25 and 26. Excluding the component of restraints. I think that may elevate itself to a different problem with the patient that needs more care. But I don't think that having a wide open definition of extensive skilled nursing is appropriate to then kick the person out of assisted living. Because they can hire, you know; whoever wants to make that definition, and when we do this, then it's going to be the Department of Human Service. The family's level of comfort and the patient's level of comfort on what they can have accomplished, and then the home health care service's level of comfort of doing those services for the patient are really what makes that determination; not a blanket statement like that. If you need something that has to be done every hour and you'd have to have a nurse there every hour of every day, then at some point the checkbook rubs up against the decision to stay in assisted living, and it just doesn't fit. And the ability to hire someone to be there 24/7 like that probably doesn't fit. But there's plenty of extensive skilled nursing care services that are available either the facility themselves or through a contracted third party that would just automatically throw the person out. I have a concern with that, and I think one of the complaints that I heard was the fact that once I need nursing care, you're going to throw me out. And I don't even care if

you provide it for me, as a facility, why can't I just call a home health care agency and hire that, and still stay in my home? I can do the same thing at my house, at my apartment, but just because I want to live in this assisted living facility and hire someone to come in and help me with nursing things, then I'm forced to leave here, and have to go somewhere else. I don't think that's the right approach either.

Rep. Fehr: I agree with the comments by Rep. Porter. Procedurally-wise, I will refrain from seconding his motion until he makes it.

Chairman Weisz: We will go through section by section, just to see. Maybe we can resolve this one. Section 1, we're defining abuse. Anyone have an issue or a concern? Page 2, we're defining financial exploitation and mental anguish and sexual abuse. We didn't have to define unreasonable confinement.

Rep. Damschen: Is memory care defined anywhere?

Chairman Weisz: No. At least not in the definition. When I asked the Department, there's not a true definition, but it is a common term. Section 2, we're talking about licensure. They moved line 14 to number 2 on line 1. It does add the language that they can now conduct an on-site visit prior to issuing a license. That's definitely a change. Number 3 is a provisional license; it allows them up to 180 days, and if the deficiency hasn't been corrected, then the Department may deny the assisted facility's application or revoke its license. I understand this to mean, if the facility is asking for new licensure, they could give them a provisional license also, even though they have some deficiencies to work out. So if they never had a license, my understanding is they could get a new provisional license while their application is being worked on. Would you agree with that, Shelly? OK. And if they already have a license, they could have up to 180 days to correct whatever the issue appears to be before it's revoked. Let's go to line 25 on page 3. We've got a,b,c and d. New requirement to notification the department. I am curious. Shelly, why would there be an issue to notify the Department right away of the change in bed capacity? I'm not sure what that would have to do with quality of care. I can understand change of ownership or even change of administrator, maybe. Adding or subtracting beds has nothing to do with quality of care.

Shelly Peterson: I'm not sure either. There is a moratorium on it so you can add or subtract.

Rep. Porter: Is there an administrator requirement of education or anything someplace else?

Peterson: There are some continuing education requirements, but you do not need to be a licensed nursing home administrator. We do not license basic care nor assisted living administrators. So the facility, the owner, is able to hire whomever they choose, but once they hire them, the requirement would be the continuing ed, which I believe is 12 hours a year. What would be proposed is that in assisted living, because one of the issues we found is people being current on North Dakota assisted living, so we thought that, too, would be helpful to have some specific training on assisted living since there are not

licensure requirements for the administrator. And assisted living administrators agree with that.

Porter: Is there a time component so that if the person hired doesn't have that ongoing education, that they can be hired and within six months or within a year, they are fully compliant? Is that written in here?

Peterson: I don't know if it is written in there, but the way we interpret it would be the way they do it in basic care is that once you were hired, within that 12 month period, you would need to get your 12 hours of continuing education. So it's not right on Day One, but you'd have a year from that date of hire. That's how we've been interpreting that part.

Porter: Is that how it is written in basic care?

Peterson: Within basic care, it is written that way. They have to have 12 hours of continuing education. And we did raise the question in the past, for clarification within the basic care rules on what that meant, because of that very issue of people coming in mid-year; and do they have to have 12 hours before the end of the calendar year? The Health Department clarified in that situation, it was within that 12-month period of coming in. I don't think it's really clear in there, but that's how we would interpret it.

Chairman Weisz: So you don't have a problem if we delete change in bed capacity?

Peterson: Nope.

Chairman Weisz: What about the change in administrator? I assume the only reason they put that in there, I assume, was to track the continuing education.

Peterson: I'm not sure why they wanted that in there, other than on the license, it does have the name of the person that applied for it. And I suppose if there are changes, they want to know. Originally you had to notify them 30 days in advance, which we thought was, sometimes you don't know.

Chairman Weisz: So the committee OK with deleting change in bed capacity? It seems unnecessary.

Rep. Oversen: Why does the department have that and if they have a database to keep that, and that's why they have that?

Peterson: You have to tell them the number of beds you want to get licensed, as well as the name of the administrator. Then, when you go into the Department of Human Services, and you look at assisted living and the number that are licensed, it will have a complete log of all the licensed facilities, the number of beds, who the administrator is, all kinds of information that they keep on their website. They update it annually only when the changes come in. But maybe, with this notification requirement, maybe they'd keep it updated more frequently.

Chairman Weisz: Let's move on to page 4. There is definitely a shift here on line 5. Currently if there is complaints, they forward them on to the appropriate agency for investigation. Under this provision, it would allow them to investigate the complaint on their own. And then including the allegation of abuse of a tenant. It doesn't say they have to.

Peterson: In SB 2012, they have requested one FTE just for the licensure of assisted living, so there's not a fiscal note on here, but it's in SB 2012, the DHS appropriation.

Chairman Weisz: So if that comes out, they don't need the FTE. What are the thoughts of the committee? It's also to establish a process for the investigation.

Rep. Porter: On first blush, I would be inclined not to do 50-32-03, and have assisted stay the same. But in the course of going through this, you wanted to bring the Department back to further justify what they think they need and why all of a sudden they need to do this. My first blush is that I wouldn't be very comfortable with that.

Chairman Weisz: We will bring the Department back.

Peterson: That issue on complaint and investigation and rules was probably one that we brought forward, wanting, probably because of the issue in your district. There needs to be some written policies and procedures when they do a complaint investigation because right now there aren't any. And it was a very difficult process for both parties involved, and there wasn't a process of how long the Department had to respond, nor the facility. It was not well defined; it left a lot of questions and concerns on how everything was handled, and so we thought, at least up front, people would know when there's a complaint investigation in your facility, you know exactly what's going to happen, what the timeframes are, what the response is, on both sides for both parties. There is no defined process now.

Chairman Weisz: Why do they need an FTE?

Peterson: My understanding is they don't believe they have sufficient staff to do what they want to do with assisted living. And so they thought having a dedicated staff person to do the licensure and any complaint investigation would better serve the public.

Chairman Weisz: Are you telling me you would prefer they investigated the complaints vs. somebody else?

Peterson: Our fear, honestly, was that it was going to go to the Department of Health, and we would far prefer the Department of Human Services. It's a much more intrusive model over there, usually. And we're not medical facilities; we're human service ones more. Whoever did it, they said they needed an FTE.

Chairman Weisz: Let's go to section 4.

Rep. Porter: Under sub 1, starting on line 16 and going through line 18, I think it specifically lacks the ability to contract, and it says the tenancy criteria must address the specific needs that can be met within the facility and the conditions under which the tenant may be required to move out of the facility. But it doesn't speak at all to the ability of the

tenant to contract for services that may not be met by the facility, that would still allow them to reside at the facility.

Chairman Weisz: Current language seems to be fairly good. It says, must have a clear, concise and understandable tenancy criteria that is fully disclosed to all tenants in writing. And then it says, before it's rented, the facility shall evaluate the tenant's ability to meet the criteria. So that's already in place. Has there been a problem with that?

Peterson: From the department's perspective, they have felt we have kept people too long, that have exceeded the tenancy criteria, and so I think some additions were put in there to help better define who was appropriate, and under what conditions. The section on contracting, initially we had a lot of concerns about that section, and we did not like it, and we worked with them to try to get a language that was acceptable to both, and that's then where that they at least had to be aware of contracts. We were worried about that being intrusive. That people should still have a right to enter into contracts, however, so we didn't want to collect all these contracts and make a judgment on them. However, if they are getting services from a third party, we should probably be aware to make sure they're still able to meet the criteria through that agency and/or the facility.

Chairman Weisz: Under current law, you don't.

Peterson: Right now it is not required.

Rep. Porter: They tie back and forth, and I think they conflict. Because on page 5, 7 sub f, line 26 says that you can have a third party contract, but you still have to meet the tenancy criteria. So if you flip back to page 4, sub 1 that the tenancy criteria must address the specific needs that can be met within the facility, and the conditions under which a tenant may be required to move out. Then you go down and it talks about they're re-evaluated annually or if they've been hospitalized. So, if they go in and get a hip replaced and come back, and they're getting contracted PT, OT services at home, then potentially they could be required to move out of the facility. And then you go down to the next one, where it says extensive skilled nursing care, without a definition of what extensive skilled nursing care is, it's all set up to kick someone out of their home, rather than keep someone in their home. That flips it on me a little bit that they're setting this whole thing up to push people out rather than to let them stay.

Chairman Weisz: If you eliminate that whole section about bedbound, etc., If that's just gone, all the language in 1 and 2, and it goes back to the original law, 1, for example the restraint part, I assume that's already a provision within skilled facility, so you wouldn't be able to. You said the portion having to do with bedbound is already limited by what basic care and skilled care says, so would that also apply to restraints?

Peterson: I would be comfortable with 1 and 2 the way they are, without these changes, except for Hospice provision. Because, right now we would really like to be able to provide hospice in that environment, and there have been some questions that we can't. We would hate to kick people out at the end of their life.

Chairman Weisz: So out of everything in 1 and 2, the only change that you think is necessary, from your perspective, is to keep the hospice care portion in there.

Peterson: That's very important to us. Yes.

Rep. Porter: I think in number 1, you need to include contracted services, so that the patient can stay in their assisted living while receiving contracted services to meet their needs. If you don't, then it's possible that once they reach a level in the Department's tenancy requirements, they won't allow them to do home health care or a contracted service and stay there.

Chairman Weisz: If you're trying to do that, it appears you'd want to do that in 18-19, where it says, the facility or landlord shall evaluate the tenant's ability to meet the facility's tenancy criteria. So if you looked at there adding third party contracts, because that could help them meet their criteria.

Rep. Porter: Absolutely. I was looking at more of an expansion of that language on lines 16, 17 and 18., and getting rid of lines 20, 21 and 22. I don't even care if they evaluate the patient's tenancy annually, but every time they've been hospitalized; I think they're just looking for a reason to throw the person out.

Chairman Weisz: I was looking at going back to the original language, and then adding something for third party contracts to insure that part of their tenancy criteria could include the use of third party contracts to meet those criteria.

Peterson: Maybe the language at the bottom of 5. It says, a service plan that identifies third party contracts for any tenant requiring third party services to ensure the tenant meets the tenancy criteria of the assisted living facility. If you want to incorporate that language.

Rep. Porter: My concern is that it does mention it. All that is is the tenant's record. If you take that language and incorporate it into line 16,17 and 18 someplace. They have to take that into consideration of whether they can stay.

Chairman Weisz: Shelly, are you ok with number 3?

Peterson: We are ok with it. Because of the issue of holding yourself out as a specific memory care unit. Which is generally a locked, secured unit so people can't leave the building, for their safety, because of issues of elopement. Many people have memory care issues, ever so slight, and they're very appropriate for assisted living. The language doesn't concern us. We suggested this language to clarify the previous language.

Rep. D. Anderson: Didn't you also want to move on line 25, not including an individual who is receiving hospice care, to the bottom of that new language? After line 26?

Peterson: Yes. We thought number 2 was very confusing because of the semi-colons and commas. But if you take out all that stuff, but keep hospice. It's confusing to the general public.

Chairman Weisz: So the language in #4, you're OK with it as it relates to the hospice care?

Peterson: Yes, we're fine with it. We weren't sure why the seven days, but as long as hospice is allowed, we can work with whatever is required to do.

Chairman Weisz: Number 5.

Rep. Porter: It doesn't take into consideration the fact that the individual may have needs that exceed the levels of items that the assisted living facility is willing to do, but it doesn't mean that they should be kicked out. They should be given the opportunity to purchase those services elsewhere, from a third party, whether it be a home health agency or other agency. The way this reads is that if it's not supplied by the facility, and they need those services, they're basically not allowed to come back and they're stuck in this transition phase of being in the hospital, off to someplace else, and there's a lot of families that get stuck in the middle of this particular phase, when the same patient who is being discharged to home, that goes through the whole case management system and the care plan system and hires a home health care agency, can go home; they can't go back to the assisted living facility. I believe that's just wrong. They should be able to go home as long as they can get the services.

Chairman Weisz: What is the difference between service plan and tenancy criteria?

Peterson: The tenancy criteria is, you as a facility establish, this is the criteria that every tenant must meet, and this is what we can deliver, should you choose to come into our facility. The service plan, then, is when a tenant comes in and their family, you sit down with them and you outline, what is it you need to make you as independent as possible. So then you outline, I want medication administration, I want daily checks with a nurse, I need my apartment cleaned; you outline in the service plan exactly what they're getting. The thing that's kind of nice about 5 is the issue on communication. It means that at least every year or at a significant change, you're in there communicating and talking with the family, because we never want surprises if at all possible. If you see a person failing, and you see that they might need skilled care, then you're having that communication with the family and putting in more services as they need them.

Chairman Weisz: So if you took 5 then, and just eliminated, or if the tenant has been hospitalized, and say, because one hospitalization could very well come under a significant change in the tenant's needs. And if they come out of the hospital and there's no change.

Rep Porter: The service plan is the menu they hand you that says, these are the services that are available. This is what they cost. It's kind of like when you go get your tires rotated or your oil changed, and they come back with this sheet that says, you know you need your air filter and you need your tires rotated and balanced, and your transmission hasn't been serviced, and they give you this whole laundry list of things that you need, and the cost for each one of them. Then you take that kind of, and extrapolate it out to a daily thing. Do you want us to stop in daily and do this? Do you want us to stop up and do your laundry? Do you want the meal plan? Do you want the evening meal plan? You shop off of the service plan to pick what you want. So we're mandating basically the facility's marketing plan of

dealing with their customers, and you know a facility, if the resident needs other services, then the family and the resident are visiting with the case managers inside these facilities on a weekly basis. They see them at bingo, they see them at lunch, they see them at the card party, they see them at the movie. These aren't room-bound individuals. They are moving and shaking all over the place. I don't see the need that this type of language has to be in there, when it's part of their business plan to offer these services.

Peterson: The vast majority of them are doing this anyway, at move-in and once a year you usually have a change in prices, and you need to notify individuals 30 days in advance. So, generally this is occurring, but the concern was some weren't communicating, and so it was felt there should be a standard that everyone followed. But the vast majority are doing this.

Rep. Porter: For the amount of money the resident is paying, I would think they'd be talking to them all the time. When we moved my uncle into an assisted living facility, it's significant as you shop on that list. As his service needs changed, we were there seeing and saying and going down and meeting with the social workers and the case managers and talking to everybody and having that relationship of, how's uncle Danny doing, and we think he needs a little more help with this. And we'll pull the menu back out and say, let's add this to his requirements. That was our interaction as the family, as the resident. And I think when you limit it to an annual update, that says all you have to do is annually. If you want to make sure that this was working right, you'd have it that they should update it quarterly, so you make sure they're talking to the residents and meeting their needs. Annually is probably not in anybody's best interest. These facilities have full-time social workers, case managers, professional staff that are interacting with the residents all the time. They see changes and they know what service plan they have, and they see they need changes, and they're visiting with the families, and they're visiting with people. To me, that's all a part of being in assisted living, and if all they have to do is look at it annually, I think that's a dis-service to the resident.

Peterson: We agree with you. They're interacting and communicating far more frequently, and staying on top of needs. So I think it was seen as a bare minimum requirement. I'd hate to see quarterly put in there because then we're starting to look like a nursing home, where we do quarterly care planning and assessments. But are they doing that anyway? Yes. But do we want the state to tell them that? No, I like your model better. But there was concern by the Department.

Chairman Weisz: Number 6. It says six hours of continuing education must be related to assisted living.

Peterson: There's lots of assisted living education and information. And since there isn't a licensure requirement, and you can hire anybody. People for the most part are making very good hiring choices. But to stay up on what is going on is a good requirement.

Chairman Weisz: And you've added vulnerable adult protection services.

Peterson: Department of Human Services did that again. I think their thought was that since we have an adult protective service mandated reporting, that we should have it as part of the mandatory training part. So it was important to them.

Chairman Weisz: And again that shouldn't be an issue as far as getting that continuing education with that included.

Peterson: I would think the Department would be more than willing to do it, or we could arrange something.

Chairman Weisz: Let's go to 7. This has to do with the tenant record. This is where there is language that identifies a third party contract. Any question on updating it at least annually to meet the tenancy criteria. Do you have a problem with any of that, Shelly?

Peterson: No.

Chairman Weisz: It asks on page 6, lines 3 and 4, it says, the facility shall provide the department with the most recent results during the facility's license review. So they're not doing that now?

Peterson: The requirement is that you have to do a satisfaction survey once every two years. We've always thought that since that was a requirement, you should give it to the department, but they never required it. And now they're just proposing that, when you renew your license, just give us a copy of your most recent satisfaction survey. It's OK.

Chairman Weisz: Now we have a lot of stuff on medication administration.

Peterson: This is generally what's required in the nurse practice act, and the board of pharmacy. I think the thought was, people sometimes don't go in and research what the pharmacy law is or the nurse practice act, so having it in this section might be helpful to facilities who are struggling in this area. We've done an enormous amount of training. I don't think it's a problem to have it there. Sometimes, on line 14, an assessment of the role and responsibilities of the medication assistant, and how a nurse will provide oversight and supervision. There was concern that some facilities defined it differently, and so it was each facility defining it.

Rep. Porter: What happens if the nurse is a contracted employee and not an employee of the facility, and then the nurse's license is still the one, and the nurse is responsible for making sure that everybody else. But, in the end, if the nurse isn't doing their job, then the facility loses their license; not the nurse.

Peterson: If there's an issue with the nurse, you would report to the Board of Nursing if it's a practice issue. As was, then the facility could get investigated under a complaint, and lose their license. But both would have a role in that.

Chairman Weisz: "An assisted living facility shall have policies and procedures for receiving, investigating and correcting medication errors." But again, doesn't that fall on the board?

Peterson: Each facility should have those policies. Originally, the bill read that you had to report every single medication error to the Department of Health, which would have been extremely burdensome and over-zealous. We thought this process of putting it back on the facility, of having a process in place for investigation of medication errors. There are currently rules within the Department of Health for their medication assistant registry, that a pattern of errors or a serious error must be reported to them, if it involves a medication assistant, so we have that with the Department of Health now. So that language is kind of repeated in here, in #11. It was all going back to where the Department had issues on medication administration. I think some facilities maybe weren't doing it correctly. I think they've learned a lot.

Chairman Weisz: I guess I still come back to the person that's ultimately responsible, whether it's a nurse or whoever. It's their license at stake. Maybe I'm missing something.

Peterson: Ultimately it's the licensed nurse and the medication assistant under their supervision, as well as the facility, to make sure they have policies in place.

Chairman Weisz: Ultimately, if there's errors happening, it's going to fall on the nurse, whether he or she is on the premises or not.

Chairman Weisz: Any further questions for Shelly? We'll probably bring the Department in sometime tomorrow to have them respond.

Peterson: Definitely #13, we don't think we need.

Chairman Weisz: I didn't quite understand that one either.

Peterson: We don't have three people in a bedroom, but.

Chairman Weisz: I really struggle that we need 10, 11 and 12. Well, 12 is having to do with allegations of abuse.

Peterson: Again, most of this is stuff facilities are doing. But the state was concerned about the complaints, and thought there should be more regulations. So we've been working with them to make them fair and reasonable.

Chairman Weisz: Does the committee have any other questions?

Rep. Porter: In the repealed section, there is a component in the definitions that talks about related by blood or marriage to the owner or manager. What was that in there for?

Peterson: I'm not sure.

Rep. Porter: It never is repeated anywhere else in the law. Was it someplace in administrative code?

Peterson: I don't believe so. They went into this whole thing on kinship.

Rep. Porter: Was it something they were using to say who could live in a unit together?

Peterson: I don't believe so, but I'm not sure. It might be best to ask the Department.

Rep. Porter: It's getting repealed, but it's not repeated.

Peterson: I'm not sure.

Chairman Weisz: Any other questions for Shelly? We will bring the Department in, hopefully tomorrow.

Chairman Weisz released the committee.

2015 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

SB 2083
3/25/2015
Job #25391

- Subcommittee
 Conference Committee

Committee Clerk Signature

Kenneth M. Toluh

Minutes:

Chairman Weisz took up SB 2083.

Chairman Weisz: On page 3, subsection 7, I guess the committee discussed and looked at a,b,c and d. We looked at taking out d, and were wondering why that was necessary, being you don't license by bed anyway. We were just curious why do you even need that?

Maggie Anderson: Director of the ND Dept. of Human Services: Sometimes it's for reporting because sometimes individuals or legislators, for example, would ask us, what is the capacity of assisted living. So, if you think you could get that information from another entity, because if it changed, we wouldn't have it. Also, it could impact their staffing of their other operations. So, if they go from 50 to 150 people in the same size facility, we may want to know why and how they're going to still allow for lock egress and privacy and some of the pieces that are expected under assisted living. Those are the couple things I can think of. Would it be essential for life safety, health, welfare? I don't know that it would be essential, but it's not uncommon when someone is licensed for a particular capacity or service, that when they change that, to notify the entity that is licensing them.

Chairman Weisz: Let's go into, on page 4, under the powers and duties of the department; adding the language that you would investigate the complaints. Why do you have to have an FTE when it does appear you're more or less doing the process, working with the facilities anyway. Are you really going to be doing that much, that you're going to have to add an FTE here?

M. Anderson: Based on the number of complaints we have had over the last couple of years and if we go back to 2001, when it was decided that the assisted living licensing would be in the Department of Human Services, and then we started doing that in 2002, we didn't have any resources to do that. And it was a very paper process, very different atmosphere in the size of these facilities and the number of these facilities; and it's grown more. Whether it's me signing something like that, or the medical services division director signing that, and that license is in the front door, to the public it means we have made sure that facility meets those licensing criteria. Today, it's generally a paper process. And then, when we have complaints, we pull in our nursing staff from the medical services division,

we have staff who used to serve on the survey and certification team in the Department of Health who works for us, and we go out and do investigations, but those are staff that are not allocated for that. They're allocated for other Medicaid functions, and we have to pull them away from that to do this. Where this would allow us an FTE to oversee just assisted living, take the lead on those complaints, work with the facilities, and follow up so some of the education in the things we're getting complaints about, we can assure they're taken care of it.

Chairman Weisz: Is that FTE in the Governor's budget or did the Senate add that?

M. Anderson: It was in the Executive Budget request.

Chairman Weisz: In Section 4, on page 4, Rep. Porter had some questions.

Rep. Porter: As we went through this component, there was a lot of discussion on what the criteria, where it exists and the tenancy criteria, and where that comes from, as we get started into this chapter.

M. Anderson: Are you looking at line 16-18 specifically?

Rep. Porter: Even if we go up to line 15, the understandable tenancy criteria. How is this determined; whether it's by each facility or by something laid out in a template by the Department, or how that's laid out that this is the eligibility to live here?

M. Anderson: There is no template that we send out, saying this is how you need to word this. This is how you need to state this. When we receive documents as part of the licensing process, we would review those, and if we noticed something that was pretty complicated for the average family or individual to understand, we'd make a note of that. We would probably then say, you need to change this. But you could always differ. It's a pretty vague word, understandable tenancy criteria.

Rep. Porter: My concern is there are built in triggers to allow a person not to move back to their home; that the assisted living facility is their home, and that there's tenancy criteria, and that you get further and further down into this new language, and it's almost like a setup for failure; that you're not going back, you're going to skilled nursing, you're going to basic care, even if you're able to stay there, and our services aren't good enough, you can hire home health agency or somebody else to do the services, we don't care. It's your home. There's a huge contrast between what a facility, a hospital would send a patient home with the necessary home health care component attached to that, and the person would be just fine, living out of their home. It seems like that doesn't exist in this language. It's almost looking to move them up in the system right away, rather than allow them to contract for those services or receive those services like if they were in their own home.

M. Anderson: Do we agree assisted living is their home?

Rep. Porter: Yes, it is their home.

M. Anderson: There are times when the assisted living facility is not capable of meeting their needs because they don't have 24-hour staff like a nursing facility does. So they need to therefore contract that out, just like someone would need to do if they were in their home. So the distinction we're making is the assisted living facility holding themselves out as being the one that can provide those services? Or is the family and the individual taking responsibility, and saying I now need hospice, or I now need 24-hour care or supervision, or whatever it is, and getting that service into my home, which happens to be an assisted living facility unit.

Rep. Porter: In this component, other than sub 2 where they list receiving hospice, where does it specifically state that the tenancy criteria does not apply if the family is contracting with an outside service to meet their requirements inside of their home? That's my concern, is that it's very broad in saying that if they don't meet the tenancy requirements, they can not be allowed back in unless they're on hospice. The part on page 5, I don't see as the fit to that.

M. Anderson: The part on page 5 where it talks about the third party contracts?

Rep. Porter: No. Well, because it's not an exception to the criteria, to the tenancy criteria; it's just saying that if they want to allow you to have a third party contract, you can. But it doesn't say, up in those prior ones, where it specifically lists hospice, it says if they're bedbound with limited potential, they're gone. It says that if they require extensive skilled nursing, which doesn't have a definition, they're gone, even though that skilled nursing could be provided for by an outside service as a contract, and they could stay in their home. That's my concern. It doesn't say that I can go out and hire that contracted service, and that is not part of my tenancy requirements.

M. Anderson: The way that I understand this as we drafted it, item #5 on page #5, on line #5, where it talks about, that each facility shall complete a service plan when the tenant moves in, and shall update that service plan. Then, when you go down to lines 26-28 on page 5, and it talks about the service plan will identify any third party contractors, we believe it does tie those third party contractors into that service plan. And so that service plan becomes part of their ability to stay there; saying this is what they need, and here are the third party contractors: hospice, home care, somebody who's just going to sit there with somebody because they may have dementia and they wander, and they have to have someone available to help them. We saw that as kind of inclusive that the minute you say you have to have a service plan, and those third party contracts have to be part of the service plan, that they could identify what services they are. But we also have to be very careful that the assisted living facility isn't crossing that line and becoming basic care or nursing facility care. It's who is providing it, and who is contracting for that.

Chairman Weisz: On page 4, #2; there you're talking about the tenancy criteria. So the way I read that, it would almost argue the service plan couldn't include some of these things because the tenancy criteria says you can't.

Rep. Porter: Does one trump the other? It doesn't matter what you put in the service plan, the criteria throws it out. Let's use just for an example, that the extensive skilled nursing care, which is a big flag to me because it's so wide open, that the assisted living facility has

limited hours of nursing there, and the person needs more of that, so they contract that out. Then, because that's part of the criteria, does the service plan that would allow them to contract that out, trump that criteria to allow them to stay there; or does the criteria trump the service plan and say, no you can't do that so you have to go?

M. Anderson: Neither one trumps necessarily. I think we could craft language that would make it clear in whether it's line 16-18 that the tenancy criteria could include what's contemplated in the service plan and must...I'm sure we could come up with something, if that's the concern that the tenancy criteria isn't contemplating the service plan. Our intent was that it is. That families and individuals can have that service plan to allow someone to stay in the facility.

Rep. Porter: Going back to this is their home. It is no different than being at home or living in an apartment and using wheels on meals, or using a home health care agency, that if it meets my needs, then we shouldn't be moving them up to the next level of care. I understand your side, where you want to make sure someone isn't in their bed with bed sores and hasn't moved for a month; where it has exceeded what is going on. But there has to be language in there that allows that flexibility of that contracted third party or that facility or the family to be able to stay in the least restrictive atmosphere and still have the ability to live where they're now calling home.

M. Anderson: That was our intent, and the reason why, on line 25, for example, of page 4, we said not including an individual who's receiving hospice; because the Department felt very strongly that because it is somebody's home, that if they move in, and six months later are diagnosed with a terminal illness, that's their home, and just like anyone of us living in a house somewhere, if we want to stay at home and die at home, then we have that right, and that's why we have that exclusion. So I think, philosophically we're talking the same things. If we need to work on some wording.

Rep. Porter: I would look at the next line, and rather than saying, who requires extensive nursing care, I would look at that as something that says, who requires nursing care that is not available at the facility or through a third party contract, so that the family has the ability to say, no, we're able to get that. it's expensive and we're paying really good money to have mom or dad still living at home, but we're able to provide that care through either paying more at the facility off of the service plan, or contracting through a home health agency to provide that care, rather than have it as an exclusion right away. I would argue that it should read something that unless it's not available, either through the facility or through a third party.

M. Anderson: In that regard, would you still be giving the assisted living facility the ability to discharge?

Rep. Porter: I hesitate in that. If the facility, in their criteria, set it up and flat out say that you are not allowed to hire someone outside to do things we can't do, and the person signs the least up front, knowing that's the condition of their lease, I'm less likely to have a problem with it. If the facility is very upfront in their leasing process, and says, you know what, these are the things we can provide; these are things that we can't; that you can go out and get a third party contractor, if you can find them, to stay here. If you can't, then you

fall out of this criteria again. I don't have a problem with that, but I don't think that just saying extensive skilled nursing care is a reason to throw someone out. If the facility says, we know we offer limited nursing care, but here's five companies that can do things for you, that as long as you hire one of them and it's working, mom and dad can stay here.

M. Anderson: We can certainly work on language. We need to be careful we don't cross the line of basic care, and what basic care can provide. I would want some time to think about your comments.

Rep. Porter: My criteria is the crossing of the line is where I couldn't be in my home. If I'm at home, and I can get these services, and I can stay at home, that's where it crosses the line.

M. Anderson: I think it gets to who is providing the service. Because assisted living can't go to the level of providing some of those services; because then they've crossed the line of basic care. But if you're getting a third party to come in; so it's working out that right language, I think.

Chairman Weisz: It is one thing to define the tenancy criteria, to insure it doesn't cross the line into basic care or skilled care. So they're not holding themselves out. Then you have to be able to fit the service plan almost outside of that because that service plan could be a lot broader than what the criteria is for tenancy within the facility; because as Rep. Porter pointed out, if I can stay at home and get those services, I ought to be able to do it within the assisted living facility. Granted, they're not able to provide those services. It needs to be crafted so that the service plan can certainly exceed the tenancy criteria.

Rep. Porter: That is the right path. It all comes down to the upfront lease. If they say, no, we aren't going to allow our service plan to exceed, they're a business, and they can choose how they want to run it. If they want to be in that business of saying, we only have this much available off of our service plan, and here's five companies you can contract with, that may exceed that, that should fully be allowed.

Chairman Weisz: The contract from their perspective is fine; they can't offer 24-hour skilled nursing care. That makes them a skilled facility. We all agree with that. They can't hold themselves out. That's part of the tenancy criteria that they're required to put out. But, on the other hand, that service plan, within the service plan for an individual, ought to have the flexibility within a third party contract, to say anything I could do in my own house that can keep me in the house, should be available within that facility, if they allow it within their lease. They're not holding themselves out to be basic care or skilled care. But if I could get those services, stay in my own home, I ought to be able to do that within an assisted living facility, if they allow that, and that should be part of their contract. So there's a difference between saying the criteria says, no you can't do this extensive skilled care; that moves them up. But it certainly shouldn't limit them of having a third party contract within their service plan that says they're going to do that, and based on that, they can stay in their home. We don't want to move them into skilled care; that's not our intent. But there is concern, and I agree with it, that we'll kick them out of assisted living, but if they were at home, they could still be at home and get services provided to them. And we certainly don't want to encourage movement into basic care or skilled care if it doesn't need to be.

Rep. Oversen: Just to make sure I'm reading subsection 2, lines 23 on page 4 correctly; because I think the way I was first reading it was wrong. If I was to separate that into two sentences, it would be: an assisted living facility may not serve and may not include in a tenancy criteria the option of serving an individual who is bedbound with limited potential for improvement period. The tenancy criteria may not automatically exclude an individual who is receiving hospice care, nursing care or restraints.

M. Anderson: No. If I want to break it into two sentences, I believe it would read like this: an assisted living facility may not serve and may not include in its tenancy criteria the option of serving an individual who is bedbound with limited potential for improvement who requires extensive skilled nursing care, or who needs restraints. That would be one sentence. Then the other sentence would say, it can't specifically exclude hospice.

Chairman Weisz: It was very poorly written.

Rep. Mooney: What is the true differences between basic care and assisted living care? And why do we care since we don't reimburse for either?

M. Anderson: I would say we do reimburse for basic care. There are two components of the basic care payment. The first one is for personal care services, and that is Medicaid funded, and that is through our Medicaid state plan, and we do receive Federal match, and you appropriate the other general funds. The other component of basic care is room and board. Room and board is not reimbursable for basic care by the Federal government, so that is a 100-percent state funded program; but we do have general fund appropriation for that. So we are providing, there is Medicaid and other just 100 percent state funds in basic care. Within assisted living facilities, you could have individuals who are eligible for home and community-based services. So you could have somebody in an assisted living facility who is receiving services through SPED (SP?) or is receiving services through Medicaid personal care or one of the waivers, because sometimes of the cost of the assisted living facility, you don't have a large proportion of that, but you do have some individuals who are receiving that. I can't remember, it was a few bienniums ago, we had an optional adjustment request, and was there a standalone bill at one time for room and board for assisted living? And it was along the same lines of what's done for basic care. But that was not adopted at that time. And so, what's the difference? You start getting into a higher level of care. One of the challenges we have in assisted living licensing is making that determination when someone has violated their assisted living licensing, and generally the reason why they violated it is because they have crossed that line, going into basic care. I am not a basic care expert, so I can't tell you all those differences. I'm sure Miss Peterson could, if you wanted to ask her.

Rep. Muscha: My home town is looking to establish an assisted living center. So I had a question. We discussed yesterday with Shelly on the reporting and the timeframe for that. It's on page 5, on Subsection 5, updating the service plan annually or sooner. We were discussing different timeframes. Obviously we hope to move forward in Enderlin, and want to do what's best. We had thrown out, is annually not often enough? Is quarterly too much? I don't know that we really reached an agreement with what we wanted to see on the committee. What would you recommend?

M. Anderson: When we drafted this, we used annually, and that's fairly consistent with what we look at with many of our home and community-based services. So like with a care plan for someone who's receiving waiver services or a state plan, we have a service called target case management, where that individual is, they kind of look into the case and assess; and there are different points in time. Certainly you could do more often than annually. That wouldn't be a concern. Doing longer than annually would probably be a concern because peoples' needs could change. And I guess the reason why we did the significant change is because sometimes they have a significant change or sometimes a hospitalization can lead to a significant change when they come back, and so certainly if the committee wanted to look at more frequently, that's certainly up to you; or less frequently. I think we feel it should be at least annually.

Chairman Weisz: Part of the discussion; if you take out the hospitalized part, you're still significant change is in there, so if there was a significant change after the person is hospitalized, it would fall in there anyway. If there isn't, there shouldn't be a need, right?

M. Anderson: That's certainly a possibility.

Chairman Weisz: There was a question on page 6, line 3 and 4, where it asks, the facility shall provide the Department with the most recent results during the facility's license review. You're not getting that now?

M. Anderson: I don't believe it's a required component now, and so we just felt the need to put in there so we would receive it. So we might be receiving it from some, and not from others.

Chairman Weisz: Has there been an issue on 10 and 11, having to do with medication administration? And why that's basically duplicating all that language that's in other sections of code?

M. Anderson: We added that because of some of the complaints and concerns we have had, have been around the dispensing of medications and the qualifications of those individuals who are dispensing them?

Chairman Weisz: You couldn't simplify number 10 and 11?

M. Anderson: That's kind of standard practice for handling medications.

Chairman Weisz: You can't reference?

M. Anderson: The medication assistant I,II and IIIs are regulated by the Board of Nursing, as are the LPNs and the RNs. The other pieces; I don't know if we could use Standards adopted by the Board. I'm not sure if all of them are covered in the Board of Nursing rules or in the Century Code somewhere. We can follow up with that with the Board. With Section 10, you'd prefer we say something like, they will follow policy?

Chairman Weisz: If it works. Ideally because of their licensure, the med I, II and III; there has to be supervision, so you already have a nurse or whatever nurse practitioner that supervises this, that has to meet their licensure requirements, and all of these requirements in general are there. So I'm just wondering if you can't.

M. Anderson: I mis-spoke. The medication I, II and IIIs are actually approved by the Health Department. And the LPNs and RNs by the board. Again, we can take a look at it and see if we can reference it. I think some of those things are in administrative code. And so it's do we want to reference administrative code and Century Code? That's ultimately your decision. With #11, I know we had different language in there, and through conversations and amendments, I think, now Section 11 mirrors what's required for basic care.

Chairman Weisz: So currently basic care is less strict?

M. Anderson: Because basic care is in the Health Department and assisted living is in the Department (of Human Services), sometimes of course we'll have differences of what we'll bring forward, and we discuss. But we do feel strongly, and one of the reasons we brought this bill forward for discussion and debate was because to the general public person who comes to visit someone in assisted living, or has a family member in assisted living, they see that license from the Department of Human Services, and they're likely assuming there's a lot more to the licensing than what has been part of that process.

Chairman Weisz: Further questions?

M. Anderson: So we will look at those two sections; the tenancy piece and the whole medication policy piece, and the reporting or error piece to see if there's a different way to make that more succinct or reference back to Century Code that's regulating that.

Chairman Weisz: In particular, Section 10, if you can just reference, would certainly simplify and clarify because they're all under their own scope of practice anyway.

Chairman Weisz: We'll work on some amendments.

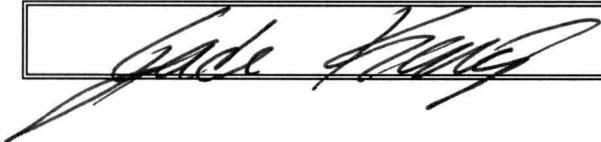
Chairman Weisz dismissed the committee.

2015 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

SB 2083
4/1/2015
25695

- Subcommittee
 Conference Committee



Minutes:

Handout #1

Chairman Weisz: We will take up 2083. It is the assisted living bill. I'm handing out an amendment. (See Handout #1) I know that at least some of their members have some concerns with the language divided by the department having to do with a concern that might be an expectation from the client that they are really holding themselves out to be more than an assisted living facility. The assisted living facility might find it difficult to kick them out when they have to. I realize that is a little crude in a way but in reality if their level of care reaches a point where they are not acceptable to be in an assisted living facility their concern with the way the language read there might be an expectation that they can live in their home so to speak no matter what. That is a concern by the long term care over the amendments even though they have to meet the rules they can't hold themselves out to be basic care but the idea that someone can come in by contract and do all these things they are afraid that they will find it much more difficult to say you can't be here anymore because you really can't have the care provided or it isn't being provided even though you agreed to it is not being provided. At the same time it is up to the assisted living facility to determine to write the contract.

Rep. Porter: I go back to my dislike for putting contracts into the century code that each facility has their own lawyer, each facility has their own criteria but on page 4 line 16 through 18 that talks about the criteria that is where that would be addressed. If that facility does not want to allow those types of contract services that they would do that, maybe we just need to add online 17 after the word facility that the tendency criteria must address the specific needs that can be meet within the facility including contract services so that we very explicitly tell those facilities that at the time the person is signing the lease they need to be upfront and say you can or cannot do these things in this facility. If they allow them to even flat out say you know we don't allow contract services. If you can't meet our requirements in this lease then you can't live here any longer I don't have a problem with that but I also don't want to exclude in that lease the ability for a facility to say you know what this is your home we don't have an issue with you staying here. We don't provide those services but I you can get those services contracted you are more than welcome to stay here. Maybe inside of those tendency requirements that we just put that in there so that they know they have to address it in that lease.

Chairman Weisz: On page 4 line 23 I am a little unclear. You are basically saying that now an individual who is bed bound with limited potential requires skilled nursing care only upon the individual showing the higher needs will be met with third party contractors. But then you have the language "providing the higher level of care which would otherwise be available in a basic care facility". I am a little unclear why that language is in there and a little unclear of exactly what you are saying.

Julie Leer ~ From the DHS: The original draft when we were working on this, we didn't have that language but after talking with the long term care association in order to anticipate some of their concerns that have been discussed here already is pointing out that they are going to be seeking services through a third party contractor so they can stay in an assisted living facility arraignment. We were just saying that they would be the third party contractors who provide the higher level of care which would otherwise be provided. I think as you read it I could see where providing is an ambiguous term that I didn't anticipate when I wrote it but now that I look at it it would be how the higher needs will be met by third party contractors who will provide the higher level of care which would otherwise be available. That is where I think providing has a dual meaning and I didn't anticipate the one that you took verses the one that I met.

Chairman Weisz: So that helps. I'm just wondering why we would even need to say "which is otherwise available in a basic care nursing facility"?

Leer: In talking to the long care term association they were concerned that people will come into an assisted living facility and they will think they can stay there through the end of life regardless of what their needs might change to be. As we discussed there are some concerns that they would perhaps be more appropriately served in a basic care facility or a skilled nursing facility. In order to represent we are talking about the fact that assisted living facilities could continue to rent to people who need those higher level of cares. They could only do so if they represented a third party contract and I think that the long term care association just wanted people to understand that we are going to give you a special dispensation as long as you have a third party contractor but they want them to really recognize that this is really care that would be better served in a different facility. If it is not in there I don't think it is going to change the way the way practice this because our expectation will still be that they have those tendency criteria in place.

Chairman Weisz: Restate how you would reword this.

Leer: it could be "only upon the individual showing how the higher needs will be met by third party contractors who will provide the higher level of care". So instead of providing it will be who will provide.

Chairman Weisz: Maybe it should say "which normally would be available in the basic care facility". Could you repeat the language again?

Leer: Change "providing" to "who will provide". Then you suggested the language "which would normally be available".

Rep. Fehr: Coming back to the tendency criteria and in reference to the reference Representative Porter had made the question is if we insert language regarding third party contractors is it necessary to say given that in subsection 2 there is discussion, does it help to clarify language as it is suggest and three does it muddy the waters further in your opinion meaning that what we don't want is to imply a condition that they can't restrict or disallow third party contractors or if someone has a third party contractor supplying a need and they are not supplying the needs fully or they discontinue whatever that their tendency criteria can manage. We don't want to take away their ability to manage their tendency criteria.

Leer: I think that the language that Representative Porter proposed would be complimentary to the rest of the process so I don't see that as creating any kind of ambiguity. Our position is that they can currently do that but I think that the position that has been presented to us by the long term care association is that the more clarity that we can provide in the legislature of the rules the better so I think that they would perhaps appreciate the expectation is of the legislative assembly and passing these to include something like what Representative Porter suggested so we would be fine with something like that as well.

Rep. Mooney: Are we moving the assisted living facilities to a higher regulated status similar to nursing homes or basic care, does it change regulations at all or is it just the provisions for the allowance for the health care?

Leer: I think that is probably one of the decisions that you have to make is whether or not we are putting an expectation on an assisted living facility that is greater than what they should be. We are trying to craft this obviously in a way that says look you are an assisted living facility your licenses is an assisted living facility you are limited to what you can provide there. However keeping in the spirit of home and community based services which is also something they try to do to help people stay in their homes. We want to do what we can to the extent that third party care is available and there are contracts available which we do see throughout the state that people are able to stay in their homes because they are fortunate enough to find the people who can provide the services. So we recognize trying to make the two concepts match. I think that we are comfortable that we can regulate this with these additional changes. I know that one of the concerns that the long term care associations expressed was when will people be able to discharge someone. When will they be able to say we can no longer provide care for you here because you can't provide this and I think that our expectation is that we are going to keep a pretty close eye on the those third party contracts because we are going to have an expectation that if you are staying in an assisted living facility and you need 24/7 care an assisted living facility isn't going to provide 24/7 care but our expectation would be if those contracts that they have in place would allow for that so they would have a 24/7 attendant. Our expectation would anticipate that if someone has 24/7 care need that that would be accommodated in those third party contracts. Again it's that balance.

Rep. Fehr: In the proposed amendments on page 6 line 18 there is removing the phrase "significant medication errors or pattern of errors" are you able to explain the intent of that?

Leer: It was one of the things that was discussed in some of the earlier discussion by the committee on how that was worded and what we were trying to get to was the fact that they are going to have certain expectations of how they are going to be reporting according to whatever their boards are. The more we qualify that language and the more we tried to limit it or draft it in a certain way the more it might take them outside what the expectations are of their licensure or of their scope of practice so we said well let's just make it that they have to do this according to what the reporting requirements are and that will cover those different levels of medication management that we have in there.

Chairman Weisz: Representative Porter can you give your suggested change?

Rep. Porter: On page 4, line 17 so we are clear after the word "facility" to insert including any contract services and the conditions under which a tenant may be required to move out of the facility so that the facility then included that in their original lease upfront. On page 4 line 26, after the word contractors it would say, "Who will provide the higher level of care which would normally be available in a basic care facility".

Chairman Weisz: At this point that is what we discussed prior to you coming in and at least making those changes. I did tell the committee your concerns and if you want you are welcome to re-iterate them. Do you have any comments on those proposed suggestions?

Shelly Peterson ~ President of Long Term Care Association: Our main concern is when the department testified on concerns and issues with assisted living they indicated we are keeping people far beyond their capabilities and putting them in situations that weren't good for anyone. Our concern is assisted living facilities have different life safety standards and our life safety standards in assisted living are far different than basic care of nursing facility and the staffing is far different. Our concern is life safety, evacuation, keeping people safe when they require two person transfers or one on one care it becomes a very difficult situation at which many facilities then can't care for those individuals and a discharge notice is initiated. We are concerned that this would set up the public to think that facilities could be allowed to do this when they are great concerns about their building and the capabilities to do it. Right now in the basic care definition, if we meet their definition we must be licensed as basic care.

Rep. Porter: So after the word contractors it would read "who will provide the higher level of care which would normally be available in a basic care of nursing facility".

Peterson: So in essence you would allow any assisted living facility either through themselves or a contract to keep a person forever?

Chairman Weisz: I don't believe they would be able to.

Peterson: But you would allow it, the regulations would allow that. We do have a lot of concern about third party contractors and I know your language would only allow it and the facility could say no but I think this just invites more issues and problems of people really wanting to stay when it is not appropriate or safe and they require a higher level and allowing a lot of third party contractors where I don't know where they come from, we don't think it's safe.

Rep. Porter: When I look at putting contract law into the century code and restrictions I tend to side on the other side of the pendulum than what you are talking about. I would rather each facility make that conscience decision. Just because they don't want to be the bad guy in their criteria I am not running the facility from the capital I would much rather leave it so if they want to do it, if they want to allow it they certainly have that window in here to do it. If they don't then all they have to do is include that in the original tendency contract or lease and say we don't allow it and then they are off the hook and we don't have to worry about it. To make a blanket statement saying no you can't even though the services might be available and you might have a facility that it's ok. I don't lean that way of taking a big red magic marker and say no you can't do it. I would much rather they run their business model the way they want to run it. We have given them the ability to say no, we have given them the mandate that says they have they have to address it so they don't have an option in here to not address it in their lease and they get the ability to choose.

Peterson: They have that ability now to have third party contractors in their facilities so they are doing that now to help people meet the current tendency criteria but we don't allow them once they need basic care and nursing home care.

Rep. Porter: They wouldn't have the ability if this goes forward as you have suggested. It would be very clear and concise that they couldn't do that.

Chairman Weisz: You could have third party contracts but you could only go up to a certain point.

Rep. Porter: I move the amendments with the correction in the language that changes the verbiage "who will provide the higher level of care which would normally be available in the basic care nursing facility".

Rep. Fehr: Second. Just for the point of discussion I believe where it says who will provide I think the word "would provide" is the correct language.

Rep. Mooney: On the surface I support the idea of being able to move in this direction to allow for greater flexibility for folks that are in an assisted living. However I am still a little concerned about maybe some potential liability issues and I have heard from my local assisted living providers back in my district who are asking me not support this. So given those concerns and I am still not 100 percent satisfied that this would not put them at risk I will be resisting the motion based on that.

Motion to Adopt Amendments with the correction "who will provide the higher level of care which would normally be available in basic care nursing facility"

Motion made by Representative Porter.

Seconded by Representative Fehr.

Total Yes 8. No 5. Absent 0.

Motion Carried.

Rep. Porter: I move the amendment on line 17 after the word facility to insert the language "including contract services". So then it is very clear that the facilities need to state in their

lease and tendency requirements if they allow contract services or not and what they can allow so they are very clear with the individuals moving in that if you have needs above what are here either you can or cannot stay here that we don't allow contract services or we do. Then it is very clear on the signing of the lease.

Rep. Fehr: Second. The amendment is including contract services, I believe earlier in discussion you said including any contract services I think it means the same thing but just to be clear on what wording you want to use on the amendment.

Rep. Oversen: When we are talking about tendency criteria is that broadly like admission criteria like it's just a broad set of requirements that apply to everybody. This not an agreement for just one tenant, this is something that applies to all before they can get into an agreement correct. I think the way this is written with "what can be met in the facility" is ok but I do have concerns that we are then requiring them to line out every potential situation that might come up with what services they might have to contract for and they might not know all of those situations ahead of time. I am concerned that we are limiting it with the language that we are including.

Rep. Hofstad: If you include contract services approved by the facility does that take it to a point where it becomes back on the facility whether or not those services are the right kind of services?

Chairman Weisz: I think the intent is saying "within our facility we will allow you to contract for these types of services". In other words they could say 24/7 care is not allowed.

Rep. Porter: Maybe the language need to say "within the facility including any contract services allowed" just to clear it up so they are up front when signing a lease they know what contract services may be allowed. I agree to change the language to "including any contract services allowed"

Rep. Fehr: I am fine with that as a second I don't think it changes anything but I think it is substantially the same language

Motion to Adopt Amendment and insert on line 17 "including any contract services allowed"
Motion made by Representative Porter.
Seconded by Representative Fehr.
Voice Vote.
Motion Carried.

Rep. Porter: I would like discussion about Ms. Peterson's concerns, in the liability section of the facility when someone in their home is getting contract services. I wrote down "no facility can be held liable for the errors and omissions of a contract service provider when an agreement is entered between a resident and a third party contractor". So they are standalone even though they are inside of that facility. What it does say is that if the facility is signing the agreement with the third party contractor then they would be part of any error in omissions. What this states is if I enter an agreement with a third party contractor that even though I am inside of this assisted living facility they are not responsible for errors in

omissions for that third party contractor even though I am inside of their facility so it would give them some blanket of liability protection.

Chairman Weisz: If the individual contracts with XYZ for 24/7 and XYZ isn't providing 24/7 and the facility is aware that they aren't really meeting the requirements so does the facility be exempt from any liability of saying you can no longer stay here because the services aren't being provided as contracted and if they don't say anything and just let it go and something does happen should they or should they not be held liable.

Rep. Porter: When I look at how liability goes back and forth, once you have the knowledge that something is wrong then you give up the immunity. I think that is fairly standard across the realms of liability so I hear what you are saying but once you have crossed that line and have the knowledge and choose not to do something then you are also assuming the liability and you give up that immunity.

Rep. Fehr: If you are allowing within your tendency criteria of allowing contractors to come in potentially you may be seen as liable so I think the argument has some vitality that perhaps some language in here. The simplest way to avoid that would be to say no I am not going to allow any third party contractors in because I don't want to take on anything. If I agree to allow take them in I may inherently be taking on some liability. I think that would be unnecessary so I think the idea has some merit.

Rep. Porter: Another way to address this would be to say that if I am the owner of the facility that before I would let you come in and do third party services inside of my facility that I would want a separate agreement and I would want to be listed as an additional insured on your insurance policy to protect me for any of your errors and omissions. Or not address it at all.

Rep. Kiefert: I'm thinking that if a third party isn't providing the services maybe we should provide a way for the facility to terminate their contract.

Rep. Oversen: The contract with the third party contractor is that solely with the individual receiving the services or is there also a part that applies to the facility?

Chairman Weisz: I don't believe the facility would be able to enter into it.

Rep. Porter: They would have to agree to allow the third party contractor.

Rep. Oversen: I think the language instead of saying no facility can it should be an assisted facility may not be held liable.

Leer: I think it is more matter of whether or not the legislative assembly decides its good policy to provide this. I don't know that there are a lot of unintended consequences from the way that it is written it is pretty specific that it is a mistake by a third party vendor a the third party contractor. It is what you are immunizing the facility against. If you have a third party contractor and they are providing 24/7 care and the person that they have there at three in the morning isn't able to facilitate an evacuation and there is a fire in the facility and

they find that the fire in the facility is because the facility failed to do something, that is blurry. I don't know that there is a really easy way to legislate around some of those things.

Rep. Muscha: Did someone make the statement that there is no oversight of third party contractors in this state?

Chairman Weisz: The facility has no oversight on the third party contract.

Peterson: What happens now is a facility a resident comes in and if they need a third party contract that individual resident contracts with that third party and we may or may not even know about it. So that contract right now is between the resident and the third party that is delivering the service. We don't have any oversight on the approval or anything.

Rep. Oversen: I move to add an amendment wherever Austin sees fit that says "an assisted living facility may not be held liable for the acts or omissions of a third party contractor."

Rep: Porter: Second.

Motion to Adopt Amendment adding "an assisted living facility may not be held liable for the acts or omissions of a third party contractor".

Motion made by Representative Oversen.

Seconded by Representative Porter.

Voice Vote.

Motion Carried.

Rep. Fehr: I move a Do Pass As Amended on SB 2083.

Rep. Hofstad: Second.

Motion for a Do Pass As Amended on SB 2083

Motion made by Representative Fehr.

Seconded by Representative Hofstad.

Total Yes 8. No 5. Absent 0.

Motion Carried.

Floor Assignment Representative Fehr.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2083

Page 4, line 23, remove the first "not"

Page 4, line 23, replace ", and may not" with "an individual who is bedbound with limited potential for improvement, who requires extensive skilled nursing care, or who needs restraints, only upon the individual showing how the higher needs will be met by third-party contractors providing the higher level of care which would otherwise be available in a basic care or nursing facility. An assisted living facility must"

Page 4, line 23, remove "the"

Page 4, line 24, replace "option of serving" with "a requirement for"

Page 4, line 24, replace "who" with "to contract with a third party to receive services if the individual"

Page 4, line 25, remove "not including an individual who is receiving hospice care; who"

Page 4, line 26, replace the underscored semicolon with an underscored comma

Page 4, line 26, remove "who"

Page 4, line 26, after "restraints" insert ". This subsection does not preclude an assisted living facility from serving a bedbound individual who is receiving hospice care"

Page 6, line 18, remove "significant medication errors or a pattern of errors"

Renumber accordingly

NOTE: Subsection 2 will read:

An assisted living facility may serve an individual who is bedbound with limited potential for improvement, who requires extensive skilled nursing care, or who needs restraints, only upon the individual showing how the higher needs will be met by third-party contractors providing the higher level of care which would otherwise be available in a basic care or nursing facility. An assisted living facility must include in its tenancy criteria, a requirement for an individual to contract with a third party to receive services if the individual is bedbound with limited potential for improvement, requires extensive skilled nursing care, or needs restraints. This subsection does not preclude an assisted living facility from serving a bedbound individual who is receiving hospice care.

SA
4/1/15

April 1, 2015

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2083

Page 4, line 17, after "facility" insert ", including any contract services allowed."

Page 4, line 23, replace "not" with "only"

Page 4, line 23, replace ", and may not" with "an individual who is bedbound with limited potential for improvement, requires extensive skilled nursing care, or needs restraints, upon the individual showing how the higher needs of the individual will be met through third party contractors that would provide a higher level of care than that which would otherwise be available in a basic care or nursing facility. An assisted living facility shall"

Page 4, line 23, remove "the"

Page 4, line 24, replace "option of serving." with "a requirement for"

Page 4, line 24, replace "who" with "to contract with a third party to receive services, if the individual"

Page 4, line 25, remove "not including an individual who is receiving hospice care; who"

Page 4, line 26, replace the underscored semicolon with an underscored comma

Page 4, line 26, remove "who"

Page 4, line 26, after the underscored period insert "An assisted living facility may not be held liable for the acts or omissions of a third-party contractor working in the facility. This subsection does not preclude an assisted living facility from serving a bedbound individual who is receiving hospice care."

Page 6, line 17, replace "the" with "a"

Page 6, line 18, replace "significant medication errors or a pattern of errors" with an underscored comma

Renumber accordingly

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

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2083

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. Fehr

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) 8 No 5

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:
with correction "who will provide the higher level of care which would normally be available in basic care nursing facility"

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

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2083

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. Fehr

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					

Yours Vote
Motion Carried

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

on line 17 added "including any contract services allowed"

Date: 4-1-15
Roll Call Vote #: 3

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2083

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. Oversen Seconded By Rep. Porter

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					
<i>Motion Carried</i>					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

an assisted living facility may not be held liable for the acts or omissions of a third party contractor.

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

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2083**

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 Fehr Seconded By Hofstad

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) 8 No 5

Absent _____

Floor Assignment Fehr

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

REPORT OF STANDING COMMITTEE

SB 2083, as engrossed: Human Services Committee (Rep. Weisz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (8 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2083 was placed on the Sixth order on the calendar.

Page 4, line 17, after "facility" insert ", including any contract services allowed."

Page 4, line 23, replace "not" with "only"

Page 4, line 23, replace ", and may not" with "an individual who is bedbound with limited potential for improvement, requires extensive skilled nursing care, or needs restraints, upon the individual showing how the higher needs of the individual will be met through third party contractors that would provide a higher level of care than that which would otherwise be available in a basic care or nursing facility. An assisted living facility shall"

Page 4, line 23, remove "the"

Page 4, line 24, replace "option of serving." with "a requirement for"

Page 4, line 24, replace "who" with "to contract with a third party to receive services, if the individual"

Page 4, line 25, remove "not including an individual who is receiving hospice care; who"

Page 4, line 26, replace the underscored semicolon with an underscored comma

Page 4, line 26, remove "who"

Page 4, line 26, after the underscored period insert "An assisted living facility may not be held liable for the acts or omissions of a third-party contractor working in the facility. This subsection does not preclude an assisted living facility from serving a bedbound individual who is receiving hospice care."

Page 6, line 17, replace "the" with "a"

Page 6, line 18, replace "significant medication errors or a pattern of errors" with an underscored comma

Renumber accordingly

2015 TESTIMONY

SB 2083

#1 SB2083
01/12/2015
J# 21818

Testimony
Department of Human Services
Senate Bill 2083 - Senate Human Services Committee
Senator Judy Lee, Chairman
January 12, 2015

Chairman Lee, members of the Senate Human Services committee, I am Julie Schwab, Director of the Medical Services Division for the Department of Human Services (Department). I am here today to support Senate Bill 2083, which was introduced at the request of the Department.

There are currently 71 licensed assisted living (AL) facilities in North Dakota. The Department is responsible for the annual licensure of these AL facilities. The Department of Health is responsible for the annual food and lodging licensure of the facilities.

The Department has received an increased number of complaints and concerns over the past two years. Based on these concerns, the Department is proposing to add more guidelines and requirements for the AL facilities to assure safety for the tenants residing in AL facilities in North Dakota.

Section 1 of the Bill amends North Dakota Century Code section 50-32-01 to include additional definitions specifically related to: "abuse," "financial exploitation," "mental anguish," "physical injury," and "sexual abuse or exploitation."

Section 2 of the Bill amends North Dakota Century Code section 50-32-02. The proposed changes to this section will:

- Allow the Department to issue a provisional license valid for no longer than 90 days which can be renewed for an additional 90

days to correct deficiencies. If the corrections have not been made after 90 days, the Department may deny the AL facility's application or may revoke its license. Currently chapter 50-32 does not include language to allow for a provisional license when deficiencies are found. Revocation is the alternative. By adding language to allow for provisional licenses the Department and the AL facility can continue to work together while the deficiencies are being corrected, versus requiring tenants to leave their current living arrangements because of a revocation only to have the facility resolve identified deficiencies a short time later and have its license reinstated. The proposed language for a provisional license was obtained from the skilled nursing facility Administrative Rules chapter 33-07-03.2-03.

- Allow the Department to conduct an onsite visit of an AL facility prior to issuing a license.
- Require an AL facility to notify the Department in writing 30 days in advance of a transfer or change of ownership, a change of name of the facility, a change of administrator, or a change in bed capacity.

Section 3 of the Bill amends North Dakota Century Code section 50-32-03. The proposed changes to this section will:

- Require the Department to establish a method to investigate complaints, including allegations of abuse of a tenant, and require the Department to create rules to establish a process for the investigation of complaints.

Section 4 of the Bill amends North Dakota Century Code section 50-32-05. The proposed changes in this section will:

- Require AL facilities to have tenancy criteria that address the specific needs that can be met within the facility and the conditions under which a tenant may be required to move out of the facility. Additionally, this subsection will require a facility to annually reevaluate a tenant's ability to meet the tenancy criteria; sooner if there has been a significant change in the tenant's needs or if the tenant has been hospitalized.
- In subsection 2, the proposed changes preclude an AL facility from serving an individual who is bedbound and from including services for a bedbound individual as an option in the tenancy criteria. Bedbound is medically defined as someone who is confined to bed, on bed rest, or bedridden.
- In subsection 3, the proposed changes would preclude an AL facility from representing itself as a facility that provides memory care services to individuals with memory care needs, such as Alzheimer's disease or dementia, and allow the Department to revoke the license of an AL facility that represents itself as being an AL facility that provides memory care services.
- In subsection 4, the proposed changes would require a facility to complete an assessment within seven days of a hospice election to ensure there is a coordinated plan of care among hospice, the AL facility, the tenant, and any appropriately appointed representative of the tenant.

- In subsection 5, the changes proposed would require an AL facility to complete a service plan when a tenant moves in and to update the plan annually; sooner if there has been a significant change in the tenant's needs or if the tenant has been hospitalized.
- In subsection 6, require that of the annual 12 hours of continuing education required for the administrator each year, at least 6 hours must be directly related to AL. In addition, training or education related to vulnerable adult protection services would be required annually.
- In subsection 7, require the AL facility to update the initial evaluation and service plan at least annually and requires a plan of care which includes necessary third-party contracts to be part of the tenant record.
- In subsection 8, require an AL facility to provide the Department with the results of the consumer satisfaction survey which is conducted every 24 months and to identify the facility's plan to correct any results that demonstrate consumer dissatisfaction.
- In subsection 10, require an AL facility to develop and follow a policy on medication administration and require an AL facility to report medication administration errors to the Health Department.
- In subsection 11, require an AL facility to develop policies for receiving, investigating, and resolving complaints, received from tenants and families.

In subsection 12 of section 50-32-05 currently exists in subsection 5 of North Dakota Century Code section 50-32-02 which is being amended in

1.5

section 2 of this bill. It makes more sense for it to be located within section 50-32-05, so the Department proposes it be moved.

This concludes my testimony and I would be happy to answer any questions.

Testimony on SB 2083
Senate Human Services Committee
January 12, 2015

Attach #2 SB2083
J# 21818
01/12/2015

Good Morning Chairman Lee and members of Senate Human Services. My name is Shelly Peterson, President of the North Dakota Long Term Care Association. We represent over 200 nursing facilities, Basic Care and Assisted Living Facilities. I am here to testify in support of **SB 2083**, with several amendments for your consideration. We have been formally representing Assisted Living for 14 years and today we represent 93% of all the Assisted Living facilities in ND.

Over the past year we have been meeting with our Assisted Living members discussing the right balance of regulations and the free market of desiring to exceed the expectations of individuals desiring this type of living environment. Assisted Living is the most popular and desired living arrangement among the residential care settings. Based upon a survey conducted by Pinnacle Quality Insight, one of the largest companies surveying and measuring quality of care and quality of life in Long term care in the US, North Dakota Assisted Living facilities exceeded all eleven measures of quality compared to their counterparts in other States.

Assisted Living facilities in North Dakota strive to provide personal choice, autonomy, independence and a caring/supportive environment. All of my professional career has been in long term care. I have a masters in social work from Denver University, 25 years in my current position and 11 years with the ND Department of Human Services. While with DHS, I worked with communities developing programs and services under the Older Americans Act and developed Ombudsman services in the 10 county area surrounding Bismarck. As an Ombudsman I investigated concerns on behalf of nursing home, basic Care and Board and Lodging residents and their families. It was in this capacity, as the Ombudsman that I developed a deep respect for facility administrators and staff of Long Term care facilities. Their focus was always on the resident and the

commitment to “bend over backwards’ to make things right. I continue to see this strong commitment today.

In December of 2013, the Department of Human Services approached our Association because of concerns in Assisted Living. At the conclusion of that meeting I gathered our Assisted Living members and we proactively began discussing the concerns and solutions. Over this past year we have developed draft legislation, submitted it to the Department for their input and then conducted six regional meetings again gathering input, suggestions and revisions to the proposed legislation.

Many of the items in this bill draft are solutions brought forward by Assisted Living facilities. Based upon our extensive review and study we have numerous changes for your consideration. We believe our changes will strengthen the bill and have the right balance of government oversight. We have verbally shared all of our suggested changes with the Department and are hopeful of their agreement. However, you are the policy makers and we ask you to support

SB 2083 and our proposed amendments. We believe them to not only be fair and reasonable, but what the consumer desires and wants. We approached this issue that the facility is responsible and accountable and the role of government is non-intrusive.

An Assisted Living facility is a congregate residential setting with private apartments and services you contract for based upon individual needs. A La Carte services are contracted for based upon a agreed service plan. A plan that promotes independence. Most facilities provide a full range of services from house-keeping, to bathing assistance, to medication management, to hospice care. Each tenant chooses what they need and desire. Today, almost all tenants are private pay (98%), with long term care insurance helping to pay for the bill for 25% of tenants. Today in North Dakota there are about 2500 individual living in an Assisted Living facility.

Now for the Amendments:

1. On page 3, on line 25 it requires the facility to notify the department 30 days in advance of four changes. Notifying 30 days in advance is not always possible, i.e. immediate dismissal of the Administrator. What we request in this section is the same standard as Nursing Facilities have for notifying the Health Department of changes regarding a change in Administrator or the Director of Nursing, notification within 30 days of the change.
2. On page 4, under Powers and duties of the Department add a new duty. The new duty would be: Annually the Department of Humans Services shall compile a written report on substantiated complaints. It is our desire to be proactive on issues in Assisted Living, this report will help assure transparency and early identification of any issues or concerns. This will also help guide our association as we deliver educations and training on issues important in assisted living.
3. On page 4, line 23 & 24, delete the language "or if the tenant has been hospitalized." We believe the language is redundant and not necessary. We support the proposed standard of reevaluating the tenant's ability to meet the tenancy criteria annually and anytime there is a significant change. A hospitalization would be triggered under a significant change, thus we don't think it is necessary to list it separately.
4. On page 4, line 28 & 29 we request that you delete "or who has a known active substance abuse problem." This is one issue we originally supported, however, after our six regional meetings and additional input from the providers we believe it should be removed. First we don't believe a specific disease, and non-control of it should automatically make someone not allowed to live in an Assisted Living. Addiction is a life long illness and bumps can occur along the way occur. Assisted Living might be the best environment. We also aren't sure what "active substance abuse problem might be. If an individual is not being a good neighbor, disruptive or

harmful to self or others, that might be a better ways to address this issue. All facilities address destructive behavior that impacts others, so we think this language regarding substance abuts should be deleted.

5. On Page 4, line 31 and the first word on the top of page 5, delete “such as Alzheimer’s disease or dementia.” We support the issue the Department is addressing in this section but think it needs to be more specific and concrete. The issue as we understand has been out-of state companies moving into North Dakota and their desire to develop care dementia units in Assisted Living. This is not allowed in North Dakota, however how you arrive at that conclusion is not clearly stated in Century Code, Administrator Code or Rule. Companies have done their due diligence when moving into North Dakota, however this issue is many times misunderstood. Thus we think to make it as clear as possible that sentence should read:

An Assisted Living facility may not advertise or hold itself out to the public as a facility that provides memory care services without additional licensure as a basic care or nursing facility.

6. On page 5, line 10 we ask that the redundant language, “or if the tenant has been hospitalized” be removed. This will occur as a significant change which is stated in this section.
7. On page 5, delete all of lines 29 and 30. We believe the tenant still has the right to enter into third-party contracts and we don’t believe they should have to submit them to the facility. This sentence references a “care plan”, a term used in nursing homes and basic care. Assisted Living facilities have “service plans” with tenants. If an individual needs services beyond the capabilities of the Assisted Living facility and they can still meet the move-in criteria of the facility through third-party contracts (i.e. Home health visits), this would be acknowledged in their service plan. If the third party is unable to provide the services, and the facility sees decline and has concerns regarding the tenant continuing ability to meet the tenancy criteria; that would be addressed with the tenant and family. Thus we

don't believe third party contracts need to be collected by the facility, and the service plan will address the issue of services necessary to keep the tenant in compliance with the tenancy criteria.

8. On page 6, delete all of lines 7 & 8 except for the word results. The current requirement in this section is everyone must conduct a consumer satisfaction survey and give the results to each tenant. That is the important person, they are receiving and paying for the service. We support the Department receiving a copy of the results but we don't think it is beneficial to give the department a plan on how any consumer dissatisfaction is being addressed. Measuring and improving customer satisfaction is an ongoing process addressed everyday with every tenant. Those facilities who participate in the Pinnacle Quality Insight survey process, get a report every month on tenant satisfaction and items identified as a concern or issue of tenants. This industry is market driven and competitive, if you don't meet the customer needs they will have options to choose from and you never want to lose one customer. The important issue is not submitting a report once every two years to the Department along with an improvement plan, but each facility having a process in place that measures quality, addresses improvement that is continual and ongoing with everything communicated to the tenant.
9. On page 6, on line 12, insert after Medication II, "Medication III". Medication III's are students pursuing a nursing education who have not yet passed their nursing licensure test. We think this deletion was just an oversight and not intended, as Medication III's are qualified medication aide professionals.
10. The next recommendation for change is our most important recommendation. We don't believe it will serve any useful purpose and it will just clog the Department of Health with unnecessary reports. We ask that you delete lines 20 & 21 on page 6. The requirement as written requires every medication error to be reported to the Department of

Health. What constitutes a medication error is comprehensive and could involve the pharmacy not filling the correct medication, a transcription error, or not giving the medication within the prescribed time. We are not aware of any state or entity requiring this level of reporting. Medication errors can be very serious, so we don't take this issue lightly. Last summer in a collaborative effort with Quality Health Associates of Minot a comprehensive Medication Took Kit on medication administration was developed. This is offered free to every Assisted Living Facility in the State. Quality Health Associates, pharmacists, and two RN's provide education on the use of the Medication Tool Kit, to Administrators and Nursing staff twice last year. What we believe to be more valuable is to have a system and process in place for medication errors. The language states we report any medication error, so does that mean if our report finds issue with a Physician, Pharmacist or Nurse, we report them, as part of the medication error to the Health Department?

We request that this language be deleted and replaced with the following:

The Assisted Living facility shall have policies and procedures for receiving, investigating and reporting medication errors. The reporting of significant medication errors or a pattern of errors must be made to the appropriate Agency.

Our last amendment is on page 6, we request that lines 25 & 26 be removed. This standard is obsolete and no one has more than two individuals sharing one bedroom.

This concludes my testimony. We appreciate this opportunity to testify before you on this important topic. This bill has great merit, with many of the changes initiated by facilities through our yearlong study. We believe our amendments improve the bill, serve well the seniors of our State and create a good balance between the role of government and private enterprise. I would be happy to answer questions you may have.

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

PROPOSED AMENDMENTS TO SENATE BILL NO. 2083

Attach # 3
SB 2083 01/12/15
J# 21818

by Shelly Peterson

Page 3, line 25, after "writing" insert "within"

Page 3, line 25, remove "in advance"

Page 4, after line 11, insert:

"4. Annually compile a written report on substantiated complaints."

Page 4, line 23, after "needs" remove ", or if"

Page 4, line 24, remove "the tenant has been hospitalized"

Page 4, line 28, remove "extensive"

Page 4, line 28, after "care" replace the underscored comma with "or"

Page 4, line 28, after "restraints" remove ", or who has a known active"

Page 4, line 29, remove "substance abuse problem"

Page 4, line 30, replace "represent itself" with "advertise or hold itself out to the public"

Page 4, line 31, remove ", such as Alzheimer's disease, or"

Page 5, line 1, replace "dementia" with "without additional licensure as a basic care or nursing facility"

Page 5, line 10, after "needs" remove "or if the tenant has been hospitalized"

Page 5, line 28, after "tenant" insert and underscored period and remove "; and"

Page 5, remove lines 29 and 30

Page 6, line 7, after the first "results" remove "and with its plans to correct any survey results that demonstrate consumer"

Page 6, line 8, remove "dissatisfaction"

Page 6, line 12, after "II," insert "medication assistant III,"

Page 6, line 20, after "shall" remove "report any medication administration error to the state"

Page 6, line 21, replace "department of health" with "have policies and procedures for receiving, investigating and correcting medication errors. The policies must include the process for reporting significant medication errors or a pattern of errors as may be required by the state board of nursing or state department of health"

Page 6, remove lines 25 and 26

Renumber accordingly

"Marked up bill" 3.3

15.8044.01000

Sixty-fourth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2083

Introduced by

Human Services Committee

(At the request of the Department of Human Services)

1 A BILL for an Act to amend and reenact sections 50-32-01, 50-32-02, 50-32-03, and 50-32-05 of
2 the North Dakota Century Code, relating to assisted living facilities licensing; and to repeal
3 section 50-32-02.1 of the North Dakota Century Code, relating to assisted living facilities.

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

5 **SECTION 1. AMENDMENT.** Section 50-32-01 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **50-32-01. Definitions.**

8 In this chapter, unless the context otherwise requires:

9 1. "Abuse" means any willful act or omission that results in physical injury, mental
10 anguish, unreasonable confinement, sexual abuse or exploitation, or financial
11 exploitation.

12 2. "Assisted living facility" means a building or structure containing a series of at least
13 five living units operated as one entity to provide services for five or more individuals
14 who are not related by blood, marriage, or guardianship to the owner or manager of
15 the entity and which is kept, used, maintained, advertised, or held out to the public as
16 a place that provides or coordinates individualized support services to accommodate
17 the individual's needs and abilities to maintain as much independence as possible. An
18 assisted living facility does not include a facility that is a congregate housing facility,
19 licensed as a basic care facility, or licensed under chapter 23-16 or 25-16 or section
20 50-11-01.4.

21 ~~2-3.~~ "Department" means the department of human services.

22 ~~3-4.~~ "Entity" means an individual, institution, organization, limited liability company, or
23 corporation, whether or not organized for profit.

1 5. "Financial exploitation" means the use or receipt of services provided by an individual
2 without just compensation, the taking or misuse of property or resources of an
3 individual by means of undue influence, breach of a fiduciary relationship, deception,
4 harassment, criminal coercion, theft, or other unlawful or improper means.

5 ~~4-6.~~ "Individualized support services" means services provided to individuals who may
6 require assistance with the activities of daily living of bathing, dressing, toileting,
7 transferring, eating, medication management, and personal hygiene.

8 ~~5-7.~~ "Living unit" means a portion of an assisted living facility that contains a sleeping area,
9 an entry door that can be locked, and a private bath with a toilet, bathtub or shower,
10 and sink and which is occupied as the living quarters of an individual who has entered
11 into a lease agreement with the assisted living facility.

12 8. "Mental anguish" means psychological or emotional damage that requires medical
13 treatment or care or is characterized by behavioral change or physical symptoms.

14 9. "Physical injury" means damage to bodily tissue caused by nontherapeutic conduct,
15 which includes fractures, bruises, lacerations, internal injuries, dislocations, physical
16 pain, illness, or impairment of physical function.

17 ~~6-10.~~ "Related by blood or marriage to the owner or manager" means an individual who is a
18 spouse or former spouse of the owner or manager or is a parent, stepparent,
19 grandparent, stepgrandparent, child, stepchild, grandchild, stepgrandchild, brother,
20 sister, half-brother, half-sister, stepbrother, or stepsister of the owner or manager or
21 the owner's or manager's spouse or former spouse.

22 11. "Sexual abuse or exploitation" includes those sex offenses defined in sections
23 12.1-20-02, 12.1-20-03, 12.1-20-04, 12.1-20-07, and 12.1-20-11.

24 **SECTION 2. AMENDMENT.** Section 50-32-02 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **50-32-02. Licensing of assisted living facilities - Penalty.**

27 1. An entity may not keep, operate, conduct, manage, or maintain an assisted living
28 facility or use the term "assisted living" in its advertising unless it is licensed by the
29 department.

- 1 2. An assisted living facility shall apply annually to the department for a license. The
2 department may conduct an onsite visit of an assisted living facility prior to issuing a
3 license.
- 4 3. The department may issue a provisional license, valid for no longer than ninety days,
5 when there are one or more deficiencies or a pattern of deficiencies related to quality
6 of care or compliance with licensing requirements. A provisional license may be
7 renewed once for no longer than an additional ninety days. If the deficiencies have not
8 been corrected upon the expiration of a provisional license, the department may deny
9 the assisted living facility's application or revoke its license.
- 10 4. An assisted living facility shall pay to the department an annual license fee of
11 seventy-five dollars for each facility. License fees collected under this section must be
12 deposited in the department's operating fund in the state treasury. An expenditure from
13 the fund is subject to appropriation by the legislative assembly.
- 14 ~~3.5.~~ An assisted living facility shall apply annually to the department for a license. After the
15 fifty-ninth day following the notification of noncompliance with annual licensing, the
16 department may assess a fine of up to fifty dollars per day against an entity that
17 provides assisted living services or uses the term assisted living in its marketing
18 without a license approved by the department. Fines collected under this section must
19 be deposited in the department's operating fund in the state treasury. An expenditure
20 from the fund is subject to appropriation by the legislative assembly.
- 21 ~~4.6.~~ Religious orders providing individualized support services to vowed members residing
22 in the order's retirement housing are not subject to this chapter.
- 23 5. ~~No more than two people may occupy one bedroom of each living unit of an assisted~~
24 ~~living facility.~~
- 25 7. An assisted living facility shall notify the department in writing thirty days ^{within} ~~in advance~~
26 of:
- 27 a. Transfer or change of ownership;
28 b. Change of name of the facility;
29 c. Change of administrator; or
30 d. Change in bed capacity.

1 **SECTION 3. AMENDMENT.** Section 50-32-03 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **50-32-03. Powers and duties of the department.**

4 The department shall:

- 5 1. Take action and give directions necessary to implement this chapter.
- 6 2. Establish a method to receive complaints related to assisted living facilities and to
7 investigate complaints or forward the complaints, including an allegation of abuse of a
8 tenant, to the appropriate agency for investigation.
- 9 3. Establish rules governing the licensing of assisted living facilities, including rules to
10 regulate the application for, approval, denial, revocation, and requirements of a
11 license, and to establish a process for the investigation.

New # 4 → 4. Annually compile a written report on substantiated complaints.

12 **SECTION 4. AMENDMENT.** Section 50-32-05 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **50-32-05. Assisted living facilities facility requirements - Duties - Educational-**
15 **requirements Education.**

- 16 1. Each assisted living facility ~~must have~~ shall establish clear, concise, and
17 understandable tenancy criteria that ~~is~~ are fully disclosed to all tenants, in writing,
18 before the tenancy agreement is signed. The tenancy criteria must address the
19 specific needs that can be met within the facility and the conditions under which a
20 tenant may be required to move out of the facility. Before a facility unit is rented, the
21 facility or landlord shall evaluate the tenant's ability to meet the facility's tenancy
22 criteria. The facility shall reevaluate a tenant's ability to meet the tenancy criteria
23 annually, or sooner if there has been a significant change in the tenant's needs, or if/
24 the tenant has been hospitalized. *Delete*

- 25 2. An assisted living facility may not serve, and may not include in its tenancy criteria the
26 option of serving, an individual who is bedbound with limited potential for
27 improvement, not including an individual who is receiving hospice care, who requires
28 extensive skilled nursing care, ^{or} who needs restraints, or who has a known active
29 substance abuse problem. *advertise or hold itself out to the public*

- 30 3. An assisted living facility may not represent itself as a facility that provides memory
31 care services to individuals with memory care needs, such as Alzheimer's disease, or

without additional License ASA basic care or nursing Facility

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~~Alzheimer's~~ dementia. The department may revoke the license of an assisted living facility that represents itself as being an assisted living facility that provides memory care services.

4. If a tenant elects to receive hospice care, the assisted living facility shall complete an assessment within seven days of the hospice election to ensure there is a coordinated plan of care between hospice, the assisted living facility, the tenant, and any appropriately appointed representative of the tenant.

5. An assisted living facility shall complete a service plan when a tenant moves in and shall update the service plan annually, or sooner if there has been a significant change in the tenant's needs or if the tenant has been hospitalized.

6. Each assisted living facility shall require the administrator of the facility to complete twelve hours of continuing education per year. At least six of the continuing education hours must be directly related to assisted living. The assisted living facility shall require all ~~direct-care~~ staff to receive annual education or training in the areas of:

- a. Resident rights;
- b. Fire and accident prevention and training;
- c. Mental and physical health needs of tenants;
- d. Behavior problems and prevention; ~~and~~
- e. Control of infection, including universal precautions; and
- f. Vulnerable adult protection services.

3-7. Each assisted living facility shall maintain a record for each tenant. The tenant record must include:

- a. An initial evaluation, updated at least annually, to meet tenancy criteria;
- b. The initial service plan, updated at least annually;
- c. The tenancy agreement signed by the tenant or the tenant's legal representative;
- ~~e.d.~~ If applicable, a medication administration record that documents medication administration consistent with applicable state laws, rules, and practices; ~~and~~
- ~~d.e.~~ An itemized list of services provided for the tenant; and
- f. ~~A plan of care which includes third-party contracts for any tenant requiring services exceeding those normally delivered in the assisted living facility.~~ Delete all

Sixty-fourth
Legislative Assembly

- 1 4.8. Before hiring, the assisted living facility shall conduct a reference and previous
- 2 employment check and a check of applicable registries of each applicant being
- 3 considered for employment at the facility.
- 4 5.9. At least once every twenty-four months, each assisted living facility shall conduct a
- 5 consumer satisfaction survey. The assisted living facility shall provide each tenant with
- 6 a copy of the results of the survey. The facility shall provide the department with the
- 7 results and with its plans to correct any survey results that demonstrate consumer
- 8 dissatisfaction.
- 9 10. An assisted living facility shall develop and follow a policy regarding medication
- 10 administration which includes the following:
- 11 a. All medications administered by facility staff must be administered by a
- 12 medication assistant I, medication assistant II, licensed practical nurse, or a
- 13 registered nurse;
- 14 b. All medications administered by facility staff must be ordered in writing by a
- 15 licensed health care practitioner;
- 16 c. All medications administered by facility staff must be stored in a locked area or
- 17 locked cart; and
- 18 d. An assessment of the role and responsibilities of the medication assistant and
- 19 how a nurse will provide oversight and supervision to a medication assistant.
- 20 11. ~~An assisted living facility shall report any medication administration error to the state~~
- 21 ~~department of health.~~ Delete
- 22 12. An assisted living facility shall develop policies for receiving, investigating, and
- 23 resolving complaints, including allegations of abuse of a tenant, from tenants and
- 24 families.
- 25 13. No more than two individuals may occupy one bedroom of each living unit of an
- 26 assisted living facility.

27 **SECTION 5. REPEAL.** Section 50-32-02.1 of the North Dakota Century Code is repealed.

Replace with have policies and procedures for receiving, investigating and correcting medication errors. The policies must include the process for reporting significant medication errors or a pattern of errors as may be required by the state board of nursing or state department of health.

Senate Human Service Committee

4
SB2083 01/12/15
J# 21818

Testimony for SB2083

Senator Lee and members of the Human Service committee,

It is my privilege to be here with you today to discuss the importance of regulation of Assisted Living Facilities. I am Char Christianson an RN and the Director of Nursing at Golden Acers Manor and Golden Acres Estates in Carrington, ND. I have worked in this capacity for the past 15 years at the Manor and the last year and a half at the Estates as it is a newly acquired Assisted Living Facility. I am also an RN member of the North Dakota Board of Nursing and am currently the longest tenured member on the board for seven and one half years.

I am here today in support of SB2083 with the amendments that have been presented by the North Dakota Long Term Care Association. There are two areas where amendments have been made, that I would like to specifically address.

The first area is the inclusion of a Medication Assistant III. Medication Assistant III are student nurse who have completed their education to a point where they can apply and be placed on the registry at the North Dakota Board of Nursing. The Medication Assistant III may perform the intervention of administering medications to the client in an ambulatory health care setting.

Chapter 54-07-05 of the Administrative Code states:

In an ambulatory health care setting where the licensed nurse delegates the intervention of giving medications to another individual, the licensed nurse must be available for direction.

In any other setting where the licensed nurse delegates the intervention of giving medications to another individual, the licensed nurse must follow facility policy for providing the supervision in order to provide the recipient of the medication appropriate safeguards.

Thus including them would be logical and would be another avenue for facilities to look for eligible quality employees in this practice setting.

The second area I would like to address is the area of medication administration errors. The current reading of this bill indicates that the assisted living facility shall report any medication administration errors to the Department of Health. Medication errors do occur and it is very important that they be addressed, however, even if you report every error it won't make a difference unless there is a process in place by the facility to address the error. Thus the amendment proposed by the Long Term Care Association which reads,

The Assisted Living Facility shall have policy and procedures in place for receiving, investigating, and reporting medication errors to the appropriate agency. The policies must include the process for reporting significant errors as may be required by the State Board of Nursing or the State Department of Health.

would ensure public safety better than reporting every error. The responsibility would be on the facility to develop a system to minimize medication errors.

Every time a nurse makes a medication error it is not reported to the Board of Nursing. The Board of Nursing relies on the facility to have policies and procedures in place to educate the person administering the medication and review the circumstances behind the error. Why the error occurred. If the person administering the medications continues to have errors after the facility has followed the procedure, it then may be reported to the Board of Nursing for further action against the individual. The Board of Nursing is then going to investigate, which includes looking at the facilities policies and procedures, to see what has been done to correct the action before it was turned into the Board for action.

I do not believe the Department of Health would want to investigate every medication error. I do believe the intent would be to monitor the facility and the process the facility has in place to eliminate medication error. With the amendment requested by the North Dakota Long Term Care Association I believe this would be achieved and public safety would be protected.

Thank you for your time and I would welcome any questions at this time.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2083

Page 3, line 25, after "writing" insert "within"

Page 3, line 25, remove "in advance"

Page 4, line 27, replace the second underscored comma with an underscored semicolon

Page 4, line 28, replace the first underscored comma with "; or"

Page 4, line 28, remove ", or who has a known active"

Page 4, line 29, remove "substance abuse problem"

Page 4, line 30, replace "represent" with "advertise or hold"

Page 4, line 30, after "itself" insert "out to the public"

Page 4, line 31, remove ", such as Alzheimer's disease, or"

Page 5, line 1, replace "dementia" with "without additional licensure as a basic care or nursing facility"

Page 5, line 29, after "A" insert "service"

Page 5, line 29, remove "of care"

Page 5, line 29, replace "includes" with "identifies"

Page 5, line 29, after "requiring" insert "third party"

Page 5, line 29, replace "exceeding those normally delivered in" with "to ensure they meet the tenancy criteria of"

Page 6, line 6, after the second "the" insert "most recent"

Page 6, line 7, remove "and with its plans to correct any survey results that demonstrate consumer"

Page 6, line 8, replace "dissatisfaction" with "during the facility's license review"

Page 6, line 12, after "II" insert ", medication assistant III"

Page 6, line 20, replace "report any" with "have policies and procedures for receiving, investigating, and correcting"

Page 6, line 20, replace "administration error to" with "errors. The policies must include the process for reporting significant medication errors or a pattern of errors as may be required by the state board of nursing or"

Renumber accordingly

#1

**Testimony
Department of Human Services
Engrossed Senate Bill 2083 –
House Human Services
Representative Robin Weisz, Chairman
March 16, 2015**

Chairman Weisz, members of the House Human Services committee, I am Karen Tescher, Assistant Director of the Long Term Care Continuum in the Medical Services Division for the Department of Human Services (Department). I am here today to support Engrossed Senate Bill 2083, which was introduced at the request of the Department.

There are currently 71 licensed assisted living (AL) facilities in North Dakota. The Department is responsible for the annual licensure of these AL facilities. The Department of Health is responsible for the annual food and lodging licensure of the facilities.

The Department has received an increased number of complaints and concerns over the past two years. Based on these concerns, the Department is proposing to add more guidelines and requirements for the AL facilities to assure safety for the tenants residing in AL facilities in North Dakota.

The ND Long Term Care Association proposed amendments to the bill and the Department worked with them in developing the amendments which were adopted by the Senate.

Section 1 of the Engrossed Bill amends North Dakota Century Code section 50-32-01 to include additional definitions specifically related to:

"abuse," "financial exploitation," "mental anguish," "physical injury," and "sexual abuse or exploitation."

Section 2 of the Engrossed Bill amends North Dakota Century Code section 50-32-02. The proposed changes to this section will:

- Allow the Department to issue a provisional license valid for no longer than 90 days which can be renewed for an additional 90 days to correct deficiencies. If the corrections have not been made after 90 days, the Department may deny the AL facility's application or may revoke its license. Currently chapter 50-32 does not include language to allow for a provisional license when deficiencies are found. Revocation is the alternative. By adding language to allow for provisional licenses, the Department and the AL facility can continue to work together while the deficiencies are being corrected, versus requiring tenants to leave their current living arrangements because of a revocation only to have the facility resolve identified deficiencies a short time later and have its license reinstated. The proposed language for a provisional license was obtained from the skilled nursing facility Administrative Rules chapter 33-07-03.2-03.
- Allow the Department to conduct an onsite visit of an AL facility prior to issuing a license.
- Require an AL facility to notify the Department in writing within 30 days of a transfer or change of ownership, a change of name of the facility, a change of administrator, or a change in bed capacity. This was one of the amendments adopted by the Senate. The bill,

as introduced, would have required the AL facility to notify the Department 30 days *in advance* of the change.

Section 3 of the Engrossed Bill amends North Dakota Century Code section 50-32-03. The proposed changes to this section will:

- Require the Department to establish a method to investigate complaints, including allegations of abuse of a tenant, and require the Department to create rules to establish a process for the investigation of complaints.

Section 4 of the Engrossed Bill amends North Dakota Century Code section 50-32-05. The proposed changes in this section are as follows:

- In subsection 1, the new language will require AL facilities to have tenancy criteria that address the specific needs that can be met within the facility and the conditions under which a tenant may be required to move out of the facility. Additionally, this subsection will require a facility to annually reevaluate a tenant's ability to meet the tenancy criteria; sooner if there has been a significant change in the tenant's needs or if the tenant has been hospitalized.
- Subsection 2 will prohibit AL facilities from serving certain individuals for whom assisted living is not an appropriate level of care. An assisted living facility may not serve, and may not include in its tenancy criteria the option of serving, an individual who is bedbound with limited potential for improvement, except an individual receiving hospice care; an individual who requires extensive skilled nursing care; or who needs restraints. The amendments adopted by the Senate removed individuals with a

known active substance abuse problem from the list of individuals that an AL facility may not serve.

- Subsection 3 will prohibit an assisted living facility from advertising or holding itself out to the public as a facility that provides memory care services to individuals with memory care needs without additional licensure as a basic care or nursing facility. The Department may revoke the license of an AL facility that represents itself as being an AL facility that provides memory care services. The Senate amendments changed the phrase "represent itself" to the phrase "advertise or hold itself out to the public" . Additionally, the phrase "without additional licensure as a basic care or nursing facility" was added at the end of the first sentence, and the reference to "Alzheimer's disease or dementia" was removed.
- In subsection 4, the proposed changes would require a facility to complete an assessment within seven days of a hospice election to ensure there is a coordinated plan of care among hospice, the AL facility, the tenant, and any appropriately appointed representative of the tenant.
- In subsection 5, the changes proposed would require an AL facility to complete a service plan when a tenant moves in and to update the plan annually; sooner if there has been a significant change in the tenant's needs or if the tenant has been hospitalized.
- Subsection 6 would require that of the annual 12 hours of continuing education required for the administrator each year, at least 6 hours must be directly related to AL. In addition, training or

education related to vulnerable adult protection services would be required annually.

- Subsection 7 would require the AL facility to update the initial evaluation and service plan at least annually. The Senate amendments in paragraph f, require a service plan to identify, rather than include, third-party contracts for any tenant requiring third party services to ensure the tenant meets the tenancy criteria of the assisted living facility.
- Subsection 9 would require an AL facility to provide the Department with the results of the most recent consumer satisfaction survey during the facility's license review. The amendment adopted by the Senate removed a requirement that the facility provide the Department with its plans to correct any survey results that demonstrate consumer dissatisfaction.
- Subsection 10 would require an AL facility to develop and follow a policy on medication administration. The Senate amendments added medication assistant III to the list of facility staff who can administer medications.
- Subsection 11 would require an AL facility to have policies and procedures for receiving, investigating, and correcting medication errors. The policies must include the process for reporting significant medication errors or a pattern of errors as may be required by the state board of nursing or the state department of health. The bill, as introduced, would have required the AL facilities to report any medication administration errors.

- Subsection 12 would require an AL facility to develop policies for receiving, investigating, and resolving complaints, received from tenants and families.
- Subsection 13 of section 50-32-05 currently exists in subsection 5 of North Dakota Century Code section 50-32-02 which is being amended in section 2 of this bill. It makes more sense for it to be located within section 50-32-05, so the Department proposes it be moved.

Section 5 of the Engrossed Bill repeals 50-32-02.1 because there are no longer any facilities to which it applies.

This concludes my testimony and I would be happy to answer any questions.

#2

Testimony on SB 2083
House Human Services Committee
March 16, 2015

Good Morning Chairman Weisz and members of House Human Services. My name is Shelly Peterson, President of the North Dakota Long Term Care Association. We represent 211 Nursing Facilities, Basic Care and Assisted Living Facilities. I am here to testify in support of SB 2083, which adds new requirements for Assisted Living Facilities. We have been formally representing Assisted Living for 14 years and today we represent 93% of all the Assisted Living facilities in ND.

Over the past year we have been meeting with our Assisted Living members discussing the right balance of regulations and the free market of desiring to exceed the expectations of individuals desiring this type of living environment. Assisted Living is the most popular and desired living arrangement among the residential care settings. Based upon a survey conducted by Pinnacle Quality Insight, one of the largest companies surveying and measuring quality of care and quality of life in long term care in the US, North Dakota Assisted Living facilities exceeded all eleven measures of quality compared to their counterparts in other States. Assisted Living facilities in North Dakota strive to provide personal choice, autonomy, independence and a caring/supportive environment.

In December of 2013, the Department of Human Services approached our Association because of concerns in Assisted Living. At the conclusion of that meeting I gathered our Assisted Living members and we proactively began discussing the concerns and solutions. Over this past year we developed draft legislation, submitted it to the Department for their input and then conducted six regional meetings again gathering input, suggestions and revisions to the proposed legislation.

Many of the items in this bill draft are solutions brought forward by Assisted Living facilities. We believe SB 2083 creates the right balance of government oversight and free enterprise. We believe the legislation to be fair and

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reasonable, while not losing what the consumer desires and wants. We approached the issue of regulations that the facility is responsible and accountable and the role of government is non-intrusive.

An Assisted Living facility is a congregate residential setting with private apartments and services you contract for based upon individual needs. A La Carte services are contracted for based upon an agreed service plan. A plan that promotes independence. Most facilities provide a full range of services from house-keeping, to bathing assistance, to medication management, to hospice care. Each tenant chooses what they need and desire. Today, almost all tenants are private pay (98%), with long term care insurance helping to pay for 25% of all tenants. In North Dakota today, there are about 2500 individual living in an Assisted Living facility. I've printed two pages from our 2015 Facts & Figures booklet which describes the types of individuals seeking Assisted Living, their caregivers and costs.

I anticipate the Department of Human Services will cover the content of the bill, so I will touch upon some highlights.

Highlights:

50-32-04 Powers and Duties of the Department:

We welcome the departments continued authority under rule making and look forward to working with them regarding rules for investigation of complaints. We believe there should be timeframes and a well-defined process for investigation of allegations.

50-32-05 Assisted Living Facility Requirements- Duties- Education:

This section addresses when a tenant must move out because they no longer meet the tenancy criteria. Today each facility is to have clear, concise and understandable tenancy criteria that is disclosed to all tenants in writing, up front upon moving into the facility. This is so important because the vast majority of tenants love Assisted Living and never want to move out. Facilities must continually monitor the individual's ability to meet the tenancy criteria. Today each facility has their own process of how this is monitored, however SB 2083 will

formalize the process for all. SB 2083 will require an assessment when a tenant experiences a significant change in functioning, including any hospitalization. This requirement will help assure tenant needs are monitored and reviewed when a significant change occurs.

Number 2 in this section is referred by us as the hospice section. It is an important section to assure those who have a terminal condition are allowed to remain, if certain requirements are met (number 4). However this section is confusing in how it is written. This section is supposed to define who is not appropriate for assisted living, an individual who is bed bound with limited potential for improvement, one who requires extensive skilled nursing care or who needs restraints. I'm wondering if it would read better by putting the hospice exception at the end of the sentence, rather than where it is placed now. This is a key issue to consumers, families and facilities so I think greater clarification of this section would serve everyone well.

Number 3 regarding what type of License you must have to operate a dementia unit is very important. This point is often confused by out-of-state companies moving into North Dakota and this section in statute will now clearly state in order to operate a dementia unit you must be a Licensed Basic Care or Nursing Facility.

Number 4 is the section that outlines the requirements should the tenant wish to receive hospice care. This is important and allows Assisted Living to provide and help arrange for end of life care, rather than requiring an individual to move out in their last days, moments of life. This is a quality of life issue.

Number 6 specifies at least six of the twelve continuing education hours required for administrators be directly related to Assisted Living. This will help all facilities to better understand all the specific Assisted Living requirements in North Dakota.

Number 13 regarding how many people may occupy one bedroom is obsolete and not applicable, but I guess it does no harm by keeping it in.

This concludes my testimony. We appreciate this opportunity to testify before you on this important topic. This bill has great merit and mirrors many of the changes initiated by facilities through our yearlong study. We believe the bill will serve well the seniors of our State and create a good balance between the role of government and private enterprise. I would be happy to answer questions you may have.

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

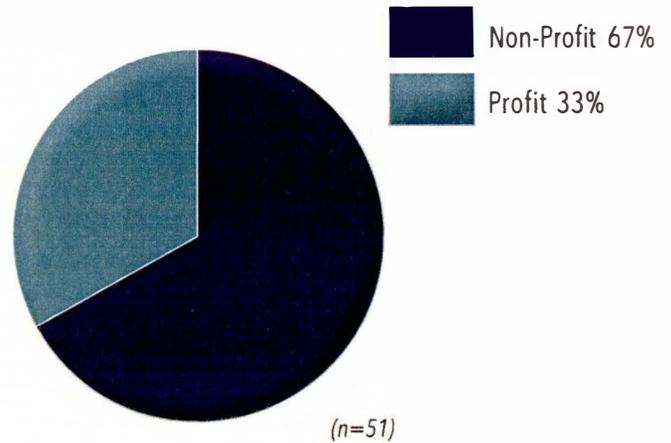
Assisted Living Facilities

SB 208
3-16-15

ASSISTED LIVING AT A GLANCE

72 licensed assisted living facilities
2,654 licensed units
2014 average occupancy was **95%**

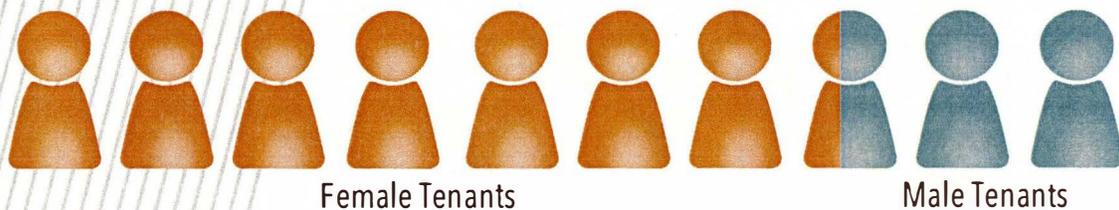
Figure 1: Ownership of Assisted Living Facilities



ASSISTED LIVING FACTS

- An assisted living facility is a congregate residential setting with **private apartments** and **contracted services**
- A la carte services are contracted based upon an agreed upon service plan
- A basic rental package generally includes **meals, housekeeping, activities, transportation, and laundry**
- Facilities provide a **full range of services** from bathing to medication management to hospice care
- Assistance with daily care and isolation are the top issues precipitating the desire to move into an assisted living facility
- Current tenants range in age from **51 to 104**, with the average age being 85

Figure 2: Gender of Assisted Living Tenants



(n=1,785)

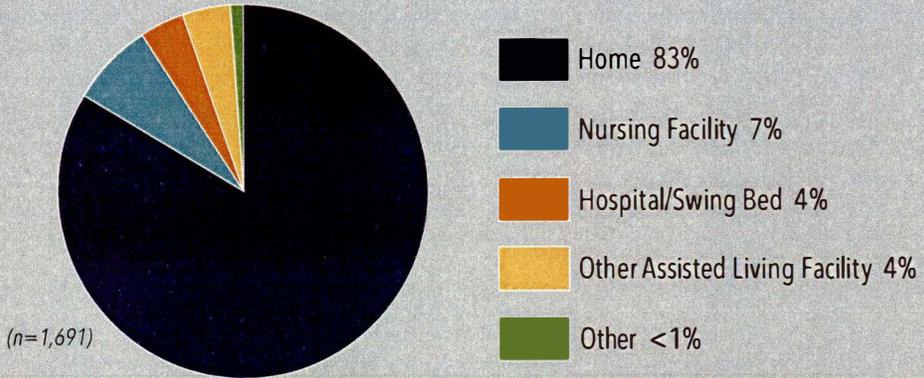
74% of tenants in North Dakota assisted living facilities are female



WHEN INDIVIDUALS MOVE INTO AN ASSISTED LIVING FACILITY, WHERE DO THEY COME FROM?

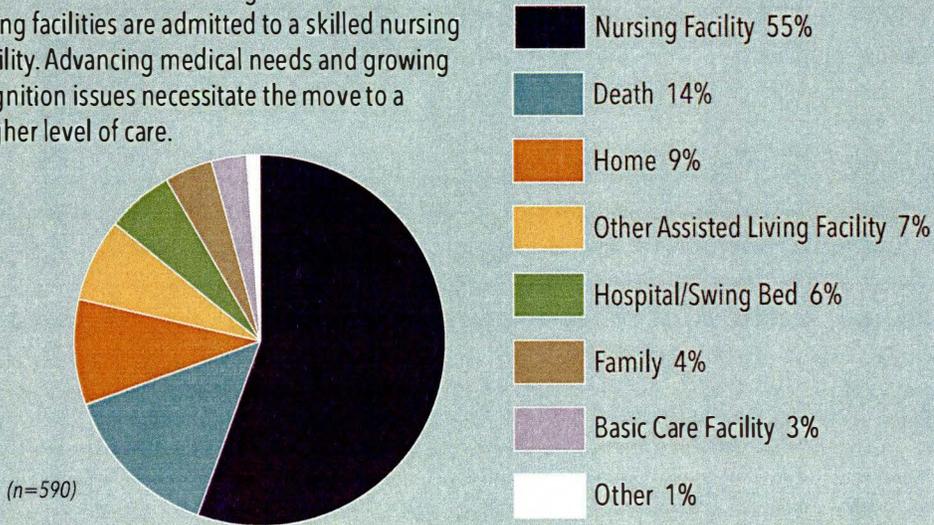
Most individuals were living in their own home prior to moving into an assisted living facility. The top four reasons for assisted living move-in:

1) Assistance with daily care, 2) Social isolation, 3) Confusion, 4) Need for supervision



WHEN INDIVIDUALS MOVE OUT, WHERE DO THEY GO?

Over half of tenants moving out of assisted living facilities are admitted to a skilled nursing facility. Advancing medical needs and growing cognition issues necessitate the move to a higher level of care.



Assisted Living Facilities

CARE NEEDS OF ASSISTED LIVING TENANTS

(n=1,358)

1/3

of tenants have impaired mental status ranging from mild confusion or forgetfulness to a mental health diagnosis

42%

of tenants need full assistance with medication administration. These tenants on average take 9.4 over-the-counter and prescription medications daily

98%

of tenants are fully independent in eating, 97% independent with transferring, 96% with toileting, and 71% with dressing

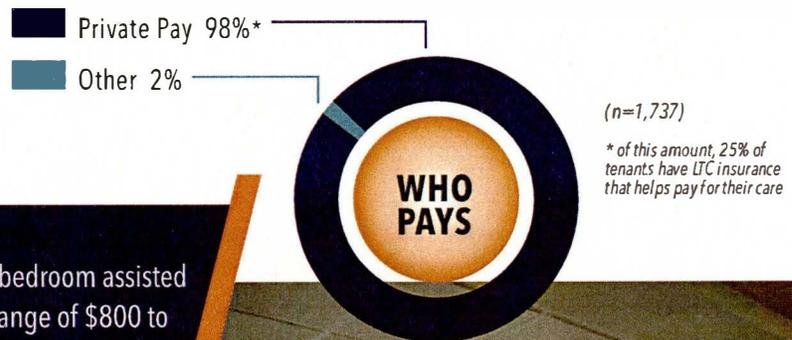
57%

of tenants periodically use the assistance of a walker

60%

of tenants are ambulatory

Figure 5: Who Pays the Bill in Assisted Living Facilities



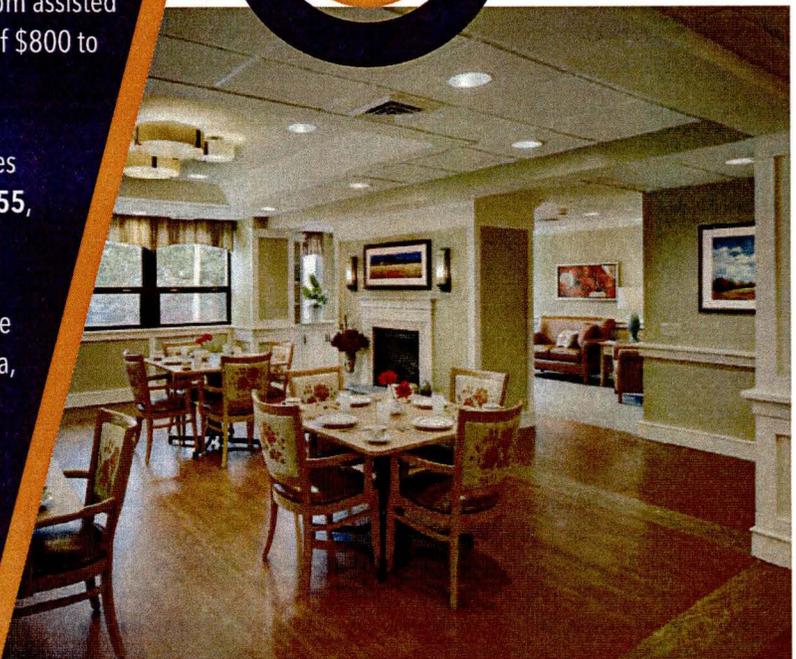
ASSISTED LIVING COST

In 2014, the average charge for rent in a one bedroom assisted living facility was **\$2,084** per month, with a range of \$800 to \$3,875 per month

The cost for services in an assisted living facility varies dramatically, with an average service package of **\$955**, with a range of \$125 to \$2,400 per month

The cost of assisted living is highly dependent on the **size** of the living space, the **location** in North Dakota, and the **amenities** in the rental package

Most tenants pay for services from their own private funds, with long term care insurance assisting in **25%** of the cases

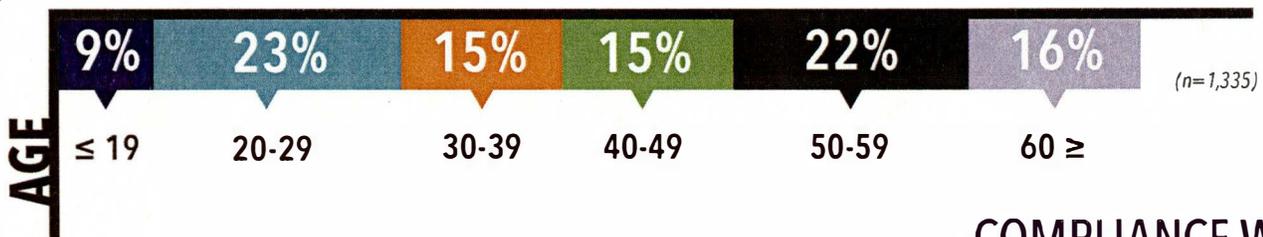


ASSISTED LIVING WORKFORCE

- The number one issue confronting assisted living facilities is **staff retention and recruitment**
- **1,484 individuals** are employed in 46 assisted living facilities
- As of November 1, 2014, 22 assisted living facilities reported **105 vacant positions**
- Four of 51 reporting assisted living facilities used contract nursing staff in 2014. Of those four, two reported spending **\$43,000 annually**
- Over one-third (38%) of the workforce is **age 50 and older**, the oldest employee is 91



Figure 6: Age of Assisted Living Workforce



COMPLIANCE WITH REGULATION

In the 2009 legislative session, legislation was passed requiring administrator and staff training, comprehensive background check prior to employment in assisted living and completion of a consumer satisfaction survey every two years

- **45 of 51** reporting assisted living facilities indicated compliance with the training and pre-employment check
- **80%** of reporting assisted living facilities indicated they completed a consumer satisfaction survey in the past two years. Of those completing, 59% use an independent company for the completion of the survey

4-1-15

#1

SB 2083

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2083

Page 4, line 23, remove the first "not"

Page 4, line 23, replace ", and may not" with "an individual who is bedbound with limited potential for improvement, who requires extensive skilled nursing care, or who needs restraints, only upon the individual showing how the higher needs will be met by third-party contractors providing the higher level of care which would otherwise be available in a basic care or nursing facility. An assisted living facility must"

Page 4, line 23, remove "the"

Page 4, line 24, replace "option of serving" with "a requirement for"

Page 4, line 24, replace "who" with "to contract with a third party to receive services if the individual"

Page 4, line 25, remove "not including an individual who is receiving hospice care; who"

Page 4, line 26, replace the underscored semicolon with an underscored comma

Page 4, line 26, remove "who"

Page 4, line 26, after "restraints" insert ". This subsection does not preclude an assisted living facility from serving a bedbound individual who is receiving hospice care"

Page 6, line 18, remove "significant medication errors or a pattern of errors"

Renumber accordingly

NOTE: Subsection 2 will read:

An assisted living facility may serve an individual who is bedbound with limited potential for improvement, who requires extensive skilled nursing care, or who needs restraints, only upon the individual showing how the higher needs will be met by third-party contractors providing the higher level of care which would otherwise be available in a basic care or nursing facility. An assisted living facility must include in its tenancy criteria, a requirement for an individual to contract with a third party to receive services if the individual is bedbound with limited potential for improvement, requires extensive skilled nursing care, or needs restraints. This subsection does not preclude an assisted living facility from serving a bedbound individual who is receiving hospice care.