

2017 SENATE HUMAN SERVICES

SB 2113

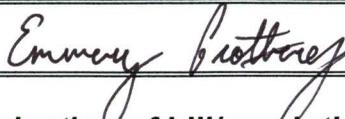
2017 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

SB 2113
1/11/2017
Job Number 26794

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A bill relating to providing transfer and discharge notices, and to duties of state long-term care ombudsman and establishment of reporting system.

Minutes:

Attachments: #1 - 5

Chair Senator J. Lee: Opened the hearing on SB2113.

(1:30) **Karla Backman:** Testified in Support of SB 2113 (See Attachment #1).

(5.30) **Senator Lee** asked what types of care had to be reported under federal law.

Karla Backman: The new federal requirements are for nursing homes or skilled nursing homes. This century code would also cover the other levels of care that are included in ND: the assisted, the basic, and the swing beds.

Senator J. Lee: But the federal requirement is not for the other three types of care. You want them all included, correct?

Karla Backman: Correct.

Senator Piepkorn: Are patients being mistreated currently? Are their problems not being reported?

Karla Backman: There are inappropriate transfers and discharges going on and there are some affects with the residents. That is not always avoidable, but there are strategies to reduce it as much as possible.

Senator Piepkorn: What is the purpose of the transfers?

Karla Backman: The transfers are often to a hospital setting because of the need for particular care; discharge is a discharge to another facility. The challenge with transfers and discharges happens when a resident may be transferred to a hospital and then they are told by the facility that sent them that they are not able to return.

Senator Anderson: What's the timeframe to report to the ombudsman?

Karla Backman: There are different requirements depending on the reason for the transfer or discharge. Sometimes there needs to be a thirty-day notice or as soon as possible.

Senator Anderson: If I'm in one facility and I want to go to another one, I have to wait 30 days because you haven't had a chance to notify the ombudsman yet?

Karla Backman: If it is a voluntary discharge, the resident has the right to choose to make a move at their request. This focuses on when a transfer discharge notice is required from the facility and that is typically in the case of an involuntary discharge.

Senator J. Lee: I understand the motives behind this bill because I don't want anyone in a care facility to have inadequate care and treatment but I want to stay away from the suggestion that the facilities in ND are unaware of what needs to be done or that they don't communicate with the family. I think there is some misunderstanding about what the capabilities are of the people in the long care system because we have facilities with staff and administration who are concerned about the people whom they serve.

(12:40) **Corinne Hofmann, Director of Policy and Operations, Protection & Advocacy Project:** Testified in Support of SB 2113 (See Attachment #2).

(15:20) **Senator Larsen:** What is the case load of an ombudsman?

Corinne Hofmann: I couldn't speak to the caseload of the ombudsman staff.

Karla Backman: There are seven zones and we have the workload divided out per zone. The goal is to have no more than 2,000 residents per ombudsman. Our goal is not to investigate every transfer or discharge but to do a quick review which allows us to know what is going on in the facilities.

Senator Clemens: What is the workload for the long term care facility for the transfer or discharge? What is the workload if this is contested by the ombudsman?

Corinne Hofmann: I can't give a definitive answer because it would depend on how the protocol is set up. Nursing homes now have to send a notice to the resident and/or family member.

Senator Kreun: How many transfers take place in a month?

Corinne Hofmann: I don't have that information.

Senator Piepkorn: In your testimony, you talk about cases where the family may be unavailable; how responsible is the family in these situations?

Corinne Hofmann: That varies; our agency works with people with disabilities so it is usually someone with a developmental or physical disability. In most cases, when we have someone with behavioral issues or mental illness we do not have family support.

Senator Piepkorn: You said there are times when the transfer or discharge is done improperly or inadequately. I appreciate the concern but I would like specifics—how often does this happen?

Corinne Hofmann: The information I can give you is primarily anecdotal. We usually receive reports after the fact and we have a list of people mandated to report to our agency so it generally comes from other care givers rather than the nursing home. I'll send some statistics but we have seen more than one case. We have investigated in those situations and substantiated neglect. By far, the majority of nursing homes do a fine job but not all have the staff to handle potential challenges. This bill could help mitigate some of those scenarios by getting someone involved to assist in the beginning.

Senator J. Lee: For example, there are a limited number of beds to handle individuals who have severe behavioral health issues so one facility may not have programs in place to help an individual with extraordinary issues that may affect other residents. In cases like that, there may be a transfer facility that has more resources available.

Senator Clemens: Do you have an idea how many complaints come from long term facilities versus swing bed and assisted living?

Corinne Hofmann: I don't recall any instances of a report coming from a swing bed or assisted living setting.

(26:00) **Shelly Peterson President of the North Dakota Long Term Care Association:** Testified in Opposition to SB 2113 (See Attachment #3 and 4).

Senator J. Lee: Will you take a moment to explain the differences among skilled care, basic care, and assisted living?

Shelly Peterson: A skilled nursing facility means the person needs 24 hour nursing care and a nurse is present in the facility at all times. We have unstable medical conditions that require assistance and supervision. They are generally admitted directly from home or after a hospital stay and it is hard to schedule a care giver because they need help throughout the day.

Assisted living is an apartment-like setting with a contract for services. People enjoy the private home setting and it is the most popular and our 2,900 units are 95% occupied. The occupants are fairly independent—sometimes you see physical limitations or the beginning stages of dementia.

The basic care facilities are for the population between assisted living and skilled nursing facilities. These individuals do not need 24-hour care but they have more physical limitations and health needs and they need supervision and the availability of staff. Basic care units are 82% occupied and 6 facilities closed across the state and we see some transfer trauma.

(44:10) Senator J. Lee: Assisted living is more of a contracted service and you pay for the services you need. Basic care has a flat fee.

Shelly Peterson: Correct. Right now, assisted living is 99% private pay. We conducted a survey of 600 North Dakotans and we asked if they would like to see more state or federal funds going in to help support assisted living; 65% said they would like funds to help pay.

Senator Larsen: Could you talk about the PACE (Programs of All-Inclusive Care for the Elderly) program?

Shelly Peterson: Individuals enrolled in PACE are generally Medicare and Medicaid qualified. They need nursing facility level of care and the PACE project is supporting them to help them stay in their home. I can ask someone to send you information on PACE.

Senator Heckaman: I stopped at a facility that had to cut down a number of basic care beds because of the change in federal regulations. Has that happened across the state?

Shelly Peterson: We've had 6 rural basic care facilities close this year because of that issue. We're bringing legislation before you to help solve that issue so they can consider reopening.

Senator Anderson: Why does it cost more money to provide a discharge summary?

Shelly Peterson: It's another regulation we have to follow. We think the most important person in the notification process is the family and the resident. We should spend time with the family and the resident when we are working on these transfers.

Senator Anderson: You are required by federal law to provide notice to the ombudsman. Is there a way we can fix this to mirror what federal law requires for the state?

Shelly Peterson: Since the federal law requires notice, we do not need a state law. Unless you would like to require basic care, swing bed hospitals, and assisted living to give notice, you do not need a change in the law.

Senator Clemens: What is the regulation that now requires long term care to notify?

Shelly Peterson: You can find the requirements at 42 CFR 40 – 43.15.

Senator Kreun: How many transfers take place every month?

Shelly Peterson: We have approximately 5,700 nursing home residents; on average we deliver services to 12,000. There are about 6,000 transfers and admission per year.

Senator Kreun: Who decides when an ombudsman is required?

Shelly Peterson: Generally the ombudsman is the advocate or voice for the resident. Any time a resident or a resident's family will call, the ombudsman is there to help. Many times, we as a facility will call the ombudsman to help with difficult situations.

Senator Kreun: Who hires the ombudsman and pays them?

Senator J. Lee: We do.

Senator Kreun: Where does the advocacy group come in if we are doing that work already?

Senator J. Lee: If an individual feels their concerns have not been adequately addressed, the group will help. The group is tax-payer funded and they also serve children with disabilities.

Senator Kreun: If the state is operating it and we are asking for 6,000 transfers per year, who is paying the individuals to do that work?

Senator J. Lee: No one is paying the long term care facilities. The federal government says the skilled care facilities have to do the reporting.

Senator Kreun: Is this a brand new bill?

Senator J. Lee: It's restating federal law but the state has the option to consider the other care components.

Senator Kreun: We are talking about a considerable work and expense.

(58:50) Senator Anderson: The only facility that wouldn't fall under the federal law would be a private nursing home that did not take Medicare or Medicaid, correct? But we do not have any of those facilities.

Shelly Peterson: In ND, you have to be a licensed facility and state law would still apply. We do not have any skilled care facilities that are not Medicare and Medicaid certified.

(1:00:15) Jerry Jurena, President, ND Hospital Association: Testified in Opposition (See Attachment #5).

Senator Anderson: Is it not true that swing bed facilities are almost all acute care and would come under the federal requirement to report?

Jerry Jurena: The hospitals are all acute care and abide by Medicaid and Medicare rules and regulations.

Senator Anderson: If they have swing bed patients, would they need to report under the federal requirement?

Jerry Jurena: No, but under this bill they would.

Senator J. Lee: This law would affect them although the federal law does not.

Senator Piepkorn: Do you have complaints?

Jerry Jurena: We have had no complaints to my knowledge.

Senator Lee closed the hearing on SB 2113.

2017 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

SB 2113
1/11/2017
Job Number 26813

- Subcommittee
 Conference Committee

Committee Clerk Signature

Marnie Johnson

Explanation or reason for introduction of bill/resolution:

A bill relating to providing transfer and discharge notices; relating to duties of state long-term care ombudsman and establishment of reporting system.

Minutes:

0 Attachments

Beginning of hearing on SB 2113: meter mark 48:17.

Chair J. Lee: Do I have a motion on SB 2113?

V-Chair Larsen: I motion Do Not Pass on SB 2113

Senator Anderson: Seconded

A roll call vote was taken.

Motion Passes 7-0.

Senator Clemens will carry.

**2017 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2113**

Senate Human Services Committee

Subcommittee

Amendment LC# or Description: _____

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

Motion Made By Sen Larson Seconded By Sen Anderson

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee (Chairman)	X		Senator Joan Heckaman	X	
Senator Oley Larsen (Vice-Chair)	X		Senator Merrill Piepkorn	X	
Senator Howard C. Anderson, Jr.	X				
Senator David A. Clemens	X				
Senator Curt Kreun	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen. Clemens

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

REPORT OF STANDING COMMITTEE

SB 2113: Human Services Committee (Sen. J. Lee, Chairman) recommends **DO NOT PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2113 was placed on the Eleventh order on the calendar.

2017 TESTIMONY

SB 2113

SB 2113
Attachment
#1
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Testimony
Senate Bill 2113 – Department of Human Services
Senate Human Services Committee
Senator Judy Lee Chairman
January 11, 2017

Chairman Lee, and members of the Senate Human Services Committee, I am Karla Backman, State Long Term Care Ombudsman with the Department of Human Services (Department). I am here today in support of Senate Bill 2113, which was introduced at the request of the Department.

The amendment to subsection 7 of section 50-10.1-03 is to match the wording of the subsection to the rest of chapter 50-10.1 and also ND Administrative Code 75-03-25.

The amendment to section 50-10.1-06 is to clarify the wording.

The new section to chapter 50-10.1 is to have all long term care facilities send a copy of transfer and discharge notices to the State Long Term Care Ombudsman. North Dakota defines long term care facilities as assisted living, basic care, swing bed hospitals approved to furnish long term care services, and nursing homes. All of these facilities are required by North Dakota Century Code chapter 50-10.2 to give their residents a notice of any transfer or discharge. The intent of the new section is to assist the long term care ombudsmen in fulfilling their responsibility to act as an advocate for residents of long term care facilities. Transfer and discharge issues have been one of the top concerns encountered by the ombudsman program for the past few years. Effective November 28, 2016, the updated Federal Requirement of Participation for Nursing

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Homes requires all nursing homes to send a copy of the written transfer and discharge notices to the Office of the State Long Term Care Ombudsman. The purpose is to provide added protection to the resident and assist the State Long Term Care Ombudsman to keep informed of agency activities. The proposed changes reaffirm the new federal requirement for nursing homes and also insure that residents of assisted living, basic care, and swing beds have the same safeguard.

There are times when the transfers and discharges are done with an improper justification and the long term care ombudsman is not aware of the situation until after the transition has taken place. Having the long term care facilities send the notices allows the long term care ombudsman to educate the facility on the allowed reasons for transfers and discharges. Also the ombudsman can discuss the situation with the resident and then advocate as directed by the resident or the resident's representative.

Other times a discharge to a different level of care is necessary to meet the needs of the resident as each level of care has limitations on the care that can be provided. This new section would provide the opportunity for the ombudsman to provide additional education and support to residents and their families when such a transfer or discharge is necessary.

Furthermore, all transfers and discharges have the potential for the resident to suffer transfer trauma. This is a response to the stress caused by a transfer or relocation that may include depression; agitation; an increase in withdrawn behavior; self-care deficits; falls; and weight loss. Any transfer or discharge can mean the resident may be leaving their community, family and friends which can lead to fewer visits and

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less community engagement. Lost also are the known routine, familiar staff and medical providers. The ombudsmen can also help educate the long term care facilities – both the discharging and the receiving – on strategies to reduce transfer trauma.

With full knowledge of all transfers and discharges, the ombudsman can support the resident throughout the transition process. Overall this section helps insure the basic resident and human right of being treated courteously, fairly and with the fullest measure of dignity.

This concludes my testimony. I would be happy to answer any questions the committee may have. Thank you.

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**Senate Human Services Committee
Sixty-fifth Legislative Assembly
Senate Bill No. 2113
January 11, 2017**

Good morning, Chairwoman Lee and Members of the Senate Human Services Committee. I am Corinne Hofmann, Director of Policy and Operations for the Protection & Advocacy Project. The Protection & Advocacy Project is an independent state agency that acts to protect people with disabilities from abuse, neglect, and exploitation, and advocates for the disability-related rights of people with disabilities.

P&A supports SB 2113 and the provision that a copy of long-term care transfer and discharge notices be sent to the state long-term care ombudsman. The population served in our long-term care facilities is vulnerable and often at the mercy of decisions made by others. They may not fully understand their rights. They may have difficulty voicing concerns to nursing home staff. Family may be unavailable or unable to assist the resident.

The state long-term care ombudsman works solely for long-term care residents and seeks to ensure their rights are protected. The ombudsman helps ensure the basic right of being treated courteously, fairly and with dignity is provided to residents.

Transfers and discharges can be traumatic and disruptive for the resident. With full knowledge of transfers and discharges, the ombudsman would be able to support residents throughout the

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transition process and minimize any negative impact on the resident.

There are also times when the transfer or discharge is done improperly or with inadequate justification. Options for dealing with the behavior or issue prompting the transfer or discharge may not have been fully explored or attempted. Notification of the transfer or discharge would allow the ombudsman an opportunity to proactively work with the resident and facility to explore solutions and avoid the disruption and trauma of a potentially unnecessary transfer or discharge.

For these reasons we would ask you to support SB 2113. Thank you for the opportunity to appear before you. I would be happy to answer any questions you may have.

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**Testimony on SB 2113
Ombudsman Program
Senate Human Services Committee
January 11, 2017**

Good morning Chairman Lee and members of Senate Human Services. My name is Shelly Peterson, President of the North Dakota Long Term Care Association (NDLTCA). We represent 210 Assisted Living, Basic Care and Nursing facility members. I am here today to testify against SB 2113 and request that you defeat it.

We support the Ombudsman Program. They are a great advocate and resource for residents, staff and facilities. I am a former DHS Ombudsman and have experienced many times the assistance Ombudsman can provide to all parties.

We are opposed to the new section 3 on page two of the bill. This new provision would require every nursing facility, basic care facility, assisted living facility and swing bed facility to provide a copy of each transfer and discharge notice to the State Long Term Care Ombudsman on the day any notice is given to a resident/tenant.

On November 28, 2016 this became a new federal requirement for nursing facilities. It is causing confusion and misinterpretation statewide and all over the nation. CMS has provided little guidance to the states and has indicated they hope to issue guidance sometime in the future. Why would we adopt a federal requirement that is seen as overarching, unnecessary and more paperwork? Why would we expand it in our state to basic care, assisted living and swing bed hospital residents? Let's wait

and see how it is implemented with nursing facilities. Let's see if it is necessary. For nursing facilities it is just one new requirement with hundreds of pages of new requirements going into effect in the next 3 years. Let's not pass this requirement onto others until we see a need.

We have many competent adults and families who probably wouldn't appreciate information being faxed, scanned and emailed to a state agency. Personal information about why they are being transferred or discharged. Examples such as:

- Shelly Peterson has not paid her assisted living bill, is 90 days past due and will be evicted on 1-31-17.
- Maggie May is physically aggressive and threatening fellow residents. Recently she struck her roommate with a chair, causing the resident to be hospitalized. Other residents fear her presence. For the welfare and safety of other residents, Ms. May is being discharged effective 3-17-17.
- Carol Ternes spiked a fever of 103 degrees and is being transferred to the hospital.

Why would we want to pass a state law and require all transfer and discharge notices to be sent to the state? What is the value? What is the purpose? Does government need to know? Americans want less regulations, but more importantly regulations that are meaningful and serve a purpose. We prefer regulations that produce quality and don't take us away from the bedside of residents. Please don't give facilities more paperwork.

Facilities must provide and document sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from a facility. This orientation must be provided in a formal manner that

residents can understand. A facility must establish, maintain and implement policies and procedures regarding transfer and discharge.

All nursing facilities, basic care, assisted living and swing bed hospitals must comply with the North Dakota Residents Bill of Rights.

In the North Dakota Century Code it states:

50-10.2-02. Residents' rights - Implementation.

1. All facilities shall, upon a resident's admission, provide in hand to the resident and a member of the resident's immediate family or any existing legal guardian of the resident a statement of the resident's rights while living in the facility. Within thirty days after admission, the statement must be orally explained to the resident and, if the resident is unable to understand, to the resident's immediate family member or members and any existing legal guardian of the resident, and thereafter annually so long as the resident remains in the facility. The statement must include rights, responsibilities of both the resident and the facility, and rules governing resident conduct. Facilities shall treat residents in accordance with provisions of the statement. The statement must include provisions ensuring each resident the following minimum rights:

l. The right not to be transferred or discharged except for:

- (1) Medical reasons;
- (2) The resident's welfare or that of other residents;
- (3) Nonpayment of one's rent or fees; or
- (4) A temporary transfer during times of remodeling.

m. The right to receive at least a thirty-day written advance notice of any transfer or discharge when the resident is being discharged to another facility or the resident's own home, or when the resident is being transferred or discharged because of a change in the resident's level of care; however, advance notice of transfer or discharge may be less than

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thirty days if the resident has urgent medical needs that require a more immediate transfer or discharge, or a more immediate transfer or discharge is required to protect the health and safety of residents and staff within the facility

Thank you for the opportunity to testify on SB 2113 and explain to you why we think it is not necessary to pass this legislation. The facility is responsible to assure all residents receive the proper discharge and transfer notice. We don't believe government needs to receive a copy of all those notices. If a facility is non-compliant and not doing their job, deal with that facility, but don't ask all 250 plus facilities covered under the Bill of Rights, to send notices to the Capitol. Passing new additional federal requirements onto basic care, assisted living and swing bed hospitals are not necessary. Let's not burden these facilities with additional paperwork that takes them away from resident care. The most important person, the resident, their family and legal guardians are receiving the written notice.

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

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

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Basic Care Satisfaction Survey Results

	1-Poor	2-Average	3-Good	4-Very Good	5-Excellent
Overall Satisfaction (n=596)	<1%	4%	13%	31%	51%
Quality of Staff (n=545)	<1%	3%	13%	42%	41%
Quality of Care (n=572)	<1%	3%	12%	40%	45%
Quality of Food (n=585)	4%	11%	27%	33%	26%

29 Basic Care Facilities and representing 834 beds participated in the survey October 2016

Assisted Living Satisfaction Survey Results

	1-Poor	2-Average	3-Good	4-Very Good	5-Excellent
Overall Satisfaction (n=966)	<1%	4%	13%	35%	47%
Quality of Staff (n=981)	<1%	3%	12%	34%	51%
Quality of Care (n=974)	<1%	3%	14%	36%	46%
Quality of Food (n=940)	4%	16%	28%	31%	21%

40 Assisted Living Facilities representing 1392 units participated in the survey October 2016

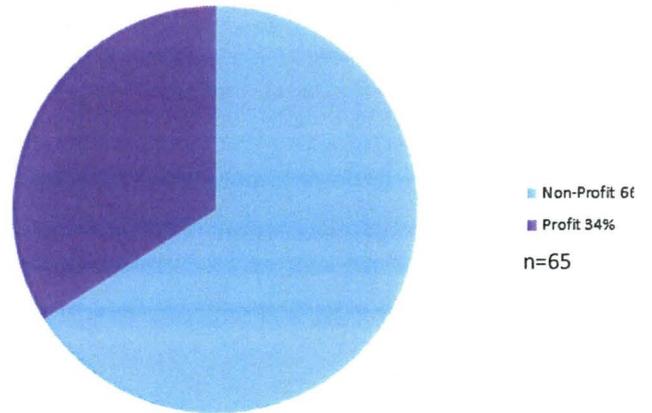
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Assisted Living Facts

ASSISTED LIVING AT A
GLANCE

75 licensed assisted living facilities
2,924 licensed units
2016 average occupancy was 95%

Figure 1: Ownership of Assisted Living Facilities

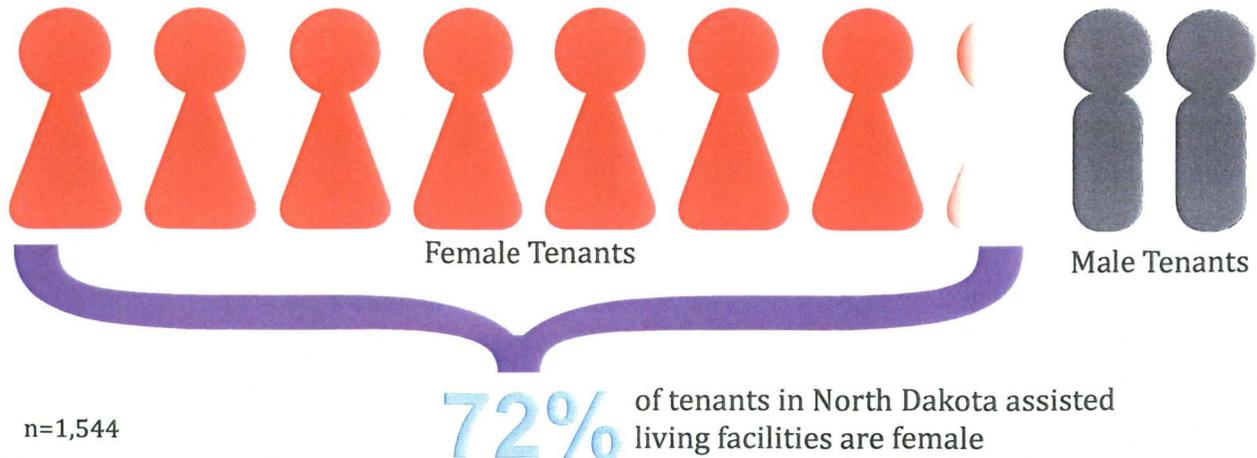


Assisted Living Facts

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 includes **snacks, housekeeping, activities, transportation, and laundry**.
- Facilities provide a **full range of services** from bathing to medication management to hospice care.
- Assistance with daily care, isolation and the need for supervision are the top issues precipitating the desire to move into an assisted living facility.
- Current tenants range in age from **53 to 104** with the average age being 85.

Figure 2: Gender

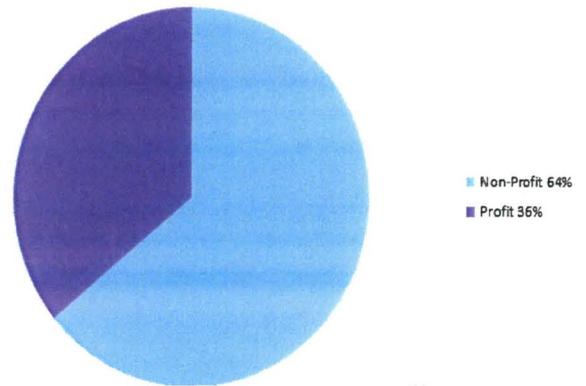


Basic Care Facts

BASIC CARE AT A GLANCE

62 licensed basic care facilities
1,818 licensed units
2016 average occupancy was 82%

Figure 7: Ownership of Basic Care Facilities



n=58

Basic Care Facts

A basic care facility is a congregate residential setting with **private** and **semi-private** rooms, providing **24-hour supervision** and staffing.

- Basic Care provides an **all-inclusive rate** providing room, meals, personal care services, supervision, activities, transportation, medication administration, nursing assessment, and care planning.
- Current residents range in age from **40 to 105 years old**, with the average age being 79.

Figure 8: Gender of Basic Care Residents



n=1,031

71% of tenants in North Dakota basic care facilities are female

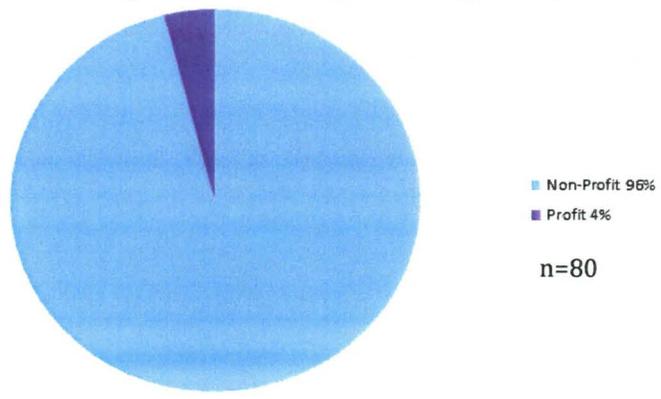
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Nursing Facility Facts

NURSING FACILITIES AT A GLANCE

80 licensed nursing facilities
6,141 licensed beds
2016 average daily rate is \$258.78
2016 average occupancy was 93.6%

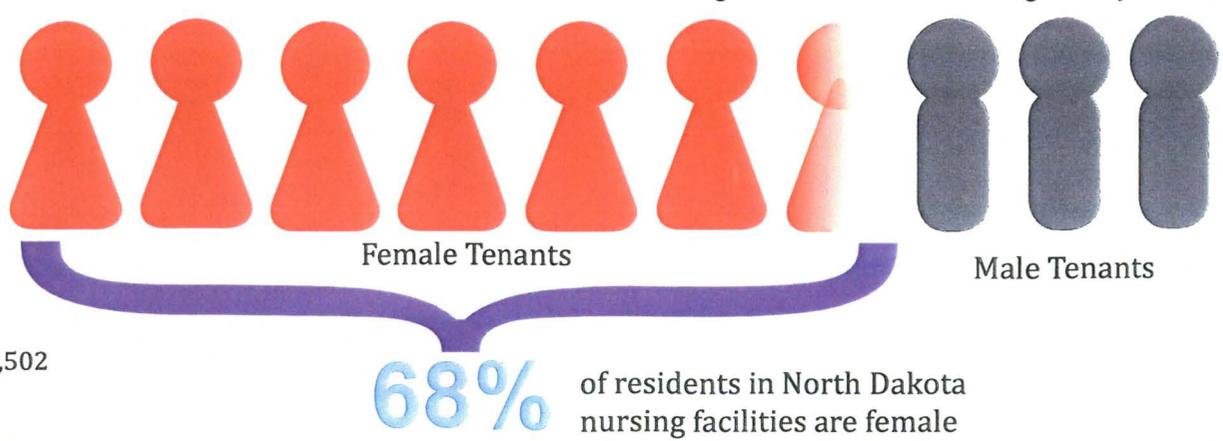
Figure 14: Ownership of Nursing Facility



NURSING FACILITY FACTS

- Resident needs are complex and they are in need of **24-hour** nursing care.
- Most residents are admitted after a hospital stay or a directly from their home
- The most significant issues necessitating admission to a nursing facility is the **need for care throughout the day**. Residents are unable to meet their own needs for dressing, toileting, eating, and remaining safe. Most often their **medical needs are complex**, requiring continuous supervision.
- Current residents range in age from **33 to 109** years old, with the average age being 84.
- The average length of stay is **less than a year**.
- According to CMS data, in 2016 ND nursing facilities had the **second highest percentage** of residents age 95 and older, 9.24% of all residents compared to the US average in this age category of 5.18%. ND nursing facilities hold the highest record for the **85-94 age group** at 47.2%, compared to the US average of 33%.

Figure 15: Gender of Nursing Facility Residents



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Vision
The North Dakota Hospital Association will take an active leadership role in major Healthcare issues.

Mission
The North Dakota Hospital Association exists to advance the health status of persons served by the membership.

Testimony: 2017 HB 2113
Senate Human Services Committee
Senator Judy Lee, Chairman
January 11, 2017

Good morning Chairman Lee and Members of the Senate Human Services Committee. I am Jerry E. Jurena, President of the North Dakota Hospital Association (NDHA). I am here to testify regarding 2017 Senate Bill 2113 and ask that you give this bill a **Do Not Pass** recommendation.

While we certainly support the work of the State Long-Term Care Ombudsman to be a resource for, and to help, residents of long term care facilities understand their rights and work with facilities to resolve complaints, this bill would place additional burdens on these facilities that are unnecessary.

State law currently requires skilled nursing care facilities, basic care facilities, assisted living facilities, and swing-bed hospitals to provide to residents a written notice, at least thirty days in advance, of any transfer or discharge. The notice must provide the reason for the transfer or discharge, the effective date of transfer or discharge, the location to which the resident will be transferred or discharged, a statement of the resident's appeal rights including the name, address, and telephone number of the entity to which the appeal may be made and how to obtain assistance with completing and submitting the appeal request, and the name, address and telephone number of the State Long-term Care Ombudsman. This bill would require these facilities to also provide a copy of each transfer and discharge notice to the State Long-Term Care Ombudsman at the same time the notice is given to the resident.

A number of our member hospitals operate swing bed facilities and skilled nursing facilities (nursing homes). We oppose this bill because, although CMS issued federal regulations implementing this requirement, it has raised questions that have yet to be answered by CMS.

PO Box 7340 Bismarck, ND 58507-7340 Phone 701 224-9732 Fax 701 224-9529

For example:

- Does a facility need to have the resident's permission to send the notice of transfer or discharge to the State Long-term Care Ombudsman? There is often detailed information in the notice about why the resident is being discharged or transferred. Will it be a HIPAA violation if the facility shares such information with the Ombudsman without the resident's written authorization?
- The written notice given to the resident must also include the name, address and telephone number of the State Long-term Care Ombudsman. If the notice has already been given to the Ombudsman, it is potentially confusing to the resident and unnecessary.
- Another requested clarification is whether the effect of sending the notice to the Ombudsman constitutes a request for assistance and, if not, what does a resident need to do to make such a request? Or will residents mistakenly assume that because the Ombudsman was notified, assistance will automatically be provided?
- It is unclear why the Ombudsman's office would need notification of every routine discharge or transfer. Such notification should be reserved for situations where the transfer or discharge is contested by the resident and he or she wants the assistance of the Ombudsman. There is concern that Ombudsman offices will not have the capacity to receive and act upon even a small portion of the notices they receive.
- It creates additional expense by requiring additional documentation to be provided by facilities and it will ultimately be confusing for residents as to why their private information is being shared with the Ombudsman without their permission.

It would be best to wait for CMS to answer some of these questions and give everyone guidance as to how to deal with these issues before we mandate it in our State law.

For these reasons, we oppose this bill and ask that you give it a **Do Not Pass** recommendation.

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

Respectfully Submitted,

Jerry E. Jurena, President
North Dakota Hospital Association