

2009 SENATE HUMAN SERVICES

SB 2045

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2045

Senate Human Services Committee

Check here for Conference Committee

Hearing Date: 1-07-09

Recorder Job Number: 6647, 6649

Committee Clerk Signature

Mary K Monson

Minutes:

Chairman Senator J. Lee opened the hearing on SB 2045 relating to advance notice requirements of any transfer or discharge of a resident to a nursing home, swing-bed hospital, or basic care or assisted living facility.

Sheila Sandness, Fiscal Analyst for the Legislative Council, appeared to introduce SB 2045 and to answer any questions. See attachment #1

Shelly Peterson, ND Long Term Care Association, appeared in favor of SB 2045.

See attachment #2.

Senator Pomeroy asked how the notices are generated.

Shelly Peterson answered that there are certain elements that must be in all notices such as the reason for the discharge, where they will be discharged to and who to contact if they wish to appeal. She offered to provide the committee with additional information on what is supposed to be contained in the written notices. (See attachment #4)

Senator Dever asked who the notice goes to.

Shelly Peterson replied that the notice would go to the resident and/or their legal guardian or both.

Senator J. Lee asked what happens if a place can't be found to be discharged to.

Shelly Peterson said they have to keep them in that facility.

Senator J. Lee asked if there is any recourse for a facility to capture dollars back on those who can't be discharged because of nonpayment.

Shelly Peterson explained that it is virtually impossible.

Bruce Murray, Lawyer with the ND Protection and Advocacy Project testified in favor of SB 2045. See attachment #3.

Senator J. Lee asked Shelly Peterson if she thought there was a need to include any kind of language developed accommodations or if those criteria were being met.

Shelly Peterson answered that they had not had concerns in that area at this point and felt that it was adequately covered.

There was no testimony in opposition to SB 2045.

Senator J. Lee closed the hearing on SB 2045.

Job # 6649

Senator J. Lee opened SB 2045 for discussion and asked if there was any discussion.

After a brief discussion on the proposed amendment that indicated it wasn't necessary,

Senator Dever made a motion to approve SB 2045. Seconded by **Senator Pomeroy**.

Roll call vote 6-0-0. Motion carried. Carrier is **Senator Marcellais**.

Date: 1-07-09

Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2045

Senate Human Services Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Sen. Dever Seconded By Sen. Pomeroy

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee, Chairman	✓		Senator Joan Heckaman	✓	
Senator Robert Erbele, V.Chair	✓		Senator Richard Marcellais	✓	
Senator Dick Dever	✓		Senator Jim Pomeroy	✓	

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Marcellais

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

REPORT OF STANDING COMMITTEE

SB 2045: Human Services Committee (Sen. J. Lee, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2045 was placed on the
Eleventh order on the calendar.

2009 HOUSE HUMAN SERVICES

SB 2045

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2045

House Human Services Committee

Check here for Conference Committee

Hearing Date: March 4, 2009

Recorder Job Number: 10164 (starts at 5 min. 38 sec.) &10165

Committee Clerk Signature

Vicky Crabtree

Minutes:

Chairman Weisz: I understand you would like to also introduce 2045 at this time.

Sheila Sandness, from Legislative Council introduced the bill: This bill relates to the advanced notice of a transfer or discharge of a resident from a nursing home, swing bed hospital or basic care or assistance living facility. I'm here to provide information. This bill provides for (inaudible) and statutes and extend that 30 day written notice requirement to basic care and assistant living facilities.

Shelly Peterson, President of ND Long Term Care Association: Testified in support of the bill. **See Testimony #1.**

Veronica Zietz, Executive Director of The Arc of Bismarck: Testified in support. **See Testimony #2.**

Rep. Conrad: The wording you suggested is, in written advanced notice, written or (inaudible).

Rep. Porter: Any estimates on the cost to your amendment to facilities across the state?

Veronica Zietz: I do not have any an exact amount, but I would say that most of these written notices would be (inaudible) themselves.

NO OPPOSITION.

Chairman Weisz closed the hearing on SB 2045.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2045

House Human Services Committee

Check here for Conference Committee

Hearing Date: March 4, 2009

Recorder Job Number: 10204

Committee Clerk Signature

Ticky Crabtree

Minutes:

Chairman Weisz: Let's take up 2045.

Rep. Porter: Motion a DO PASS.

Rep. Holman: Second.

Roll Call Vote: 10 yes, 0 no, 3 absent, Rep. Uglem, Conrad, Kilichowski

MOTION CARRIED

BILL CARRIER: Rep. Holman

Date: 3-4-09

Roll Call Vote #:

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2045

House HUMAN SERVICES Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Rep. Porter Seconded By Rep. Holman

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN ROBIN WEISZ	✓		REP. TOM CONKLIN	✓	
VICE-CHAIR VONNIE PIETSCH	✓		REP. KARI L CONRAD	A	
REP. CHUCK DAMSCHEN	✓		REP. RICHARD HOLMAN	✓	
REP. ROBERT FRANTZVOG	✓		REP. ROBERT KILICHOWSKI	A	
REP. CURT HOFSTAD	✓		REP. LOUISE POTTER	✓	
REP. MICHAEL R. NATHE	✓				
REP. TODD PORTER	✓				
REP. GERRY UGLEM	A				

Total (Yes) 10 No 0

Absent 3

Bill Carrier Rep. Holman

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

MOTION Carried

REPORT OF STANDING COMMITTEE

SB 2045: Human Services Committee (Rep. Weisz, Chairman) recommends DO PASS
(10 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). SB 2045 was placed on the
Fourteenth order on the calendar.

2009 TESTIMONY

SB 2045

Madame Chairman, members of the committee:

For the record, my name is Sheila Sandness and I am a Fiscal Analyst for the Legislative Council. I am here to present information on Senate Bill 2045 relating to advance notice requirements of any transfer or discharge of a resident from a nursing home, swing-bed hospital, or basic care or assisted living facility. I appear neither for nor against the bill, but just to provide information and answer any questions you may have.

The Long Term Care Committee learned under current administrative rules, nursing homes must give a thirty-day written notice of any discharge or transfer. Please refer to pages 274-275 of the "Report of the North Dakota Legislative Council". This bill provides for such notice in statute and extends the thirty-day written notice requirement to basic care and assisted living facilities.

Senate Bill 2045 amends subdivision m of subsection 1 of section 50-10.2-02 of the NDCC. The amendment changes "a thirty-day advance notice" to "at least a thirty-day written advance notice".

Testimony on SB 2045
Senate Human Services Committee
January 7, 2009

Senator Lee and members of the Senate Human Services Committee, thank you for the opportunity to testify on SB 2045. My name is Shelly Peterson, President of the North Dakota Long Term Care Association. Our association represents assisted living facilities, basic care facilities and nursing facilities. I am here to testify in support of SB 2045.

Long term care facilities provide care for 14,000 North Dakotans each year.

Federal regulations (42 CFR 483.12) require that a nursing facility or swing bed hospital provide a written notice when transferring or discharging a resident in their care. The written notice must be given at least thirty days prior to the move occurring unless certain emergency or other conditions exist.

Federal regulations do not govern assisted living or basic care when they transfer or discharge an individual in their care.

Although federal regulations do not govern this area, state law does. Attached is Chapter 50-10.2, Rights of Health Care Facility Residents. This chapter asserts certain rights to individuals living in a nursing facility, assisted living facility, basic care facility or swing bed hospital. SB 2045, improves residents rights by requiring all long term care facilities previously mentioned to provide a written notice when individuals are being discharged or transferred from a facility. We believe all notices of discharge or transfer should be written. If it is not in writing, misunderstanding and miscommunication is more likely to occur. Today the standard of practice is to put all notices in writing. We support a change in statute to require all notices of discharge/transfer be written.

Thank you for the opportunity to testify. Should you have any questions, I would be happy to answer them.

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

CHAPTER 50-10.2 RIGHTS OF HEALTH CARE FACILITY RESIDENTS

50-10.2-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Conflict of interest" means any type of ownership in a facility or membership on the governing body of a facility by a provider of goods or services to that facility or by a member of that person's immediate family.
2. "Department" means the department of human services.
3. "Facility" means a skilled nursing care facility, basic care facility, assisted living facility, or swing-bed hospital approved to furnish long-term care services.
4. "Immediate family" means husband, wife, father, mother, brother, sister, son, daughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, stepchild, uncle, aunt, niece, nephew, or grandchild.
5. "Remodeling" means any alteration in structure, refurbishing, or repair that would:
 - a. Prevent the facility staff from providing customary and required care; or
 - b. Seriously endanger or inconvenience any resident with noise, dust, fumes, inoperative equipment, or the presence of remodeling workers.
6. "Resident" means a person residing in a facility.

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:
 - a. The right to civil and religious liberties, including knowledge of available choices, the right to independent personal decisions without infringement, and the right to encouragement and assistance from the staff of the facility to promote the fullest possible exercise of these rights.
 - b. The right to have private meetings, associations, and communications with any person of the resident's choice within the facility.
 - c. The right of each resident, the resident's immediate family, any existing legal guardian of the resident, friends, facility staff, and other persons to present complaints on the behalf of the resident to the facility's staff, the facility's administrator, governmental officials, or to any other person, without fear of reprisal, interference, coercion, discrimination, or restraint. The facility shall adopt a grievance process and make the process known to each 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. An

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individual making a complaint in good faith is immune from any civil liability that otherwise might result from making the complaint.

- d. The right to send and receive unopened personal mail and the right of access to and use of telephones for private conversations.
- e. The right to assured private visits by one's spouse, or if both are residents of the same facility, the right to share a room, within the capacity of the facility, unless sharing a room is not medically advisable as documented in the medical records by the attending physician.
- f. The right to manage one's own financial affairs if not under legal guardianship, or to delegate that responsibility in writing to the administrator or manager of the facility, but only to the extent of funds held in trust by the facility for the resident. If such a trust is established, then a written quarterly accounting of any transactions made on behalf of the resident must be furnished along with an explanation by the facility to the resident or the person legally responsible for the resident.
- g. The right to be fully informed in writing prior to or at the time of admission and during one's stay, of services provided and the charges for those services, including ancillary charges. Residents, or their legal guardians, must be informed at least thirty days prior to any change in the costs or availability of the services. No facility may demand or receive any advance payment or gratuity to assure admission.
- h. The right to be adequately informed of one's medical condition and proposed treatment and to participate in the planning of all medical treatment, including the right to refuse medication and treatment, to be discharged from the facility upon written request, and to be notified by the resident's attending physician of the medical consequences of any such actions.
- i. The right to have privacy in treatment and in caring for personal needs, to use personal belongings, to have security in storing and using personal possessions, and to have confidentiality in the treatment of personal and medical records. The resident has the right to view, and authorize release of, any personal or medical records.
- j. The right to be treated courteously, fairly, and with the fullest measure of dignity.
- k. The right to be free from mental and physical abuse and the right to be free from physical or chemical restraint except in documented emergencies or when necessary to protect the resident from injury to self or to others. In such cases, the restraint must be authorized and documented by a physician for a limited period of time and, if the restraint is a chemical one, it must be administered by a licensed nurse or physician. Except as provided in this subdivision, drugs or physical restraints may not be used or threatened to be used for the purposes of punishment, for the convenience of staff, for behavior conditioning, as a substitute for rehabilitation or treatment, or for any other purpose not part of an approved treatment plan.
- l. The right not to be transferred or discharged except for:
 - (1) Medical reasons;
 - (2) The resident's welfare or that of other residents; or
 - (3) Nonpayment of one's rent or fees.

Residents may be temporarily transferred during times of remodeling.

- m. The right to receive a thirty-day 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; and the right to receive advance notice of transfer or discharge under all other circumstances to the extent not prohibited by sound medical reasons, or incompatibility which affects a resident's welfare or that of another resident.
 - n. The right to refuse to perform services on behalf of the facility, unless agreed to by the resident or legal guardian and established in the plan of care.
 - o. The right to a claim for relief against a facility for any violation of rights guaranteed under this chapter.
 - p. The right to have each facility display a notice that the following information is available for public review and make the information available on request:
 - (1) A complete copy of every inspection report, deficiency report, and plan of correction the facility received during the previous two years.
 - (2) The facility's grievance process.
 - (3) A copy of the statement of ownership, board membership, and partners.
 - (4) A statement of ownership setting forth any conflict of interest in the operation of the facility.
 - q. The right to a pharmacist of the resident's choice irrespective of the type of medication distribution system used by the facility.
 - r. The right to not be discriminated against by a facility in the admissions process or in the provision of appropriate care on the basis of the resident's source of payment to the facility. Any applicant for admission to a facility who is denied admission must be given the reason for the denial in writing upon request.
 - s. The right of residents and their families to organize, maintain, and participate in resident advisory and family councils.
 - t. The right of residents receiving services performed by a provider from outside the facility to be informed, on request, of the identity of the provider.
2. Waiver of any of the rights guaranteed by this chapter may not be made a condition of admission to a facility.
 3. Each facility shall prepare a written plan and provide staff training to implement this chapter.
 4. The department shall hold open meetings at least once every two years in each region established by the governor's executive order 1978-12 dated October 5, 1978, having a facility, to advise and to facilitate communication and cooperation between facility personnel and the residents in their mutual efforts to improve resident care; and to document concerns and issues needing to be addressed. Appropriate advance notice must be given.
 5. The department shall develop and coordinate with the facility licensing and regulatory agencies a relocation plan in the event a facility is decertified or unlicensed.

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50-10.2-03. Rulemaking authority of department. The department may adopt rules in accordance with chapter 28-32, consistent with and necessary for the implementation and enforcement of this chapter through the ombudsman program under chapter 50-10.1.

50-10.2-04. Enforcement - Injunction. Any facility that violates this chapter may be enjoined by a district court. Actions for injunction under this section may be prosecuted by the attorney general or any state's attorney in the name of the state. Actions for injunction under this section must be prosecuted in the county where the case arises.

TESTIMONY – PROTECTION AND ADVOCACY PROJECT
BILL 2045 (2009)

SENATE HUMAN SERVICES COMMITTEE

Honorable Judy Lee, Chairman

January 7, 2009

Chairman Lee, and members of the Senate Human Services Committee, I am Bruce Murry, a lawyer with the North Dakota Protection and Advocacy Project (P&A).

P&A strongly supports long-term care facilities providing residents with at least thirty days' written notice before transfer or discharge.

The North Dakota Human Rights Act and the Americans with Disabilities Act would require the facility to provide reasonable accommodations if the resident could not read or understand written notice. For instance, a facility might need to provide notice by large print, audio or in Braille for someone with low vision. If the committee feels some long-term care providers might not know of their other duties under the law, the bill could be amended to highlight the need for reasonable accommodations.

Thank you very much for your consideration.

Nursing Facility and Swing Bed residents must receive a written notice on a transfer and discharge.

The written notice must include:

- The reason for transfer or discharge.
- The effective date of transfer or discharge.
- The location to which the resident is transferred or discharged.
- A statement that the resident has the right to appeal the action to the State.
- The name, address, and telephone number of the State LTC Ombudsman.
- The name, address and telephone number of Protection and Advocacy is provided for residents with a diagnosis of developmental disabilities or for residents who are diagnosed with mental illness.
- A notice of transfer and discharge must be made by the facility at least 30 days prior to a move occurring.

Some attached to house

An exception to the 30-day notice is: A notice may be made as soon as practicable before transfer or discharge when:

- The safety of individuals in the facility would be endangered.
- The health of individuals in the facility would be endangered.
- The resident's health improves sufficiently to allow a more immediate transfer or discharge.
- An immediate transfer or discharge is required by the resident's urgent medical needs.
- A resident has not resided in the facility for 30 days.

Before a facility transfers or discharges a resident, the facility must notify the resident and, if known, a family member or legal representative of the resident, in writing and in a language and manner they understand of the move.

Basic Care

NDCC 50-10.2 states that basic care residents have the right to receive a thirty-day 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, and the right to receive advance notice of transfer or discharge under all other circumstances to the extent not prohibited by sound medical reasons, or incompatibility which affects a resident's welfare or that of another resident.

NDCC 50-10.2 states that basic care residents have the right not to be discharged except for:

- Medical reasons,
- The resident's welfare or that of other residents; or
- Nonpayment of one's rent or fees.

Testimony on SB 2045
House Human Services Committee
March 4, 2009

Chairman Weisz and members of the House Human Services Committee, thank you for the opportunity to testify on SB 2045. My name is Shelly Peterson, President of the North Dakota Long Term Care Association. Our association represents assisted living facilities, basic care facilities and nursing facilities. I am here to testify in support of SB 2045.

Long term care facilities provide care for 14,000 North Dakotans each year.

Federal regulations (42 CFR 483.12) require that a nursing facility or swing bed hospital provide a written notice when transferring or discharging a resident in their care. The written notice must be given at least thirty days prior to the move occurring unless certain emergency or other conditions exist. (See Attachment A) — *Same a locked to*

Federal regulations do not govern assisted living or basic care when they transfer or discharge an individual in their care. *Shelly testimony*

Although federal regulations do not govern this area, state law does. Attached is Chapter 50-10.2, Rights of Health Care Facility Residents. (See Attachment B) This chapter asserts certain rights to individuals living in a nursing facility, assisted living facility, basic care facility or swing bed hospital. SB 2045, improves residents rights by requiring all long term care facilities previously mentioned to provide a written notice when individuals are being discharged or transferred from a facility. We believe all notices of discharge or transfer should be written. If it is not in writing, misunderstanding and miscommunication is more likely to occur. Today the standard of practice is to put all notices in writing. We support a change in statute to require all notices of discharge/transfer be written.

Thank you for the opportunity to testify. Should you have any questions, I would be happy to answer them.

Shelly Peterson, President
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Testimony of Support

Senate Bill No. 2045

March 4, 2009

Good morning Chairman Weisz and members of the Human Services Committee. My name is Veronica Zietz (#166); I am the Executive Director at The Arc of Bismarck. I am here today representing both The Arc of Bismarck and The Arc of Cass County. The Arc is a non-profit organization focused on providing education, advocacy and supports to children and adults with disabilities to foster empowerment and full inclusion in the community.

I support Senate Bill No. 2045 because it would require that residents of long-term care facilities be notified in writing of any transfer or discharge from their care facility. Residents of long-term care facilities not only include the elderly but also some individuals with disabilities. I think this bill is simply good policy and affords residents of long-term care facilities the same rights as any other individual "renting" a dwelling would be allowed.

I do support this bill in current form; however, I would like to encourage the committee to consider adding language to this bill requiring the written notice be provided in alternative formats to individuals with print disabilities. Alternative formats could include a digital file that may be manipulated by enlarging the size of text, changing colors to make reading easier, having the computer produce an audio file from the text file, and Braille. Though, this may not affect many individuals it is important to note that some people aren't able to read standard printed material due to physical or mental limitations. By providing a written notice in alternative formats you would be allowing individuals with disabilities to be treated the same as all other residents of long-term care facilities.

The legislation that is being recommended in Senate Bill No. 2045 is a definite step in the right direction; I would ask that you go one step further and provide notices in alternative formats. I appreciate your consideration and urge you to vote do pass on SB 2045.

Thank you for your time and consideration.