

Testimony on HB 1332
Senate Human Services Committee
March 9, 2021

Good morning Chairman Lee and members of the Senate Human Services Committee. My name is Shelly Peterson, President of the North Dakota Long Term Care Association. We represent 211 assisted living, basic care, and skilled nursing facilities in North Dakota. I am here in support of HB 1332.

What we are striving to accomplish in HB 1332 is to extend the basic care and nursing facility moratorium through July 31, 2023, continue the same exceptions to the basic care moratorium, (for entities to get free beds if they can prove any unmet need), and to allow nursing facilities to change their bed capacity twice, (rather than once), in a 12 month period.

Section 1: Continues the basic care moratorium through July 31, 2023.

Section 2: Continues the nursing facility moratorium through July 31, 2023 and allows nursing facilities to make bed changes twice a year rather than once.

The primary purpose of this legislation is to limit any expansion of basic care beds, (other than DHS and DOH approving based upon need), and nursing facility beds. Why is this necessary when on 1-14-21 we had 1226 open nursing facility beds and 595 open basic care beds? Is there a risk, would anyone want to open a new basic care or nursing facility with the inherent risk of COVID and the lack of demand right now?

We continue to believe it is the best public policy to limit the expansion of the state's institutional expansion capacity. The state just settled the Department of Justice case where it was alleged North Dakota was not providing its citizens with all of the options to live in the most integrated independent setting. Why would we want to go in the opposite direction and potentially open up additional institutional capacity?

Under the moratorium we have had a good re-distribution of nursing facility beds from low demand areas to high demand areas. See the attached chart that displays the changes in our four most populated areas from 2009-2020 (Appendix A).

Today we are experiencing an unprecedented decline in occupancy. As shared with you in the hearing on HB 1065, we have 62 of 79 nursing facilities under 90% occupancy. In the June 30, 2020 cost report, we had 24 nursing facilities lose \$3.7 million in lost reimbursement caused by the occupancy penalty. I wish \$3.7 million was our only loss. Most facilities at this point in time are financially frail, with revenue plummeting and expenses at an all-time high.

At the end of the 2019 legislative session, I became aware of a new LLC-Southwest Crossing that was seeking approval to build a new continuum care retirement community in Minot, ND. They were seeking a zoning change with the city to build 110 assisted living units, 47 memory care, (basic care) units, 197 independent living units, and in the final phase, a 200 bed nursing facility, see Appendix B.

Now see Appendix C, which shows the basic care and nursing facilities in the Minot/Williston area licensed capacity and their occupancy on 1-14-21. In the House a question was raised in the hearing on HB 1065 asking

how a facility could operate when their occupancy has dropped so significantly, they cannot, and they are not. Just as we were surprised when Lutheran Social Services, a 100 year old organization, announced closing and bankruptcy. I fear for the long term care facilities that some may face that same fate.

I reached out to the LLC that is interested in investing and building a new continuum of care facility in Minot. In 2019 I told them about the moratorium and said we would help them identify potential beds to buy for their project. They were not fully aware of the moratorium at the time. I also reached out to them last month to see what their current plans are. They indicated they were still interested in building the facility and are currently evaluating and updating their feasibility study and management options. I told them we would be asking the legislature to continue the moratorium. He indicated they were exploring with some facility(s) options to purchase their existing beds/operations.

I think this is a win-win situation for all facilities and the state of North Dakota. The alternative of adding 200 nursing facility beds and 47 memory care beds in an already saturated region would further strain the already frail condition of facilities.

The last issue I would like to address is allowing nursing facilities to change bed capacity twice a year rather than once in a 12 month period. Yesterday in HB 1065 we identified another area of statute that needs to be changed to allow beds in bed layaway to come back into service prior to the 12 month requirement. Today, when you put beds aside in bed layaway, they must stay in layaway a minimum of 12 month and not exceed 48 months. At this time, we don't have anyone requesting to

bring beds back before the 12 month period, however once the impact of the pandemic is lessened, we believe demand for care will increase.

In closing I ask for your support of the moratorium and the flexibility to change bed capacity twice a year.

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