

**Testimony on HB 1175**  
**House Industry, Business and Labor Committee**  
**January 27, 2021**

Good morning Chairman Lefor and members of the House Industry, Business and Labor 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 1175.

COVID-19 has had a devastating impact on individuals living in a congregate care setting, their families, the staff taking care of residents, and the facilities themselves. The global outbreak of COVID-19 has been traumatic unlike anything we have ever experienced in long term care. Soon to enter the eleventh month of the pandemic, everyone is feeling the toll, including the dedicated facility staff members who are doing everything in their power to provide the best possible care in an extremely difficult situation. In the United States, long term care facilities have emerged as hotspots for COVID-19 outbreaks.

North Dakota long term care facilities, residents and staff, represent 9.6% of all the cases, yet bear 60% of all deaths. Of the 1385 total deaths related to COVID-19 in North Dakota, 830 were deaths in long term care. Of the 215 long term care facilities counted in the data, 170 facilities have had outbreaks, (79%). Since the beginning we have had 4054 positive resident cases and 5131 positive staff. Estimating our total number of residents today around 8000, over half of our residents had COVID-19

### North Dakota long term cases and deaths through 1-14-21:

Total Cases in North Dakota	95,378
Total Cases in Long Term Care	9,185 (9.6%)
Staff	5,131
Residents	4,054
Total Deaths in North Dakota	1,386
Total Deaths in Long Term Care	830 (60%)

### States with the highest percent of COVID-19 deaths occurring in long term care as of 1-14-21:

NH	74%
RI	67%
KY	66%
MN	64%
ND	60%

At the beginning and mid-summer, we thought we could beat this virus. We thought we would be spared the ravages of what some other states were experiencing. In March, prior to the declaration of the public health emergency, all long term care shut down visitation, put stringent mitigation strategies in place and learned everything we could. We were distraught to see and hear what was occurring in some nursing facilities across the nation. CMS, CDC, Health Department guidance and executive orders have dictated what we should and must be doing during this pandemic. And we have relied upon the guidance and mandates as we wanted to protect every single person in our care. No one wanted to be the first case or have the first death. I do not know if facilities and staff will ever fully recover. It has been tremendously difficult to lose each resident. Facilities have fought hard to save every single person. The one single issue we can point to nationally and in North Dakota that caused our outbreaks and numbers to rise, the number of cases within the community. As the community numbers increased, so did our numbers and deaths. We have been aggressively testing all residents and staff, with a couple of facilities having up to 50% of all staff test positive and then within the week almost all the rest of their staff. Can you imagine the panic that could set in when you provide 24 hour care and you lose

the majority of your staff in one testing event? Thank God for dedicated staff and facilities, they had plans in place and worked long hours to make sure residents got the care they needed. It was not always ideal, but facilities worked overtime to try and care for every resident.

To say the least, the vast majority of facilities are financially devastated and census has dropped. People are afraid of the inherent risk of living in a long term care setting and of the visitor restrictions meant to safeguard residents. It will take a while to recover emotionally and financially. Attached to my testimony is an article, "What will the Senior Living Market Look Like for Insurers Post-Pandemic?" We have already been told that major insurance companies who provide professional and general liability are in the process of adding COVID-19 exclusions.

To say the least, we need your help. We need this legislation.

Long term care facilities provided essential services that were not suspended during COVID-19. Their residents and tenants did not go away when the virus started. Our heroic health care workers were there and continue to be there to provide care to residents needs despite COVID-19. COVID-19 is still present today. Although the number of cases has diminished, every day our members continue to serve the residents with COVID-19 and continue striving to protect others they serve from contracting the virus.

As you are well aware, the COVID-19 pandemic is a hundred-year event that goes far beyond anything any of us have experienced. The rapid spread, the high prevalence of negative outcomes amongst the elderly and people with underlying medical conditions, and the fact that the virus

can be transmitted by people who show no outward symptoms make our members' job in providing care exceedingly difficult.

Something that is unique to North Dakota is the age of our nursing facility residents. We care for the oldest of the old, with North Dakota often times leading the nation in the number of residents over the age of 90 in our facilities.

Facilities feel privileged to care for our greatest generation, they have contributed significantly to North Dakota's quality of life, they have helped make North Dakota great. Through the direct actions of staff, thousands of residents in our care have recovered from COVID-19, but the ones who have died, we grieve each loss.

I want to assure you we are only asking for protection so we can continue to care for North Dakotans when they need help the most. When they are unable to care for themselves. The immunity provided in this bill does not apply to an act or omission that constitutes: willful and wanton misconduct, reckless infliction of harm, or intentional infliction of harm.

Thank you for the opportunity to testify in support of HB 1175. I ask for your favorable consideration of the bill and would be happy to answer any questions you may have.

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This article can be viewed online at: <https://www.mynewmarkets.com/articles/183707/what-will-the-senior-living-market-look-like-for-insurers-post-pandemic>

## What Will the Senior Living Market Look Like for Insurers Post-Pandemic?

December 2, 2020 by Joe Levy

Property/casualty insurance for senior living facilities has taken a hit this year. The insurance market has been hardening for the last year or two, and the COVID-19 pandemic brought on a wave of new challenges that has only compounded the problem. Brokers who are working with these health care organizations should be particularly wary of increased liability and more stringent underwriting as we move into 2021.

This past year has only accelerated the pace of premium rate increases that the senior living world was already facing. Insurance companies are reluctant to provide coverage for organizations because they carry inherent risk. As a result of the intense media coverage and negative publicity directed at the senior living industry, we anticipate families are more likely to file negligence, quality of care issues or wrongful death claims as a result of COVID-19.

The expectation among insurance company executives and plaintiffs' attorneys are that the COVID-19 related liabilities are going to impact the liability market for the next several years. Even with strong risk management plans in place, senior living facilities cannot eliminate this liability altogether.

With COVID-19, the potential for liability claims could far outpace collected premiums. Paying out more in claims than they're bringing in has forced insurance companies to raise rates. Some insurance companies have elected to stop insuring these organizations altogether, which also drives up rates.

It's a supply-and-demand marketplace. When there is significantly less supply, the cost rises. Even newer carriers in this space are being hit with higher than expected claims volumes.

None of this is good news for senior living operators who, historically, have already been operating on thin margins. Over the past several months, they have taken on significant additional expenses to disinfect facilities and obtain additional personal protective equipment. Now, they are faced with the fact that most of the major insurance companies who provide professional and general liability coverage are in the process of adding COVID-19 exclusions.

This is almost certainly going to be a universal change for future policies, and brokers should start informing clients to prepare for this at their next renewal. Clients will likely be facing additional exclusions and rising rates for the foreseeable future as insurers continue to grapple with the effects of this tumultuous year and what lies ahead.

### Looking Ahead

The bottom line heading into 2021 is that everything is more challenging and taking more time. The liability impact and escalating rates have clients and insurance companies determined to do their due diligence and avoid more financial fallout. Underwriters are scrutinizing risks more closely than ever. Agents and brokers need to demonstrate that their clients are meeting the insurance companies' requirements before they can secure coverage.

In order to prepare for extremely lengthy and protracted renewals, agents and brokers should be starting the process earlier than under normal market conditions. Their aim should be to be as proactive as possible. Most insurance companies are now requesting a COVID-19 questionnaire. These questionnaires ask reasonable questions about what's going on in the facility, what additional safety measures have been put in place, how many cases of COVID-19 the facility has had, and how they were dealt with. This might make some clients nervous, but it actually creates an opportunity for open and honest dialogue.

A big part of the agent's job now will be to proactively manage cases and help to prepare clients for anticipated and unanticipated financial challenges. Hopefully, there will soon be a vaccine and abatement of the virus, but even with a solution, we are unlikely to see premiums decrease for the foreseeable future. Agents and brokers will need to take the lessons learned in 2020 with them into the next year.

The organizations that thrive will be those that have maintained financial stability and improved their operations to effectively manage and minimize the spread of disease. Hopefully, no matter what the new year holds, we will have learned enough to ensure that we will be better prepared for what lies ahead.



### **About Joe Levy**

*Levy is a senior vice president at Risk Strategies.*