

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1488

2007 HOUSE HUMAN SERVICES

HB 1488

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1488

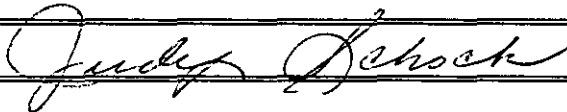
House Human Services Committee

☐ Check here for Conference Committee

Hearing Date: January 23, 2007

Recorder Job Number: 1623

Committee Clerk Signature



Minutes:

Chairman Price: Opening the hearing on HB 1488.

Representative Gary Kreidt, District 33: This bill came forward after the interim that was studied, and in regards to survey process in basic care facilities, and also the safety survey.

Since 2005 the health department has regular surveys. They have 50% announced and 50% unannounced. With the unannounced when the health department shows up at facilities. On announced the staff is available during the survey process.

Shelly Peterson, President of the ND Long Term Care Association: See attached testimony. We have fewer deficiencies when announced.

Deb Magnuson, RN plus administrator of a Basic Care Facility in Fargo: See attached testimony.

Bruce Boyaurd, owner of a 28 bed Alzheimer basic care facility: I too am in favor of announced surveys. The staff does get nervous. We have had announced and unannounced surveys. I agree with the others that have testified.

Linda Johnson Wurtz, Associate State Director for Advocacy for AARP ND: See attached testimony.

Bruce Pritschet, Director of the Division of Health Facilities for the ND Department of

Health: See attached testimony, and collected data attached to testimony.

Chairman Price: On the understaffing previous testimony said that you would take a look at past payroll records and staffing.

Mr. Pritschet: We do not review the payroll records. We look at the staffing schedules for the prior two weeks.

Chairman Price: You would pick it up than if it was understaffed?

Mr. Pritschet: It is possible that we would.

Chairman Price: You mentioned jay co, they have totally changed the way they are doing their surveys and not requiring a lot of somewhat a partnership working through paces type thing. Are you looking at doing some your changing on that?

Mr. Pritschet: Our process of survey is pretty well defined in the administrative rules. We have had no discussion of changing at this point in how we set up surveys.

Chairman Price: And on who is announced and unannounced they suggested that you can pick those that you wish that in the future may have a higher potential for deficiencies. How have you done it in the past two years?

Mr Pritschet: We have looked over the list and given input on which we felt would be okay to announce.

Chairman Price: So basically you would do unannounced on those with higher potential?

Mr. Pritschet: Based on some criteria that were set up for the pilot project. I believe that is correct.

Chairman Price: Any further opposition? If not we will close the hearing on HB 1488

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1488

House Human Services Committee

☐ Check here for Conference Committee

Hearing Date: January 23, 2007

Recorder Job Number: 1726

Committee Clerk Signature

Judy Dehock

Minutes:

Chairman Price: Take out HB 1488 for discussion. Just to be clear, if you are doing anything on life safety codes, like fire etc. they are announced surveys.

The committee discusses announced and unannounced surveys. On the health surveys with ½ announced and ½ unannounced as it has been in the past few years. The department gets to pick who is announced and who is not. Mr. Pritchard said they tend to pick those that they expect are going to be bigger violators or have more deficiencies for the unannounced surveys. We found a good mechanism the facilities are working with, and a mechanism that works well according to their outcome. Committee thinks they should keep it going. They do not need a complaint before they do an announced survey for health, for safety yes. For health portions if in compliance it may again be unannounced. They are doing inspections on the rule we asked them to do the last session, on 50, 50. Some of the committee felt we were putting things in convenience for the facility not safety. Some units like for the families to come in and the families like coming to surveys.

Representative Weisz makes a motion for a do pass, **Representative Hatlestad** seconds the motion. 9 yeas, 2 nays, and 1 absent. **Representative Hatlestad** to carry to the floor.

FISCAL NOTE
Requested by Legislative Council
03/29/2007

Amendment to: HB 1488

1A. 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.*

| | 2005-2007 Biennium | | 2007-2009 Biennium | | 2009-2011 Biennium | |
|----------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
| | General Fund | Other Funds | General Fund | Other Funds | General Fund | Other Funds |
| Revenues | | | | | | |
| Expenditures | | | \$40,000 | | | |
| Appropriations | | | | | | |

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

| 2005-2007 Biennium | | | 2007-2009 Biennium | | | 2009-2011 Biennium | | |
|--------------------|--------|------------------|--------------------|--------|------------------|--------------------|--------|------------------|
| Counties | Cities | School Districts | Counties | Cities | School Districts | Counties | Cities | School Districts |
| | | | | | | | | |

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill relates to the survey of basic care facilities, changing the current unannounced survey process, to an announced survey process for 100 % of the Life Safety Code Surveys and 50% of the Program Surveys and an addition of a two tiered system for identification of non compliance.

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.*

This bill will result in rule making in consultation with basic care providers related to 100% announced life safety code surveys and 50% announced health program surveys as well as development of a two tiered system of identification of non compliance.

It does take some additional staff time with paperwork and contacts to the facility to announce the surveys. This bill also directs us to study the outcome of this rule change and report back to legislative council by August 1, 2008.

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.*

The amount needed to work with providers to go through the rule making process is \$10,000 or less.

If the department performs the study and provides the report to legislative council regarding the impact of implementation there will be no fiscal impact. If the department needs to hire an independent contractor we estimate the cost to be \$30,000.

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 is also included in the executive budget or relates to a continuing appropriation.*

| | | | |
|----------------------|----------------|-----------------------|----------------------|
| Name: | Kathy J. Albin | Agency: | Department of Health |
| Phone Number: | 328.4542 | Date Prepared: | 03/29/2007 |

FISCAL NOTE
Requested by Legislative Council
01/16/2007

Bill/Resolution No.: HB 1488

1A. 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.*

| | 2005-2007 Biennium | | 2007-2009 Biennium | | 2009-2011 Biennium | |
|----------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
| | General Fund | Other Funds | General Fund | Other Funds | General Fund | Other Funds |
| Revenues | | | | | | |
| Expenditures | | | | | | |
| Appropriations | | | | | | |

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

| 2005-2007 Biennium | | | 2007-2009 Biennium | | | 2009-2011 Biennium | | |
|--------------------|--------|------------------|--------------------|--------|------------------|--------------------|--------|------------------|
| Counties | Cities | School Districts | Counties | Cities | School Districts | Counties | Cities | School Districts |
| | | | | | | | | |

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill relates to the survey of basic care facilities, requiring the department to change the current unannounced survey process, to an announced survey process for 100 % of the Life Safety Code Surveys and 50% of the Program Surveys. All complaints would remain unannounced.

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.*

It will take some additional staff time for paperwork and contacts to the facility to announce the surveys, and rulemaking would be required to change the current regulation for all surveys to be unannounced. However, the amount is less than \$5,000 and will be absorbed in the department's budget.

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 is also included in the executive budget or relates to a continuing appropriation.*

| | | | |
|---------------|----------------|----------------|------------|
| Name: | Kathy J. Albin | Agency: | Health |
| Phone Number: | 328.4542 | Date Prepared: | 01/22/2007 |

Date: 4/23
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. "Click here to type Bill/Resolution No."

House HUMAN SERVICES

HB 1488

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken

move to pass

Motion Made By

Rep Weisz

Seconded By

Rep Hatlestad

| Representatives | Yes | No | Representatives | Yes | No |
|--------------------------------|-----|----|------------------|-----|----|
| Clara Sue Price - Chairman | ✓ | | Kari L Conrad | | |
| Vonnie Pietsch - Vice Chairman | ✓ | | Lee Kaldor | | ✓ |
| Chuck Damschen | ✓ | | Louise Potter | ✓ | |
| Patrick R. Hatlestad | ✓ | | Jasper Schneider | | ✓ |
| Curt Hofstad | ✓ | | | | |
| Todd Porter | ✓ | | | | |
| Gerry Uglem | ✓ | | | | |
| Robin Weisz | ✓ | | | | |
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Total (Yes) 9 "Click here to type Yes Vote" No 2 "Click here to type No Vote"

Absent

1

Floor Assignment

Rep Hatlestad

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

REPORT OF STANDING COMMITTEE (410)
January 24, 2007 7:59 a.m.

Module No: HR-16-1099
Carrier: Hatlestad
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1488: Human Services Committee (Rep. Price, Chairman) recommends DO PASS
(9 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HB 1488 was placed on the
Eleventh order on the calendar.

2007 SENATE HUMAN SERVICES

HB 1488

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1488

Senate Human Services Committee

☐ Check here for Conference Committee

Hearing Date: 3-20-07

Recorder Job Number: 5340, 5356

Committee Clerk Signature

Mary K Monson

Minutes:

Chairman Senator J. Lee opened the hearing on HB 1488 relating to state department of health surveys of basic care facilities.

Representative Gary Kreidt (District #33) introduced HB 1488 and reported that the interim budget committee on health care looked at this process which was, at that time, a pilot project with respect to announced and unannounced surveys for basic care facilities in ND. Testimony was heard and discussions took place but no recommendations came from the committee. He was asking for continuation of the 50% announced and 50% unannounced surveys for basic care facilities. The life safety surveys would continue to be unannounced.

He also proposed an additional amendment (attachment #1) to create a new section which would start up a demonstration project for voluntary surveys during construction or renovation of basic care and long term care facilities (meter 04:30). At the time of completion when the architect, engineer, administrator, and contractor are doing the walkthrough of the completion and turning the project over to the facility also have someone there from the life safety division.

At that time if they see something that doesn't meet compliance it can be brought to the attention of the facility and the architect. Then, possibly changes can be made and corrected before the situation where the facility has signed off and six months or so down the road life safety division comes in for a survey and finds numerous things out of compliance.

This amendment says that facilities can ask to have this process available. It is a cost to the department but they can assess a reasonable fee to the facility for this service.

Senator Heckaman asked what the role of the state department is now when renovations or construction is being done.

Rep. Kreidt explained that the plans for construction or renovation have to be submitted to the division of life safety with the department. They are reviewed and if there are problems those changes are made at that time. Once into the process, if there are changes, those orders must be submitted to the department and must meet their approval.

Senator J. Lee stated that the problem has been that plans have been submitted and either no change was made or made and approved. After the project is completed and the final inspection is done then the facility is being told there is a problem and the facility has to make the changes.

It comes down to a communication issue.

Shelly Peterson (President, NDLTC Association) testified in support of HB 1488 and submitted written testimony (attachment #2). They are in support also of the proposed amendment from Rep. Kreidt. One of the areas of greatest frustration is during renovation and construction. Facilities work hard to be in compliance and they think they are in compliance. When they seal up the building and occupy it, then later have a

life safety inspection and find out that they need to make changes, it is very costly and frustrating.

Senator J. Lee asked her for a comparison of inspections or surveys for basic care facilities and long term facilities.

Ms. Peterson said the survey process for skilled nursing facilities is dictated by the federal government. It is a much regulated process and under the Social Security Act it is required that they all be unannounced for nursing facilities (meter 25:50).

Basic care is totally regulated by the legislature. The health portion surveys occur once every two years—that's the goal (meter 26:37).

Senator J. Lee also asked Ms. Peterson to explain the difference between basic care and long term care or skilled care and assisted living.

(Meter 27:24) Ms. Peterson explained the three residential settings with services.

Senator Erbele asked what things are looked at in life safety inspections.

Ms. Peterson replied they look at the health needs of the residents. They look to see if there is sufficient staff should there be a fire. They look at such things as smoke penetration, fire walls, ductwork, fire drills, etc.

Senator Heckaman asked if those things are addressed in the general inspection for the annual licensing.

Ms. Peterson said that the health survey is different than the life safety survey. The life safety survey checks compliance with life safety regulations. The health portion looks at the needs of the residents and if their health care needs are being met (meter 32:30).

Generally a basic care survey is done by one individual spending one to two days in the facility. The life safety inspections could be a three or four hour in section.

Senator Heckaman asked about the recommended frequency of the survey.

Ms. Peterson answered that they would recommend the frequency remain the same as it is—once every two years.

Senator Dever asked if the definition of the time frame involved with an announced survey is defined somewhere.

Ms. Peterson thought it might be in an administrative rule. They can slide them if there isn't sufficient staff to get out and survey.

Senator Dever referred to the amendment and asked how many renovation/construction projects are typically around the state within a years time.

(Meter 34:30) Ms. Peterson guessed there would probably be about a dozen.

Senator Dever struggled with the concept because the health department already has responsibility for preliminary approval of life safety issues and change orders throughout the process.

Ms. Peterson said that sounds really good but it doesn't quite work that way. (Meter 36:19) She went on to give examples of problems that arise and examples of how this pilot project would be beneficial.

Senator Heckaman asked why the health department can't do the surveys now.

Ms. Peterson said the health department has indicated that they do not have sufficient staff.

Deb Magnuson (Administrator of a Basic Care Facility in Fargo) See attached testimony #3 in support of HB 1488.

Senator Erbele asked what items are specific to look at in the health surveys.

Ms. Magnuson said the health survey piece looks specifically at resident health and care issues. Safety looks more at the building and the facility safety.

Senator Dever asked what she meant by a concern that announced surveys will present a hazard to the seniors of ND.

Ms. Magnuson said she was speaking about testimony she heard in the House. The testimony against talked about this being dangerous to seniors. She didn't see how that would be.

There was fear that somehow the facilities would have time to hide something.

There was no further testimony in favor of HB 1488.

Bruce Pritschet (Director, Division of Health Facilities, ND DOH) testified in opposition to HB 1488. See attached testimony #4.

Senator J. Lee asked if there were any consistencies in the citations that were found in the announced and unannounced—any data that there was more of one kind than another deficiency noted between the two surveys.

(Meter 57:45) Mr. Pritschet reported that for unannounced surveys there were 27 citations from the governing body. He explained what some of those might be. The assessment and care plan process was cited 18 different tags.

From the announced surveys governing body was cited in one facility. The fire safety was cited in three facilities. The education program was cited in two facilities. Resident care and care plans were cited in three facilities for the announced and six in the unannounced. Pharmacy was cited in two facilities on the announced and more on the unannounced. Dietary was cited at a two to one ratio. The same areas appear in both but are cited more frequently in unannounced and some areas are absent from the announced.

Dietary infractions were discussed with examples given.

The surveys of the facilities were done in the order they were due for survey. If they started with an unannounced survey the next one would be announced. They went back and forth in that manner.

Darleen Bartz (Department of Health) helped put the project together and offered more in-depth information on how the selection of facilities took place (meter 65:45). They took size into consideration and tried to balance the announced and unannounced surveys.

The time line of the announced and unannounced surveys was discussed. Obtaining the information up front was faster in the announced surveys. The survey process itself wasn't shortened.

The hearing on HB 1488 was recessed.

JOB #5356

Chairman Senator J. Lee brought the hearing on HB 1488 back to order and recognized Mr. Pritschett to continue answering questions.

Senator Erbele asked about the procedure of getting deficiencies corrected. He also asked if there is a follow up to go back to make sure it was corrected or if they wait until the next survey.

Mr. Pritschett said there is a revisit process for the basic cares (meter 01:51).

Senator J. Lee said that in long term care there are some deficiencies that result in freezing the ability to admit new residents. She asked if anything like that happens for basic care.

Mr. Pritschett said there is not. In licensing, there is the ability to give a provisional license or revoke the license.

Senator J. Lee asked if most facilities are generally cooperative about getting the deficiencies corrected.

Mr. Pritschett said that most are cooperative. There always seems to be those that are more difficult to work with to get the deficiencies corrected.

There was discussion that there are some issues that can't be addressed in a short period of time. The life safety code citations take longer all the time versus the health program citations.

(Meter 05:26) Off hour surveys were addressed. The long term care program requires 10% of the surveys to be done at alternative start times which would be on a holiday, weekend day, before 7 am or after 7 pm. Basic care does not have that requirement for off hour surveys except for complaints.

The makeup of the survey teams was also discussed (meter 07:00). They need to have specific training.

(Meter 10:00) When talking about announced and unannounced surveys part of the departments concern is that a true picture is not given during the announced surveys. Further discussion followed on staffing and scheduling records.

Senator J. Lee asked how ND basic care survey rules compare to other states since it is not federally established.

Mr. Pritschett said he didn't know of any other state that has that category.

(Meter 14:50) Discussion continued on the differences between a basic care and an assisted living survey. Assisted living is by the department of human services and is more of a contractual situation. Basic care in ND is more like assisted care in other states.

(Meter 18:40) (Attachment #4a) Mr. Pritschett addressed the amendment proposed by Representative Kreidt. The estimated cost for a FTE for the biennium would be about \$148,625. They have an agreement with the centers for Medicare and Medicaid services to do the certification and recertification of facilities. That agreement doesn't allow them to consult. The consultant would have to be separated from the survey team. Senator Dever asked how extensive the survey is for certification before occupancy. Mr. Pritschett said it is a very thorough life safety code survey.

Senator Dever wanted to know how that is different than what they are looking for here. Mr. Pritschett replied that it has to do with the conflict of interest (meter 27:18).

Further discussion followed on maintenance and construction visits and differences in requirements compared to city building codes.

Senator J. Lee asked why there is construction review for basic care and not for assisted living. Discussion followed on that and evacuation standards.

Senator Dever asked how big of a problem this amendment seeks to address.

Ms. Bartz said there are ongoing concerns with construction. If they had personnel to designate one person as this staff person they would not be opposed to moving forth with it. The biggest issue is that they would need additional staff and the funding to have the staff on board to do the work.

Senator Dever asked how long after a project is finished before there is an inspector from the health department to go through the facility.

Ms. Bartz said that if it is a new facility someone would have to be out there to look at it from a licensure perspective prior to certifying it and in that case they would have a construction person out there. For remodeling, it would probably occur after the project was completed and probably when they do the routine survey.

Discussion followed on quality assurance and building codes.

Ms. Bartz said that, in reality, if you are monitoring and supervising and providing oversight for a construction project, you need to be there all the time to make sure things are done correctly. The problem with keeping construction on track and eliminating deficiencies wouldn't be solved by having one person check once or twice on the construction sight. There would be some impact but everything would not be caught.

Senator J. Lee asked how it could be done.

Ms. Bartz said some of the recommendations their committee came up with were: there should be a quality assurance piece written into the contract that facilities make with the people doing the construction for them, and; if they are not meeting the quality or something comes up later, somebody has to be accountable because they should know that information. It should be between the provider and whoever they are contracting with. Another concern is that the people who are building inspectors are not expected to meet any certain level of qualifications.

Linda Johnson Wurtz (Associate State Director for Advocacy, AARP, ND) testified in opposition to HB 1488. (Attachment #5)

Jim Jacobson (Director, Protective Services Unit for the ND P&A Project) testified in opposition to HB 1488. (Attachment #6) He added information that he was a program director for ICFMR's for eight years and they went through survey process after survey process. There are two ways in which to approach surveys and survey results. One is to look at it like it is paper compliance and that leads to a lot of discussions about deficiencies. The other is to recognize that those standards are there to define the quality of services that should be provided. He and his staff decided the only way to

appropriately serve the people they work with was for every record to be available to everybody who worked in the facility including policy and procedures (meter 59:21). In the work he does, investigate allegations of abuse and neglect, he never looks at a facility with a high number of reports as a bad facility nor does he look at a facility with a low number of reports as a good facility. There are only two things that data tells. One, the facility with the high number of reports is being diligent to comply with state law on mandatory reporting. Two, the facility that has a low number of reports has a low number of reports. It doesn't tell if they have quality services and it doesn't give the investigator an opportunity to do anything to access those services.

Senator J. Lee asked how he could have all the records available to everybody with HIPAA requirements.

Mr. Jacobson replied that when he says available to everyone he means everyone who is required to provide services in that facility (meter 60:35).

Further discussion took place on records being available for surveyors 24-7. Paper compliance is secondary only to high quality of care.

Darleen Bartz (Department of Health) was recognized by Senator J. Lee for more comments. In basic care, there needs to be nursing services provided to meet the needs of the resident. That does not mean the needs to nursing services are needed eight hours a day or seven days a week. That can take place by contract with a home health agency or other mechanisms. The basic care facility does need to provide at least a minimum of one staff person to assist the residents 24 hours/day which is different from eight hours of nursing care.

Whoever is on staff and caring for the residents should have access to the documents they would need to provide care and services for the residents.

In all the years she has been in the department, they have only gone on one investigation at night. They were investigating a complaint that took place at night (meter 69:22).

Senator J. Lee asked if she saw any purpose to announced surveys or if she thought they should all be unannounced.

Ms. Bartz felt they should be unannounced especially in the health portion.

Senator Warner referred to the amendment and asked if their standards are objective enough to be studied, and if there could be seminars on the specifics of nursing home design.

Ms. Bartz said that is a true concern because there is a difference between surveys.

There is a difference between construction and maintenance. Just because there has been a construction visit it will in no way guarantee that there won't be an issue when they come out and survey later. In reality, if the architect and the people who should be doing that quality assurance are doing their job, there shouldn't be a need for the department to be doing it (meter 72:44).

Senator Dever asked if they did the same number of surveys prior to doing this study July 1, 2005 involving announced basic care surveys.

Ms. Bartz replied that in 1989 the DHS transferred the responsibility for licensure of basic care to the DOH. What weren't transferred were the funds. With the new administration, some funding is in place to do surveys. The licensure fee they collected was only enough to cover one or two complaint investigations during the year, but didn't cover the cost of inspections.

It's only within the last three to four years that they have actually had funds to allow basic care surveys of any kind. With that it has allowed them to become more regular and able to fit them in (meter 75:40). Further discussion followed.

Marilyn Goldade (Director of Nursing, Haaland Home, Rugby, ND) testified in a neutral manner. She has participated in both announced and unannounced surveys. Her first survey was unannounced and the surveyors were in the facility four and a half days. The second survey four years later was announced and the surveyors were able to leave in 26 hours. She preferred the announced. Then she spoke specifically to the illusion of potential harm that the seniors are put in with the announced survey.

(Meter 79:28) She talked about deficiencies that her facility received and compared to them the general public. As a provider of care to seniors and a taxpayer, she is looking at where the common sense and collaborative effort comes in.

Shelly Peterson (ND LTC Association) was recognized by Senator J. Lee for comments. Before 2005 there were very few basic care surveys. The announced survey process brought regular surveys. They are supportive of the survey process and they want it to work. Inspections are necessary and help them to operate to their best efficiency. The survey agency gets to pick who gets which survey. If they have any concern about any facility, they can go there unannounced. All complaint surveys would be unannounced. There are quality standards in place. (Meter 85:19) She addressed the suggestion that there are unstaffed facilities and emphasized that there has never been a basic care facility unstaffed.

Senator J. Lee asked for comments on the process for responding to citations for those less process driven complaints.

Darleen Bartz (DOH) said they offer an appeals process for basic care and they encourage their surveyors to use reasonable common sense.

Discussion followed on addressing some deficiencies in a simpler fashion.

(Meter 90:45) The amendment was again addressed and the DOH talked about some types of things they can do as training and getting information out to the facilities to help them. It is important to have communication between the DOH and the association on how to make sure the construction process goes better.

The hearing on HB 1488 was closed.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1488

Senate Human Services Committee

☐ Check here for Conference Committee

Hearing Date: 3-21-07

Recorder Job Number: 5370, 5417

Committee Clerk Signature

Mary K Monson

Minutes:

Chairman Senator J. Lee opened discussion on HB 1488.

There was concern with the amendment and that it would actually relieve the contractors of some liability. There needs to be enhanced communication.

The survey and inspection requirements for basic care and assisted living facilities are extraordinarily different. Basic care facilities are reimbursed by Medicaid and assisted living is not and they are both providing comparable service to their residents. One is inspected in remarkable detail and the other has very little survey at all.

Senator Warner stated that one distinction between the two is that basic care accepts Alzheimer and other dementia patients and sometimes provides care for the mentally retarded.

In response to a question about defining announced and unannounced Shelly Peterson explained that an announced generally means a one week notice.

There was discussion on the merits of announced and unannounced surveys in relation to bringing in extra staff and gathering the documentation for the survey. Deficiencies were also addressed with respect to using common sense and making the compliance process easier for certain minor deficiencies.

Senator Warner asked if it would be useful to create in statute a requirement that there would be two levels of reprimand.

Shelly Peterson thought that was an excellent idea. Even the federal government has recognized that for nursing facilities. There is a level A deficiency which doesn't need a plan of correction. Maybe with basic care there could be recommendations and then deficiencies.

Senator J. Lee asked Ms. Peterson if she would help put language together to amend that idea on.

Senator Dever asked if there would be a way of looking at a two stage inspection also. Ms. Peterson speculated that the concern the health department would have with that would be the staff time involved.

Senator J. Lee recessed the committee work.

JOB #5417

Chairman Senator J. Lee brought the committee back to order for discussion. She asked Jennifer Clark from legislative council to answer a question about a shift in liability from the amendment in HB 1488.

Ms. Clark (Legislative Council) said that language could be added in to clarify that this doesn't shift the burden or gives protection to the facility. The other piece is that plans are submitted to an engineer before they renovate or build and that doesn't shift the burden in any way. Surveys are being done on a regular basis and the fact that they pass one time doesn't guarantee that they will pass next time.

Senator Dever asked if the health department does the survey and checks it off as ok, does that relieve the contractor of the responsibility.

Ms. Clark replied that puts them in the same position, it just adds one more opportunity to have that exchange.

Shelly Peterson (LTC Association) said that now the department is held harmless in any situation. She explained that the department is in the building every year or every other year with basic care. The facility is responsible for compliance even if the department misses something. (Meter 06:04) Addressing the problem with construction non compliance she said the major problem is that they can't get the surveyor out there when the construction or renovation project is coming to an end. They are hoping through this they can have more timely inspections so when the architect is doing the sign off and the contractors are done they could have an inspection right then. It would be another safety mechanism. Even at that point if something is missed, the facility is ultimately responsible.

There are about six major construction projects for nursing facilities coming up and this could possibly be limited to these six to see how it works. Further discussion followed. Senator J. Lee asked if there was any purpose to amend in a "shall consider studying the similarities of disparities between survey requirements for assisted living and basic care".

Ms. Peterson said that on a national level they are really pushing regulations for assisted living. Basic care in ND is like the assisted living in other states. A comparison and evaluation might be very worthy.

There was discussion on combining basic care with assisted living.

(Meter 12:30) More discussion took place on the amendment and the association hiring an independent surveyor and the problems involved with that. There is no problem with the consulting versus inspecting in basic care. The amendment was written for both

the basic care and the long term care. That is where the problem is. A suggestion for addressing that problem was limiting it to long term care projects that exceed \$4 million and rotating life safety inspectors.

Ms. Peterson distributed a draft of wording provide by Senator Warner for an amendment dealing with the two tiered system. (Attachment #7) (Meter 20:10)

Senator Warner said his intention with the wording "comment of note" is that it would be a written comment and only need to be initialed indicating that it had been received.

Senator Dever wondered if this could spell out any deficiencies in administrative rule.

Ms. Peterson responded that she couldn't find anything helpful regarding this.

Deficiency isn't even defined. On the nursing facility side they have what is termed

level A deficiencies which are simply noted. No plan of correction is necessary.

Senator J. Lee asked if Jennifer Clark should do something about the over \$4 million or if there was something she would suggest.

Ms. Clark gave her suggestion (meter 26:45).

Senator J. Lee asked if they should do anything with the Kreidt amendment at all.

Senator Warner felt better if the private industry and the regular architects were making those decisions. They should be appropriately trained and should be responsible for the recommendations they make.

Senator J. Lee asked Ms. Peterson if she finds the problems are greater, one way or another, in urban versus rural.

Ms. Peterson wasn't sure. There are issues in both.

Further discussion took place on the problems and possible solutions.

Senator Warner moved to accept the Warner amendment.

The motion was seconded by Senator Heckaman.

Roll call vote 6-0-0. Amendment accepted.

Senator J. Lee recessed the committee so Ms. Clark would have time to draw up the amendment for committee review.

The Committee reconvened and reviewed the Warner amendment prepared by Ms. Clark with legislative council. (Attachment #8)

Senator Warner moved a Do Pass on HB 1488 as amended.

Senator Heckaman seconded the motion.

Roll call vote 6-0-0. Motion carried. Carrier is Senator J. Lee.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1488

Senate Human Services Committee

☐ Check here for Conference Committee

Hearing Date: 3-26-07

Recorder Job Number: 5559, 5571

Committee Clerk Signature

Mary K Monson

Minutes:

Chairman Senator J. Lee opened HB 1488. She explained that there were some liability issues the AG office had concerns about. She had requested that Shelly Peterson, LTC, Darleen Bartz, DOH, and Jennifer Clark, LC, communicate with the AG's office and see if they could come up with something to satisfy everyone.

Darleen Bartz (DOH) reported that she would speak to the amendment that the health department was proposing (attachment #9). She provided comments on the proposed amendment (attachment #9a).

Senator J. Lee pointed out that the intent was not that the department would be developing a plan. That was the way the language was drafted and Ms. Peterson brought to the attention of the committee the need to correct it.

She didn't think there was a need necessarily for a written plan of correction that has to be prepared and approved by the health department for such things as wearing an apron and putting all hair under a hairnet. Things like that which are easily addressed with communication from the facility manager are not the same as major deficiencies.

Senator Dever wondered if the comments pertaining to the legalities the DOH raise in its arguments only addressed the amendments the Senate put on or the bill as the Senate amended it.

Ms. Bartz responded, mostly as amended.

Senator Dever stated that their recommended amendment was basically to turn the whole thing into a study.

Ms. Bartz said that is true.

Senator Dever (meter 13:10) pointed out that when he recently went to the health department he discovered what he considered to be some pretty serious life safety violations.

Ms. Bartz addressed his observations (meter 14:10) and pointed out that the safety of the state buildings fall under a different jurisdiction and a different set of safety standards.

The discussion continued on the frustration of the facilities.

Senator J. Lee asked Ms. Bartz how she proposed having the pilot study work.

Ms. Bartz responded that it would be similar to what they have now except they would have all of the life safety code unannounced. Long term care actually has a similar process having an A level deficiency which basically comes out being a recommendation.

In essence the outcome would be that they would study it and come back to the legislature so there could be additional discussion once they have added information (meter 18:00)

Senator J. Lee asked why the basic care system is different from the long term care. Why isn't the basic care just included in the long term care survey?

Ms. Bartz said that basic care is supposed to be a more social model rather than a highly regulated model and she would see them going into a greater level of regulation rather than a lesser amount if they ended up having multiple tiers. The amendment put forth by the committee was requesting a two tiered system. The project she proposed continued to keep exactly what was in place regarding the unannounced and announced survey processes. It also provides for two different tiers as far as the citation (meter 20:50).

Senator Dever said that, when under construction, if the facilities get mixed signals on what is required and what isn't and later are held responsible they could make the argument that, had they known "this should have been included in the project", they would have done it.

Ms. Bartz said part of her concern is the fact that if they are giving recommendations to something that literally has potential for harm for the residents and not requiring that they respond they are knowingly allowing an unsafe environment. (Meter 23:24)

Examples were given.

Senator Dever said that if something is not pointed out that should have been and later, here's one standard now and when the project is done there's another standard, there is a real problem with communication.

Ms. Bartz said the concern with the construction piece was the fact that there are many stages of construction and if you are not there before the walls are put up you don't necessarily know what is behind the walls. In order to do a good quality assurance, you need to be out there full time. Spot checks are just that—spot checks. It doesn't assure that the construction will be done correctly. Another problem is that they are dealing with two different processes, the fact that they are looking at a construction visit and

wanting to use a maintenance survey. Merging the two different types of processes and making them work is not doable.

Shelly Peterson (Long Term Care Association) confirmed that she knew when the Warner amendment got drafted the language didn't get translated correctly and she brought it to the attention of Senator J. Lee. She knew it was not the intent of the committee that the DOH develop the plan of correction and she also notified the health department. (Meter28:30) She went on to explain suggested changes to the amendment.

Senator J. Lee asked Rep. Kreidt for his comments.

Rep. Kreidt said he could live with the amendment. He made additional comments in regards to the amendment that he originally proposed. The concept had originally come forward to the governor with a proposal for funding in his budget but he turned it down. It did come from the department, at that time, to allow the process included in his amendment (meter 32:50).

Rep. Kreidt talked about the announced and unannounced surveys. The department has a prerogative in the selection of who is announced and unannounced. They know through the process over the years if there is a facility out there that might not be up to par and they have the right to survey unannounced (meter 36:00).

Doug Barr (Director of Civil Litigations, Office Attorney General) said his purpose of being present was just to share with the committee any potential liability associated with the amendment that provided for the department to issue the correction. He understood that wasn't the intention and it would be made clear that would not be the process within future amendments.

Senator J. Lee asked Ms. Bartz to offer comments on suggestions from Ms. Peterson and to address the cost issue.

Ms. Bartz said that would definitely be an improvement. She would like to see something like that in a pilot project first. It makes sense to her that they would want to study it. She agreed with Ms. Peterson that they could definitely work together. In response to Rep. Kreidt's comments, she said when they discussed having someone to do construction they asked to also include an FTE and funding (40:12). Without an FTE and the tools needed, it was not a doable project.

Senator J. Lee asked Ms. Bartz if they had the resources now to do what the idea of this proposal is. She wanted to know if there is also going to be a resource issue if it is even done as a pilot project.

Ms. Bartz replied that a pilot project would give them more room to operate (meter 41:35).

(Meter 43:40) There was a short discussion on the date for the report. Jennifer Clark with legislative council suggested August 1.

The committee was recessed.

JOB #5571

Chairman Senator J. Lee brought the committee back to order for discussion on HB 1488 and consideration of amendments drafted by Jennifer Clark from legislative council.

Jennifer Clark (Legislative Council) presented two amendment versions and explained them.

The .0206 version (attachment #10) clarified that it was the development that's in consultation with basic care facilities, not the implementation. It clarified that it was the

health survey. The designation of the two tiers was taken out. In section two the date was moved to August 1. This would remain as permanent law and would probably require adoption of the administrative rules.

The .0205 (attachment #11) version maintained section one of the bill as it came to the Senate. The survey issue of announced and unannounced hasn't changed. Under this provision, in subsection one the department of health would develop the two tiered compliance system. The report date to legislative council would be August 1, 2008. Then they would report on the two provisions—the announced and unannounced survey process as well as the two tiered deficiencies process. There is an expiration date to clarify that it is a pilot program that ceases to exist at the end of the biennium.

Neither administrative rules nor FTE's were addressed in either version.

Ms. Clark explained procedures about amendments being printed in the journal and discussion followed.

Senator J. Lee asked Shelly Peterson and Darleen Bartz for their comments on the proposed amendment from legislative council.

Shelly Peterson (Long Term Care) responded that they preferred amendment .0206. It puts into statute the process, it governs what they will be doing in the next two years, and, if they choose not to continue, legislation can be brought forward to change it.

Darleen Bartz (Department of Health) reported that they would rather go with .0205.

There is merit in studying and they can put together a study and start implementing it much quicker than going through the rulemaking process (meter 8:55). To get the most meaningful data she recommended going with the pilot project so they would have time to implement and collect data to bring back.

Senator J. Lee asked her to report on the ongoing project on the two tiered system.

Ms. Bartz said there has not been a pilot project on a two tiered deficiency citation system that has been completed. This is all new territory. What was completed was a study that looked at unannounced versus announced. The compliance rate was about double in the unannounced versus in the announced. The department found that they were not having better communication with families, residents, or any of the individuals in the facility by announcing the survey. (Meter 11:40) She said the national trend is going to unannounced surveys.

(Meter 15:40) Senator J. Lee returned the discussion to the amendment and asked if they should look at the pilot project in .0205 or the statute requiring administrative rules in .0206.

Senator Erbele referred to the administrative rule making process in .0206 versus not doing it in .0205. He wanted to know about the length of time to do the rule and if they could write the rules in less time if they went with .0205 now, did the study and collected the data, and next session wanted to put something in statute.

Ms. Bartz replied that they could implement a pilot project much faster than rule making.

Senator Warner had a problem with requiring the agency to examine itself (meter 19:45).

Senator J. Lee asked Ms. Peterson to respond to Senator Warner's concern and if there was an advantage to being able to start earlier as a pilot rather than later.

Ms. Peterson answered that she agreed with Senator Warner and the ideal would be an outside entity to do the study. She said they didn't have a problem with going to rulemaking. She said the rulemaking process and the delay was ok with them

(meter 22:45).

Senator J. Lee asked Mr. Mullen if he had any constitutional concerns with either of the proposed amendments.

Mike Mullen said either one was legally sufficient.

Senator Dever moved to reconsider actions by which the committee passed HB 1488 and the action on the amendment.

The motion was seconded by Senator Erbele.

Roll call vote 6-0-0.

Senator Erbele moved to adopt the version .0206 amendments.

Senator Heckaman seconded the motion.

Roll call vote 6-0-0. Amendment adopted.

Senator Erbele moved a Do Pass on HB 1488 as amended with version .0206.

Senator Heckaman seconded the motion.

Roll all vote 6-0-0. Motion carried. Carrier is Senator J. Lee.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1488

Page 1, line 2, after "facilities" insert "; and to provide for a demonstration project for surveys of basic care facility and a long-term care facility construction or renovation"

Page 1, after line 14, insert:

"SECTION 2. DEMONSTRATION PROJECT FOR VOLUNTARY SURVEYS DURING CONSTRUCTION OR RENOVATION OF BASIC CARE AND LONG-TERM CARE FACILITIES. During the 2007-09 biennium, the state department of health shall implement and conduct a demonstration project to provide for a survey process for basic care facilities and long-term care facilities to access voluntarily during construction or renovation of the facility. The survey must include a survey of life safety. The department may charge a basic care facility and a long-term care facility a reasonable fee for performing the requested survey. The department shall evaluate the success of the demonstration project to determine the feasibility and desirability of making the program permanent."

Renumber accordingly

JB
3-22-07

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1488

Page 1, line 2, after "facilities" insert "; and to provide for a report to the legislative council"

Page 1, line 7, after "the" insert:

"1."

Page 1, line 10, after the period insert:

"2."

Page 1, line 14, after the underscored period insert "As part of the survey process, the department shall develop and implement, in consultation with basic care facilities, a two-tiered system of identifying and correcting deficiencies issued as part of the survey process. The deficiencies system must provide that the department issue:

- a. A written plan of correction for a deficiency that has a direct negative impact on a resident; and
- b. A written recommendation for a deficiency that does not have a direct negative impact on a resident.

3."

Page 1, after line 14, insert:

"SECTION 2. STATE DEPARTMENT OF HEALTH - REPORT TO LEGISLATIVE COUNCIL. Before May 1, 2008, the state department of health shall provide a report to the legislative council regarding the impact of implementation of this Act, including whether the department will be recommending any legislative changes to the basic care survey process."

Renumber accordingly

Date: 3-21-07

Roll Call Vote #: 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1488

Senate HUMAN SERVICES Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Amendment

Motion Made By Sen. Warner Seconded By Sen. Heckaman

| Senators | Yes | No | Senators | Yes | No |
|---------------------------------|-----|----|--------------------------|-----|----|
| Senator Judy Lee, Chairman | ✓ | | Senator Joan Heckaman 2 | ✓ | |
| Senator Robert Erbele, V. Chair | ✓ | | Senator Jim Pomeroy | ✓ | |
| Senator Dick Dever | ✓ | | Senator John M. Warner 1 | ✓ | |
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Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

Date: 3-21-07

Roll Call Vote #: 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1488

Senate HUMAN SERVICES Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 701605.0203 Title 0300

Action Taken Do Pass as Amended

Motion Made By Sen. Warner Seconded By Sen. Heckaman

| Senators | Yes | No | Senators | Yes | No |
|---------------------------------|-----|----|--------------------------|-----|----|
| Senator Judy Lee, Chairman | ✓ | | Senator Joan Heckaman 2 | ✓ | |
| Senator Robert Erbele, V. Chair | ✓ | | Senator Jim Pomeroy | ✓ | |
| Senator Dick Dever | ✓ | | Senator John M. Warner 1 | ✓ | |
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Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. J. Lee

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

REPORT OF STANDING COMMITTEE

HB 1488: 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). HB 1488 was placed on the Sixth order on the calendar.

Page 1, line 2, after "facilities" insert "; and to provide for a report to the legislative council"

Page 1, line 7, after "the" insert:

"1."

Page 1, line 10, after the period insert:

"2."

Page 1, line 14, after the underscored period insert "As part of the survey process, the department shall develop and implement, in consultation with basic care facilities, a two-tiered system of identifying and correcting deficiencies issued as part of the survey process. The deficiencies system must provide that the department issue:

- a. A written plan of correction for a deficiency that has a direct negative impact on a resident; and
- b. A written recommendation for a deficiency that does not have a direct negative impact on a resident.

3."

Page 1, after line 14, insert:

"SECTION 2. STATE DEPARTMENT OF HEALTH - REPORT TO LEGISLATIVE COUNCIL. Before May 1, 2008, the state department of health shall provide a report to the legislative council regarding the impact of implementation of this Act, including whether the department will be recommending any legislative changes to the basic care survey process."

Renumber accordingly

Date: 3-26-07

Roll Call Vote #: 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1488

Senate HUMAN SERVICES Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Reconsider actions

Motion Made By Sen. Dever Seconded By Sen. Erbele

| Senators | Yes | No | Senators | Yes | No |
|------------------------------------------|-----|----|------------------------|-----|----|
| Senator Judy Lee, Chairman | ✓ | | Senator Joan Heckaman | ✓ | |
| Senator Robert Erbele, V. Chair <u>2</u> | ✓ | | Senator Jim Pomeroy | ✓ | |
| Senator Dick Dever <u>1</u> | ✓ | | Senator John M. Warner | ✓ | |
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Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1488

Page 1, line 2, after "facilities" insert "; and to provide for a report to the legislative council"

Page 1, line 7, after "~~the~~" insert:

"1."

Page 1, line 10, after the period insert:

"2."

Page 1, line 14, after the underscored period insert "As part of the survey process, the department shall develop and implement, in consultation with basic care facilities, a two-tiered system of identifying and correcting deficiencies issued as part of the survey process. The deficiencies system must provide that the department issue:

- a. A written plan of correction for a deficiency that has a direct negative impact on a resident; and
- b. A written recommendation for a deficiency that does not have a direct negative impact on a resident.

3."

Page 1, after line 14, insert:

"SECTION 2. STATE DEPARTMENT OF HEALTH - REPORT TO LEGISLATIVE COUNCIL. Before May 1, 2008, the state department of health shall provide a report to the legislative council regarding the impact of implementation of this Act, including whether the department will be recommending any legislative changes to the basic care survey process."

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1488

In lieu of the amendments adopted by the Senate as printed on pages 933 and 934 of the Senate Journal, House Bill No. 1488 is amended as follows:

Page 1, line 2, after "facilities" insert "; and to provide for a report to the legislative council"

Page 1, line 7, after "~~the~~" insert:

"1."

Page 1, line 10, after the period insert:

"2."

Page 1, line 14, after the underscored period insert "As part of the survey process, the department shall develop and implement, in consultation with basic care facilities, a two-tiered system of identifying issues of concern and identifying and correcting deficiencies issued as part of the survey process. The system must provide for:

- a. A written plan of correction for a deficiency that has a direct negative impact on a resident; and
- b. A written recommendation for an issue of concern that does not have a direct negative impact on a resident.

"3."

Page 1, after line 14, insert:

"SECTION 2. STATE DEPARTMENT OF HEALTH - REPORT TO LEGISLATIVE COUNCIL. Before May 1, 2008, the state department of health shall provide a report to the legislative council regarding the impact of implementation of this Act, including whether the department will be recommending any legislative changes to the basic care survey process."

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1488

In lieu of the amendments adopted by the Senate as printed on pages 933 and 934 of the Senate Journal, House Bill No. 1488 is amended as follows:

Page 1, line 2, after "facilities" insert "; to provide for a basic care survey pilot project; to provide for a report to the legislative council; and to provide an expiration date"

Page 1, after line 14, insert:

**"SECTION 2. STATE DEPARTMENT OF HEALTH PILOT PROJECT -
REPORT TO LEGISLATIVE COUNCIL.**

1. During the 2007-09 biennium, the state department of health shall develop, in consultation with basic care facilities, and shall implement a two-tiered compliance system for deficiencies identified as part of the health portion of the basic care facility survey process.
2. Before August 1, 2008, the state department of health shall provide a report to the legislative council regarding the implementation and impact of the survey process under section 1 of this Act and on the pilot project for a two-tiered compliance system for deficiencies, including whether the department will be recommending any legislation regarding the basic care survey process or pilot project for the two-tiered compliance system for deficiencies.

SECTION 3. EXPIRATION DATE. Section 2 of this Act is effective through June 30, 2009, and after that date is ineffective."

Renumber accordingly

70605.0206
Title.

Prepared by the Legislative Council staff for
Senate Human Services
March 26, 2007

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1488

In lieu of the amendments adopted by the Senate as printed on pages 933 and 934 of the Senate Journal, House Bill No. 1488 is amended as follows:

Page 1, line 2, after "facilities" insert "; and to provide for a report to the legislative council"

Page 1, line 14, after the underscored period insert "As part of the survey process, the department shall develop, in consultation with basic care facilities, and shall implement a two-tiered system of identifying areas of noncompliance with the health portions of the survey."

Page 1, after line 14, insert:

"SECTION 2. STATE DEPARTMENT OF HEALTH - REPORT TO LEGISLATIVE COUNCIL. Before August 1, 2008, the state department of health shall provide a report to the legislative council regarding the impact of implementation of this Act, including whether the department will be recommending any legislative changes to the basic care survey process."

Renumber accordingly

Date: 3-26-87

Roll Call Vote #: 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1488

Senate HUMAN SERVICES Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken .0206 amendments

Motion Made By Sen. Erbele Seconded By Sen. Heckaman

| Senators | Yes | No | Senators | Yes | No |
|-----------------------------------|-----|----|-------------------------|-----|----|
| Senator Judy Lee, Chairman | ✓ | | Senator Joan Heckaman 2 | ✓ | |
| Senator Robert Erbele, V. Chair 1 | ✓ | | Senator Jim Pomeroy | ✓ | |
| Senator Dick Dever | ✓ | | Senator John M. Warner | ✓ | |
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Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

[Signature]
3-26-07

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1488

In lieu of the amendments printed on pages 933 and 934 of the Senate Journal, House Bill No. 1488 is amended as follows:

Page 1, line 2, after "facilities" insert "; and to provide for a report to the legislative council"

Page 1, line 14, after the underscored period insert "As part of the survey process, the department shall develop, in consultation with basic care facilities, and shall implement a two-tiered system of identifying areas of noncompliance with the health portions of the survey."

Page 1, after line 14, insert:

"SECTION 2. STATE DEPARTMENT OF HEALTH - REPORT TO LEGISLATIVE COUNCIL. Before August 1, 2008, the state department of health shall provide a report to the legislative council regarding the impact of implementation of this Act, including whether the department will be recommending any legislative changes to the basic care survey process."

Renumber accordingly

Date: 3-26-07

Roll Call Vote #: 3

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1488

Senate HUMAN SERVICES Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 70605.0207 Title .0400

Action Taken Do Pass / amended w/.0206

Motion Made By Sen. Erbele Seconded By Sen. Heckaman

| Senators | Yes | No | Senators | Yes | No |
|---------------------------------|-----|----|-------------------------|-----|----|
| Senator Judy Lee, Chairman | ✓ | | Senator Joan Heckaman 2 | ✓ | |
| Senator Robert Erbele, V. Chair | ✓ | | Senator Jim Pomeroy | ✓ | |
| Senator Dick Dever | ✓ | | Senator John M. Warner | ✓ | |
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Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator J. Lee

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

REPORT OF STANDING COMMITTEE

HB 1488: 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). HB 1488 was placed on the Sixth order on the calendar.

In lieu of the amendments printed on pages 933 and 934 of the Senate Journal, House Bill No. 1488 is amended as follows:

Page 1, line 2, after "facilities" insert "; and to provide for a report to the legislative council"

Page 1, line 14, after the underscored period insert "As part of the survey process, the department shall develop, in consultation with basic care facilities, and shall implement a two-tiered system of identifying areas of noncompliance with the health portions of the survey."

Page 1, after line 14, insert:

"SECTION 2. STATE DEPARTMENT OF HEALTH - REPORT TO LEGISLATIVE COUNCIL. Before August 1, 2008, the state department of health shall provide a report to the legislative council regarding the impact of implementation of this Act, including whether the department will be recommending any legislative changes to the basic care survey process."

Renumber accordingly

2007 HOUSE HUMAN SERVICES

CONFERENCE COMMITTEE

HB 1488

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1488

House Human Services Committee

☒ Check here for Conference Committee

Hearing Date: April 13, 2007

Recorder Job Number: 5997

Committee Clerk Signature

Judith Schock

Minutes:

Chairman Kreidt: Calls the meeting to order for HB 1488. The only question I have is in regard to line 16 and 17. If the senate could give us an update on where we are going to implement the 2 tiered system of identifying non compliance.

Senator Dever: I assume you are talking the 0400 version. We were thinking at that point is that there are violations that are more serious than others. The department should be able to distinguish between what really should require some action on the part of the facility and those violations that are much more minor.

Representative Kreidt: What we are probably trying go with the two tiered system and maybe where we would have one level where they would probably have to do a plan of corrections with those deficiencies and call those the higher level. The lower level where they may make the corrections that would not need a full plan of correction?

Senator Dever: I think that would be correct. It is important also to know that this should be developed in consultation with the basic care facilities not to work against each, but to work together for the benefit of the residence and in section 2 to provide a report.

Chairman Kreidt: Looking at the fiscal note, talking about the possibility having to hire an independent contractor and a possible \$30,000.00. This doesn't look that difficult of a system

we are going to be implementing that we are going to need to hire and independent contractor to be able to tell them how to do this. I would hope we are not going to be spending those 30,000 dollars. Working with the industry in basic care providers and I am sure the long term care association is involved in those discussions that they can come up with something for considerably less dollars than we are talking about here. Am I under the assumption that it would be general fund dollars of 40,000 dollars if this is needed, we would be looking at 40,000 dollars from appropriation general funds?

Senator Dever: I think those dollars; it was considered they could find that in their budget with out an appropriation. I don't think this need to be a big deal, but I think it is important it involved the input of the facilities.

Chairman Kreidt: Hopefully it will be done for a minimal amount of dollars.

Representative Kaldor: The relationship between that 2 tiered system and the 3 criteria or determining whether a survey is going to be announced or unannounced? If the 2 tiered systems will identify the areas of non compliance, it is primarily with the health portion? In other words we would than say there is no life safety issue that would come under the 2 tiered systems.

Chairman Kreidt: I believe the 2 tiered only will apply to the health portion to the survey, regards to the life safety that would continue on the same as it its now.

Representative Kaldor: So half of those surveys must be announced. That means half are un announced. I am still curious how that plays into the determination, I suppose the health department will have to develop some kind of definition of what a 2 tiered system is, and will they still have latitude or even if it doesn't require a plan of action, it may be the result of an unannounced survey. I am not familiar with current law. How does that deal with the issue of announced and unannounced?

Chairman Kreidt: If I recall during the last biennium there was a pilot project. This process was implemented and went through the two year project. The information than came forward to the project committee on health care. It was discussed there and information was received from the department, from providers, and looked at. No decision was made with that information received by the committee on health care. It was left in limbo. The result of the information that was received didn't set a course of direction doing it one way or another having any serious effect on the facilities on regards to surveys. I am satisfied with the senator's explanation on that, and am ready to move on.

Representative Kaldor: I was just posing a question; I didn't know what current law was. Current law they are all unannounced?

Chairman Kreidt: They are 50-50.

Senator Dever: I don't think they have been doing these inspections for many years.

Chairman Kreidt: At one point it went up to 50-7 years before there were any surveys taken, when they had time, or with a problem at the facility with a family.

Senator Dever: This being a fairly new process again I think reporting to legislative council will monitor that.

Senator Dever: It seems everyone is happy so I move the house accede to the senate amendments. **Representative Damschen** seconds the motion. The vote was 6 yeas, 0 nays, and 0 absent. **Chairman Kreidt** will carry the bill to the floor, and adjourns the meeting.

**REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)**

Bill Number 1488 (, as (re)engrossed):

Date: 4/13/07

Your Conference Committee House Human Services

attend
For the Senate:

YES / NO

attend
For the House:

YES / NO

| | | | |
|--------------------------------------------------|-------------------------------------|-----------------------------------------------------|-------------------------------------|
| <input checked="" type="checkbox"/> Sen. Dever | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> Chairman Kreidt | <input checked="" type="checkbox"/> |
| <input checked="" type="checkbox"/> Sen. Erskine | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> Rep. Damschen | <input checked="" type="checkbox"/> |
| <input checked="" type="checkbox"/> Sen. Pomroy | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> Rep. Kaldor | <input checked="" type="checkbox"/> |

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HI) page(s) 1437 -- 1438

____, and place _____ on the Seventh order.

____, adopt (further) amendments as follows, and place _____ on the Seventh order:

____, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

DATE: 4/13/07

CARRIER: Rep. Kreidt

| | |
|-----------------------------------|----------------|
| LC NO. | of amendment |
| LC NO. | of engrossment |
| Emergency clause added or deleted | |
| Statement of purpose of amendment | |

MOTION MADE BY: Sen. Dever

SECONDED BY: Rep. Damschen

VOTE COUNT YES 0 NO 0 ABSENT

REPORT OF CONFERENCE COMMITTEE

HB 1488: Your conference committee (Sens. Dever, Erbele, Pomeroy and Reps. Kreidt, Damschen, Kaldor) recommends that the **HOUSE ACCEDE** to the Senate amendments on HJ page and place HB 1488 on the Seventh order.

HB 1488 was placed on the Seventh order of business on the calendar.

2007 TESTIMONY

HB 1488

Testimony on HB 1488 **House Human Services Committee** **January 23, 2007**

Chairman Price and members of the House Human Services Committee, thank you for the opportunity to testify in support of HB 1488. My name is Shelly Peterson, I'm President of the North Dakota Long Term Care Association. On behalf of basic care facilities we are supporting HB 1488 and would like to share information regarding why we think this legislation is beneficial.

First, I'd like to share with you some information about basic care facilities.

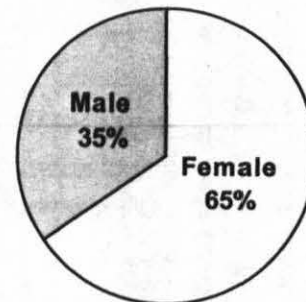
Profile

54 licensed basic care facilities in North Dakota
 85.5% occupancy
 75% operated by non-profit organization
 Average Department of Human Services daily rate: \$65.38

Residents

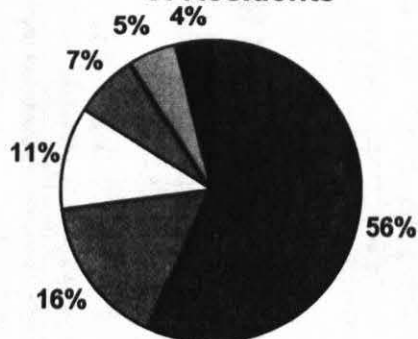
Average Age: 81 years old
 Age Range: 23 to 108 years old

Gender of Basic Care Residents



(n=996)

Prior Living Arrangements of Residents

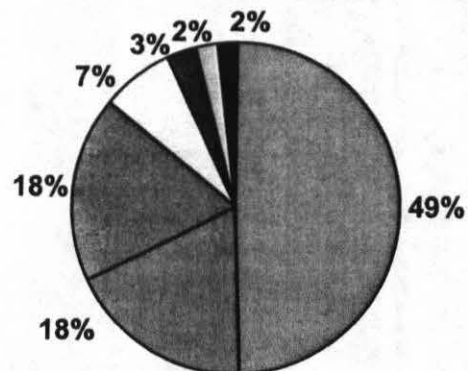


■ Home - 56%
 ■ Hospital/Swing Bed - 16%
 □ Nursing Facility - 11%
 ■ Other* - 7%
 ■ Other Basic Care Facility - 5%
 ■ Assisted Living Facility - 4%

*Other: State Hospital/Mental Health Facility/
 Independent Living/Homeless/Prison

(n=980)

Where Residents Leave To:

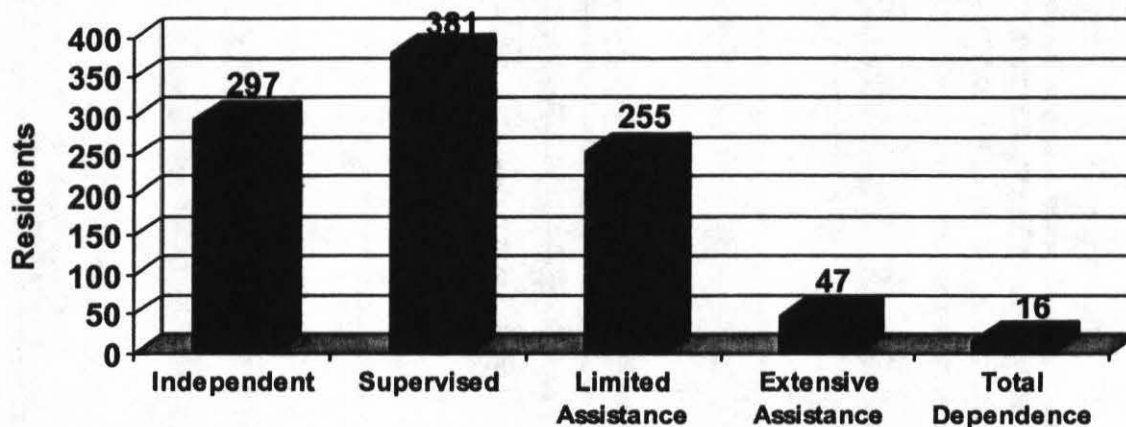


■ Nursing Facility - 49%
 ■ Home - 18%
 ■ Hospital/Swing Bed - 18%
 □ Death - 7%
 ■ Other - 3%
 □ Assisted Living Facility - 2%
 ■ Other Basic Care Facility - 2%

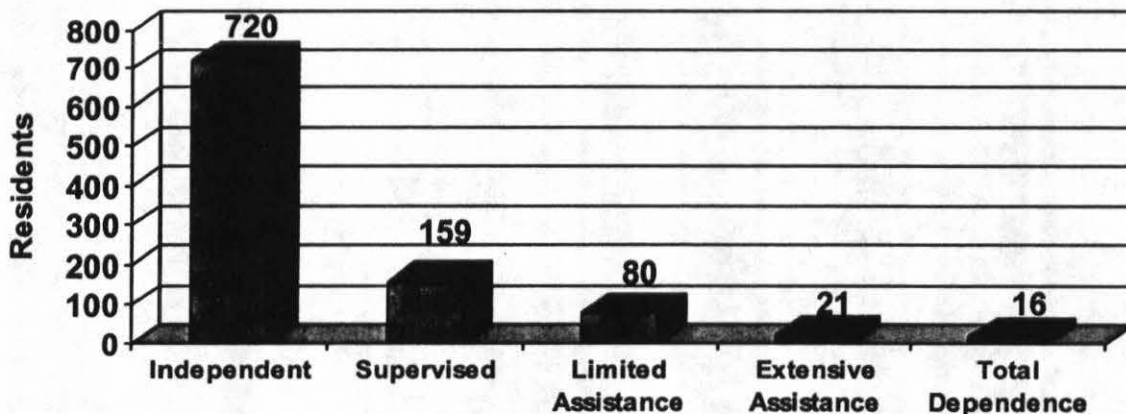
(n=508)

Needs of Residents:
(n=996)

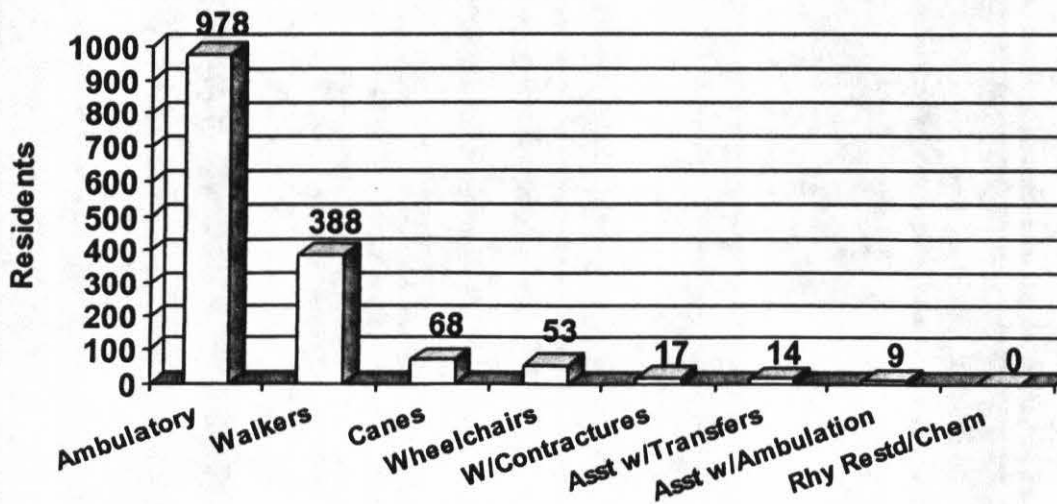
BATHING



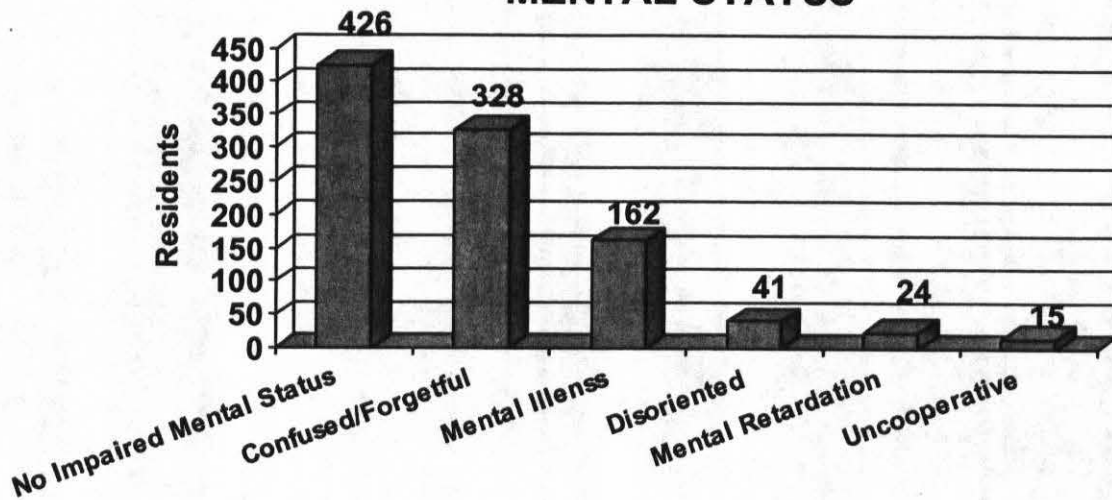
DRESSING



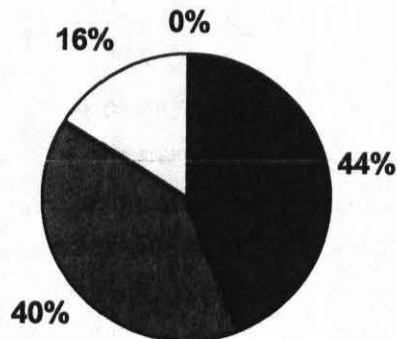
MOBILITY



MENTAL STATUS

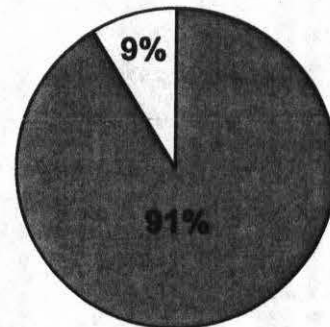


Payment Sources



- Private Pay - 44%
- Basic Care Assistance - 40%
- Long Term Care Ins. - 16%
- Other - <1%

Medications:



- Facility Manages Medication
- Self-Administered Drugs

Announced Basic Care Pilot Project – The 2005 legislature mandated a study to test an announced basic care survey process. The Health Department was entrusted to conduct the study and implemented it July 1, 2005 through May 31, 2006. The most positive aspect of the project was basic care facilities were being surveyed, some for the first time in many years.

At the conclusion of the study, the Department of Health submitted a report regarding the status of the project to the Budget Committee on Health Care. The Health Department recommended to the interim committee that announced surveys not continue. Basic care facilities on the other hand felt strongly announced basic care surveys were beneficial to residents, families, and surveyors and recommended we pursue legislation supporting announced surveys. The interim committee did not take any position on the issue of announced surveys.

Let me share with you why facilities are so positive about the announced survey process. Our findings are based upon collecting and analyzing data from the announced and unannounced survey respondents.

Why announced surveys work:

1. Residents and family have an opportunity for more meaningful involvement. Residents and families receive a week's advanced notice and have time to think of and prepare comments. Facilities posted a notice as directed by the Department and informed residents at Resident Council meetings. Families were asked if they were willing and available for interviews. From the facilities perspective, it seemed that discussion and interviews with residents, resident councils, and families was enhanced. The advanced notice facilitated more opportunity for involvement in the survey process. In the late 1980's I was employed by the Department of Human Services and one of my functions was a long term care ombudsman. I investigated complaints on behalf of basic care and nursing facility residents. Sometimes it was difficult for residents to voice concerns. Being dependent upon the facility for care and not wanting to "be a trouble", residents would sometimes remain silent. Facilities want to hear and encourage the voicing of concerns, it is the only way to improve something that may be bothering or of concern to a resident. The resident council process allows concerns to be aired and resolved and the resident to feel good and empowered by resolving something of concern. By giving resident councils advance notice of the Health Department survey, they felt more involved and connected to the survey process. One of the important questions asked of resident councils during the survey is how is the facility at resolving problems and concerns brought forward by the council. Advance notice facilitated resident council and family input and we felt this improved the survey process.
2. Essential staff were present. The announced survey assured essential staff were present and available for the survey. Generally basic care administrative staff is very small. If the right person is not present, questions and information may be difficult to retrieve. With a survey only once every two years, you want to be able to readily provide the information the Department needs. Good communication was enhanced by the announced survey process. Having essential staff present for the survey allowed for quick access to essential information.

3. Paperwork was efficiently delivered to surveyors. When the advance notice is delivered to the facility, a list of required information is also transmitted. Information that can only be gathered based upon the current resident roster. This allowed the facility staff to gather all the necessary records and have them available for Health Department staff upon entrance into the facility. This was an efficient use of surveyor and facility staff time.
4. Facility staff were more comfortable and better able to perform their routine work. Surveyors observe all aspects of care delivery. Staff can sometimes be nervous and scared regarding observation of their work. During the week proceeding the survey staff were informed of the upcoming survey and the process of what to expect was reviewed. Staff had an opportunity to ask questions and understand what would occur during the survey. Staff reported being more comfortable and more confident in the observation of their skills. Under the announced survey, staff could mentally prepare and not make what they termed "stupid mistakes". Mistakes you make when you are nervous and anxious about performing well.
5. Staffing is difficult to manipulate. Concern was raised that staffing could be enhanced and changed during the "advanced notice survey week". The Health Department checks past payroll records to determine routine staffing. If you increase staffing during this time, it will be readily apparent and noted.
6. Accuracy of survey results. Surveyor staff are professionals intent on gathering accurate, comprehensive data and making important observations. They gather data through record review, interviews with residents, staff and families, and by direct observations. Record review, interviews and observation allow three different means of gathering information and assessing compliance. To cover up a long or short time facility practice would be difficult to achieve. In the past, basic care surveys were much less frequent. It was not unheard of for a facility to go anywhere from 5 to 8 years without a survey. Providers did not like that rare survey process. Providers like to know they are doing the right thing and are in compliance with regulations. They appreciate the review process and want to work with the regulators to not only assure regulatory compliance but quality of care. All facilities that have experienced the announced survey process encourage it's continuation. They believe it works well for all parties.

HB 1488 states life safety inspections be announced. Discussion with Health Department life safety inspectors indicate they support and endorse this approach. When the life safety inspector arrives it's vital the right personnel are present and through the inspection process important education and information is relayed to staff. With life safety inspectors themselves assuring announced surveys work well, it seem compliance with life safety is best achieved by working collaboratively. We all want to work together to assure compliance is achieved.

HB 1488 states one-half the basic care facilities will receive an announced health survey and one-half will receive an unannounced health survey. The Department has the authority to select who receives what type of survey and when. Should they have concerns with any provider they have the authority to continue with unannounced surveys. The legislation further states any complaint survey related to life safety or health will continue to be unannounced, we support that position.

In conclusion, we believe the announced survey process is valid, comprehensive, efficiently uses resources and assures regulatory compliance. We believe with the Health Department in total control of who receives the announced basic care survey sufficient safe guards in place. Your support of HB 1488 is requested.

Thank you again, for the opportunity to testify. I would be happy to address any questions you my have.

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

Testimony on HB 1488

Deb Magnuson, RN, BSN
Executive Director
Waterford at Harwood Groves
Fargo, North Dakota

Good morning Representative Price and members of the House Human Services Committee. My name is Deb Magnuson. I am a registered nurse who has practiced in the state of North Dakota for 31 years, and I am also the administrator of a Basic Care Facility in Fargo. I have had both announced and an unannounced surveys, so I feel very comfortable in addressing the pros and cons of both types.

The underlying purpose of the survey process is to ensure that care and services provided by facilities in our state meet the accepted standards for safety and quality of care. It is my belief that both the state Department of Health and the basic care communities are committed to that goal.

When I began the basic care licensure process in 2003, I was very impressed with the knowledgeable professionals I met. The nurses, social workers, and life safety inspectors from the Department of Health were able to explain the purpose of the rules and also able to make suggestions or recommendations on how to meet the intent of the rules. I saw the process as collaborative, with all parties working toward a common goal.

Since my initial licensure, I have had two surveys. One was announced and one was unannounced.

An unannounced survey begins like this. A group of 2-3 individuals arrives in your parking lot, bringing a rolling travel cart of books and boxes to your front desk, and asks to see the administrator. When I arrived, I was presented with business cards, and told that a survey was underway. At that moment I needed to clear my calendar of all things scheduled for the next 2 days, and brought them to a conference room. As I reviewed the items they asked to see, I was thinking about who was on vacation, where all the various documentation was stored, and how I was going to get everything rescheduled. The element of surprise does not enhance a collegial relationship.

My announced survey began with a fax and a follow-up phone call 1 week prior to the survey. I was able to check the vacation schedule, adjust my schedule, and also post notices so that family and friends who may want to talk with surveyors were aware that it would be taking place. Various documents and binders were gathered and available in the conference room for review. Staff working in the Basic Care area were told the survey was going to happen, and those who had never been through the survey process were able to ask questions. The elements of fear and surprise were greatly diminished.

I didn't have a perfect survey either time. I am grateful to learn what improvements I can make to ensure the well being of residents, and it is always good to have a fresh look at what you do everyday.

I didn't alter anything we do, and neither did my staff. We keep records on everything. If there is a question about the "usual" staffing, my payroll records are readily available. Resident changes are identified in the quarterly care plans, the nursing assessment documentation, and the progress notes. Employee files, resident charts, fire drill reports, and maintenance logs are all there for review.

Having half of the health surveys remain unannounced will give us long term data to support the fact that there should be no significant difference in survey outcomes. The Life Safety surveys require the gathering of a great deal of documentation from many sources. Having that ready allows you to "listen and learn" during the walk through.

Our state Ombudsman program provides a vehicle for complaints or concerns to be brought forward. When there is a potential problem it makes good sense for the survey to be unannounced. There is an identified issue to be reviewed and the visit is focused on that complaint. The number of people involved and documentation reviewed is much narrower in scope.

I would encourage this committee to support HB 1488. I believe this will enhance the relationship and improve the collaborative process between facilities and the Department of Health.

Thank you for your time.

Deb Magnuson



**Human Services Committee
HB 1488
January 23, 2007**

Chairman Price and members of the committee. I'm Linda Johnson Wurtz, Associate State Director for Advocacy for AARP North Dakota. I represent 79,600 North Dakotans who are members of AARP.

I understand the interests of the Health Department survey staff and the Long Term Care Association in changing the survey process by alerting the basic care facility of when the survey team will arrive. However, I must express the same cautions that I did when this experiment was put to the test over the 2005-2006 interim.

Our first priority must be the safety of people. The reason surveys are performed is to ascertain that the environment is structured for the wellbeing of those residents. That is why the Health Department, as part of the inspections, looks at food safety, fire safety, safeguards for pharmacy and medication administration, etc. The ease of performing those inspections should be secondary to the consideration of safety.

In other areas of our lives where surveys or inspections are performed to ensure public safety, carrying them out unannounced is the standard. The fire safety inspectors come to our office unannounced. Restaurants, hospitals, hair salons, milking facilities on farms...all must be prepared to be inspected at all times. It's their commitment to accountability. Their standards must be at that optimum level at all times. Why would we lower our expectations for facilities where people live who are elderly or have encountered disability?

I would also suggest that before such a critical policy decision is made regarding the inspection of our basic care facilities, that you seek broader input from your constituencies. Your decision is going to affect people. Our citizens should know this is happening and have an opportunity to tell you how they feel about it.

Our government takes good care of us. We assume that when we walk into a restaurant, it's safe to eat there. We assume that a clinic is clean and the food we buy is fresh and processed safely. We also assume, that when we entrust a loved one to the care of a facility, they will be safe. Your decision regarding unannounced surveys will affect more than the current residents of basic care, their families, and guardians. This will affect the future residents and their protectors who at some point must turn to facility care and will need to trust that the environment is safe all of the time.

The few North Dakotans I have talked to concerning this issue are not aware that announced surveys in basic care are being considered. To them a survey is an inspection, and our citizenry is accustomed to inspections that are unannounced. There are people who do not even know what a basic care facility is today, who may some day need that facility. When they do, will they need to ask if the last survey was announced or unannounced?

I encourage you to think safety first and consider the expectations of the people it will affect today and in the future.

Thank you.

Testimony

House Bill 1488

House Human Services Committee

Tuesday, January 23, 2007; 9:30 a.m.

North Dakota Department of Health

Good morning, Chairman Price and members of the committee. My name is Bruce Pritschet, and I am director of the Division of Health Facilities for the North Dakota Department of Health. I am here today to provide information on House Bill 1488.

Basic Care Survey Pilot Project

Pursuant to Section 26 Senate Bill 2004 from the 59th Legislative Assembly, the Department of Health conducted a Basic Care Survey Pilot Project during the past interim. The purpose of the project was to test an announced basic care survey process and to provide recommendations regarding the continuation of the unannounced survey process for basic care facilities.

A project workgroup was formed that consisted of representation from the North Dakota Long Term Care Association; basic care providers; AARP; North Dakota Protection and Advocacy; the Department of Human Services, including Medicaid and the Ombudsman Program; and the Department of Health. The project required that North Dakota Administrative Code Section 33-03-24.1-03. 9., which states "The department will perform ... unannounced onsite surveys to determine compliance with this chapter," be waived for 50 percent of the basic care facilities surveyed during the study.

Before initiating the pilot study, a Basic Care Survey Pilot Project plan was developed by the Department of Health and reviewed and agreed upon by the workgroup. The plan included procedures for the announced standard survey of basic care providers, selection of basic care providers for announced surveys, and evaluation of the pilot study. Baseline data was collected and reviewed by the workgroup, and specific requirements were identified for monitoring to determine if there was a difference in the citation of these requirements during announced and unannounced surveys.

Study Results

The results of the pilot study are as follows:

- Time Frame of Study
 - July 1, 2005, to September 30, 2006 (The study is still ongoing, but results for October through December 2006 are not yet available.)

- Number of Surveys
 - Announced program surveys = 13 completed
 - Unannounced program surveys = 13 completed
 - Announced Life Safety Code surveys = 11 completed
 - Unannounced Life Safety Code surveys = 11 completed
- Average Number of Citations
 - Announced program surveys = 4.4 citations
 - Unannounced program surveys = 7.5 citations
 - Announced Life Safety Code surveys = 3.8 citations
 - Unannounced Life Safety Code surveys = 5.8 citations

Please refer to attachment for additional data resulting from the study.

Analysis of Study Results

- Both providers and surveyors indicated that information is available sooner in most cases when the survey is announced.
- Both providers and surveyors reported some improvement in communication with announced surveys.
- Surveyors reported no increase in communication or contact initiated by family, residents or staff resulting from announcing the survey.
- Providers indicated that, in their opinion, the results of the announced survey are the same as if the survey were unannounced.
- Review of deficiency statements reveals that approximately twice as many deficiencies result from unannounced surveys as from announced surveys.

Department of Health Recommendations

The mission of the Department of Health is to protect and enhance the health and safety of all North Dakotans and the environment in which we live. The objective of the Division of Health Facilities is to improve access and assure delivery of quality health care to the people of North Dakota, many of whom reside in basic care facilities. We believe the health and safety of the residents in basic care facilities should be our first consideration, and not what is more comfortable and convenient for facility or surveyor staff members.

On June 12, 2006, the Department of Health reported to the interim Budget Committee on Health Care the preliminary results from the pilot study. After much discussion about the results of this study and in keeping with our mission and objective, our recommendation to the interim committee was to continue with the unannounced basic care survey process. Our reasons were as follows:

- The national standard is for surveys to be conducted unannounced to get a true picture of the day-to-day care and services that are provided to residents. The Joint Commission on Accreditation of Health Care Organizations, which accredits hospitals, has changed to unannounced surveys this past year to better ensure the quality of care and safety of patients.
- Announcing surveys allows facilities to make temporary changes at survey time, which has the potential to alter survey findings. It is critical that surveys reflect the actual day-to-day operations of the facility.
- Evidence resulting from this study demonstrates that approximately twice as many deficiencies are cited during unannounced surveys than during announced, leading one to believe that the facilities are possibly fixing problems for the survey visit, rather than developing a system to ensure continued compliance.
- Citation of a deficient practice and the resulting plan of correction have a more significant impact on the facility's ability to deliver services in an improved manner over a longer period of time. It also provides the consumer with a more accurate picture of the day-to-day operation of the facility.
- During announced surveys, certain deficiencies can be missed. For example, a facility being understaffed would be missed if the survey were announced. This does have an impact on resident care and safety.

This completes my testimony. I am happy to address any questions you may have.

Announced Basic Care Survey Pilot Project
Data Collected July 1, 2005, through September 30, 2006

Specific Requirements

| Requirement | Announced – Number | Outcome | Unannounced – Number | Outcome |
|-------------------------------------------------------------------|---------------------------|----------------|-----------------------------|----------------|
| 33-03-24.1-09.2. Policies and Proc. | 1/13 (8%) | N | 5/13 (38%) | Y-1, 4-N |
| 33-03-24.1-10. 5. Walk through 5 days | 0/13 | | 2/13 (15%) | N |
| 33-03-24.1-11.2. Education programs. | 2/13 (15%) | N | 3/13 (23%) | N |
| 33-03-24.1-12.4. Care plans | 3/13 (23%) | Y-2, N-1 | 6/13 (46%) | Y-1, N-5 |
| 33-03-24.1-15. 4. Med Administration | 2/13 (15%) | N | 6/13 (46%) | Y-1, N-5 |
| 33-03-24.1-18. Food Sanitation | 4/13 (31%) | Y-1, N-3 | 6/13 (46%) | N |
| 33-03-24.1-18.3. Snacks/on menu | 1/13 (8%) | N | 4/13 (31%) | N |
| K0218. Doors to sleeping rooms – 20 minute fire protection rating | 1/11 (8%) | N | 3/11 (27%) | N |
| K0247. Emergency lighting system | 3/11 (23%) | N | 7/11 (64%) | N |

Y= Actual Negative Outcome to the Resident ; N = Potential for Negative Outcome to the Resident

Facility Feedback From Announced Basic Care Pilot Project Program Surveys

Communication flow was helpful:

Yes – 10/10 times reported

Citations were accurate:

Yes – 8/8 times reported

Outcome would have been different if unannounced:

Yes – 1/10 times reported – more relaxed

No – 9/10 times reported

How did facility communicate upcoming survey to family, residents and staff:

Signs posted – 9/10 times reported

Other notification to families/residents: 2/10 times reported

Facility Feedback From Announced Basic Care Pilot Project Life Safety Code Surveys

Communication flow was helpful:

Yes – 5/5 times reported

Citations were accurate:

Yes – 5/5 times reported

Outcome would have been different if unannounced:

No – 5/5 times reported

How did facility communicate upcoming survey to family, residents and staff:

Signs posted – 5/5 times reported

Surveyor Feedback From the Basic Care Pilot Project Surveys

1. Availability of administrative staff at the time of survey:

| | |
|----------------------|---------------------------------------|
| Announced surveys: | At entrance 9/9 times reported |
| Unannounced surveys: | At entrance 4/9 times reported |
| | Within one hour 1/8 times reported |
| | More than one hour 4/8 times reported |

2. Requested information available:

| | |
|----------------------|---------------------------------------|
| Announced surveys: | At entrance 6/9 times reported |
| | More than one hour 3/9 times reported |
| Unannounced surveys: | Within one hour 6/9 times reported |
| | More than one hour 3/8 times reported |

3. Communication between facility staff and survey staff:

| | |
|--------------------|---------------------------------|
| Announced surveys: | Improved 5/8 times reported |
| | Not improved 3/8 times reported |

4. Family, resident, or staff initiated communication with surveyors or called the department.

| | |
|--------------------|--------------------------|
| Announced surveys: | Yes = 0/9 times reported |
| | No = 9/9 times reported |

Testimony on HB 1488 **Senate Human Services Committee** **March 20, 2007**

Chairman Lee and members of the Senate Human Services Committee, thank you for the opportunity to testify in support of HB 1488. My name is Shelly Peterson, I'm President of the North Dakota Long Term Care Association. On behalf of basic care facilities we are supporting HB 1488 and would like to share information regarding why we think this legislation is beneficial.

First, I'd like to share with you some information about basic care facilities.

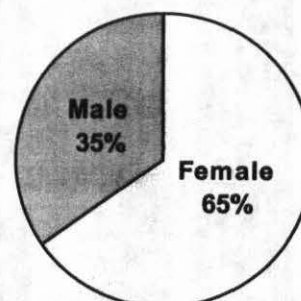
Profile

54 licensed basic care facilities in North Dakota
 85.5% occupancy
 75% operated by non-profit organization
 Average Department of Human Services daily rate: \$65.38

Residents

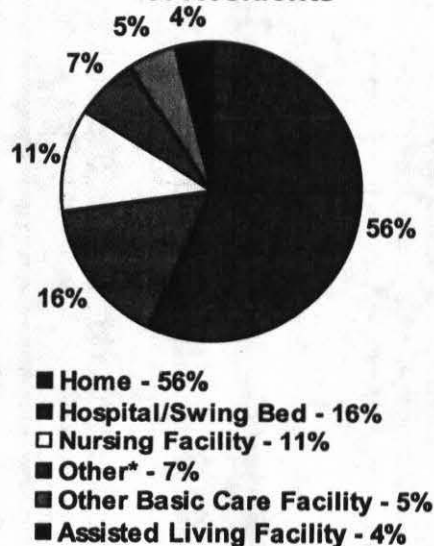
Average Age: 81 years old
 Age Range: 23 to 108 years old

Gender of Basic Care Residents



(n=996)

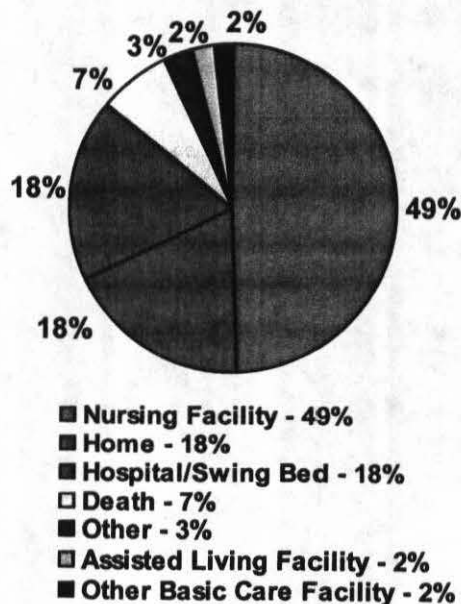
Prior Living Arrangements of Residents



*Other: State Hospital/Mental Health Facility/
 Independent Living/Homeless/Prison

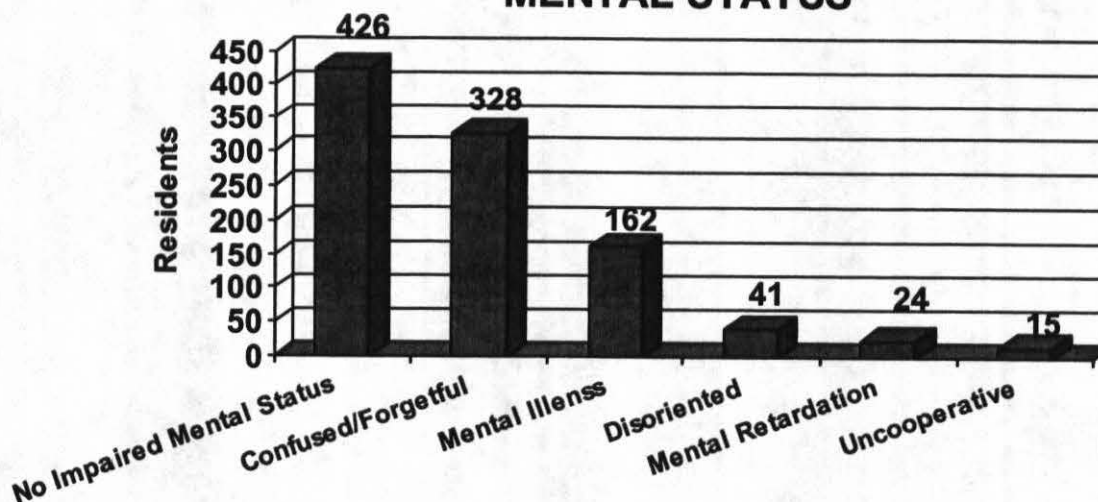
(n=980)

Where Residents Leave To:

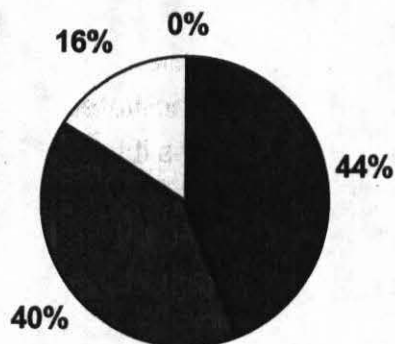


(n=508)

MENTAL STATUS

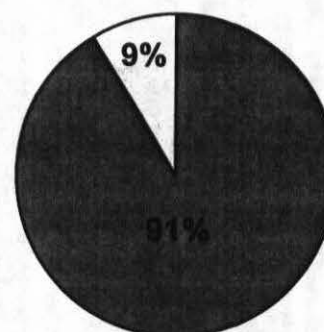


Payment Sources



- Private Pay - 44%
- Basic Care Assistance - 40%
- Long Term Care Ins. - 16%
- Other - <1%

Medications:



- Facility Manages Medication
- Self-Administered Drugs

Announced Basic Care Pilot Project – The 2005 legislature mandated a study to test an announced basic care survey process. The Health Department was entrusted to conduct the study and implemented it July 1, 2005. One of the most positive aspects of the project was basic care facilities were being surveyed, some for the first time in many years.

At the conclusion of the study, the Department of Health submitted a report regarding the status of the project to the Budget Committee on Health Care. The Health Department recommended to the interim committee that announced surveys not continue. It seemed this recommendation was based upon the outcome that announced surveys resulted in less deficiencies. Isn't that what we are striving for, greater compliance with the regulations? We believe less deficiencies are better and that is what the pilot project achieved. Facilities are always striving for compliance and want to do a good job. In this pilot project they achieved greater compliance. Basic

care facilities believe announced basic care surveys are beneficial to residents, families, and surveyors and recommended we pursue legislation supporting announced surveys. The interim committee did not take any position on the issue of announced surveys.

Let me share with you why facilities are so positive about the announced survey process. Our findings are based upon collecting and analyzing data from the announced and unannounced survey respondents.

Why announced surveys work:

1. Residents and family have an opportunity for more meaningful involvement. Residents and families receive a week's advanced notice and have time to think of and prepare comments. Facilities posted a notice as directed by the Department and informed residents at Resident Council meetings. Families were asked if they were willing and available for interviews. From the facilities perspective, it seemed that discussion and interviews with residents, resident councils, and families was enhanced. The advanced notice facilitated more opportunity for involvement in the survey process. Sometimes it is difficult for residents to voice concerns. Being dependent upon the facility for care and not wanting to "be a trouble", residents sometimes remain silent. Facilities want to hear and encourage the voicing of concerns, it is the only way to improve something that may be bothering or of concern to a resident. The resident council process allows concerns to be aired and resolved and the resident to feel good and empowered by resolving something of concern. By giving resident councils advance notice of the Health Department survey, they feel more involved and connected to the survey process. One of the important questions asked of resident councils during the survey is how is the facility at resolving problems and concerns brought forward by the council. Advance notice facilitated resident council and family input and we felt this improved the survey process.
2. Essential staff were present. The announced survey assured essential staff were present and available for the survey. Generally basic care administrative staff is very small. If the right person is not present, questions and information may be difficult to retrieve. With a survey only once every two years, you want to be able to readily provide the information the Department needs. Good communication was enhanced by the announced survey process. Having essential staff present for the survey allowed for quick access to essential information.

3. Paperwork was efficiently delivered to surveyors. When the advance notice is delivered to the facility, a list of required information is also transmitted. Information that can only be gathered based upon the current resident roster. This allowed the facility staff to gather all the necessary records and have them available for Health Department staff upon entrance into the facility. This was an efficient use of surveyor and facility staff time.
4. Facility staff were more comfortable and better able to perform their routine work. Surveyors observe all aspects of care delivery. Staff can sometimes be nervous and scared regarding observation of their work. During the week proceeding the survey staff were informed of the upcoming survey and the process of what to expect was reviewed. Staff had an opportunity to ask questions and understand what would occur during the survey. Staff reported being more comfortable and more confident in the observation of their skills. Under the announced survey, staff could mentally prepare and not make what they termed "stupid mistakes". Mistakes you make when you are nervous and anxious about performing well.
5. Staffing is difficult to manipulate. Concern was raised that staffing could be enhanced and changed during the "advanced notice survey week". The Health Department checks past work schedules to determine routine staffing. If you increase staffing during this time, it will be readily apparent and noted. If the Department chooses, they could also check past payroll records.
6. Accuracy of survey results. Surveyor staff are professionals intent on gathering accurate, comprehensive data and making important observations. They gather data through record review, interviews with residents, staff and families, and by direct observations. Record review, interviews and observation allow three different means of gathering information and assessing compliance. To cover up a long or short time facility practice would be difficult to achieve. In the past, basic care surveys were much less frequent. It was not unheard of for a facility to go anywhere from 5 to 8 years without a survey. Providers did not like that rare survey process. Providers like to know they are doing the right thing and are in compliance with regulations. They appreciate the review process and want to work with the regulators to not only assure regulatory compliance but quality of care. All facilities that have experienced the announced survey process encourage it's continuation. They believe it works well for all parties.

HB 1488 states life safety inspections be announced. Discussion with Health Department life safety inspectors indicate they support and endorse this approach. When the life safety inspector arrives it's vital the right personnel are present and through the inspection process important education and information is relayed to staff. With life safety inspectors themselves assuring announced surveys work well, it seem compliance with life safety is best achieved by working collaboratively. We all want to work together to assure compliance is achieved.

HB 1488 states one-half the basic care facilities will receive an announced health survey and one-half will receive an unannounced health survey. The Department has the authority to select who receives what type of survey and when. Should they have concerns with any provider they have the authority to continue with unannounced surveys. The legislation further states any complaint survey related to life safety or health will continue to be unannounced, we support that position.

In conclusion, we believe the announced survey process is valid, comprehensive, efficiently uses resources and assures regulatory compliance. We believe with the Health Department in total control of who receives the announced basic care survey sufficient safe guards in place. Your support of HB 1488 is requested.

Thank you again, for the opportunity to testify. I would be happy to address any questions you my have.

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

BASIC CARE FACILITIES IN NORTH DAKOTA

| City | Facility Name | Basic Care Beds |
|--------------|----------------------------------------|-----------------|
| Arthur | Prairie Villa | 25 |
| Bismarck | Baptist Home, Inc. | 10 |
| Bismarck | Edgewood Vista Senior Living | 48 |
| Bismarck | Maple View East | 24 |
| Bismarck | The Terrace | 40 |
| Bismarck | Waterford on West Century | 20 |
| Bowman | Southwest Healthcare Services | 5 |
| Cando | Towner County Medical Center | 10 |
| Carrington | Holy Family Villa | 24 |
| Devils Lake | GSS - Lake Country Manor | 6 |
| Devils Lake | Odd Fellows Home | 43 |
| Dickinson | Dickinson Country House LLC | 24 |
| Dickinson | Evergreen Dickinson, LLC | 51 |
| Edgeley | Manor St. Joseph | 40 |
| Edmore | Edmore Memorial Rest Home | 30 |
| Elgin | Dakota Hill Housing | 35 |
| Ellendale | Evergreen Place | 20 |
| Fargo | The Evergreens of Fargo* | 72 |
| Fargo | Waterford at Harwood Groves | 20 |
| Forman | Four Seasons Healthcare Ctr, Inc. | 5 |
| Gackle | Gackle Care Center, Inc. | 41 |
| Grand Forks | Parkwood Place | 40 |
| Grand Forks | St. Anne's Guest Home | 54 |
| Hazen | Senior Suites at Sakakawea | 34 |
| Hettinger | Hillcrest Care Center | 6 |
| Jamestown | Bethel Four Acres | 28 |
| Jamestown | Rock of Ages, Inc. | 53 |
| Jamestown | Roseadele | 20 |
| Kenmare | Baptist Home of Kenmare | 60 |
| Lisbon | North Dakota Veterans Home | 111 |
| Maddock | Maddock Memorial Home | 25 |
| Mandan | Dakota Pointe | 10 |
| McClusky | Sheridan Memorial Home | 16 |
| Minot | Edgewood Vista | 53 |
| Minot | Emerald Court | 28 |
| Mott | Good Samaritan Society - Mott | 6 |
| Mountain | Borg Pioneer Memorial Home | 43 |
| New Town | Good Samaritan Society - New Town | 18 |
| Noonan | Good Samaritan Society - Manor on Main | 32 |
| Osnabrock | Good Samaritan Society - Osnabrock | 6 |
| Rugby | Harold S. Haaland Home | 68 |
| Valley City | HI Soaring Eagle Ranch | 11 |
| Wahpeton | St. Catherine's Living Center | 16 |
| Wahpeton | The Leach Home | 39 |
| Walhalla | Pembilier Nursing Center | 13 |
| Watford City | McKenzie Cty HC Systems LTC | 9 |
| West Fargo | Sheyenne Crossings | 24 |
| Williston | Bethel Lutheran Home | 26 |
| Williston | The Kensington | 71 |
| Wilton | Redwood Village | 34 |

There are 54 licensed basic care facilities in the State of North Dakota

1547

*The Evergreens of Fargo is licensed as four (each has 18 basic care beds) facilities.

Testimony on HB 1488

Deb Magnuson, RN, BSN
Executive Director
Waterford at Harwood Groves
Fargo, North Dakota

Good morning Senator Lee and members of the Senate Human Services Committee. My name is Deb Magnuson. I am a registered nurse who has practiced in the state of North Dakota for 31 years, and I am also the administrator of a Basic Care Facility in Fargo. I have had both announced and an unannounced surveys, so I feel very comfortable in addressing the pros and cons of both types.

The underlying purpose of the survey process is to ensure that care and services provided by facilities in our state meet the accepted standards for safety and quality of care. It is my belief that both the state Department of Health and the basic care communities are committed to that goal.

When I began the basic care licensure process in 2003, I was very impressed with the knowledgeable professionals I met. The nurses, social workers, and life safety inspectors from the Department of Health were able to explain the purpose of the rules and also able to make suggestions or recommendations on how to meet the intent of the rules. I saw the process as collaborative, with all parties working toward a common goal.

Since my initial licensure, I have had two surveys. One was announced and one was unannounced.

An unannounced survey begins like this. A group of 2-3 individuals arrives in your parking lot, bringing a rolling travel cart of books and boxes to your front desk, and asks to see the administrator. You are presented with business cards, and told that a survey is underway. At that moment you need to clear your calendar of all things scheduled for the next 2 days. As you review the items they ask for, you think about who is on vacation, where all the various documentation is stored, and how you are going to get everything rescheduled. The element of surprise does not enhance a collegial relationship.

My announced survey began with a fax and a follow-up phone call 1 week prior to the survey. I was able to check the vacation schedule, adjust my schedule, and also post notices so that family and friends who may want to talk with surveyors were aware that it would be taking place. Various documents and binders were gathered and available in the conference room for review. Staff working in the Basic Care area were told the survey was going to happen, and those who had never been through the survey process were able to ask questions. The elements of fear and surprise were greatly diminished.

I didn't have a perfect survey either time. I am grateful to learn what improvements I can make to ensure the well being of residents, and it is always good to have a fresh look at what you do everyday.

I didn't alter anything we do, and neither did my staff. We keep records on everything. If there is a question about the "usual" staffing, my payroll records are readily available. Resident changes are identified in the quarterly care plans, the nursing assessment documentation, and the progress notes. Employee files, resident charts, fire drill reports, and maintenance logs are all there for review.

When I began my licensing process 4 years ago I visited other basic care communities. At that time I was told by an administrator that he had not be surveyed in over 7 years. Using the teams time more efficiently could actually increase the timeliness of surveys. Having all surveys completed every other year could actually increase the safety and compliance of facilities.

I understand that there is a concern that announced surveys will present a "hazard" to the seniors of North Dakota. Those of us who have devoted our careers to serving the elderly have no intention of causing harm. I truly believe that providers who present care concerns have already been identified by the Department of Health. I trust that when intervention has been needed, they have responded.

I am an AARP member, and have been for several years. None of the fellow AARP members I have spoken to have a concern that this change will present issues.

Having half of the health surveys remain unannounced will give us long term data to support the fact that there is no significant difference in survey outcomes. The Life Safety surveys require the gathering of a great deal of documentation from many sources. Having that ready allows you to "listen and learn" during the walk through.

Our state Ombudsman program provides a vehicle for complaints or concerns to be brought forward. When there is a potential problem it makes good sense for the survey to be unannounced. There is an identified issue to be reviewed and the visit is focused on that complaint. The number of people involved and documentation reviewed is much narrower in scope.

The last eight years of my career have been committed to providing a safe and meaningful lifestyle for seniors. If there are poor providers in the state I want them improved or closed. Major breeches in performance in a facility can't be hidden whether the survey is announced or not.

I would encourage this committee to support HB 1488. I believe this will enhance the relationship and improve the collaborative process between facilities and the Department of Health.

Thank you for your time.

Deb Magnuson

Testimony

House Bill 1488

Senate Human Services Committee

Tuesday, March 20, 2007; 11 a.m.

North Dakota Department of Health

Good morning, Chairman Lee and members of the committee. My name is Bruce Pritschet, and I am director of the Division of Health Facilities for the North Dakota Department of Health. I am here today to provide information on House Bill 1488.

Basic Care Survey Pilot Project

Pursuant to Section 26 of Senate Bill 2004 from the 59th Legislative Assembly, the Department of Health conducted a Basic Care Survey Pilot Project during the past interim. The purpose of the project was to test an announced basic care survey process and to provide recommendations regarding the continuation of the unannounced survey process for basic care facilities.

A project workgroup was formed that consisted of representation from the North Dakota Long Term Care Association; basic care providers; AARP; North Dakota Protection and Advocacy; the Department of Human Services, including Medicaid and the Ombudsman Program; and the Department of Health. The project required that North Dakota Administrative Code Section 33-03-24.1-03. 9., which states "The department will perform ... unannounced onsite surveys to determine compliance with this chapter," be waived for 50 percent of the basic care facilities surveyed during the study.

Before initiating the pilot study, a Basic Care Survey Pilot Project plan was developed by the Department of Health and reviewed and agreed upon by the workgroup. The plan included procedures for the announced standard survey of basic care providers, selection of basic care providers for announced surveys, and evaluation of the pilot study. Baseline data was collected and reviewed by the workgroup, and specific requirements were identified for monitoring to determine if there was a difference in the citation of these requirements during announced and unannounced surveys.

Study Results

The results of the pilot study are as follows:

- Time Frame of Study
 - July 1, 2005, to September 30, 2006

- Number of Surveys
 - Announced program surveys = 13 completed
 - Unannounced program surveys = 13 completed
 - Announced Life Safety Code surveys = 11 completed
 - Unannounced Life Safety Code surveys = 11 completed
- Average Number of Citations
 - Announced program surveys = 4.4 citations
 - Unannounced program surveys = 7.5 citations
 - Announced Life Safety Code surveys = 3.8 citations
 - Unannounced Life Safety Code surveys = 5.8 citations

Please refer to attachment for additional data resulting from the study.

Analysis of Study Results

- Both providers and surveyors indicated that information is available sooner in most cases when the survey is announced.
- Both providers and surveyors reported some improvement in communication with announced surveys.
- Surveyors reported no increase in communication or contact initiated by family, residents or staff resulting from announcing the survey.
- Providers indicated that, in their opinion, the results of the announced survey are the same as if the survey were unannounced.
- Review of deficiency statements reveals that approximately twice as many deficiencies result from unannounced surveys as from announced surveys.

Department of Health Recommendations

The mission of the Department of Health is to protect and enhance the health and safety of all North Dakotans and the environment in which we live. The objective of the Division of Health Facilities is to improve access and assure delivery of quality health care to the people of North Dakota, many of whom reside in basic care facilities. We believe the health and safety of the residents in basic care facilities should be our first consideration, and not what is more comfortable and convenient for facility or surveyor staff members.

On June 12, 2006, the Department of Health reported to the interim Budget Committee on Health Care the preliminary results from the pilot study. After much discussion about the results of this study and in keeping with our mission and objective, our recommendation to the interim committee was to continue with the unannounced basic care survey process. Our reasons were as follows:

- The national standard is for surveys to be conducted unannounced to get a true picture of the day-to-day care and services that are provided to residents. The

Joint Commission on Accreditation of Health Care Organizations, which accredits hospitals, has changed to unannounced surveys this past year to better ensure the quality of care and safety of patients.

- Announcing surveys allows facilities to make temporary changes at survey time, which has the potential to alter survey findings. It is critical that surveys reflect the actual day-to-day operations of the facility.
- Evidence resulting from this study demonstrates that approximately twice as many deficiencies are cited during unannounced surveys than during announced, leading one to believe that the facilities are possibly fixing problems for the survey visit, rather than developing a system to ensure continued compliance.
- Citation of a deficient practice and the resulting plan of correction have a more significant impact on the facility's ability to deliver services in an improved manner over a longer period of time. It also provides the consumer with a more accurate picture of the day-to-day operation of the facility.
- During announced surveys, certain deficiencies can be missed. For example, a facility being understaffed would be missed if the survey were announced. This does have an impact on resident care and safety.

This completes my testimony. I am happy to address any questions you may have.

Announced Basic Care Survey Pilot Project
Data Collected July 1, 2005, through September 30, 2006

Specific Requirements

| Requirement | Announced – Number | Outcome | Unannounced – Number | Outcome |
|-------------------------------------------------------------------|-------------------------------|----------------|---------------------------------|----------------|
| 33-03-24.1-09.2. Policies and Proc. | 1/13 (8%) | N | 5/13 (38%) | Y-1, 4-N |
| 33-03-24.1-10. 5. Walk through 5 days | 0/13 | | 2/13 (15%) | N |
| 33-03-24.1-11.2. Education programs. | 2/13 (15%) | N | 3/13 (23%) | N |
| 33-03-24.1-12.4. Care plans | 3/13 (23%) | Y-2, N-1 | 6/13 (46%) | Y-1, N-5 |
| 33-03-24.1-15. 4. Med Administration | 2/13 (15%) | N | 6/13 (46%) | Y-1, N-5 |
| 33-03-24.1-18. Food Sanitation | 4/13 (31%) | Y-1, N-3 | 6/13 (46%) | N |
| 33-03-24.1-18.3. Snacks/on menu | 1/13 (8%) | N | 4/13 (31%) | N |
| K0218. Doors to sleeping rooms – 20 minute fire protection rating | 1/11 (8%) | N | 3/11 (27%) | N |
| K0247. Emergency lighting system | 3/11 (23%) | N | 7/11 (64%) | N |

Y= Actual Negative Outcome to the Resident ; N = Potential for Negative Outcome to the Resident

Facility Feedback From Announced Basic Care Pilot Project Program Surveys

Communication flow was helpful:

Yes – 10/10 times reported

Citations were accurate:

Yes – 8/8 times reported

Outcome would have been different if unannounced:

Yes – 1/10 times reported – more relaxed

No – 9/10 times reported

How did facility communicate upcoming survey to family, residents and staff:

Signs posted – 9/10 times reported

Other notification to families/residents: 2/10 times reported

Facility Feedback From Announced Basic Care Pilot Project Life Safety Code Surveys

Communication flow was helpful:

Yes – 5/5 times reported

Citations were accurate:

Yes – 5/5 times reported

Outcome would have been different if unannounced:

No – 5/5 times reported

How did facility communicate upcoming survey to family, residents and staff:

Signs posted – 5/5 times reported

Surveyor Feedback From the Basic Care Pilot Project Surveys

1. Availability of administrative staff at the time of survey:

| | |
|----------------------|---------------------------------------|
| Announced surveys: | At entrance 9/9 times reported |
| Unannounced surveys: | At entrance 4/9 times reported |
| | Within one hour 1/8 times reported |
| | More than one hour 4/8 times reported |

2. Requested information available:

| | |
|----------------------|---------------------------------------|
| Announced surveys: | At entrance 6/9 times reported |
| | More than one hour 3/9 times reported |
| Unannounced surveys: | Within one hour 6/9 times reported |
| | More than one hour 3/8 times reported |

3. Communication between facility staff and survey staff:

| | |
|--------------------|---------------------------------|
| Announced surveys: | Improved 5/8 times reported |
| | Not improved 3/8 times reported |

4. Family, resident, or staff initiated communication with surveyors or called the department.

| | |
|--------------------|--------------------------|
| Announced surveys: | Yes = 0/9 times reported |
| | No = 9/9 times reported |

#4a

Amendment: House Bill 1488 – Demonstration Project for Voluntary Surveys during Construction or Renovation of Basic Care and Long Term Care Facilities

- Currently, the Department of Health has 3 LSC FTE to complete the current workload related to survey of LSC in Hospitals, Skilled Nursing Facilities, Basic Care Facilities, ICF/MR Facilities, and other facility types (over 250 surveys per year, approximately 275 revisits per year, for a total of approximately 1050 visits in a biennium). These individuals are responsible to complete the recertification surveys, revisits, and complaint investigations as needed. Often more than one revisit is required after a survey to ensure compliance is achieved.
- Health Department would require at least one new FTE plus the associated funding for 2 years of the project. Current LSC staff members do not have the time to take on added work load and it would be considered a Conflict of Interest consistent with the Social Security Act governing survey of Skilled Nursing Facilities resulting in the surveyor not being allowed to complete a Medicare or Medicaid survey in the facility for a period of two years from the date of last consultation.
- It is estimated the Health Department reviews plans for over 100 projects per year which would result in between 2 or more onsite visits per project (if requested) depending upon the size of the project.
- The consultation visit could not be used as the LSC survey for Skilled Nursing Facilities due to the Conflict of Interest Identified above, the requirement for the surveys to be unannounced, the timing of the visit, and the need to cite areas of non-compliance if identified for federal purposes. The consultation visit could not be used for the LSC survey of Basic Care Facilities unless citations were made at the time of the visit vs. consultation where recommendations/guidance is given.
- No federal funds could be used on a consultation visit. When previously asked, the Centers for Medicare and Medicaid Services have clearly indicated that a state may conduct pilot projects; however, this would be in addition to the regular survey process and would need to be funded by the state through another mechanism.
- Not sure how one person could be in so many locations timely. Projects occur throughout the state, would not want to hold up a project because consultant is unable to be onsite in time to review current phase of construction.
- The FTE to complete this workload would need to be hired and trained which would take approximately 3-6 months.
- One added FTE could complete approximately 300 onsite visits per biennium with an average of 10 hours per visit (including preparation, travel, onsite, follow-up documentation) at a cost of approximately \$500 per visit.
- Funding for the position would be dependent on requests and completion of 300 onsite visits during the biennium. If this did not occur there would not be sufficient revenue to cover salary and operating costs for the position. One alternative would be to include a general fund appropriation for the project and have fees paid by providers' returned to the general fund to offset costs. Another alternative would be for the department to contract with an individual to

complete the visits when requested, however it may be difficult to find a contractor with the knowledge and skills needed for this type of project.

Biennial Budget for Basic Care and Long Term Care Construction Pilot Project

Salary

2007-2008 (year 1)

1 FTE \$39,600

2007-2009 (year 2) \$41,183

1 FTE

Total Salaries \$80,784

Direct Costs

Fringe \$14,541

Medical Insurance \$13,300

Total Direct \$27,841

Total Salaries and Direct Costs \$108,625

Operating

(Travel, Per Diem, Hotel, Office, Phone, Supplies, Rent) \$ 40,000

Total Cost of Project \$148,625

Social Security Act 1819(g)(2)(E) and 1919(g)(2)(E)

(E) SURVEY TEAMS.—

(ii) PROHIBITION OF CONFLICTS OF INTEREST.—A State may not use as a member of a survey team under this subsection an individual who is serving (or has served within the previous 2 years) as a member of the staff of, or as a consultant to, the facility surveyed respecting compliance with the requirements of subsections (b), (c), and (d), or who has a personal or familial financial interest in the facility being surveyed.

Life at 108 is what you make it

This Article was in the L.A. Herald on Sunday, Jan. 21, 2007

There was an error regarding her children. She had a brother who died young. Her son, Louis, died 2 1/2 yrs. ago.

Thought you might enjoy the article. Mary truly is an amazing woman.

Sister Rebecca

■ GF's Mary Schumacher reflects on her lengthy life

Mary Schumacher doesn't worry about the war in Iraq or the threat of global warming.

At 108, she thinks more about the days of World War I, when she and her husband, Fred, were married. And she remembers her girlhood on a farm near Reynolds, N.D.

She is one of the growing number of centenarians among us now and an inspiration for any youngsters in their 60s or 80s hoping to lead a long, healthy life.

Living right

When you spend an hour visiting with Mary, you conclude her longevity has something to do with eating good food, working hard and worshipping God.

Mary believes in walking steps whenever possible. She changes the sheets on her bed each week. She takes care of her own clothing.

"I still can see," she says, "but it's cloudy. And I can hear, but it's very dim." She shrugs her shoulders and laughs as she says, "Life is what you make it."

Cozy, quiet life

Mary's life these days is the cozy quiet of her room at St. Anne's Guest Home, where



Marilyn Hagerty
HERALD COLUMNIST

she enjoys just remembering things past. She is up and downstairs for breakfast at 7:30 a.m. Then, she goes to the chapel, where she says the rosary at 8:30 a.m. and attends the 9 a.m. Mass. She watches "Wheel of Fortune" in the evening and goes to bed fairly early.

In her time, she has enjoyed music and dancing. She has read good books. But she accepts the limitations of age as they unfold. Until recently, she walked the stairs at St. Anne's. Now, she uses a walker because she knows she could fall.

She doesn't mind telling you that she was a sassy little kid and spoiled as the dickens. Still, she says, she sat alone enough and thought of what kind of person she would and would not like to be.

Twin born in 1898

She and her twin brother, Joe, were the youngest of 12 children born to Joe and Mary



▲ Mary Schumacher's life these days is the cozy quiet of her room at St. Anne's Guest Home, where she enjoys just remembering things past. She is up and downstairs for breakfast at 7:30 a.m. Then, she goes to the chapel, where she says the rosary at 8:30 a.m. and attends the 9 a.m. Mass. She watches "Wheel of Fortune" in the evening and goes to bed fairly early.

Ackerman on Aug. 29, 1898. Joe died when he was very young, but Mary grew up as the baby sister in the family.

Delivering milk

She remembers delivering milk to homes in Reynolds. For each delivery, she had to tie up the horses. "It was a bother," she says. She remembers sometimes taking the train to Grand Forks and shopping for clothes at Wolfe's Store in downtown Grand Forks. She isn't into shopping at the mall in these times.

Her wedding was so long

Sister Rebecca Metzger, the administrator of St. Anne's Guest Home, often says she would like to live to be 108 if she could be like Mary Schumacher. "She has a deep spiritual life. She accepts reality and is so positive."

back to Fred's sister, Lena, and Mary's brother, Fred, to Mary Breidenbach.

The young men at the time were being called into military service during World War I. Those who were married and in Class 2 had a better chance of staying home and working on their farms. Her husband was able to stay home and tend to his horses, stock and machinery.

Four children

They had four children: Lewis, who died young, and a twin sister, Lucille Rohman, who lives in Washington state; and a son, Donald Schumacher, and a daughter, Geraldine Linneman, who both live in Grand Forks.

It is her son, Donald, in his early 80s, and a niece, Jean Shreiner, who come regularly to visit Mary at St. Anne's. Her daughter, Geraldine, is living in Valley 4000.

One of 84 residents

Mary is one of 84 residents at St. Anne's Guest Home and is held in high regard by the Franciscan Sisters, who operate St. Anne's.

Sister Rebecca Metzger, the administrator, often says she would like to live to be 108 if she could be like Mary Schumacher. "She has a deep spiritual life. She accepts reality and is so positive."

Reach Marilyn Hagerty at mhagerty@herald.com or 772-1055.

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Human Services Committee

HB 1488

March 20, 2007

Chairman Lee and members of the committee. I'm Linda Johnson Wurtz, Associate State Director for Advocacy for AARP North Dakota. I represent 80,500 North Dakotan members.

I understand the interest in changing the survey process by alerting the basic care facilities before the survey team arrives. However, I must express the same cautions that I did when this experiment was put to the test over the 2005-2006 interim.

Our first priority must be the safety of people. The reason surveys are performed is to ascertain that the environment is structured for the wellbeing of those residents. That is why the Health Department, as part of the inspections, looks at food safety, fire safety, safeguards for pharmacy and medication administration, etc. The ease of performing those inspections should be secondary to the consideration of safety for the people who choose a basic care facility as their home.

The issue of safety was never clearer to me than after a meeting with the Department of Health, along with several other advocates, before they experimented with this process over the interim. We watched a PowerPoint presentation that outlined some of the deficiencies that are found during surveys. These were some of the examples: a contaminated needle left unattended; food kept past the expiration date; dishes not sanitized; light bulbs not replaced; batteries in smoke detectors not replaced; strong odors. I have attached two documents to my testimony that provide similar data from the experiment conducted during the 05-06 interim. I hope you will look through them and decide, as I did, that these are not conditions in which we should leave people we care about.

In other areas of our lives where surveys or inspections are performed to ensure public safety, carrying them out unannounced is the standard. The fire safety inspectors come to our office unannounced. Restaurants, hospitals, hair salons, milking facilities on farms...all must be prepared at all times to be inspected. It's their commitment to accountability. Their standards must be at that optimum level at all times. Why would we lower our expectations for facilities where people live?...people who are elderly or have encountered disability?

We assume that when we walk into a restaurant it's safe to eat there. We assume that a clinic is clean and the food we buy is fresh and processed safely. We also assume, that when we entrust a loved one to the care of a facility, they will be safe. People are not going to expect that a facility...which is licensed by the North Dakota Department of Health...is inspected by appointment. Your decision regarding unannounced surveys will affect more than the current residents of basic care, their families, and guardians. This will affect the future residents and their protectors who at some point must turn to facility care and will need to trust that the environment is safe all of the time.

The few North Dakotans I have talked to concerning this issue are not aware that announced surveys in basic care are being considered. To them a survey is an inspection, and our citizenry is accustomed to inspections that are unannounced. There are people who do not even know what a basic care facility is today, who may some day need that facility. When they do, will they need to ask if the last survey was announced or unannounced?

I encourage you to think safety first and consider the expectations of the people this policy will affect today and in the future. Please recommend do-not-pass on HB 1488.

Thank you.

Unannounced Basic Care Survey Information

Unannounced Basic Care Surveys were conducted at 15 Basic Care Facilities from 07/28/05 – 11/22/06.

B910 Governing Body (NDAC 33-03-24. 1-09. 1.) cited in 3 facility

- > failed to ensure a resident did not enter areas/rooms where access to drugs/medications and hazardous substances put the health and safety of the resident at risk.
- > failed to ensure residents received quality services; failed to ensure residents' health needs and safety needs were met; and failed to ensure the overall operation of the facility was in compliance with all state laws

B920 Governing Body (NDAC 33-03-24. 1-09. 2.) cited in 6 facilities

- > failed to ensure policy/procedures were reviewed annually
- > failed to implement a falls protocol for residents who experienced falls which resulted in injuries

B921 Governing Body (NDAC 33-03-24. 1-09. 2. a.) cited in 2 facilities

- > failed to ensure policies and procedures were developed and implemented to meet the needs of the residents

B923 Governing Body (NDAC 33-03-24. 1-09. 2. c. (3)) cited in 4 facilities

- > failed to implement policy and procedure to assess/determine self administration of medication was a safe practice
- > failed to ensure facility staff developed the necessary pharmacy and medication service policies/procedures, in consultation with a registered pharmacist

B924 Governing Body (NDAC 33-03-24. 1-09. 2. d.) cited in 3 facilities

- > failed to follow the necessary practices to prevent infections during the provision of personal cares and investigate a communicable disease
- > failed develop infection control policies and procedures that addressed the investigation, management and control of infections, and communicable disease in residents and staff members

B925 Governing Body (NDAC 33-03-24. 1-09. 2. e.) cited in 1 facility

- > failed to provide residents with care and services in a manner which was free from mental abuse. Residents were provided care and services in a punitive nature, which resulted in the residents exhibiting signs of mental anguish.

B927 Governing Body (NDAC 33-03-24. 1-09. 2. g.) cited in 2 facilities

- > failed to provide a written account to residents regarding resident funds
- > failed to care plan for residents who did house cleaning for the facility
- > failed to provide toileting care in a dignified manner

B928 Governing Body (NDAC 33-03-24. 1-09. 2. h.) cited in 1 facility

> failed to make inquiry of the State Certified Nursing Assistant (CNA) Abuse Registry and the Board of Nursing Unlicensed Assistive Person Registry regarding any history of alleged abuse

B929 Governing Body (NDAC 33-03-24. 1-09. 2. i.) cited in 2 facilities

> failed to provide any evidence the employees had received orientation to their job duties/responsibilities
> failed to maintain current Certified Nursing assistant and Certified Medication Aide certificates in personnel files

B930 Governing Body (NDAC 33-03-24. 1-09. 3.) cited in 1 facility

> failed to obtain a clinical laboratory improvement amendments (CLIA) waiver

B950 Governing Body (NDAC 33-03-24. 1-09. 5.) cited in 2 facilities

> failed to ensure sufficient trained and competent staff were employed at the facility to meet the resident's needs

B1010 Fire Safety (NDAC 33-03-24.1-10. 1.) cited in 2 facilities

> failed to comply with the national fire protection association life safety code for all residents. Monthly monitoring of the fire extinguishers was not completed

B1020 Fire Safety (NDAC 33-03-24.1-10. 2.) cited in 2 facilities

> failed to conduct monthly fire drills on alternating shifts, failed to conduct at least one fire drill where all staff and residents evacuated the building, and failed to conduct night shift fire drills utilizing an alarm

B1040 Fire Safety (NDAC 33-03-24.1-10. 4.) cited in 2 facility

> to include all required information
> failed to include a brief description of the drill, including information regarding residents who required physical assistance, verbal cueing/direction, refused to respond, etc., and failed to describe any problems encountered during the fire drill Failure to describe problems related to resident and or staff response to the drill, and implement appropriate corrective action, places residents and staff at risk for harm/injury in the event of an actual fire/disaster.

B1050 Fire Safety (NDAC 33-03-24.1-10. 5.) cited in 2 facilities

> failed to provide an individual fire drill walk-through within five days of admission

B1110 Education Programs (NDAC 33-03-24. 1-11 1.) cited in 3 facilities

> failed to provide the required new employee education training
> failed to provide the required employee in-service training
> failed to have an effective program for educating employees' and providing them with a system for applying their skills and knowledge in an effective way to improve the quality of life and quality of care

B1120 Education Program (NDAC 33-03-24. 1-11 2.) cited in 2 facilities

- > failed to provide the required employee in-service training
- > failed to receive annual training in residents' rights; mental and physical health needs of the residents, including behavior problems; and fire safety

B1140 Education Program (NDAC 33-03-24. 1-11 4.) cited in 4 facilities

- > failed to ensure dietary department employees attended educational programs

B1150 Education Program (NDAC 33-03-24. 1-11 5.) cited in 2 facilities

- > failed to ensure staff responsible for activities attended a minimum of two activity educational programs

B1210 Resident Assessment and Care Plans (NDAC 33-03-24. 1-12 1.) cited in 5 facilities

- > failed to complete admission assessment within 14 days and quarterly assessments
- > failed to assess resident's capability of self-preservation, changes in behavior, urinary continence, and skin integrity
- > failed to assess the individual needs/problems of residents placing residents at risk for functional decline, lack of appropriate treatment/intervention, or treatment which may not be indicated or necessary.

B1220 Resident Assessment and Care Plans (NDAC 33-03-24. 1-12 2.) cited in 4 facilities

- > failed to assess significant resident weight loss
- > failed to assess and document resident's capability of self-preservation
- > failed to assess resident's swallowing problems, assistive devices, falls, and weight loss.

B1230 Resident Assessment and Care Plan (NDAC 33-03-24. 1-12 3.) cited in 2 facility

- > failed to develop an individualized plan of care
- > failed to plan and implement appropriate goals and interventions to improve/maintain each resident's mental and physical function

B1240 Resident Assessment and Care Plans (NDAC 33-03-24. 1-12 4.) cited in 7 facilities

- > failed to review and revise/update care plans to reflect the current resident status/pertinent changes

B1320 Resident Records (NDAC 33-03-24. 1-13 2.) cited in 4 facilities

- > failed to include the required information in the records

B1420 Personal Care Services (NDAC 33-03-24. 1-14. 2.) cited in 1 facility

- > failed to refer/obtain health/mental health services

B1440 Personal Care Services (NDAC 33-03-24. 1-14. 4.) cited in 1 facility

- > failed to position plate guards to accommodate the resident's dominant hand

B1510 Pharmacy and Med Administration Services (NDAC 33-03-24. 1-15. 1) cited in 1 facility

- > failed to provide security for medications during medication passes

B1520 Pharmacy and Med Administration Services (NDAC 33-03-24. 1-15. 2. b.) cited in 2 facilities

- > failed to provide secure storage for medications and controlled substances

B1540 Pharmacy and Med Administration Services (NDAC 33-03-24. 1-15. 4. b. and c.) cited in 8 facilities

- > failed to label medication containers in accordance with current physician orders, and label insulin vials with the date the vial was opened
- > failed to assess/document the effectiveness of PRN medications
- > failed to maintain drug containers which are labeled consistent with state laws
- > failed to properly administer medications
- > failed to identify the reason for administering PRN (as needed) medications, and monitoring the effectiveness of the medications and failed to provide a secure area for controlled substances
- > failed to ensure the administration instructions on the prescription label, the resident's administration record (MAR), and the physician order all correlated
- > failed to administer medications before meals or after meals as ordered by the physician

B 1600 Social Services (NDAC 33-03-24. 1-16.) cited in 1 facility

- > failed to provide services to meet a resident's need

B1700 Nursing Services (NDAC 33-03-24. 1-17.) cited in 7 facilities

- > failed to assess/determine self administration of medication was a safe practice
- > failed to provide insulin administration in the Basic Care Unit. Resident was required to go to the Long Term Care portion of the facility to receive their insulin administration.
- > failed to address swallowing difficulties, falls, and a significant 7.5 % weight loss
- > failed to have physician's orders to start, or discontinue a medication
- > unlicensed personnel failed to notify licensed nursing personnel when residents experienced falls with resulting injuries to provide immediate/timely direction for the unlicensed staff regarding the treatment and care of the residents and failure to have physician's orders to start, or discontinue medication
- > failed to ensure a resident was observed and assessed by a nurse, after being sick for an entire shift
- > failed to provide nursing services to evaluate residents' needs for assessment of health/physical status

B1800 Dietary Services (NDAC 33-03-24. 1-18.) cited in 8 facilities

- > failed to label and date food items
- > failed to maintain refrigerator and freezer at proper temperatures
- > failed to store, prepare, and serve food under sanitary conditions
- > failed to monitor the chemical level of the dishwasher
- > failed to ensure a proper concentration of sanitizer in the solution used to clean non-food contact surfaces of equipment

B1810 Dietary Services (NDAC 33-03-24. 1-18. 1.) cited in 2 facilities

- > failed to include all food served in the menus, to ensure that meals meet the recommended dietary allowances of the food and nutrition
- > failed to plan and provide meals which were nutritious, and well-balanced

B1830 Dietary Services (NDAC 33-03-24. 1-18. 3.) cited in 4 facilities

- > failed to include snacks on the daily menu or to offer snacks

B1840 Dietary Services (NDAC 33-03-24. 1-18. 4.) cited in 6 facilities

- > failed to ensure food is served in the correct portions sizes to meet the individual needs of residents receiving the prescribed diets
- > failed to provide physician's ordered prescribed therapeutic diet and failed to utilize approved menus
- > failed to have a planned menu for prescribed therapeutic diets
- > failed to have a planned and approved therapeutic menu
- > failed to have a planned menu for all of the prescribed diets ordered by a physician, including regular diets; and failed to ensure menus for prescribed diets were planned and reviewed by an appropriate professional

B1860 Dietary Services (NDAC 33-03-24. 1-18. 6.) cited in 2 facilities

- > failed to serve food by methods that will enhance/conserves flavor and appearance, and failed to serve food at the proper temperatures

B2220 General Building Requirements (NDAC 33-03-24. 1-22. 2.) cited in 1 facility

- > failed to maintain secured handrails

B2230 Kitchen (NDAC 33-03-24. 1-22. 3.) cited in 1 facility

- > failed to ensure food was properly stored and prepared

B2254 General Building Requirements (NDAC 33-03-24. 1-22. 5. a.) cited in 1 facility

- > failed to provide each resident with a mattress in good repair

B2265 Toilet rooms and bathing facilities (NDAC 33-03-24. 1-22. 6. e.) cited in 1 facility

- > failed to maintain a workable light in the bathroom

Announced Basic Care Survey Pilot Project information

Announced Basic Care Surveys were conducted at 13 Basic Care Facilities from 07/28/05 – 11/22/06.

B920 Governing Body (NDAC 33-03-24. 1-09. 2.) cited in 1 facility
> failed to review policies and procedures annually

B1020 Fire Safety (NDAC 33-03-24.1-10. 2.) cited in 2 facilities
> failed to conduct monthly fire drills, alternating with all work shifts
> failed to conduct the required monthly fire drills

B1040 Fire Safety (NDAC 33-03-24.1-10. 4.) cited in 1 facility
> failed to include a brief description of the drill including the escape path used during the monthly fire drills

B1120 Education Program (NDAC 33-03-24. 1-11 2.) cited in 2 facilities
> failed to annually participate in all required inservice programs
> failed to ensure employees received the required annual in-service on fire and accident prevention and safety; mental and physical health needs of the residents, including behavior problems; prevention and control of infections, including universal precautions; and resident rights

B1220 Resident Assessment and Care Plans (NDAC 33-03-24. 1-12 2.) cited in 3 facilities
> failed to complete accurate quarterly assessments
> failed to assess the cause of weight loss and/or weight gain for residents and the capability of self-preservation
> failed to assess a resident who was incontinent of bowel, and then develop and implement interventions to assist the resident in maintaining continence

B1240 Resident Assessment and Care Plans (NDAC 33-03-24. 1-12 4.) cited in 3 facilities
> failed to update (review and revise) each resident's care plan

B1540 Pharmacy and Med Administration Services (NDAC 33-03-24. 1-15. 4. b. and c.) cited in 2 facilities
> failed to properly record medications at the time of administration

B1800 Dietary Services (NDAC 33-03-24. 1-18.) cited in 4 facilities

- > failed to store food under sanitary conditions
- > failed to follow the regulations of the "North Dakota Requirements for Food and Beverage Establishment" in the preparation of food, and dishwashing/storage of utensils
- > failed to conform with the North Dakota Requirements for Food and Beverage Establishments in regard to sanitation and food storage
- > failed to provide safe and sanitary food service

B1830 Dietary Services (NDAC 33-03-24. 1-18. 3.) cited in 1 facility

- > failed to include snacks on the daily menu

B1840 Dietary Services (NDAC 33-03-24. 1-18. 4.) cited in 5 facilities

- > failed to have planned menus for residents with prescribed therapeutic diet orders
- > failed to plan, prepare, and serve prescribed diets for residents on therapeutic diets
- > failed to serve therapeutic diets, as ordered by the physician
- > failed to serve a therapeutic renal diet
- > failed to follow the menus planned by a registered dietitian

B2000 Housekeeping and laundry services (NDAC 33-03-24. 1-20.) cited in 2 facilities

- > failed to maintain fans in a clean manner
- > failed to provide services necessary to maintain a clean interior environment (bathroom vents)

TESTIMONY ON HOUSE BILL 1488
BASIC CARE FACILITY SURVEYS

SENATE HUMAN SERVICES COMMITTEE
Honorable Judy Lee, Chairman

March 20, 2007

Chairman Lee and members of the Senate Human Services Committee, my name is Jim Jacobson and I am the Director of the Protective Services Unit for the North Dakota Protection and Advocacy Project (P&A). P&A opposes announced surveys of Basic Care Facilities.

People whose needs result in requiring the support and services provided by a Basic Care Facility are, by virtue of those needs, vulnerable. The purpose of licensure standards is not to create a test that the facility passes or fails. The purpose is to ensure that, on a continuous basis, a minimum quality of care is implemented. This quality of care standard is to be maintained 24/7, not just demonstrated for a survey conducted by the North Dakota Department of Health (NDDH). Unannounced surveys are the mechanism by which the NDDH determines that the quality of care is not only demonstrated but consistent. Many steps can be taken by Facilities to present a picture of quality of services provided, at the time of the survey. Any preparation for a survey could present a picture that is not consistent with the services provided on a routine basis.

It is imperative that, as much as possible, surveys reflect the routine quality of services provided. Only unannounced surveys will accomplish this. Only this process will ensure safety and well being of the people who are vulnerable and require quality of care in their day to day lives. Please support full protection for our citizens receiving this service and do not support announced surveys of Basic Care Facilities. Thank you.

Suggested Amendment to HB 1488

Page 1, Line 10, after "chapter," add: The Department will develop a two tiered system of issuing deficiencies. Area's of concern that have direct negative outcome to any resident will result in a deficiency with a written plan of correction required. Other areas of concern will result in recommendations and a written plan of correction is not necessary. The changes to implement the two tiered system of identifying and correcting areas of non-compliance should be developed in conjunction with basic care providers and be reported to the appropriate interim committee.

Page 1, Line 14, after "chapter," add: The Department will report and update the appropriate interim committee regarding the impact of HB 1488. The report should be submitted by May 2008.

3-21-07
Shelly Peterson

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1488

In place of the amendments adopted by the Senate as printed on pages 933 and 934 of the Senate Journal, House Bill No. 1488 is amended as follows:

Page 1, line 2, after "facilities" insert "; and to develop and implement a pilot study and provide for a report to the legislative council"

Page 1, line 10, remove "The department shall implement a survey process for basic care"

Page 1, remove lines 11 through 13

Page 1, line 14, remove "must be unannounced" and the underscored period

Page 1, after line 14, insert:

"SECTION 2. STATE DEPARTMENT OF HEALTH - TO DEVELOP AND IMPLEMENT A PILOT STUDY AND TO REPORT TO LEGISLATIVE COUNCIL.

The Department of Health shall develop and implement a pilot project for the basic care facility survey process. For the pilot survey process, the life safety portions of the survey must be announced; for the health portions of the survey, half of the surveys must be announced; and for a survey initiated in response to a complaint related to health and life safety, all surveys must be unannounced. As part of the survey pilot project, the department of health may implement a compliance system for the health portion of the survey that does not require a written plan of correction for a citation that is isolated and has a potential for no more than a minimal negative impact on any resident. Before May 1, 2008, the state department of health shall provide a report to the legislative council regarding the impact of implementation of this Act, including whether the department will be recommending any legislative changes to the basic care survey process."

Renumber accordingly

Comments on Amendments to HB 1488

- We are requesting that consideration be given to the new amendments proposed by the department for the following reasons:
- This bill has since turned into an effort to regulate the regulator, rather than the regulated, does not focus on the best interests of the vulnerable residents, and places the department in a position of great liability and may also be considered unconstitutional.
- Since the amendment was identified I have spoken with Director of Risk Management for the State of North Dakota, the Director of the Litigation Division with the Attorney General's Office, and the Department's Legal Council with the Attorney General's Office, and Mike Mullen with the Attorney General's Office who has assisted in drafting the amendments.
- Review indicated the following:

The department to develop and implement a system identifying concerns and identifying and correcting deficiencies as part of the survey process.

- Placing a requirement on the department "to develop and implement a system identifying concerns and identifying and **correcting deficiencies issued** as part of the survey process" places the department (and the state of North Dakota) in a position of great liability and does not protect the health and safety of the vulnerable elderly housed in the facilities.
- If the department would develop a plan of correction for a facility and the plan did not work, it is conceivable that the department could be held responsible for the facility's failure to comply rather than the facility. The accountability for the care provided and correction shifts from the facility to the department when it needs to remain with the facility providing the direct care for the resident.
- Requiring the department to be in the position of correcting deficiencies and providing facilities with a written plan of correction to be implemented in response to deficiencies cited by the department would require the department to have control of the facility's management and resources – at least concerning the deficiency cited. This would potentially create a regulatory agency taking in contravention of the constitution.
- The language would also not allow the department to cite unless there was a negative outcome. The department could only identify the concern and give recommendations. Recommendations do not need to be implemented by a facility and is consistent with an accreditation process versus a licensure process.
- The process described in the amendment is similar to an accreditation which is not regulatory, but voluntary. If facilities choose not to comply they can simply drop accreditation. Concerns that occur in an accredited facility are turned over to the licensure authority to follow-through and ensure compliance. The process of identifying concerns and recommendations does not require compliance with requirements put in place to promote health and safety and prevent harm from occurring. For example, a drunk driver or someone speeding on the highway could be stopped and given a recommendation to not drink or to slow down, but no citation would be given until such time there was an accident that resulted in someone being injured or worse. Another example would be that we could only recommend correction to LSC deficiencies, unless there was a fire and someone was injured or died – then when it is too late to prevent injury, we could issue a deficiency with a plan of correction the facility would be required to implement. This again would place the

Darleen Bartz
DOH 3-26-07

department in a position of liability as we had identified the unsafe environment, yet had only issued a concern and recommended correction rather than require the necessary correction be made to protect the residents.

- The facility would no longer be required to provide even the minimum level of care currently required, and it is questionable if they would be held accountable if the department knowingly allowed the facility to choose not to comply with requirements until something bad happened to someone.
- Assisted Living would provide a greater level of safety for residents as assisted living facilities are expected to meet the terms of their contract, whereas Basic Care Facilities would no longer be required to meet the minimum licensure requirements.

In consultation with the basic care facilities

- The words "in consultation with the basic care facilities" may be interpreted in two ways –
 - As the right to participate in workgroups with the department and to comment on changes or processes which are currently available to them and have been utilized in the past – even with the development of the survey pilot project over the last biennium; or
 - It may be interpreted to mean that basic care facilities must agree with, and thereby have veto power over, the specifics of the survey process that will be developed. We have been advised that this second interpretation would give the basic care facilities the authority to determine what is law. That would be a delegation of legislative authority. And, in *McCabe v. Workers Comp. Bureau*, the Supreme Court held that a delegation of legislative authority may not be given to a private party.
 - The first meaning of this phrase is currently being done by the department on a routine basis and there is nothing gained by stating it in law other than confusion that it means something more than is allowed by the constitution.

Isolated findings:

- Based on the concerns identified by the committee, wording has been added to allow the department to include in the study language which would allow the department to not require a plan of correction for findings which are isolated and identified to have the potential for no more than minimal harm to a resident. I do believe that we are doing this in most cases. I reviewed the file of the example of the hair net given at the last meeting. This was only one of three findings which were cited under the requirement of dietary sanitation. The other findings included such things as storing wet glasses in the cupboard which creates an environment for bacteria growth and not wearing aprons when handling dirty dishes so that the apron can be removed when working with clean items. Rather, the staff member chose not to protect her clothing and moved with soiled clothes between areas, again creating an unsafe sanitary environment.

Fiscal Impact:

- Currently, the department has funding in place for basic care facilities which allows us to go onsite once every two years for health and safety visits. The amendments currently in the bill will result in a significant amount of increased workload. As indicated in testimony by a provider last week, correction takes a significant amount of time. It is estimated that the cost of implementing these provisions and the added workload to the department would be \$297,250 and require 2 additional FTE. In addition, there would be the added cost associated

with rulemaking for a total cost to the General Fund of \$307,250. This does not include the added funding that would be needed to for anticipated legal fees related to the increased liability issues resulting from these changes.