

2011 SENATE HUMAN SERVICES

SB 2261

2011 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee Red River Room, State Capitol

SB 2261
1-24-2011
Job Number 13306

☐ Conference Committee

Committee Clerk Signature

DManson

Explanation or reason for introduction of bill/resolution:

Relating to a moratorium on granting licenses to new intermediate care facilities for the mentally retarded.

Minutes:

Attached testimony.

Senator Judy Lee opened the hearing on SB 2261.

Senator Judy Lee introduced SB 2261 which is a bill that was introduced so there would be an opportunity for discussion about how to address the issue of potentially expanding needs and potentially expanding facilities and not necessarily expanding budget.

Tina Bay, Dept. of Human Services, provided background information on SB 2261. Attachment #1

Senator Tim Mathern asked what the need is if the department has essentially full control of funding these facilities. Wouldn't you just limit the number of facilities that would be funded or the number of spaces for facilities? Why is a moratorium needed?

Ms. Bay responded that currently the rules tell them they have to license the facility unless they are in non compliance with the licensing regulations. It doesn't state anything about budget limitations. If they don't have it in the budget for the new facility, they could license the facility but not have the money for that facility to serve consumers.

Senator Tim Mathern asked if that isn't the current situation. If the legislature doesn't appropriate as much as the facilities want, then they are funded less than they want.

Ms. Bay answered that recently there have been more requests with the transition efforts to transition people from the developmental center.

Senator Dick Dever asked if these facilities are all public pay.

Ms. Bay replied that was mostly correct. A person could be private pay in one of these institutions as well.

Senator Spencer Berry asked if there is adequate space available throughout the state.

Ms. Bay said there isn't a defined area and if there isn't room in one area then they look to other areas.

There was no opposing testimony.

Julie Leer, Dept. of Human Services, provided information on the language used in drafting the bill. Attachment #2

Barbara Murry, ND Association of Community Providers, offered neutral testimony. Attachment #3

Senator Dick Dever stated that the department is saying they need to be able to control this and she is saying they can control it anyway. He asked if they are able to still work with the department to build the facilities they need, if the bill passes.

Ms. Murry said the bill doesn't explain that very well. Testimony from the department indicated they don't plan to totally restrict building ICFMR's but they want to regulate it. Other agency members had a lot of concern on what that would mean and how it would translate into practices of the industry.

Senator Judy Lee stated that they wanted to encourage conversations between the department and the providers.

Senator Tim Mathern asked what her sense of the market was. Is there enough latitude in the number of persons needing this? Are there enough factors in place where the private market could solve this or is it still a controlled population and funding source so the state needs to determine the number of beds.

Ms. Murry responded that they have had concerns what this would mean in terms of possible similarities to the market system within the long term care industry where there is the selling of beds. She didn't have an answer whether it is wise or not. Their population is much narrower than the broad spectrum of people who are going into nursing homes. In one sense they see it as something extra that isn't needed. There still is a role for the use of ICFMR's within services to people with developmental disabilities.

Theresa Larson, Executive Director of Protection and Advocacy, said that in theory P&A supports this bill. The reservation about this is that they are looking at deinstitutionalization from the developmental center. The next goal is to look at going from 95 residents from this July to 67 residents by July 2013. In looking at those residents moving to the community they want to ensure that they have appropriate placements.

Senator Gerald Uglem asked if she saw the ICFMR as a little institution.

Ms. Larson replied the CMS does look at ICFMR's as an institution. That is their definition. The 1-4 bed ICFMR's is more palatable to North Dakota.

There was no further testimony.

The hearing on SB 2261 was closed.

Discussion was opened: There is room for private competition.

Would this moratorium apply to strictly private pay organizations? This bill doesn't distinguish between private or not. It's this kind of facility – that is all it says.

Senator Judy Lee adjourned the committee until they could get further information from the stakeholders.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee
Red River Room, State Capitol

SB 2261
1-31-2011
Job Number 13749

☐ Conference Committee

Committee Clerk Signature

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Explanation or reason for introduction of bill/resolution:

Minutes:

Senator Judy Lee opened SB 2261 for committee work.

Discussion centered around studying the moratorium. There has never been a moratorium and there are those that are concerned because people are being transitioned out of the developmental center. It will take some specialized facilities, in some cases, to meet the unique needs.

If they make a study out of this the concerned providers would have an avenue of raising their concerns and having a public discussion about it.

There are concerns about not having enough beds but also about having too many beds. Part of the department's concern was that entities would build facilities to accommodate the anticipated increase so the department is looking at this so they have control over how many facilities are built.

If they do a study and delay the moratorium, will some facilities build in anticipation of the limit?

Senator Judy Lee closed discussion.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee
Red River Room, State Capitol

SB 2261
2-9-2011
Job Number 14263

☐ Conference Committee

Committee Clerk Signature

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Explanation or reason for introduction of bill/resolution:

Minutes:

Senator Judy Lee opened SB 2261 for committee work. She reported that she had the opportunity to visit with the providers who agreed to meet with the department. Carol Olson from the department would be happy to convene a group of providers and staff members from the department to discuss all of the issues involved with the transitioning of individuals out of the developmental center, the needs to change facilities to accommodate, etc. Rather than having a moratorium it might be more productive to permit the stakeholders to have those conversations.

The department is able to contract with whomever they want or not so there isn't really a financial issue.

Senator Tim Mathern moved a **Do Not Pass**.

Seconded by **Senator Spencer Berry**.

Roll call vote 5-0-0. **Motion carried.**

Carrier is **Senator Tim Mathern**.

Date: 2-9-2011

Roll Call Vote # _____

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2261Senate HUMAN SERVICES

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☒ Do Not Pass ☐ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ ReconsiderMotion Made By Sen. Mathern Seconded By Sen. Berry

Senators	Yes	No	Senators	Yes	No
Sen. Judy Lee, Chairman	✓		Sen. Tim Mathern	✓	
Sen. Gerald Uglem, V. Chair	✓				
Sen. Dick Dever	✓				
Sen. Spencer Berry	✓				

Total (Yes) 5 No 0Absent 0Floor Assignment Sen. Mathern

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

REPORT OF STANDING COMMITTEE

SB 2261: Human Services Committee (Sen. J. Lee, Chairman) recommends **DO NOT PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2261 was placed on the Eleventh order on the calendar.

2011 TESTIMONY

SB 2261

#1

Testimony
Senate Bill 2261– Department of Human Services
Senate Human Services Committee
Senator Judy Lee, Chairman
January 24, 2011

Chairman Lee, members of the Senate Human Services Committee, I am Tina Bay, Director of the Developmental Disabilities Division within the Department of Human Services. I am here today on behalf of the Department to provide background information and to support Senate Bill 2261. This bill will provide an act to enact a new section to chapter 25-16 of the North Dakota Century Code, relating to a moratorium on granting licenses to new intermediate care facilities for the mentally retarded (ICF/MR).

Current regulations only allow the Department to deny a license to an applicant upon a finding of noncompliance with the licensing rules of the Department. In addition current rules indicate that licensing a facility does not create an obligation for the state to purchase services from the licensed facility.

IFC/MRs are institutional levels of care and are viewed as restrictive settings regardless of location and size according to the Centers for Medicare and Medicaid Services(CMS). Olmstead, Money Follows the Person, Aging & Disability Resource Center (ADRC) and recent Department of Justice efforts all enforce least restrictive settings and consumer choice.

This suggested new section to chapter 25-16 will still allow for new ICF/MRs if the Department determines it to be necessary however it will be in a more controlled manner than current regulation allows. This concludes my testimony. I would be happy to answer any questions you may have.

Testimony
Senate Bill 2261 – Department of Human Services
Senate Human Services Committee
Senator Lee, Chairman
January 24, 2011

Good morning, Chairman Lee, members of the Senate Human Services Committee. My name is Julie Leer and I am an attorney with the Department of Human Services. I am here today to provide information on the language used in drafting Senate Bill 2261.

Senator Lee asked me to explain why the language in this bill uses the term "intermediate care facility for the mentally retarded" when this committee heard Senate Bill 2142 on January 17th that will change the term "intermediate care facility for the mentally retarded" to "intermediate care facility for the intellectually disabled." Senate Bill 2261 was drafted using the existing term out of an abundance of caution. If for some reason Senate Bill 2142 changing "mentally retarded" to "intellectually disabled" does not pass and this bill does, this bill would not create an inconsistency within the Century Code. If both pass, there is an instruction in the final section of Senate Bill 2142 for the Legislative Council to substitute "intellectually disabled" for "mentally retarded" in any legislation passed during this session. That would ensure that the language in Senate Bill 2261 would be published using the term "intermediate care facility for the intellectually disabled" if both bills pass.

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

TESTIMONY
Senate Bill 2161 – DD Loan Fund
Senate Human Services
Senator Judy Lee, Chairman
January 24, 2011

Chairman Lee, members of the Senate Human Services Committee, I am Barbara Murry, Executive Director of the North Dakota Association of Community Providers. I am here today to offer neutral testimony on Senate Bill 2261, the moratorium on ICF-MR beds.

The DD industry, and NDACP just became aware this bill had been introduced approximately 12 working hours ago. We have had preliminary discussion on the impact to the industry and to the people we support. However, this is too short a time to develop a position on this bill, with state-wide input of our members.

The following questions, concerns, and thoughts have been expressed by NDACP member organizations.

1. ICF's-MR facilities are an important option for providing services in the community. They are one of many tools that providers need to offer.
2. This will have a negative impact on further deinstitutionalization, and the efforts to downsize the institution to 67 people by 2013.
3. New construction cost makes it prohibitive to build new MSLA or TCLF group homes. Therefore, limiting ICF's-MR has the effect of prohibiting the building of all new group homes.
4. Why more laws? Without this law, no ICF-MR has been built without the consent of DHS. Another provider stated that they had recently

been denied in their request to build a new ICF-MR. They questioned why the law was needed if they had legally been denied.

5. This may create an incentive for for-profit and non-profit providers to sell their "beds" by creating a market due to the moratorium.
6. DHS can already regulate this through their use of the purchase of service agreement.
7. The people served in the community are aging. DD does not want to increase ^{LA}~~SA~~ hours. The services in a four bed ICF-MR could be individualized, while still having the ability to meet increasing needs.

In summary, NDACP hasn't had the time to weigh the advantages against the disadvantages of this bill. The introduction of the bill without any input from community providers does not serve the state of North Dakota well in planning for the needs of its citizens with intellectual disabilities. This concludes my testimony. I would be happy to answer any questions.