

**2015 HOUSE HUMAN SERVICES**

**HB 1109**

# 2015 HOUSE STANDING COMMITTEE MINUTES

**Human Services Committee**  
Fort Union Room, State Capitol

HB 1109  
1/7/2015  
Job #21731

- Subcommittee  
 Conference Committee

*Hicky Crabtree*

## **Explanation or reason for introduction of bill/resolution:**

A bill relating to health care facility residents' rights.

## **Minutes:**

Testimonies #1-2 attached

Chairman Weisz called the hearing to order on HB 1109.

Karla Backman: State Long Term Ombudsman with DHS and Aging Services Division testified in support of the bill. (See Testimony #1)

Shelly Peterson: President of the ND Long Term Care Association testified in support of the bill. (See Testimony #2)

Rep. Porter: In section subsection M it talks about discharge to another facility. Is there a component in here that talks about the number of days a bed has to be held?

Peterson: Each facility has to develop their policy on what they allow for bed hold days. At a minimum each facility generally has fifteen bed hold days. The issue happens after those fifteen days. It is not specifically addressed in here bed hold days. You must have a policy on it. In basic care it is fifteen days and in nursing facilities it may be up to thirty days. When you transfer someone to the hospital you are to give them immediate notice on that transfer which isn't practical all the time. You also give them the bed hold policy.

Rep. Porter: If I am transferred and still willing to pay then can I extend that or is it still fifteen days? Can the facility get rid of me in that fifteen day window?

Peterson: Generally we consider all transfers to the hospital a transfer and not a discharge. We are not supposed to discharge to a hospital. We will keep you if you want to pay. If you have a stroke or heart attack and in a basic care facility, that facility is not capable of taking you back because the facility is for baseline care. They have to give you a notice right away.

Rep. Porter: On page 3, lines 27 and 28 it talks about being transferred. Your definition of being transferred and what is in the bill, are they the same?

Peterson: Even when it is a change in the level of care and the facility feels incapable of caring for you because your needs have progressed beyond their licensure capability we still have to give a 30 day advanced notice. Generally we don't discharge to a hospital. The document, Transfer Admission and Discharge Rights has a section on the definition of a discharge and a transfer. Discharge and transfer are used interchangeably in here and gets confusing on whether it is a transfer or discharge. A discharge is when you are never expected to come back to the facility.

Rep. Rich S. Becker: What happens in rural areas that give written notices and there are no other facilities in the area and a person is forced to go 200 miles to the nearest facility? How does that factor into requesting this bill? What has led up to this bill?

Peterson: The families are generally upset. At a minimum you give the thirty day notice. In our small rural licensed nursing homes we have taken five nursing home beds out of services and converted them to basic care facility. You can have a lower level of care so you can keep them when they need skilled care. The bill was brought forward by the DHS and they wanted two technical changes. They wanted to change that there must be a hearing every two years and It is a technical housekeeping bill to clean up the language. If you want to look at that 30 day issue and put language in that is easier for everyone to understand, I think it would be helpful.

Chairman Weisz: Are you asking if we want, we should look at this?

Peterson: Yes.

Chairman Weisz: Have you had an issue where there has been some question on whether it met the criteria for sound medical reasons?

Peterson: Yes. I had an issue recently where residents were on the floor fighting and it was very serious. The facility tried to make a hospitalization and two hospitals refused to take the resident they have been having difficulty with. To me the issue is to do an immediate discharge to a nursing facility because he needed more protective measures.

Rep. Fehr: Under M you mean take out the whole paragraph and substitute your sentence?

Peterson: Yes.

No Opposition

Chairman Weisz closed the hearing.

Rep. Porter: Maybe an assignment back to the Long Term Care Association and the Department to work out the language they think would clarify that the best for the patient. This should be clarify this now rather than 18 months from now.

Rep. Weisz: We will sit on this and give them time to work on this.

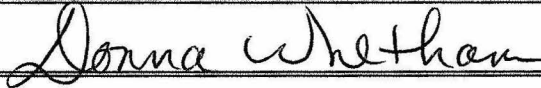
# 2015 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee  
Fort Union Room, State Capitol

HB 1109  
1/14/2015  
21993

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

A bill relating to health care facility residents' rights.

## Minutes:

Attachment #1.

**Chairman Wiesz:** took up HB 1109.

**Shelly Petersen:** President of the ND Long Term Care Association, Explained proposed amendment. (1:00-1:50). (See Attachment #1).

**Chairman Wiesz:** Any discussion?

**Representative Overson:** I move to adopt the amendment that is proposed by the ND Long Term Care Association.

**Representative Fehr:** seconded.

**Voice Vote:** All Ayes. Motion carried.

**Representative Hofstad:** Moved a Do Pass as Amended on HB 1109.

**Representative Seibel:** Seconded.

A Roll Call Vote was taken. Yes: 11 No: 0 Absent: 2.

**Representative Oversen:** will carry the bill.

January 14, 2015

2/1-15-15

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1109

Page 3, line 28, overstrike "and the right to receive" and insert immediately thereafter  
"however,"

Page 3, line 29, overstrike "under all other circumstances to the"

Page 3, overstrike line 30

Page 3, line 31, overstrike "resident's welfare or that of another resident" and insert  
immediately thereafter "may be less than thirty days if the resident has  
urgent medical needs that require a more immediate transfer or  
discharge, or a more immediate transfer or discharge is required to  
protect the health and safety of residents and staff within the facility"

Renumber accordingly

Date: 1-14-15  
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1109

House Human Services Committee

Subcommittee

Amendment LC# or Description: NDLCA Amendment

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar

Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Rep. Overson    Seconded By Rep. Fehr

Representatives	Yes	No	Representatives	Yes	No
Chairman Weisz			Rep. Mooney		
Vice-Chair Hofstad			Rep. Muscha		
Rep. Bert Anderson			Rep. Oversen		
Rep. Dick Anderson					
Rep. Rich S. Becker					
Rep. Damschen					
Rep. Fehr					
Rep. Kiefert					
Rep. Porter					
Rep. Seibel					

*Voice Vote*

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

*Voice Vote  
YEAS*

*Motion Carried*

Date: 1-14-15  
 Roll Call Vote #: 2

**2015 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1109**

House Human Services Committee

Subcommittee

Amendment LC# or Description: 15.8052.01001

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Rep. Hofstad Seconded By Rep. Seibel

Representatives	Yes	No	Representatives	Yes	No
Chairman Weisz	✓		Rep. Mooney	✓	
Vice-Chair Hofstad	✓		Rep. Muscha	✓	
Rep. Bert Anderson	✓		Rep. Oversen	✓	
Rep. Dick Anderson	✓				
Rep. Rich S. Becker	✓				
Rep. Damschen	✓				
Rep. Fehr	✓				
Rep. Kiefert	✓				
Rep. Porter	✓				
Rep. Seibel	✓				

Total (Yes) 11 No 0

Absent 2

Floor Assignment Rep. Oversen

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

**REPORT OF STANDING COMMITTEE**

**HB 1109: Human Services Committee (Rep. Weisz, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1109 was placed on the Sixth order on the calendar.

Page 3, line 28, overstrike "and the right to receive" and insert immediately thereafter "however."

Page 3, line 29, overstrike "under all other circumstances to the"

Page 3, overstrike line 30

Page 3, line 31, overstrike "resident's welfare or that of another resident" and insert immediately thereafter "may be less than thirty days if the resident has urgent medical needs that require a more immediate transfer or discharge, or a more immediate transfer or discharge is required to protect the health and safety of residents and staff within the facility"

Renumber accordingly

**2015 SENATE HUMAN SERVICES**

**HB 1109**

# 2015 SENATE STANDING COMMITTEE MINUTES

Human Services Committee  
Red River Room, State Capitol

HB 1109  
3/17/2015  
24935

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Donald Mueller*

## Explanation or reason for introduction of bill/resolution:

A bill relating to health care facility residents' rights

## Minutes:

Attach #1: Testimony by Karla Backman  
Attach #2: Testimony by Shelly Peterson

**Karla Backman**, State Long Term Care Ombudsman with Department of Human Services, introduced HB 1109 to the Senate Human Services Committee (attach #1)(4:37-6:33)

**Shelly Peterson**, President of the North Dakota Long Term Care Association provided written testimony (attach #2)

**Senator Howard Anderson, Jr.** stated the only times he hears complaints is when a facility uses the excuse or cannot take care of patient any longer.

**Chairman Judy Lee** the ombudsman poster is posted, and has noticed the content by the main entrance for the facilities she has visited.

## OPPOSITION to HB 1109

No opposing testimony

## NEUTRAL to HB 1109

No neutral testimony

**Senator Warner** moved the Senate Human Services Committee DO PASS the engrossed HB 1109. The motion was seconded by **V. Chairman Oley Larsen**. No discussion.

## Roll Call Vote

6 Yes, 0 No, 0 Absent. Motion passes.

**Senator Howard Anderson, Jr.** will carry HB 1109 to the floor.

Date: 03/17 2015  
Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB1109

Senate Human Services Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Place on Consent Calendar  
Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Sen. Warner Seconded By Sen Larsen

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee (Chairman)	✓		Senator Tyler Axness	✓	
Senator Oley Larsen (V-Chair)	✓		Senator John M. Warner	✓	
Senator Howard C. Anderson, Jr.	✓				
Senator Dick Dever	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Anderson

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

**REPORT OF STANDING COMMITTEE**

**HB 1109, as engrossed: Human Services Committee (Sen. J. Lee, Chairman)**  
recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).  
Engrossed HB 1109 was placed on the Fourteenth order on the calendar.

**2015 TESTIMONY**

**HB 1109**

#1

**Testimony**  
**House Bill 1109– Department of Human Services**  
**House Human Services Committee**  
**Representative Robin Weisz, Chairman**  
**January 7, 2015**

Chairman Weisz, and members of the House Human Services Committee, I am Karla Backman, State Long Term Care Ombudsman with the Department of Human Services (Department), Aging Services Division. I am here today in support of House Bill 1109. This bill was introduced at the request of the Department.

The amendment to subsection 1 of 50-10.2-02 is to ensure all the exceptions are numbered; there is no change to intent or content.

The Bill also proposes to remove subsection 4 of 50-10.2-02. With the ongoing development and presence of the Long Term Care Ombudsman Program this section has become redundant. Local ombudsmen are assigned to each facility and they visit regularly to meet with the residents and family members about their concerns and issues especially as they relate to residents' rights. The local ombudsmen also provide consultation services to facility personnel regarding residents' rights. The Department retains documentation in a central database of all concerns and issues addressed by the local ombudsmen. Facilities also have resident councils that give voice to the residents regarding concerns within the facility.

This concludes my testimony. I will address questions you may have. Thank you.

Testimony on HB 1109

House Human Services Committee

January 7, 2015

Good Morning Chairman Weisz and members of the House Human Services Committee. My name is Shelly Peterson, President of the North Dakota Long Term Care Association. We represent over 200 Assisted Living, Basic Care and Nursing Facilities across North Dakota.

We are supportive of the proposed changes to the Bill of Rights and want to draw your attention to an area of the bill regarding the 30 day written notice.

A long term care facility can only discharge a resident for one of the following reasons:

- A discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility.
- A resident's health has improved sufficiently so the resident no longer needs the services provided by the facility.
- The safety of individuals in the facility is endangered.
- The health of individuals in the facility would otherwise be endangered.
- The resident, after reasonable and appropriate notice fails to pay for the stay at the facility.

The law requires facilities to give a 30 day written advance notice of a transfer or discharge under all circumstances except when prohibited by sound medical reasons or the welfare of residents.

m. The right to receive at least a thirty-day written advance notice of any transfer or discharge when the resident is being discharged to another facility or the residents own home, or when the resident is being transferred or discharged because of a change in the residents level of care; and the right to receive advance notice of transfer or discharge under all other circumstances to the extent not prohibited by sound medical reasons, or incompatibility which affects a resident's welfare or that of another resident.

North Dakota does not allow aging in place, so when a resident's needs progress most often they will move from a basic care facility to a nursing facility. This is especially true, with basic care residents who have some type of dementia. As the disease progresses, sometimes eloping from the facility or challenging/threatening behavior can occur. If the

onset is sudden, sometimes a 30 day notice is not practical or safe. Facilities need to actively monitor behavior to assure all residents remain safe. When resident's needs & behavior progress beyond the capability and licensure level of the facility the resident needs to be transferred to a facility that can better meet their immediate and long term needs.

Facilities try to remain in constant communication with families so families aren't surprised when a move needs to be immediate without the 30 day written notice. We have interpreted the above right to allow facilities the right to transfer or discharge before a thirty day period when the welfare of residents is compromised.

Under all circumstances facilities must keep residents safe and when facilities feel that is not being achieved, they will take steps for a more immediate discharge.

In some of these circumstances the Ombudsman tells the facility they must still provide a 30 day written notice.

I believe it would be helpful to clarify this section, maybe something as simple as:

The right to receive a thirty day written advance notice of a discharge unless prohibited by sound medical reasons or the welfare of other residents.

We want to treat all residents with dignity and respect, and help them function at their most independent level.

When facilities ask residents to move it is because they can no longer safely care for them or they are not paying their bill. We believe in almost all circumstances that we should provide a written 30 day notice, unless the welfare of the resident or that of other residents is compromised.

Thank you for considering our concern on the 30 day written notice. We would be happy to work with you on this issue should you desire to address it in **HB 1109**.

I would be happy to answer any questions.

Shelly Peterson, President  
North Dakota Long Term Care Association  
1900 North 11<sup>th</sup> Street  
Bismarck, ND 58501  
(701) 222-0660  
[www.ndltca.org](http://www.ndltca.org)

HB 1109

*Shelly Peterson amendment*

#1  
HB 1109  
1-14-15

- m. The right to receive at least a thirty-day written advance notice of any transfer or discharge when the resident is being discharged to another facility or the resident's own home, or when the resident is being transferred or discharged because of a change in the resident's level of care; ~~and the right to receive provided, however, that~~ advance notice of transfer or discharge ~~under all other circumstances to the extent not prohibited by sound medical reasons, or incompatibility which affects a resident's welfare or that of another resident~~ may be less than thirty days if the resident has urgent medical needs that require a more immediate transfer or discharge, or a more immediate transfer or discharge is required to protect the health and safety of residents and staff within the facility.

Attach#1  
HB 1109  
03/17/2015  
J#24935

**Testimony**  
**Engrossed House Bill 1109– Department of Human Services**  
**Senate Human Services Committee**  
**Senator Judy Lee, Chairman**  
**March 17, 2015**

Chairman Lee, and members of the House Human Services Committee, I am **Karla Backman**, State Long Term Care Ombudsman with the Department of Human Services (Department), Aging Services Division. I am here today in support of Engrossed House Bill 1109. This bill was introduced at the request of the Department.

The amendment to subsection 1 of North Dakota Century Code (N.D.C.C.) section 50-10.2-02 is to ensure all the exceptions are numbered; there is no change to intent or content.

The Bill also proposes to remove subsection 4 of N.D.C.C. section 50-10.2-02. With the ongoing development and presence of the Long Term Care Ombudsman Program this section has become redundant. Local ombudsmen are assigned to each facility and they visit regularly to meet with the residents and family members about their concerns and issues especially as they relate to residents' rights. The local ombudsmen also provide consultation services to facility personnel regarding residents' rights. The Department retains documentation in a central database of all concerns and issues addressed by the local ombudsmen. Facilities also have resident councils that give voice to the residents regarding concerns within the facility.

The Long Term Care Association requested amendments to section 1, subsection m to clarify the language. The Department and the Association worked on amendments that were adopted by the House.

This concludes my testimony. I will address questions you may have.  
Thank you.

**Testimony on HB 1109**  
**Senate Human Services Committee**

**March 17, 2015**

Attach #2  
HB 1109  
03/17/2015  
J# 24935

Good Morning Chairman Lee and members of the Senate Human Services Committee. My name is Shelly Peterson, President of the North Dakota Long Term Care Association. We represent 211 Assisted Living, Basic Care and Nursing Facilities across North Dakota.

We ask for your support of HB 1109, as amended by the House. We asked the House for changes to clarify the language regarding transfer and discharge. The current language is confusing, we worked with the Department of Human Services to clarify the language. We believe the new language is more understandable to residents and families.

A long term care facility can only discharge a resident for one of the following reasons:

- A discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility.
- A resident's health has improved sufficiently so the resident no longer needs the services provided by the facility.
- The safety of individuals in the facility is endangered.
- The health of individuals in the facility would otherwise be endangered.
- The resident, after reasonable and appropriate notice fails to pay for the stay at the facility.

The law requires facilities to give a 30 day written advance notice of a transfer or discharge under all circumstances except when the resident has urgent medical needs that require a more immediate transfer or discharge, or a more immediate transfer or discharge is required to protect the health and safety of residents and staff within the facility. The House changes in the section creates language that is clear and concise.

North Dakota does not allow aging in place, so when a resident's needs progress most often they will move from a basic care facility to a nursing facility. This is especially true, with basic care residents who have some type of dementia. As the disease progresses, sometimes eloping from the facility or challenging/threatening behavior can occur. If the onset is sudden, sometimes a 30 day notice is not practical or safe. Facilities need to actively monitor behavior to assure all residents remain safe. When resident's needs and behavior progress beyond the capability and licensure level of the facility the resident needs to be transferred to a facility that can better meet their immediate and long term needs.

Facilities try to remain in constant communication with families so families aren't surprised when a move needs to be immediate without the 30 day written notice. We want to treat all residents with dignity and respect, and help them function at their most independent level.

When facilities ask residents to move it is because they can no longer safely care for them or they are not paying their bill. We believe in almost all circumstances that we should provide a written 30 day notice, unless the welfare of the resident or that of other residents is compromised.

The House amendments to clarify this section are very helpful to families, residents and facilities. Thank you for your consideration and support of HB 1109.

Shelly Peterson, President  
North Dakota Long Term Care Association  
1900 North 11<sup>th</sup> Street  
Bismarck, ND 58501  
(701) 222-0660  
[www.ndltca.org](http://www.ndltca.org)