

2015 SENATE HUMAN SERVICES

SB 2065

2015 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

SB 2065
2/10/2015
23547

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Donald Mueller

Explanation or reason for introduction of bill/resolution:

Relating to appointment of state and local ombudsmen, ombudsmen access to facilities and records, posting information about the ombudsman program, and confidentiality of ombudsman records and files.

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 and testified for SB 2065 (attach #1) (time ends 4:45)

Chairman Judy Lee indicated she has seen posters in Long Term Care facilities. Senator Lee supported what Ms. Backman was talking about and thinks it will be eye catching and a good thought.

Shelly Peterson, President of North Dakota Long Term Care Association, testified (attach #2). (time ends 7:42)

Senator Warner the ombudsman program is only used for specific individuals. If there is a general complaint about the nursing home, that is handled another way. Correct?

Ms. Peterson answered yes, the Ombudsman investigates the bill of rights, the rights and protections that each resident has in a skilled nursing facility, basic care ombudsman. The Health Department investigates quality of care, quality issues. However, a complaint could go initially go to the Ombudsman and they many times would refer to the Health Department. Generally, the Ombudsman is enforcement and protection of the residents bill of rights.

Senator Warner so the ombudsman could initiate an investigation based on an anonymous complaint or it doesn't have to be specific to any one particular client?

Ms. Peterson confirmed yes.

Chairman Judy Lee and **Ms. Peterson** read through the amendment

OPPOSITION to SB 2065

No opposing testimony

NEUTRAL to SB 2065

No neutral testimony

Closed Public Hearing

Senator Howard Anderson, Jr. moved to ADOPT AMENDMENT as provided by Shelly Peterson for SB 2065. The motion was seconded by **V. Chairman Oley Larsen**.

Discussion

Senator Dever asked for clarification on the specific line number of the bill. **Julie Leer** from Department of Human Services clarified.

Roll Call Vote to Adopt Amendment

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

Senator Howard Anderson, Jr. moved a DO PASS AS AMENDED for SB 2065. The motion was seconded by **Senator Dever**. No discussion.

Roll Call Vote to DO PASS as Amended

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

Senator Warner will carry SB 2065 to the floor.

February 10, 2015

YD
2/10/15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2065

Page 2, line 3, replace the underscored semicolon with ", access to the records is necessary to investigate a complaint and"

Page 2, line 4, remove ", or access to the records is"

Page 2, line 5, replace "necessary to investigate a complaint" with ", or"

Page 2, line 8, remove the underscored comma

Renumber accordingly

Date: 02/10 2015
Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB2065

Senate Human Services Committee

☐ Subcommittee

Amendment LC# or Description: LTC 15.8051.01001

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 Anderson Seconded By 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 _____

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

Date: 02/10 2015
Roll Call Vote #: 02

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB2065

Senate Human Services Committee

☐ Subcommittee

Amendment LC# or Description: 15.8051.01001 Title 02000

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 Anderson Seconded By Dever

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 Warner

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

REPORT OF STANDING COMMITTEE

SB 2065: 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). SB 2065 was placed on the Sixth order on the calendar.

Page 2, line 3, replace the underscored semicolon with ". access to the records is necessary to investigate a complaint and"

Page 2, line 4, remove "; or access to the records is"

Page 2, line 5, replace "necessary to investigate a complaint" with ". or"

Page 2, line 8, remove the underscored comma

Renumber accordingly

2015 HOUSE HUMAN SERVICES

SB 2065

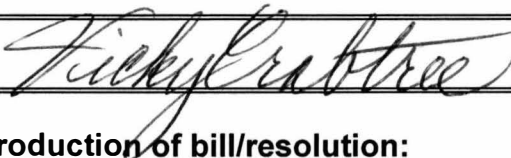
2015 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee Fort Union Room, State Capitol

SB 2065
2/23/2015
24254

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to appointment of state and local ombudsmen and access to facility and records.

Minutes:

Testimony #1

Chairman Weisz: opened the hearing on SB 2065.

Rep. Oversen: Is there a specific version that we should be working off? Or a reason why we have 3 versions?

Chairman Weisz: It is my practice as chairman to make sure that the original senate bill and the final version is readily accessible.

Karla Backman: State Long Term Care Ombudsman with the DHS Aging Services Division. (See Testimony #1)

Rep. Porter: In Section 2, the new language of the ability to access; we are taking out by court order and giving you access to all records social and medical. Even if there isn't a complaint or reasonable suspicion?

Backman: It says "if necessary to investigate a complaint." We are looking to mirror the language of the older Americans act which doesn't restrict that access.

Rep. Porter: I'm looking at line 5. It goes from where it used to be in the court to access and is authorized for the department under reasonable cause.

Chairman Weisz: On line 2 you say they have permission but on line 4, you say they are unable to give consent. It seems to contradict each other.

Julie: An attorney with the DHS. You are correct; there are three conditions that can prompt access under this. The first is if the ombudsmen or ombudsmen authorized agent has permission. The second one is access is necessary to investigate a complaint and the resident is unable. The third one is that there is no legal representative.

Chairman Weisz: How can you have permission if you are unable to give permission?

Julie: Both conditions have to occur for that one condition.

Chairman Weisz: Again, I come back to the first condition they have to have permission. The second is that they are unable to give permission.

Julie: If they are unable to give permission plus they need info to investigate a complaint plus there is no legal representative. They are all part of one condition. We want all three of those things to happen in b.

Rep. Oversen: I understand, I think we either want to delineate those into lines or put a semicolon instead of the comma to separate them.

Chairman Weisz: I understand what she is saying I just don't think the language is good.

Rep. Fehr: Who is the authorized agent?

Julie: We have a state ombudsmen office, and the authorized agent would be the people who are doing the work of the ombudsmen. The agents are the ones who are doing the adult protected services work on behalf of the ombudsmen.

Rep. Fehr: On the first page it refers to local long-term ombudsmen. Is this the same thing using different words?

Julie: I think that the first page is referring to the several ombudsman and the various locations. I don't know. We were going with the statute the way it was written. I don't think that either one would impact us. The ombudsmen encompasses the local and the state.

Backman: An authorized agent may also be a volunteer ombudsman who is technically not an employee.

Rep. Fehr: Does this require the authority of a local or state ombudsman or could a volunteer initiate this on their own?

Backman: The protocol of a volunteer ombudsman is there are certain complaints they are able to investigate. T

NO OPPOSITION

Chairman Weisz closed the hearing on SB 2065.

2015 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

SB 2065
2/23/2015
Job #24268

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Ticky Crabtree

Minutes:

ATTACHMENT #1

Chairman Weisz: Let's look at 2065. I'm going to hand out some amendments from the department. (See Attachment #1) The amendments address the issue on page 2 on trying to clarify the order of where the ombudsman can have access and the priority list would be. Now the amendments will break them out to and a, b, and c.

Rep. Porter: I Move the amendment.

Rep. Oversen: Second.

VOICE VOTE: MOTION CARRIED

Rep. Porter: I Move a Do Pass As Amended.

Rep. Seibel: Second.

ROLL CALL VOTE: 13, 0 n 0 absent

MOTION CARRIED

Bill Carrier: Rep. Fehr

Sal
2/23/15

February 23, 2015

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2065

Page 2, line 2, after "if" insert ":

"a."

Page 2, line 2, replace the first "the" with "The"

Page 2, line 3, replace the underscored comma with ":

"b."

Page 2, line 3, replace "access" with "Access"

Page 2, line 5, replace the underscored comma with an underscored semicolon

Page 2, line 5, replace "if" with:

"c."

Page 2, line 5, replace "a" with "A"

Renumber accordingly

Date: 2-23-15
Roll Call Vote #: /

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2065

House Human Services Committee

☐ Subcommittee

Amendment LC# or Description: See description below

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. Porter Seconded By Rep. Oversen

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) _____ No _____

Absent _____

Floor Assignment _____

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

page 2 line 2 after "if" insert "a."
page 2 line 3 replace underscored comma
with "b."
page 2 line 5 replace underscored comma with
an underscored semi colon
Page 2 line 5 replace "d" with "c."

Date: 2-23-15
Roll Call Vote #: 2

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2065

House 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 Rep. Porter 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) 13 No 0

Absent 0

Floor Assignment Rep. Fehr

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

REPORT OF STANDING COMMITTEE

SB 2065, as engrossed: Human Services Committee (Rep. Weisz, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2065
was placed on the Sixth order on the calendar.

Page 2, line 2, after "if" insert ":

"a."

Page 2, line 2, replace the first "the" with "The"

Page 2, line 3, replace the underscored comma with ":

b."

Page 2, line 3, replace "access" with "Access"

Page 2, line 5, replace the underscored comma with an underscored semicolon

Page 2, line 5, replace "if" with:

"c."

Page 2, line 5, replace "a" with "A"

Renumber accordingly

2015 TESTIMONY

SB 2065

Attach#1
02/10/2015
SB2065
J# 23547

Testimony
Senate Bill 2065– Department of Human Services
Senate Human Services Committee
Senator Judy Lee, Chairman
February 10, 2015

Chairman Lee, and members of the Senate 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 to testify in support of Senate Bill 2065, which was introduced at the request of the Department.

This bill proposes to amend sections 50-10.1-02, 50-10.1-04, 50-10.1-05, and 50-10.1-07 of the North Dakota Century Code, relating to the long-term care ombudsman program.

Section 1 of the bill proposes to change the wording to reflect actual practice. The state long term care ombudsman position is and has been employed by the Department rather than appointed.

Sections 1 and 4 of the Bill propose to change the term "regional" ombudsman to "local" ombudsman as the ombudsman assignments no longer follow the borders of the established state planning regions. This is a result of balancing and distributing facilities and residents among the available ombudsman.

Section 2 of the Bill proposes to eliminate the time restrictions for visits by the ombudsman. The ombudsman is an advocate for the resident and may be hindered by the restrictions of "normal working hours or by appointment." There are times in the course of resolving concerns

regarding resident rights and health, welfare, and safety that a visit may need to be made outside of "normal working hours." The "by appointment" requirement reduces the ombudsman's opportunity to observe normal facility practices.

Section 2 also proposes to update the language so it mirrors the Older Americans Act, our federal authority. (See the attachment.) The Older Americans Act, requires the State to ensure that state ombudsmen are able to access records and residents. The current language of section 50-10.1-04 creates a barrier not anticipated in the language of the Older Americans Act. In particular, the Older Americans Act requires the State to ensure that resident records be available to the ombudsmen without requiring intervention by a Court. The proposed change in this bill will make the access language consistent with the Older Americans Act. The language change in Section 2 will benefit residents who are not able to speak on their own behalf, who have no legal representative, or whose legal representative or guardian is suspected of exploiting the resident. Access to residents and records as proposed will also allow more immediate investigation and determination of complaints, and where, appropriate, facilitate more immediate referrals to the appropriate agencies and for any needed protective action. Altogether, the changes in Section 2 of the Bill allow the ombudsmen to provide more complete advocacy for residents of the long-term care facilities.

Section 3 of the Bill proposes to replace the requirement that facilities post a copy of the ombudsman code chapter with a requirement that facilities post basic information about the ombudsman program. The ombudsman program provides a poster that tells what services the

program provides as well as contact information. This is a quick reference and more user-friendly than posting the century code.

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

OLDER AMERICANS ACT AMENDMENTS OF 2006

CHAPTER 2—OMBUDSMAN PROGRAMS

Section. 711. DEFINITIONS.

As used in this chapter:

- (1) OFFICE.—The term “Office” means the office established in section 712(a)(1)(A).
- (2) OMBUDSMAN.—The term “Ombudsman” means the individual described in section 712(a)(2).
- (3) LOCAL OMBUDSMAN ENTITY.—The term “local Ombudsman entity” means an entity designated under section 712(a)(5)(A) to carry out the duties described in section 712(a)(5)(B) with respect to a planning and service area or other substate area.
- (4) PROGRAM.—The term “program” means the State Long-Term Care Ombudsman program established in section 712(a)(1)(B).
- (5) REPRESENTATIVE.—The term “representative” includes an employee or volunteer who represents an entity designated under section 712(a)(5)(A) and who is individually designated by the Ombudsman.
- (6) RESIDENT.—The term “resident” means an older individual who resides in a long-term care facility.

(42 U.S.C. 3058f)

Section. 712. STATE LONG-TERM CARE OMBUDSMAN PROGRAM.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—In order to be eligible to receive an allotment under section 703 from funds appropriated under section 702 and made available to carry out this chapter, a State agency shall, in accordance with this section—

- (A) establish and operate an Office of the State Long-Term Care Ombudsman; and
- (B) carry out through the Office a State Long-Term Care Ombudsman program.

(2) OMBUDSMAN.—The Office shall be headed by an individual, to be known as the State Long-Term Care Ombudsman, who shall be selected from among individuals with expertise and experience in the fields of long-term care and advocacy.

(3) FUNCTIONS.—The Ombudsman shall serve on a fulltime basis, and shall, personally or through representatives of the Office—

(A) identify, investigate, and resolve complaints that—

- (i) are made by, or on behalf of, residents; and
- (ii) relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of the residents (including the welfare and rights of the residents with respect to the appointment and activities of guardians and representative payees), of—

- (I) providers, or representatives of providers, of long-term care services;
- (II) public agencies; or
- (III) health and social service agencies;

(B) provide services to assist the residents in protecting the health, safety, welfare, and rights of the residents;

(C) inform the residents about means of obtaining services provided by providers or agencies described in subparagraph (A)(ii) or services described in subparagraph (B);

(D) ensure that the residents have regular and timely access to the services provided through the Office and that the residents and complainants receive timely responses from representatives of the Office to complaints;

(E) represent the interests of the residents before governmental agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents;

(F) provide administrative and technical assistance to entities designated under paragraph (5) to assist the entities in participating in the program;

(G)

(i) analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other governmental policies and actions, that pertain to the health, safety, welfare, and rights of the residents, with respect to the adequacy of long-term care facilities and services in the State;

(ii) recommend any changes in such laws, regulations, policies, and actions as the Office determines to be appropriate; and

(iii) facilitate public comment on the laws, regulations, policies, and actions;

(H)

(i) provide for training representatives of the Office;

(ii) promote the development of citizen organizations, to participate in the program; and

(iii) provide technical support for the development of resident and family councils to protect the well-being and rights of residents; and

(I) carry out such other activities as the Assistant Secretary determines to be appropriate.

(4) CONTRACTS AND ARRANGEMENTS.—

(A) IN GENERAL.—Except as provided in subparagraph (B) the State agency may establish and operate the Office, and carry out the program, directly, or by contract or other arrangement with any public agency or nonprofit private organization.

(B) LICENSING AND CERTIFICATION ORGANIZATIONS; ASSOCIATIONS.—The State agency may not enter into the contract or other arrangement described in subparagraph (A) with—

(i) an agency or organization that is responsible for licensing or certifying long-term care services in the State; or

(ii) an association (or an affiliate of such an association) of long-term care facilities, or of any other residential facilities for older individuals.

(5) DESIGNATION OF LOCAL OMBUDSMAN ENTITIES AND REPRESENTATIVES.—

(A) DESIGNATION.—In carrying out the duties of the Office, the Ombudsman may designate an entity as a local Ombudsman entity, and may designate an employee or volunteer to represent the entity.

(B) DUTIES.—An individual so designated shall, in accordance with the policies and procedures established by the Office and the State agency—

- (i) provide services to protect the health, safety, welfare^[14] and rights of residents;
- (ii) ensure that residents in the service area of the entity have regular, timely access to representatives of the program and timely responses to complaints and requests for assistance;
- (iii) identify, investigate, and resolve complaints made by or on behalf of residents that relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of the residents;
- (iv) represent the interests of residents before government agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents;
- (v)
 - (I) review, and if necessary, comment on any existing and proposed laws, regulations, and other government policies and actions, that pertain to the rights and well-being of residents; and
 - (II) facilitate the ability of the public to comment on the laws, regulations, policies, and actions;
- (vi) support the development of resident and family councils; and
- (vii) carry out other activities that the Ombudsman determines to be appropriate.

(C) ELIGIBILITY FOR DESIGNATION.—Entities eligible to be designated as local Ombudsman entities, and individuals eligible to be designated as representatives of such entities, shall—

- (i) have demonstrated capability to carry out the responsibilities of the Office;
- (ii) be free of conflicts of interest and not stand to gain financially through an action or potential action brought on behalf of individuals the Ombudsman serves;
- (iii) in the case of the entities, be public or nonprofit private entities; and
- (iv) meet such additional requirements as the Ombudsman may specify.

(D) POLICIES AND PROCEDURES.—

- (i) IN GENERAL.—The State agency shall establish, in accordance with the Office, policies and procedures for monitoring local Ombudsman entities designated to carry out the duties of the Office.
- (ii) POLICIES.—In a case in which the entities are grantees, or the representatives are employees, of area agencies on aging, the State agency shall develop the policies in consultation with the area agencies on aging. The policies shall provide for participation and comment by the agencies and for resolution of concerns with respect to case activity.

(iii) CONFIDENTIALITY AND DISCLOSURE.—The State agency shall develop the policies and procedures in accordance with all provisions of this subtitle regarding confidentiality and conflict of interest.

(b) PROCEDURES FOR ACCESS.—

(1) IN GENERAL.—The State shall ensure that representatives of the Office shall have—

(A) access to long-term care facilities and residents;

(B)(i) appropriate access to review the medical and social records of a resident, if—

(I) the representative has the permission of the resident, or the legal representative of the resident; or

(II) the resident is unable to consent to the review and has no legal representative; or

(ii) access to the records as is necessary to investigate a complaint if—

(I) a legal guardian of the resident refuses to give the permission;

(II) a representative of the Office has reasonable cause to believe that the guardian is not acting in the best interests of the resident; and

(III) the representative obtains the approval of the Ombudsman;

(C) access to the administrative records, policies, and documents, to which the residents have, or the general public has access, of long-term care facilities; and

(D) access to and, on request, copies of all licensing and certification records maintained by the State with respect to long-term care facilities.

(2) PROCEDURES.—The State agency shall establish procedures to ensure the access described in paragraph (1).

(c) REPORTING SYSTEM.—The State agency shall establish a statewide uniform reporting system to—

(1) collect and analyze data relating to complaints and conditions in long-term care facilities and to residents for the purpose of identifying and resolving significant problems; and

(2) submit the data, on a regular basis, to—

(A) the agency of the State responsible for licensing or certifying long-term care facilities in the State;

(B) other State and Federal entities that the Ombudsman determines to be appropriate;

(C) the Assistant Secretary; and

(D) the National Ombudsman Resource Center established in section 202(a)(21).

(d) DISCLOSURE.—

(1) IN GENERAL.—The State agency shall establish procedures for the disclosure by the Ombudsman or local Ombudsman entities of files maintained by the program, including records described in subsection (b)(1) or (c).

(2) IDENTITY OF COMPLAINANT OR RESIDENT.—The procedures described in paragraph (1) shall—

(A) provide that, subject to subparagraph (B), the files and records described in paragraph (1) may be disclosed only at the discretion of the Ombudsman (or the person designated by the Ombudsman to disclose the files and records); and

(B) prohibit the disclosure of the identity of any complainant or resident with respect to whom the Office maintains such files or records unless—

(i) the complainant or resident, or the legal representative of the complainant or resident, consents to the disclosure and the consent is given in writing;

(ii) (I) the complainant or resident gives consent orally; and

(II) the consent is documented contemporaneously in a writing made by a representative of the Office in accordance with such requirements as the State agency shall establish; or

(iii) the disclosure is required by court order.

(e) CONSULTATION.—In planning and operating the program, the State agency shall consider the views of area agencies on aging, older individuals, and providers of long-term care.

(f) CONFLICT OF INTEREST.—The State agency shall—

(1) ensure that no individual, or member of the immediate family of an individual, involved in the designation of the Ombudsman (whether by appointment or otherwise) or the designation of an entity designated under subsection (a)(5), is subject to a conflict of interest;

(2) ensure that no officer or employee of the Office, representative of a local Ombudsman entity, or member of the immediate family of the officer, employee, or representative, is subject to a conflict of interest;

(3) ensure that the Ombudsman—

(A) does not have a direct involvement in the licensing or certification of a long-term care facility or of a provider of a long-term care service;

(B) does not have an ownership or investment interest (represented by equity, debt, or other financial relationship) in a long-term care facility or a long-term care service;

(C) is not employed by, or participating in the management of, a long-term care facility; and

(D) does not receive, or have the right to receive, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility; and

(4) establish, and specify in writing, mechanisms to identify and remove conflicts of interest referred to in paragraphs (1) and (2), and to identify and eliminate the relationships described in subparagraphs (A) through (D) of paragraph (3), including such mechanisms as—

(A) the methods by which the State agency will examine individuals, and immediate family members, to identify the conflicts; and

(B) the actions that the State agency will require the individuals and such family members to take to remove such conflicts.

(g) LEGAL COUNSEL.—The State agency shall ensure that—

(1)(A) adequate legal counsel is available, and is able, without conflict of interest, to—

(i) provide advice and consultation needed to protect the health, safety, welfare, and rights of residents; and

(ii) assist the Ombudsman and representatives of the Office in the performance of the official duties of the Ombudsman and representatives; and

(B) legal representation is provided to any representative of the Office against whom suit or other legal action is brought or threatened to be brought in connection with the performance of the official duties of the Ombudsman or such a representative; and

(2) the Office pursues administrative, legal, and other appropriate remedies on behalf of residents.

(h) ADMINISTRATION.—The State agency shall require the Office to—

(1) prepare an annual report—

(A) describing the activities carried out by the Office in the year for which the report is prepared;

(B) containing and analyzing the data collected under subsection (c);

(C) evaluating the problems experienced by, and the complaints made by or on behalf of, residents;

(D) containing recommendations for—

(i) improving quality of the care and life of the residents; and

(ii) protecting the health, safety, welfare, and rights of the residents;

(E)(i) analyzing the success of the program including success in providing services to residents of board and care facilities and other similar adult care facilities; and

(ii) identifying barriers that prevent the optimal operation of the program; and

(F) providing policy, regulatory, and legislative recommendations to solve identified problems, to resolve the complaints, to improve the quality of care and life of residents, to protect the health, safety, welfare, and rights of residents, and to remove the barriers;

(2) analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other government policies and actions that pertain to long-term care facilities and services, and to the health, safety, welfare, and rights of residents, in the State, and recommend any changes in such laws, regulations, and policies as the Office determines to be appropriate;

(3)(A) provide such information as the Office determines to be necessary to public and private agencies, legislators, and other persons, regarding—

(i) the problems and concerns of older individuals residing in long-term care facilities; and

(ii) recommendations related to the problems and concerns; and

(B) make available to the public, and submit to the Assistant Secretary, the chief executive officer of the State, the State legislature, the State agency responsible for licensing or certifying long-term care facilities, and other appropriate governmental entities, each report prepared under paragraph (1);

- (4)(A) not later than 1 year after the date of the enactment of this title, establish^[15] procedures for the training of the representatives of the Office, including unpaid volunteers, based on model standards established by the Director of the Office of Long-Term Care Ombudsman Programs, in consultation with representatives of citizen groups, long-term care providers, and the Office, that—
- (A) specify a minimum number of hours of initial training;
 - (B) specify the content of the training, including training relating to—
 - (i) Federal, State, and local laws, regulations, and policies, with respect to long-term care facilities in the State;
 - (ii) investigative techniques; and
 - (iii) such other matters as the State determines to be appropriate; and
 - (C) specify an annual number of hours of in-service training for all designated representatives;
- (5) prohibit any representative of the Office (other than the Ombudsman) from carrying out any activity described in subparagraphs (A) through (G) of subsection (a)(3) unless the representative—
- (A) has received the training required under paragraph (4); and
 - (B) has been approved by the Ombudsman as qualified to carry out the activity on behalf of the Office;
- (6) coordinate ombudsman services with the protection and advocacy systems for individuals with developmental disabilities and mental illnesses established under—
- (A) subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000^[16]; and
 - (B) the Protection and Advocacy for Mentally Ill Individuals Act of 1986 (42 U.S.C. 10801 et seq.);
- (7) coordinate, to the greatest extent possible, ombudsman services with legal assistance provided under section 306(a)(2)(C), through adoption of memoranda of understanding and other means;
- (8) coordinate services with State and local law enforcement agencies and courts of competent jurisdiction; and
- (9) permit any local Ombudsman entity to carry out the responsibilities described in paragraph (1), (2), (3), (6), or (7).
- (i) **LIABILITY.**—The State shall ensure that no representative of the Office will be liable under State law for the good faith performance of official duties.

(j) NONINTERFERENCE.—The State shall—

- (1) ensure that willful interference with representatives of the Office in the performance of the official duties of the representatives (as defined by the Assistant Secretary) shall be unlawful;
- (2) prohibit retaliation and reprisals by a long-term care facility or other entity with respect to any resident, employee, or other person for filing a complaint with, providing information to, or otherwise cooperating with any representative of, the Office; and
- (3) provide for appropriate sanctions with respect to the interference, retaliation, and reprisals.

(42 U.S.C. 3058g)

Testimony on SB 2065
Senate Human Service Committee
February 10, 2015

Attch#2
02/10/2015
SB2065
J#23547

Good Morning Chairman Lee and members of Senate Human Services. My name is Shelly Peterson, President of North Dakota Long Term Care Association. We represent 211 Long Term Care Facilities. I am here to testify in support of SB 2065 and offer an amendment to better assure the protection of residents who are unable to give consent.

As a former ombudsman and my work with long term facilities we see great value in the Ombudsman Program. Many times facilities will contact the ombudsman for assistance in working with families and residents.

The Legislation before you addresses the ombudsmans authority to access Long term care facilities and resident medical records. We believe the ombudsman's right to access resident records without the expressed consent of the resident or the resident's representative should be permitted only if necessary to investigate and respond to a complaint if:

- a) The resident is unable to give consent and has not logal representative
or
- b) In the opinion of the ombudsman consent is unreasonably withheld by the resident or the resident's representative.

Our amendment is attached which clarifies this issue.

On page one "reasonable" access to all Long Term Care Facilities is changed and the definition of reasonable access is removed. Although we agree the definition of reasonable access was narrowly defined, possibly some definition should continue.

Thank you for the opportunity to comment, on SB 2065, I would be happy to answer questions.

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

PROPOSED AMENDMENT TO SENATE BILL NO. 2065

Page 2. line 3, after the semicolon, insert "or access to the records is necessary to investigate a complaint and"

Page 2, line 4, replace: the semicolon with a comma

Page 2, line 5, remove: "or access to the records is"

Page 2, line 5, remove: "necessary to investigate a complaint"

Renumber accordingly

Testimony
Engrossed Senate Bill 2065– Department of Human Services
House Human Services Committee
Representative Robin Weisz, Chairman
February 23, 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 to testify in support of Engrossed Senate Bill 2065, which was introduced at the request of the Department.

This bill proposes to amend sections 50-10.1-02, 50-10.1-04, 50-10.1-05, and 50-10.1-07 of the North Dakota Century Code, relating to the long-term care ombudsman program.

Section 1 of the bill proposes to change the wording to reflect actual practice. The state long term care ombudsman position is and has been employed by the Department rather than appointed.

Sections 1 and 4 of the Bill propose to change the term "regional" ombudsman to "local" ombudsman as the ombudsman assignments no longer follow the borders of the established state planning regions. This is a result of balancing and distributing facilities and residents among the available ombudsman.

Section 2 of the Bill proposes to eliminate the time restrictions for visits by the ombudsman. The ombudsman is an advocate for the resident and may be hindered by the restrictions of "normal working hours or by appointment." There are times in the course of resolving concerns

regarding resident rights and health, welfare, and safety that a visit may need to be made outside of "normal working hours." The "by appointment" requirement reduces the ombudsman's opportunity to observe normal facility practices.

Section 2 also proposes to update the language so it mirrors the Older Americans Act, our federal authority. (See the attachment.) The Older Americans Act, requires the State to ensure that state ombudsmen are able to access records and residents. The current language of section 50-10.1-04 creates a barrier not anticipated in the language of the Older Americans Act. In particular, the Older Americans Act requires the State to ensure that resident records be available to the ombudsmen without requiring intervention by a Court. The proposed change in this bill will make the access language consistent with the Older Americans Act. The language change in Section 2 will benefit residents who are not able to speak on their own behalf, who have no legal representative, or whose legal representative or guardian is suspected of exploiting the resident. Access to residents and records as proposed will also allow more immediate investigation and determination of complaints, and where, appropriate, facilitate more immediate referrals to the appropriate agencies including for any needed protective action. The Senate adopted amendments to this section that were proposed by the Long Term Care Association and with which the Department agreed. Altogether, the changes in Section 2 of the Bill allow the ombudsmen to provide more complete advocacy for residents of the long-term care facilities.

Section 3 of the Bill proposes to replace the requirement that facilities post a copy of the ombudsman code chapter with a requirement that facilities post basic information about the ombudsman program. The

ombudsman program provides a poster that tells what services the program provides as well as contact information. This is a quick reference and more user-friendly than posting the century code.

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

OLDER AMERICANS ACT AMENDMENTS OF 2006

CHAPTER 2—OMBUDSMAN PROGRAMS

Section. 711. DEFINITIONS.

As used in this chapter:

- (1) OFFICE.—The term “Office” means the office established in section 712(a)(1)(A).
- (2) OMBUDSMAN.—The term “Ombudsman” means the individual described in section 712(a)(2).
- (3) LOCAL OMBUDSMAN ENTITY.—The term “local Ombudsman entity” means an entity designated under section 712(a)(5)(A) to carry out the duties described in section 712(a)(5)(B) with respect to a planning and service area or other substate area.
- (4) PROGRAM.—The term “program” means the State Long-Term Care Ombudsman program established in section 712(a)(1)(B).
- (5) REPRESENTATIVE.—The term “representative” includes an employee or volunteer who represents an entity designated under section 712(a)(5)(A) and who is individually designated by the Ombudsman.
- (6) RESIDENT.—The term “resident” means an older individual who resides in a long-term care facility.

(42 U.S.C. 3058f)

Section. 712. STATE LONG-TERM CARE OMBUDSMAN PROGRAM.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—In order to be eligible to receive an allotment under section 703 from funds appropriated under section 702 and made available to carry out this chapter, a State agency shall, in accordance with this section—

- (A) establish and operate an Office of the State Long-Term Care Ombudsman; and
- (B) carry out through the Office a State Long-Term Care Ombudsman program.

(2) OMBUDSMAN.—The Office shall be headed by an individual, to be known as the State Long-Term Care Ombudsman, who shall be selected from among individuals with expertise and experience in the fields of long-term care and advocacy.

(3) FUNCTIONS.—The Ombudsman shall serve on a fulltime basis, and shall, personally or through representatives of the Office—

(A) identify, investigate, and resolve complaints that—

- (i) are made by, or on behalf of, residents; and
- (ii) relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of the residents (including the welfare and rights of the residents with respect to the appointment and activities of guardians and representative payees), of—

- (I) providers, or representatives of providers, of long-term care services;
- (II) public agencies; or
- (III) health and social service agencies;

(B) provide services to assist the residents in protecting the health, safety, welfare, and rights of the residents;

(C) inform the residents about means of obtaining services provided by providers or agencies described in subparagraph (A)(ii) or services described in subparagraph (B);

(D) ensure that the residents have regular and timely access to the services provided through the Office and that the residents and complainants receive timely responses from representatives of the Office to complaints;

(E) represent the interests of the residents before governmental agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents;

(F) provide administrative and technical assistance to entities designated under paragraph (5) to assist the entities in participating in the program;

(G)

(i) analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other governmental policies and actions, that pertain to the health, safety, welfare, and rights of the residents, with respect to the adequacy of long-term care facilities and services in the State;

(ii) recommend any changes in such laws, regulations, policies, and actions as the Office determines to be appropriate; and

(iii) facilitate public comment on the laws, regulations, policies, and actions;

(H)

(i) provide for training representatives of the Office;

(ii) promote the development of citizen organizations, to participate in the program; and

(iii) provide technical support for the development of resident and family councils to protect the well-being and rights of residents; and

(I) carry out such other activities as the Assistant Secretary determines to be appropriate.

(4) CONTRACTS AND ARRANGEMENTS.—

(A) IN GENERAL.—Except as provided in subparagraph (B) the State agency may establish and operate the Office, and carry out the program, directly, or by contract or other arrangement with any public agency or nonprofit private organization.

(B) LICENSING AND CERTIFICATION ORGANIZATIONS; ASSOCIATIONS.—The State agency may not enter into the contract or other arrangement described in subparagraph (A) with—

(i) an agency or organization that is responsible for licensing or certifying long-term care services in the State; or

(ii) an association (or an affiliate of such an association) of long-term care facilities, or of any other residential facilities for older individuals.

(5) DESIGNATION OF LOCAL OMBUDSMAN ENTITIES AND REPRESENTATIVES.—

(A) DESIGNATION.—In carrying out the duties of the Office, the Ombudsman may designate an entity as a local Ombudsman entity, and may designate an employee or volunteer to represent the entity.

(B) DUTIES.—An individual so designated shall, in accordance with the policies and procedures established by the Office and the State agency—

- (i) provide services to protect the health, safety, welfare^[14] and rights of residents;
- (ii) ensure that residents in the service area of the entity have regular, timely access to representatives of the program and timely responses to complaints and requests for assistance;
- (iii) identify, investigate, and resolve complaints made by or on behalf of residents that relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of the residents;
- (iv) represent the interests of residents before government agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents;
- (v)
 - (I) review, and if necessary, comment on any existing and proposed laws, regulations, and other government policies and actions, that pertain to the rights and well-being of residents; and
 - (II) facilitate the ability of the public to comment on the laws, regulations, policies, and actions;
- (vi) support the development of resident and family councils; and
- (vii) carry out other activities that the Ombudsman determines to be appropriate.

(C) ELIGIBILITY FOR DESIGNATION.—Entities eligible to be designated as local Ombudsman entities, and individuals eligible to be designated as representatives of such entities, shall—

- (i) have demonstrated capability to carry out the responsibilities of the Office;
- (ii) be free of conflicts of interest and not stand to gain financially through an action or potential action brought on behalf of individuals the Ombudsman serves;
- (iii) in the case of the entities, be public or nonprofit private entities; and
- (iv) meet such additional requirements as the Ombudsman may specify.

(D) POLICIES AND PROCEDURES.—

(i) IN GENERAL.—The State agency shall establish, in accordance with the Office, policies and procedures for monitoring local Ombudsman entities designated to carry out the duties of the Office.

(ii) POLICIES.—In a case in which the entities are grantees, or the representatives are employees, of area agencies on aging, the State agency shall develop the policies in consultation with the area agencies on aging. The policies shall provide for participation and comment by the agencies and for resolution of concerns with respect to case activity.

(iii) CONFIDENTIALITY AND DISCLOSURE.—The State agency shall develop the policies and procedures in accordance with all provisions of this subtitle regarding confidentiality and conflict of interest.

(b) PROCEDURES FOR ACCESS.—

(1) IN GENERAL.—The State shall ensure that representatives of the Office shall have—

(A) access to long-term care facilities and residents;

(B)(i) appropriate access to review the medical and social records of a resident, if—

(I) the representative has the permission of the resident, or the legal representative of the resident; or

(II) the resident is unable to consent to the review and has no legal representative; or

(ii) access to the records as is necessary to investigate a complaint if—

(I) a legal guardian of the resident refuses to give the permission;

(II) a representative of the Office has reasonable cause to believe that the guardian is not acting in the best interests of the resident; and

(III) the representative obtains the approval of the Ombudsman;

(C) access to the administrative records, policies, and documents, to which the residents have, or the general public has access, of long-term care facilities; and

(D) access to and, on request, copies of all licensing and certification records maintained by the State with respect to long-term care facilities.

(2) PROCEDURES.—The State agency shall establish procedures to ensure the access described in paragraph (1).

(c) REPORTING SYSTEM.—The State agency shall establish a statewide uniform reporting system to—

(1) collect and analyze data relating to complaints and conditions in long-term care facilities and to residents for the purpose of identifying and resolving significant problems; and

(2) submit the data, on a regular basis, to—

(A) the agency of the State responsible for licensing or certifying long-term care facilities in the State;

(B) other State and Federal entities that the Ombudsman determines to be appropriate;

(C) the Assistant Secretary; and

(D) the National Ombudsman Resource Center established in section 202(a)(21).

(d) DISCLOSURE.—

(1) IN GENERAL.—The State agency shall establish procedures for the disclosure by the Ombudsman or local Ombudsman entities of files maintained by the program, including records described in subsection (b)(1) or (c).

(2) IDENTITY OF COMPLAINANT OR RESIDENT.—The procedures described in paragraph (1) shall—

(A) provide that, subject to subparagraph (B), the files and records described in paragraph (1) may be disclosed only at the discretion of the Ombudsman (or the person designated by the Ombudsman to disclose the files and records); and

2-23-15

#1

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2065

Page 2, line 2, after "if" insert: ";

a."

Page 2, line 3, replace the underscored comma with ";

b."

Page 2, line 5, replace the underscored comma with an underscored semi-colon

Page 2, line 5, replace "if" with:

c."

Renumber accordingly