

2009 HOUSE HUMAN SERVICES

HB 1263

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1263

House Human Services Committee

☐ Check here for Conference Committee

Hearing Date: January 21, 2009

Recorder Job Number: 7423 17 min. 59 sec.

Committee Clerk Signature

Vicky Crabtree

Minutes:

Chairman Weisz called hearing to order on HB 1263.

Representative Kreidt introduced HB 1263, as a sponsor he supports the bill.

Shelly Peterson, President of ND Long Term Care Association: testified in support of the bill. **See attached Testimony #1.**

Chairman Weisz: Did you survey all the current assisted living facilities?

Shelly Peterson: The vast majority of all the assisted living facilities in the state belong to our association. Those members are on the board and support. No, did not survey them.

Representative Nathe: In regards to the satisfaction survey, when conducted with the clients are the family also involved within that circle?

Shelly Peterson: It does involve family as well as the tenants.

Representative Nathe: Will it be put out at the same time, or separately from the family?

Shelly Peterson: Not necessarily. The standard is not yet developed on what the parameters are. All we are saying right now is that you must conduct them.

Amy Nelson, Executive Director of Fair Housing of the Dakotas: testified in support. **See attached Testimony #2.**

Jim Jacobson, Director ND Protection and Advocacy Project: testified in support of bill.

No opposition to the bill.

Chairman Weisz closed the hearing.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1263

House Human Services Committee

☐ Check here for Conference Committee

Hearing Date: January 21, 2009

Recorder Job Number: 7494 8 min. 12 sec.

Committee Clerk Signature

Vicky Crabtree

Minutes:

Chairman Weisz: Take up HB 1263. It's straight forward.

Representative Conrad motioned to accept amendments.

Representative Potter seconded.

Chairman Weisz: Ms. Peterson have you seen that amendment?

Shelly Peterson: Haven't seen the amendment. (Inaudible). Facilities have to be in compliance with federal and state regulations. I'd hesitate to start listing laws when we know we must be in compliance with federal fair labor and so many different things. That specific one statute, I don't know if that is the best thing to do as a policy. If we feel people are at a risk and danger, the only way we can evaluate that is to have that criteria established up front.

Representative Conrad: Seems to me the facility would be in trouble with federal law anyway.

Shelly Peterson: The facility may, yes.

Representative Porter moved for a DO PASS on HB 1263.

Representative Kilichowski seconded.

Roll call vote: 11 yes, 0 no, 2 absent Representative Holman and Representative Potter.

Carrier of Bill: Representative Kilichowski

Date: 1-21-09
Roll Call Vote #:

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1263

House HUMAN SERVICES Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Rep Porter Seconded By Rep Kilichowski

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN ROBIN WEISZ	✓		REP. TOM CONKLIN	✓	
VICE-CHAIR VONNIE PIETSCH	✓		REP. KARI L CONRAD	✓	
REP. CHUCK DAMSCHEN	✓		REP. RICHARD HOLMAN	A	
REP. ROBERT FRANTSVOG	✓		REP. ROBERT KILICHOWSKI	✓	
REP. CURT HOFSTAD	✓		REP. LOUISE POTTER	A	
REP. MICHAEL R. NATHE	✓				
REP. TODD PORTER	✓				
REP. GERRY UGLEM	✓				

Total (Yes) 11 No 0

Absent 2

Bill Carrier Kilichowski

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

REPORT OF STANDING COMMITTEE (410)
January 22, 2009 2:02 p.m.

Module No: HR-12-0759
Carrier: Kilichowski
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1263: Human Services Committee (Rep. Welsz, Chairman) recommends DO PASS
(11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1263 was placed on the
Eleventh order on the calendar.

2009 SENATE HUMAN SERVICES

HB 1263

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1263

Senate Human Services Committee

☐ Check here for Conference Committee

Hearing Date: 03/10/2009

Recorder Job Number: 10589

Committee Clerk Signature

Mary K Monson

Minutes:

Chairman J. Lee Opened the hearing on HB 1263 relating to duties of assisted living facilities.

Representative Gary Kreidt District #33. Introduced HB 1263. Gave the history of the bill which puts in some requirements for residents as well as providing services at a lower cost in a more homelike atmosphere.

Senator Dever Can we assume that these kinds of requirements already exist?

Kredit Yes.

Chairman J. Lee We had a discussion earlier about ND being unique in its distinction between basic care and assisted living, etc. Have you thought about reviewing those differentiations?

Kredit That is a good point to make. Spoke about terminology and distinctions

Discussion about long term care insurance in relationship to these definitions

Senator Dever Do opportunities exist for 12 hours of continuing education requirements?

Kredit I'm sure long term care would be happy to provide those opportunities. I don't see it as a problem.

Chairman J. Lee Is there online education available?

Kredit I would assume so.

Representative Meltcalf District #24. To my knowledge there has been no real examination of this industry except by those who own these places. We want to properly oversee this places.

Bruce Murry Lawyer with the ND Protection & Advocacy Project (P&A). Recommended amendments for 1263. See attachment #1.

Chairman J. Lee Are you thinking of a situation where perhaps someone had memory issues that would put them beyond the capabilities of the assisted living facility? I do not want to discriminate but there are some issues that are beyond the ability of some facilities.

Murry Most of our disability laws anticipate a dialogue happening between several parties. The beginning of the dialogue is often about what the needs of the individual. The goal is to keep the dialogue open.

Chairman J. Lee Asked a hypothetical question about individuals with dimension. She is having a little problem seeing an assisted living facility as the same as an apartment.

Murry Referred back to his testimony where it spoke about landlords and legal issues

Senator Dever Without the amendment, can landlords ignore the law?

Murry The amendment doesn't change the legal obligations of the landlord but is more a footnote for people who do not routinely read certain sections of the law.

Chairman J. Lee Asked about the legal rights of the individual in choosing their own care

Murry Described the legal ramifications of individual care in relation to anti discrimination law
Further discussion about legal issues regarding care facilities; Murry recommends a very small amendment—Chairman J. Lee is concerned with unintended consequences

Shelly Peterson President of the Long Term Care Association (LTC). Spoke in support of 1263. See attachment #2. Addressed the amendment proposed by Murry, she is hesitant to support the amendment.

Amy S. Nelson Executive Director of the Fair Housing of the Dakotas (FHD). Spoke in support of 1263. See attachment #3.

There was no opposition testimony given

Karen Tescher Assistant Director in the Medical Services Division for DHS. Provided information on 1263. See attachment #4.

Senator Heckaman What are the licensing requirements now?

Tescher Explained the licensing procedure including the fees and credentials required

Chairman J. Lee Closed the hearing on HB 1263.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1263

Senate Human Services Committee

☐ Check here for Conference Committee

Hearing Date: 03/24/2009

Recorder Job Number: 10589

Committee Clerk Signature

Mary K Monson

Minutes:

Chairman J. Lee Opened the discussion on HB 1263. See additional information attachment #5. Gave a brief summary of the bill to the committee

Shelly Peterson President of the Long Term Care Association. The most important section is section 1. The concern is that we are potentially violating fair housing. Explained the history of the bill—there were issues with moving out and the criterion for getting in and complaints from the ombudsman. The bill is written in attempt to comply with fair housing practices. It is frustrating because in order to be fair to tenants and neighbors, there needs to be clear guidelines. She wants section 1 to stay as it is the most important section of the bill. She is concerned with staying in compliance with the law.

Chairman J. Lee Talked about her personal experience with her father and assisted living—there has to be some way to determine how the needs of individuals will be met. I am with you on this, this is not the same thing as fair housing. I would like to have us consider a study on assessing and studying the criterion and definitions used by the state. I think that might help set aside some of the fair housing concerns.

Peterson I think a study is a great idea.

Chairman J. Lee I don't think the house would have a problem with this being a study. Should this study be attached to any other bill?

Discussion about the house and some of the Representatives

Senator Dever I think the fair housing request would be more appropriate in an independent living situation.

Discussion about the language of the study

Senator Heckaman I move the amendment .0101.

Senator Dever Second

The Clerk called the role on the motion to **Amend. Yes: 6, No: 0, Absent: 0.**

Senator Heckaman I move **Do Pass as Amended.**

Senator Dever Second

The Clerk called the role on the motion to **Do Pass as Amended. Yes: 6, No: 0, Absent: 0.**

Senator Dever will carry the bill.

March 16, 2009

JB
3/24/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1263

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

Page 2, after line 9, insert:

"SECTION 2. LEGISLATIVE COUNCIL STUDY - BASIC CARE AND ASSISTED LIVING FACILITIES. During the 2009-10 interim, the legislative council shall study how the state laws and administrative rules regulate basic care and assisted living facilities. The study must include consideration of whether the state's designations of basic care and assisted living as care categories are outmoded or inconsistent with industry categories of care and a review of the definitions used in services offered by and the licensure and registration process used in regulating basic care and assisted living facilities. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly."

Renumber accordingly

Date: 3/24/09

Roll Call Vote #: _____

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1263

Senate Human Services Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 0101

Action Taken ☐ Do Pass ☐ Do Not Pass ☐ Amended ☐ Rerefer to Appropriations

☒ Adopt Amendment ☐ Reconsider

Motion Made By Sen. Heckaman Seconded By Sen. Dever

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee, Chairman	✓		Senator Joan Heckaman	✓	
Senator Robert Erbele, V.Chair	✓		Senator Richard Marcellais	✓	
Senator Dick Dever	✓		Senator Jim Pomeroy	✓	

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

Date: 3/24/09

Roll Call Vote #: _____

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1263

Senate Human Services Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 90638.0101 Title .0200

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Rerefer to Appropriations
☐ Adopt Amendment ☐ Reconsider

Motion Made By Sen. Heckaman Seconded By Sen. Dever

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee, Chairman	✓		Senator Joan Heckaman	✓	
Senator Robert Erbele, V.Chair	✓		Senator Richard Marcellais	✓	
Senator Dick Dever	✓		Senator Jim Pomeroy	✓	

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Dever

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

REPORT OF STANDING COMMITTEE

HB 1263: 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 1263 was placed on the Sixth order on the calendar.

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

Page 2, after line 9, insert:

"SECTION 2. LEGISLATIVE COUNCIL STUDY - BASIC CARE AND ASSISTED LIVING FACILITIES. During the 2009-10 interim, the legislative council shall study how the state laws and administrative rules regulate basic care and assisted living facilities. The study must include consideration of whether the state's designations of basic care and assisted living as care categories are outmoded or inconsistent with industry categories of care and a review of the definitions used in services offered by and the licensure and registration process used in regulating basic care and assisted living facilities. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly."

Renumber accordingly

2009 TESTIMONY

HB 1263

#1

Testimony on HB 1263
House Human Services Committee
January 21, 2009

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. I am here on behalf of our assisted living members and request your support of HB 1263. HB 1263 provides some additional regulations of assisted living. (See Attachment A)

Almost one year ago the North Dakota Department of Human Services formed a group called the Assisted Living Work Group. Members of the work group included assisted living providers, representatives from the ND Department of Health and Department of Human Services, AARP, Protection and Advocacy, the Centers for Independent Living and our Association. (See Attachment B)

The purpose of the group was to consider if additional regulations for assisted living was necessary and if so, what should it be. It was determined at the first meeting the group would continue to meet and move forward with recommending potential regulations. With the North Dakota Department of Human Services as the lead agency in convening the group, it was envisioned they would propose the assisted living bill draft as an agency bill.

At one of our last meetings last fall, the Department of Human Services announced they would not be pursuing assisted living legislation and if anyone wanted to, that group would need to bring it forward. After that announcement, our Association stepped forward to spearhead the efforts of the workgroup.

Before I cover what HB 1263 is proposing to do, I want to briefly outline assisted living in North Dakota. Assisted living is a congregate residential setting that provides or coordinates personal services, has 24-hour availability of staff and provides assistance with scheduled and unscheduled needs. Tenants live in individual apartments, with doors that lock and lease agreements that protect

their rights. Today, we have 61 licensed assisted living facilities, representing 2,273 apartment like units, spread throughout North Dakota. (See Attachment C) The cost of assisted living depends on three issues:

1. Size of the living unit;
2. Service package; and
3. Location of the facility

Below is a chart of cost information:

Rent	
Type of Unit	Range of Prices
Small Efficiency	\$505 to \$1,885
Large Efficiency	\$525 to \$2,425
1 Bedroom	\$720 to \$2,650
2 Bedroom	\$819 to \$3,152

Services	
Categories of Care	Range of Prices
Lowest	\$200 to \$855
Next Level	\$300 to \$1,405
Next Level	\$575 to \$1,655
Next Level	\$925 to \$2,005

The typical person moving into assisted living is female (74%) eighty-five years old and moving from her own home (84%). The top reason for moving into assisted living is physical decline in health, followed by cognitive decline and then social isolation.

HB 1263 puts additional requirements in place that we believe will be good for consumers of assisted living and assisted living facilities. The bill has five important features:

1. It requires each facility to have clear, concise, understandable tenancy criteria that is fully disclosed in writing to all potential tenants, prior to the agreement being signed. We want to make sure individuals are appropriate for assisted living and their needs can be met. When a person is asked to move out it is generally because their needs are too complex and they can not safely be met by the facility. One criteria could be that a person must be able to exit the living unit without staff assistance. At night, when tenants are asleep in their apartments, staffing is minimal and if there should be a fire, you want to make sure tenants have the ability to exit to a safe place. We also don't want someone to move in that requires

extensive hands on care (two person transfers) that can't be arranged for or provide by the assisted living facility. You would hate to have someone move into assisted living, find that they need 24-hour care that isn't available, thus necessitating a move out. Having clear, concise, understandable tenancy criteria protects all parties. (See Attachment D and Attachment E)

2. Requires all administrators to complete twelve hours of continuing education annually and all direct care staff to have training in:
 - a. Resident rights;
 - b. Fire and accident prevention and training;
 - c. Mental and physical health needs of tenants;
 - d. Behavior problems and prevention; and
 - e. Control of infection, including universal precautions.

We believe this training is a good standard for all assisted living facilities and is currently the standard for basic care facilities.

3. Outlines the minimum requirements for tenants' records. The record would include the initial evaluation to meet the tenancy criteria, the tenancy agreement signed by the tenant or their legal representative, the tenant's medication record if the facility administers the medication and an itemized list of services. Facilities charges for services are based upon the service package selected by the tenant so we want to assure the record contains an itemized list of services provided for the tenant.
4. Assures every facility will conduct a reference and previous employment check on each employment applicant. This due diligence in selecting capable staff will help assure we have the right staff in place. We added language that you must check applicable registries. We thought this language would help new facilities become aware of the registry requirements with the North Dakota Board of Nursing.

5. The last requirement is one which we are really excited about. It requires each assisted living facility at least every twenty-four months, to conduct a consumer satisfaction survey and a copy of the survey results must be provided to each tenant. Assisted living wants not only to meet the needs of their tenants, but exceed them. What a great way to monitor your performance than to ask your primary customers through a survey, how are we doing. Through this survey process, facilities will be made aware of opportunities for improvement and continually strive to meet the needs of their tenants.

HB 1263 has been a collaborative effort between facilities, government regulators and advocates of the elderly. We support these additional regulations for assisted living and ask for your support.

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

Shelly Peterson, President
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1900 North 11th Street • Bismarck, ND 58501
(701) 222-0660 • www.ndltca.org • E-mail: shelly@ndltca.org

Regulations that Impact Assisted Living:

*Same handover
given to
Senate.*

Chapter 23-09 "Lodging Establishments and Assisted Living Facilities"

Chapter 25-01.3-04 "Reporting of Abuse, Neglect or Exploitation – Immunity for good –faith reports."

Chapter 25-03.3-04 "Reporting of Abuse, Neglect and Exploitation"

Chapter 33-33-04 "North Dakota Requirements for Food and Beverage Establishments – The "Red Book"

Chapter 33-33-05 "Smoke Detector Rules"

Chapter 43-12.1 "Nurse Practices Act"

Chapter 47-16 "Leasing of Real Property"

Chapter 50-10.1 "Long-Term Care Ombudsmen"

Chapter 50-10.2 "Rights of Health Care Facility Residents"

Chapter 50-32 "Assisted Living Facilities"

Chapter 54-07-03.1 "Unlicensed Assistive Person Competence
(this should include article 54-07 "unlicensed assistive person")

Chapter 54-07-06.1 "Medication Assistant Program I Requirements"

Chapter 54-07-08 "Specific Delegation of Medication Administration"

Chapter 75-03-34 "Licensing of Assisted Living Facilities"

Assisted Living Work Group Members

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*Same handbook
given to
Senate.*

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Licensed Assisted Living Facilities

(Sorted by City)

Total Licensed Facilities = 61

Services Available										
Number of Licensed Units	Bathing	Dressing	Toileting	Eating	Medication Management	Personal Hygiene	Meal Preparation	Housekeeping	Transportation	Other
6	X	X	X	X	X	X	X	X	X	Incontinence Mgmt
41	X	X	X	X	X	X	X	X	X	X
30	X	X	X	X	X	X	X	X	X	X
64	X	X	X	X	X	X	X	X	X	X
70	X	X	X	X	X	X	X	X	X	X
58	X	X	X	X	X	X	X	X	X	X
12	X	X	X	X	X	X	X	X	X	Grocery shopping, exercise assist
12	X	X	X	X	X	X	X	X	X	X
49	X	X	X	X	X	X	X	X	X	X
18	X	X	X	X	X	X	X	X	X	X
26	X	X	X	X	X	X	X	X	X	X
28	X	X	X	X	X	X	X	X	X	X
55	X	X	X	X	X	X	X	X	X	X
38	X	X	X	X	X	X	X	X	X	X
5	X	X	X	X	X	X	X	X	X	X
149	X	X	X	X	X	X	X	X	X	Health care/personal care
48	X	X	X	X	X	X	X	X	X	X
54	X	X	X	X	X	X	X	X	X	X
60	X	X	X	X	X	X	X	X	X	Escorts, massage therapy, exercise program, assist with amb
85	X	X	X	X	X	X	X	X	X	Therapies, beauty shop, activities
85	X	X	X	X	X	X	X	X	X	Therapies, beauty shop, activities
26	X	X	X	X	X	X	X	X	X	Foot care
60	X	X	X	X	X	X	X	X	X	X
60	X	X	X	X	X	X	X	X	X	X
52	X	X	X	X	X	X	X	X	X	X
60	X	X	X	X	X	X	X	X	X	Arrangements with outside entity
11	X	X	X	X	X	X	X	X	X	Exercise
16	X	X	X	X	X	X	X	X	X	X
41	X	X	X	X	X	X	X	X	X	X
18	X	X	X	X	X	X	X	X	X	X
14	X	X	X	X	X	X	X	X	X	X
16	X	X	X	X	X	X	X	X	X	X
12	X	X	X	X	X	X	X	X	X	Home health
11	X	X	X	X	X	X	X	X	X	Social Activities
24	X	X	X	X	X	X	X	X	X	X
41	X	X	X	X	X	X	X	X	X	Noon meal
85	X	X	X	X	X	X	X	X	X	Activities, PT, OT, Hospice, Home Health
8	X	X	X	X	X	X	X	X	X	X
67	X	X	X	X	X	X	X	X	X	Mail
8	X	X	X	X	X	X	X	X	X	Standby assist ambulance
65	X	X	X	X	X	X	X	X	X	X
51	X	X	X	X	X	X	X	X	X	X
115	X	X	X	X	X	X	X	X	X	X
16	X	X	X	X	X	X	X	X	X	Evening meal package, restorative therapy, electric bed rental
10	X	X	X	X	X	X	X	X	X	X
7	X	X	X	X	X	X	X	X	X	X
14	X	X	X	X	X	X	X	X	X	X
29	X	X	X	X	X	X	X	X	X	X
37	X	X	X	X	X	X	X	X	X	Foot/nail care
44	X	X	X	X	X	X	X	X	X	X
16	X	X	X	X	X	X	X	X	X	X
16	X	X	X	X	X	X	X	X	X	X
15	X	X	X	X	X	X	X	X	X	Activities, exercise
36	X	X	X	X	X	X	X	X	X	Foot care
67	X	X	X	X	X	X	X	X	X	Footcare
39	X	X	X	X	X	X	X	X	X	X
6	X	X	X	X	X	X	X	X	X	Church, activities

Total Living Units	2,273
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Criteria for Assisted Living

1. Tenant's general health is stable and predictable.
2. The tenant is able to move about independently or use wheelchair or walker without assistance.
3. Tenant is able to get into and out of chairs, bed, etc.
4. Tenant is able to eat meals without assistance.
5. Tenant is able to participate in activities of daily living such as dressing, bathing, grooming, etc.
6. Tenant is able to care for most of his/her own toileting needs. May require assistance with minimal incontinence management.
7. May need general oversight of medications.
8. Does not abuse medications, illegal drugs or alcohol.
9. Tenant is not a safety hazard or danger to self or others.
10. Tenant is able to aid in choice and delivery of services. Must be willing to cooperate with services and direction from staff.
11. Must be willing and able to comply with Policies and Procedures of Valley View Heights.
12. Tenant must submit a copy of his/her health history and physicians orders prior to admission.
13. A current physical exam must be completed prior to admission.
14. A tenant exceeding any of the criteria will be reassessed for proper level of care or discharged to an appropriate setting.
15. Must be 55 years of age or older.

**VALLEY MEMORIAL HOMES
ASSISTED LIVING POLICIES & PROCEDURES**

Policy #: 1400.1

Policy Title: **Tenancy Criteria**

Purpose: To provide guidance to the staff in determining eligibility of a prospective tenant for tenancy

To provide guidance to the staff when a tenant no longer meets eligibility requirements

To provide information to individuals and their families as to eligibility

- Policy Statement:
1. This facility is non-discriminatory. Tenancy will not be denied to any person because of sex, race, religion, or national origin.
 2. The prospective tenant's physician must submit a copy of the tenant's health history and physician orders prior to move-in.
 - A. If a tenant does not have a local physician established, they must do so prior to their moving in to the facility.
 3. The prospective tenant or tenant must meet the following criteria:
 - A. Age
 - Must be 55 years of age or older or disabled within the criteria for being a tenant or residing in an assisted living facility (unless otherwise authorized)
 - B. Financial
 - Must have the financial resources to pay the rent, security deposit or other fees for services (agreed upon or otherwise provided).
 - C. Mobility
 - Able to walk independently or with cane or walker (or be willing to accept assistance from staff)*
 - Able to self-propel wheelchair (or be willing to accept assistance from staff)*

- Able to bear weight and transfer from wheelchair, to bed, to toilet or into bed (or be willing to accept assistance from staff)*

D. Activities of Daily Living

- Must be able to care for self regarding toileting, bathing, or dressing (or be willing to accept assistance from staff)*
- Must be able to manage incontinence per self through the usage of pads or other incontinence measures (or be willing to accept assistance from staff)*

E. Medication

- Is able to manage own medications (or be willing to accept assistance with medication reminders/administration)*
- May be oxygen dependent if able to monitor own oxygen (or obtain staff assist)*

F. Meals

- Must be able to feed self. Special diets are accommodated and assistance given with cutting up foods and opening cartons.
- Must be able to get to and from the dining room for meals on own or with escort assistance as needed.*

G. Housekeeping

- Housekeeping is generally the responsibility of the facility. Tenant is responsible to maintain their unit in an orderly fashion between weekly cleanings.
- If additional housekeeping is required, tenant will be required to contract for this service.*

H. Laundry

- Laundry is the responsibility of the tenant. This service may also be contracted through the facility.

I. Self-Preservation

- Must be able to exit the facility with cueing and/or minimal direction in case of an emergency

J. Tobacco

- Tenants, family and/or visitors may not use tobacco anywhere in the buildings or on the grounds.

K. Appliance Safety

- Ability to safely use any electrical appliances that are brought in (no frayed cords or plugs)
- Management reserves the right to shut off power to stove (WT) or any other electrical appliances as assessment deems necessary in regards to safety for self or others

L. Socialization/Behavior

- Is able to function adequately within the facility without threat of harm to self or others
 - Does not disrupt the facility's stability and normal operation
 - Able to relate appropriately with other tenants and staff
 - Able to communicate needs to staff
 - Cannot exhibit behavior that is verbally or physically abusive to other tenants, staff or visitors
 - Can be forgetful and/or slightly confused. Accepts and responds to re-direction
 - Does not wander out of facility or off facility grounds and become lost
4. Final determination regarding eligibility rests with Facility Administration in collaboration with Personal Care staff.
 5. If a prospective tenant or a tenant has difficulty with the above criteria, a service plan to meet his/her needs will be developed with tenant, facility staff and family. If the needs cannot be met with the services available, the prospective tenant would not qualify for tenancy nor the tenant for continued tenancy.
 6. When a tenant no longer qualifies, Facility Administration, along with the Director of Personal Care Services (or designee), will discuss with the tenant and/or family the need to change living arrangements. Although consultation with family members, the physician, and other health care providers will be utilized in assessing the tenant's ability to meet the above criteria, final determination rests with the administration of the facility.

7. Probationary tenancy can be utilized when there is some expectation of reversing the identified concerns.
(See policies on Probationary Tenancy Evaluation Period.)

*A fee will be charged for staff assistance.

Effective Date: 1/01/01

Revision Date: 2/26/01; 02/14/02, 10/14/2002, 4/25/2005, 11/2008

Authorized By _____

FAIR HOUSING OF THE DAKOTAS

#2

(The Fair Housing of the Dakotas serves North and South Dakota and works to eliminate housing discrimination and to ensure equal housing opportunities for all.)

Telephone: 701-221-2530

ND Relay: 1-800-366-6889 (Voice)

SD Relay: 1-800-877-1113 (Voice)

Address: 909 Basin Avenue, Suite 2, Bismarck, ND 58504

Toll Free: 1-888-265-0907

Fax: 701-221-9597

ND TDD: 1-800-927-9275

SD TDD: 1-866-273-3323

Testimony before the House Human Services Committee on House Bill 1263 by the Fair Housing of the Dakotas January 21, 2009

Mr. Chairman, and members of the Committee, my name is Amy S. Nelson and I am the Executive Director of the Fair Housing of the Dakotas (FHD). The FHD is a non-profit agency which serves North and South Dakota. We work to eliminate housing discrimination and to ensure equal housing opportunities for all. The FHD educates the public on Fair Housing Laws and also investigates allegations of housing discrimination. When discrimination is found, we assist complainants in filing complaints of housing discrimination with the North Dakota Department of Labor (NDDOL) and/or in state or federal court. The Federal Fair Housing Act prohibits discrimination in the rental, sale or financing of housing due to race, color, religion, national origin, gender (sex), presence of children (familial status) and disability (handicap). North Dakota state law also provides these protections as well as due to age (40 and over) and status with respect to marriage and public assistance.

The FHD requests clarification on this bill regarding Section 1, Lines 9-10 noting, "Before a facility unit is rented, the facility or landlord shall evaluate the tenant's ability to meet the facility's tenancy criteria." This line is not clear to us as to what may be used in this evaluation. We are concerned about possible fair housing violations by housing providers requesting information on whether tenants are capable of independent living which may discriminate due to age and disability. **We encourage an amendment following this line which states "Such criteria will not discriminate in violation of state or federal fair housing laws."**

We do not assume that any possible discrimination was the bill's intent; however, we want to make sure there are not future problems. For rental, applicants should not be asked about their disability except to determine whether an applicant is qualified for a dwelling available only to persons with disabilities or to persons with a particular type of disability or is qualified for a priority available to persons with disabilities. Applicants also should not be asked about their ability to care for themselves, but may be asked about their ability to be lease compliant. If a tenant can be lease compliant, either on their own or with the care of others, they should be allowed to live there. In addition, it would not be a violation of fair housing laws to inquire whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance; whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance or if an individual's tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others. More information on possible fair housing violations is included in the attached.

With this amendment, the Fair Housing of the Dakotas would support passage of House Bill 1263. I thank you for the opportunity to provide testimony today and please let me know if you have any questions or need any additional information. Thank you.



Disability Discrimination in Senior Housing

Aisha Anderson Bierma
Staff Attorney
Legal Aid Society of Minneapolis

*Same handbook
given to
senate.*

This brief outline provides guidance on how to apply the Fair Housing Act (FHA) to senior housing. Courts are still developing this area of law. The FHA can apply to all kinds of senior housing, including "independent living," housing with services, assisted living, and nursing homes. *See* 42 U.S.C. § 3602(b) (2000). This outline provides examples of potentially discriminatory actions and how they might be analyzed under the FHA.

I. Discriminatory Admissions

- It is illegal to "discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter" because of her disability. 42 U.S.C. § 3604(f)(1). This mandate applies to admissions.
- Potential examples of discriminatory admissions (must look at case-specific facts):
 - "You can't move into this seniors' apartment complex because you can't live independently."
 - "You can't move into this assisted living facility because we can't meet your needs."
 - "You can't move into this nursing home because of your mental illness / other disabilities."
- Bottom line to consider:
 - If the applicant is applying to independent living, can she keep up her apartment, with or without assistance, and otherwise comply with nondiscriminatory lease terms? The applicant should not be rejected merely because of her disability or disability-related needs, even if she applies to "seniors' independent living."
 - If the applicant is applying to a nursing home or housing with services, is she asking the housing or service provider to offer services beyond those it normally provides? If not, the applicant should not be rejected because of her disability-related needs. The applicant should also not be rejected because a facility does not want to offer the services it is required to offer under its contract, its advertised services, or applicable law (e.g. the Nursing Home Reform Law). For more explanation, see the attached Bierma, Nepveu, and Wilkinson *Clearinghouse Review* article.

II. Discriminatory Questioning During Admissions

- **With limited exceptions, a housing provider cannot ask disability-based questions of a prospective tenant/resident. 24 C.F.R. § 100.202(c) (2007).**
- **Potential examples of discriminatory questioning:**
 - “I applied to an apartment, and I was given a questionnaire about my disabilities to see if I could live independently.”
 - “I applied to an assisted living facility / nursing home, and the housing provider asked me for details about my mental health / other disabilities.”
- **Bottom line to consider:**
 - In independent living, with limited exceptions, housing providers should not ask questions about applicants’ disabilities.
 - In some states (e.g. Minnesota), there is a strong argument that the housing provider should not ask questions about applicants’ disabilities. These questions should be left to the service provider and should not be shared with the housing provider.
 - In nursing homes, and possibly in other types of housing with services, questions should be limited to determining the services the applicant will require from the provider. Other questions about disabilities are likely to violate the FHA. For more explanation, see the attached Bierma, Nepveu, and Wilkinson *Clearinghouse Review* article.

III. Discriminatory Evictions

- **It is illegal to “discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter” because of her disability. 42 U.S.C. § 3604(f)(1). This mandate applies to evictions.**
- **Potential examples of discriminatory evictions:**
 - “You need to move out of our apartment building because we have seen your health decline and we think it’s time for you to move into a nursing home.”
 - “My mom is being evicted from an assisted living Alzheimer’s community because she wanders and can be aggressive.”
 - “You are being evicted/discharged from this nursing home because of your difficult behaviors.”

- **Bottom line to consider:**

- This analysis is similar to that applicable to admissions. *See supra* Section I.
- If the tenant is in independent living, can she keep up her apartment, with or without assistance, and otherwise comply with nondiscriminatory lease terms? The tenant should not be evicted merely because of her disability or disability-related needs, even in “seniors’ independent living.”
- If the tenant/resident is living in a nursing home or housing with services, is she asking the housing or service provider to offer services beyond those it normally provides? If not, she should not be evicted/discharged because of her disability-related needs. She should also not be evicted/discharged because a facility does not want to offer the services it is required to offer under its contract, its advertised services, or applicable law (e.g. the Nursing Home Reform Law). For more explanation, see the attached Bierma, Nepveu, and Wilkinson *Clearinghouse Review* article.

IV. Discriminatory Terms and Conditions

- **It is illegal to have different terms, conditions, or privileges in rental property for individuals with disabilities. 42 U.S.C. § 3604(f)(2).**
- **Potential examples of discriminatory terms and conditions:**
 - Restrictions on wheelchairs or motorized mobility devices, such as requiring:
 - Permits for use
 - Doctors’ notes for use
 - Liability insurance
 - Waivers releasing the provider of any liability for use of the device
 - Operating tests
 - Transfers into dining chairs during meals
 - “My landlord says I can’t eat in the dining room because my disability makes others uncomfortable.”
 - “I applied for housing, and the housing provider only does background checks for applicants with mental illnesses.”
- **Bottom line to consider:**
 - Is this person being treated differently by a housing provider because of her disability or her disability-related needs? If so, the housing provider may have violated the FHA by imposing discriminatory terms and conditions.

V. Discriminatory Failures to Provide Reasonable Accommodations or Modifications

- It is illegal for a housing provider to refuse to provide requested reasonable accommodations or modifications. 42 U.S.C. § 3604(f).
 - A reasonable accommodation is a reasonable change or “accommodation” in rules, policies, practices, or services that may be necessary to afford a tenant/resident/applicant equal opportunity to use and enjoy a dwelling.
 - A reasonable modification is a reasonable physical/structural change that may be necessary for a tenant/resident/applicant to have full enjoyment of the premises.
- **Potential examples of a failure to provide reasonable accommodations:**
 - A housing provider will not allow a tenant/resident with a disability to have a service or companion animal that may be necessary for her use or enjoyment of the dwelling.
 - A housing provider will not admit an applicant because of difficult behaviors related to her disability, even though the applicant has proposed a reasonable plan to eliminate or reduce those behaviors. See attached Bierma, Nepveu, and Wilkinson *Clearinghouse Review* article.
 - A nursing home evicts/discharges a resident for her disability-related care needs, even though she requested and needed only reasonable adjustments in services.
 - A housing provider takes away a tenant/resident’s wheelchair, even though the tenant/resident proposed a reasonable plan to eliminate threats she formerly posed when using the chair.
- **Potential example of a failure to provide a reasonable modification:**
 - A housing provider will not allow a tenant/resident to install grab bars in the shower or an automatic shut-off for the faucet, even though such changes may be necessary for the tenant/resident’s full enjoyment of the premises.
- **Bottom line to consider:**
 - Did the housing provider fail to provide a requested reasonable accommodation or modification? If so, the provider violated the FHA. For help defining reasonable accommodations and modifications, see the HUD/DOJ Guides at:
 - http://www.usdoj.gov/crt/housing/jointstatement_ra.htm
 - http://www.usdoj.gov/crt/housing/fairhousing/reasonable_modifications_mar08.pdf

TESTIMONY – PROTECTION AND ADVOCACY
PROJECT

HOUSE BILL 1263 (2009)

SENATE APPROPRIATIONS COMMITTEE

Honorable Judy Lee, Chairman

March 10, 2009

Chairman Lee, and members of the Senate Human Services Committee, I am Bruce Murry, a lawyer with the North Dakota Protection and Advocacy Project (P&A). P&A is a state agency advocating for North Dakotans with disabilities. P&A recommends amendments to HB 1263.

The federal Fair Housing Act and the North Dakota Human Rights Act all prohibit discrimination based upon disabilities unless there is strong justification. Attachments to the testimony of the North Dakota Long Term Care Association show that providers sometimes misunderstand these complicated requirements. See Attachment D to NDLTCA Testimony to House Human Services Committee on January 21, 2009. A tenant who is willing to fulfill the terms of the lease has the right to move in without respect to disability. For example, a person may have adequate insurance to fund all services necessary to avoid violating the rights of neighbors and the landlord. P&A therefore recommends the following amendment to avoid needless violations of the law:

On page 1, line 10, after the word "criteria." insert "The facility and landlord must comply with any applicable federal and state law in making the determination."

Given this change, P&A believes that HB 1263 would promote individual rights by providing notice and clarity to tenants. We believe the remaining risk of discrimination is outweighed by the benefits of clarity. P&A needs to reserve the right to object to particular violations of the law in the unlikely event providers do in fact illegally discriminate.

Last Fall (2008) P&A suggested to NDLTCA that the bill could allow the exclusion of tenants posing imminent threats to health, safety, and the rights of the landlord and neighbors. P&A and others also suggested to NDLTCA that the facility evaluate whether it met the tenant's needs. However, P&A recognizes these changes would be the best practice, and stylistic, and does not insist upon them.

P&A testimony today challenges part of this bill.

However, P&A wishes to affirm the efforts of NDLTCA in proactively raising this issue. They worked in good faith, centered their thinking on individual tenant rights, and sought to accommodate the concerns of advocates.

Attachment D simply shows that the good intentions of high quality providers may produce accidental -- but real -- discrimination.

Thank you for your consideration.

Testimony on HB 1263
Senate Human Services Committee
March 10, 2009

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. I am here on behalf of our assisted living members and request your support of HB 1263. HB 1263 provides some additional regulations of assisted living. (See Attachment A)

Almost one year ago the North Dakota Department of Human Services formed a group called the Assisted Living Work Group. Members of the work group included assisted living providers, representatives from the ND Department of Health and Department of Human Services, AARP, Protection and Advocacy, the Centers for Independent Living and our Association. (See Attachment B)

The purpose of the group was to consider if additional regulations for assisted living was necessary and if so, what should it be. It was determined at the first meeting the group would continue to meet and move forward with recommending potential regulations. With the North Dakota Department of Human Services as the lead agency in convening the group, it was envisioned they would propose the assisted living bill draft as an agency bill.

At one of our last meetings last fall, the Department of Human Services announced they would not be pursuing assisted living legislation and if anyone wanted to, that group would need to bring it forward. After that announcement, our Association stepped forward to spearhead the efforts of the workgroup.

Before I cover what HB 1263 is proposing to do, I want to briefly outline assisted living in North Dakota. Assisted living is a congregate residential setting that provides or coordinates personal services, has 24-hour availability of staff and provides assistance with scheduled and unscheduled needs. Tenants live in individual apartments, with doors that lock and lease agreements that protect

their rights. Today, we have 61 licensed assisted living facilities, representing 2,273 apartment like units, spread throughout North Dakota. (See Attachment C) The cost of assisted living depends on three issues:

1. Size of the living unit;
2. Service package; and
3. Location of the facility

Below is a chart of cost information:

Rent	
Type of Unit	Range of Prices
Small Efficiency	\$505 to \$1,885
Large Efficiency	\$525 to \$2,425
1 Bedroom	\$720 to \$2,650
2 Bedroom	\$819 to \$3,152

Services	
Categories of Care	Range of Prices
Lowest	\$200 to \$855
Next Level	\$300 to \$1,405
Next Level	\$575 to \$1,655
Next Level	\$925 to \$2,005

The typical person moving into assisted living is female (74%) eighty-five years old and moving from her own home (84%). The top reason for moving into assisted living is physical decline in health, followed by cognitive decline and then social isolation.

The Association and our assisted living members were guided in our work by the National Assisted Living Workgroup. The National Assisted Living Workgroup was charged by the US Senate Special Committee on Aging in 2001 to develop recommendations to ensure high quality care and services for all assisted living residents. There were 50 plus organizations represented on the workgroup, including AARP, the Alzheimer's Association and the National Center for Assisted Living. The National Assisted Living Workgroup issued their final report to the Senate Special Committee on Aging in April 2003.

HB 1263 puts additional requirements in place that we believe will be good for consumers of assisted living and assisted living facilities. Each of these five requirements was recommended by the National Assisted Living Workgroup. The bill has five important features:

First, it requires each facility to have clear, concise, understandable tenancy criteria that is fully disclosed in writing to all potential tenants, prior to the agreement being signed. We want to make sure individuals are appropriate for assisted living and their needs can be met. Having clear, concise, understandable tenancy criteria protects all parties.

This type of "Pre-Move In Screening Process" was recommended in the report to the Senate Special Committee on Aging. The rationale for the recommendation is to best assure that an assisted living residence can meet a prospective resident's needs and expectations. This process is initiated once a prospective tenant requests admission into an assisted living residence and is concluded prior to admission. Although we do not specify it in HB 1269, the National Assisted Living Workgroup recommends a history and physical, evaluation of the prospective resident's ability to self-administer medications, evaluation of activities of daily living, instrumental activities of daily living and risk factors. This information is not necessarily due to the housing need but it is needed for appropriate delivery of care. If we do not have knowledge of the person's needs prior to "move in," it is impossible to know if their needs can be met in the assisted living environment. It is very stressful to the family and tenant, to provide for or help them arrange services only to find out after the move in, their needs can not be safely met with assisted living. We want to avoid these heart breaking situations. At least twenty-two states today specify this type of requirement

Secondly, it requires all administrators to complete twelve hours of continuing education annually and all direct care staff to have training in:

- A. Resident rights;
- B. Fire and accident prevention and training;
- C. Mental and physical health needs of tenants;
- D. Behavior problems and prevention; and
- E. Control of infection, including universal precautions.

We believe this training is a good standard for all assisted living facilities and is currently the standard for basic care facilities.

Third, it outlines the minimum requirements for tenants' records. The record would include the initial evaluation to meet the tenancy criteria, the tenancy agreement signed by the tenant or their legal representative, the tenant's medication record if the facility administers the medication and an itemized list of services. Facilities charges for services are based upon the service package selected by the tenant so we want to assure the record contains an itemized list of services provided for the tenant.

Fourth, it assures every facility will conduct a reference and previous employment check on each employment applicant. This due diligence in selecting capable staff will help assure we have the right staff in place. We added language that you must check applicable registries. We thought this language would help new facilities become aware of the registry requirements with the North Dakota Board of Nursing.

The last requirement is one which we are really excited about. It requires each assisted living facility at least every twenty-four months, to conduct a consumer satisfaction survey and a copy of the survey results must be provided to each tenant. Assisted living wants not only to meet the needs of their tenants, but exceed them. What a great way to monitor your performance than to ask your primary customers through a survey, how are we doing. Through this survey process, facilities will be made aware of opportunities for improvement and continually strive to meet the needs of their tenants.

HB 1263 has been a collaborative effort between facilities, government regulators and advocates of the elderly. We support these additional regulations for assisted living and ask for your support.

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

Shelly Peterson, President

**APPLICATION FOR A LICENSE TO OPERATE AN ASSISTED LIVING FACILITY**

NORTH DAKOTA DEPARTMENT OF HUMAN SERVICES

MEDICAL SERVICES DIVISION

SFN 452 (Rev. 10-2008)

Telephone (701) 328-2321

Department Use Only
License Number
Licensure Period

INSTRUCTIONS: Type or print clearly. Attach with the application a check or money order for \$75.00 and other information as requested and return it to: **ND Department of Human Services, 600 E Boulevard Ave. Dept 325, Bismarck, ND 58505-0250.** Keep a copy for your records.

ASSISTED LIVING FACILITY INFORMATION

Name of Assisted Living Facility (ALF)			
ALF Street Address	City	State	Zip Code
ALF Mailing Address	City	State	Zip Code
Contact Person	Title	Telephone Number	
Fax Number	E-Mail Address	Contact Person's Mailing Address (if different than facility address)	

Type of Application Initial ____ Renewal ____	Number of Living Units? ____	Does Your ALF Specialize in Dementia/Alzheimer's? Yes ____ No ____
Has ownership of this ALF changed in the last twelve months? Yes ____ No ____	Has the legal entity responsible for the operation of this ALF changed in the last twelve months? Yes ____ No ____	Is the ALF under a management agreement? Yes ____ No ____

LEGAL OPERATOR OF THE ASSISTED LIVING FACILITY

Exact Name of Legal Entity Responsible for Operation		Taxpayer Identification Number	
Mailing Address	City	State	Zip Code

LEGAL OWNER OF THE ASSISTED LIVING FACILITY

Exact Name of Owner of Premises			
Mailing Address	City	State	Zip Code

SERVICES AVAILABLE

Services Available to Tenants at the Facility. (Either Provided Directly or Coordinated Through Other Entities)			
<input type="checkbox"/> Bathing	<input type="checkbox"/> Eating	<input type="checkbox"/> Housekeeping	<input type="checkbox"/> Other _____
<input type="checkbox"/> Dressing	<input type="checkbox"/> Medication Management	<input type="checkbox"/> Transportation	<input type="checkbox"/> Other _____
<input type="checkbox"/> Toileting	<input type="checkbox"/> Personal Hygiene	<input type="checkbox"/> Laundry	<input type="checkbox"/> Other _____
<input type="checkbox"/> Transferring	<input type="checkbox"/> Meal Preparation	<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____
How are Services Provided to Tenants? Directly by Operating Entity ____ Coordinated Through Other Entity(s) ____.			
Other (Please Specify) _____			

SIGNATURES AND AFFIDAVIT

Note: The person signing the application cannot be less than 18 years of age. The application must be signed by the official(s) of the entity responsible for the operation of the assisted living facility. (If a sole proprietorship, the owner shall sign the application; if a corporation, two of its officers shall sign; if a state, county, or municipal unit, the application is to be signed by the head of the department having jurisdiction over the assisted living facility.)

The undersigned hereby makes application for a license to operate an assisted living facility subject to the provisions of North Dakota Century Code - Chapter 50-10.1, 50-10.2, 50-32 and 23-09, and to North Dakota Administrative Code - Chapter 75-03-34 as well as any other applicable federal, state, and local laws and regulations. We declare that we have examined this application and all attachments and that to the best of our knowledge and belief, this information is true, correct, and complete. We will notify the Department of Human Services in writing of any changes in this information within thirty (30) days of any such change.

Name (Print)_____
Name (Print)_____
Signature_____
Date_____
Signature_____
Date_____
Title_____
Title

Note: The application fee will not be refunded if the application is denied because the required information is not submitted or the application is incomplete. The following items must be provided before the application will be processed.

☐ Signed application

☐ Check or money order for the \$75.00 annual license fee (Made payable to the Department of Human Services)

☐ Copy of the License Issued by the Food and Lodging Division of the North Dakota Department of Health, or License Issued by the Local Health Unit Responsible for Inspections. (For more information about the required inspections, contact the Food and Lodging Division at 701-328-1291.)

☐ Copy of written agreement with tenant. **Agreement must include separate rates for rent and separate rates for services provided to the tenant as well as payment terms, refund policies, rate changes, tenancy criteria, and living unit inspections.**
☐ Copy of written notice provided to tenants that explains how a tenant may report a complaint regarding the assisted living facility. **The notice must include the telephone number of the department's senior info-line and the address of the Aging Services Division of the department.** The telephone numbers for the senior info-line are 1-800-451-8693 and 1-701-328-4601. The address of the State Long Term Care Ombudsman is: Aging Services Division, ND Department of Human Services, 1237 West Divide Avenue, Suite 6, Bismarck, ND 58501.

☐ Copy of the Brochure used to Promote or Advertise the Facility (If Available)

☐ Copy of Resident Handbook (If Available)

☐ Enter Provider Number if enrolled as a Qualified Service Provider (QSP) _____

☐ Return application to the following address: ND Department of Human Services, Medical Services Division, 600 E Boulevard Avenue-Dept. 325, Bismarck, ND 58505-0250

FAIR HOUSING OF THE DAKOTAS

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Testimony before the Senate Human Services Committee on House Bill 1263 by the Fair Housing of the Dakotas March 10, 2009

Madam Chair, and members of the Committee, my name is Amy S. Nelson and I am the Executive Director of the Fair Housing of the Dakotas (FHD). The FHD is a non-profit agency which serves North and South Dakota. We work to eliminate housing discrimination and to ensure equal housing opportunities for all. The FHD educates the public on Fair Housing Laws and also investigates allegations of housing discrimination. When discrimination is found, we assist complainants in filing complaints of housing discrimination with the North Dakota Department of Labor (NDDOL) and/or in state or federal court. The Federal Fair Housing Act prohibits discrimination in the rental, sale or financing of housing due to race, color, religion, national origin, gender (sex), presence of children (familial status) and disability (handicap). North Dakota state law also provides these protections as well as due to age (40 and over) and status with respect to marriage and public assistance.

The FHD requests clarification on this bill regarding Section 1, Lines 9-10 noting, "Before a facility unit is rented, the facility or landlord shall evaluate the tenant's ability to meet the facility's tenancy criteria." ***We want to eliminate potential problems and encourage an amendment following this line which states "Such criteria will follow applicable federal and state laws and not discriminate in violation of state or federal fair housing laws."*** We are concerned from the House hearing handouts about possible fair housing violations by housing providers requesting information on whether tenants are capable of independent living which may discriminate due to age and disability. The handouts appeared to indicate independent living requirements as one of the intents for assisted housing legislation.

In rental situations, applicants should not be asked about their disability except to determine whether an applicant is qualified for a priority available to persons with disabilities or for a dwelling available only to persons with disabilities or to persons with a particular type of disability. Needed assisted living services should be kept separate if at all possible from the lease approval process so services are not used as a reason for denial. Applicants also should not be asked about their ability to care for themselves at application, but may be asked about their ability to be lease compliant. If a tenant can be lease compliant, either on their own or with the care of others, they should be allowed to live there. In addition, it would not be a violation of fair housing laws to inquire whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance; whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance or if an individual's tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others. More information on possible fair housing violations in so called "independent living" scenarios is attached.

With the above amendment, the Fair Housing of the Dakotas would support passage of House Bill 1263. I thank you for the opportunity to provide testimony today and please let me know if you have any questions or need any additional information. Thank you.



Testimony
House Bill 1263 – Department of Human Services
Senate Human Services Committee
Senator Judy Lee, Chairman
March 10, 2009

Chairman Lee, members of the Senate Human Services Committee, I am Karen Tescher, Assistant Director in the Medical Services Division, for the Department of Human Services, and I am here today to provide information concerning House Bill 1263.

Approximately one year ago, the Department agreed to chair a work group to review the current status of assisted living regulations and review the activity of the past work group which disbanded in 2002. The new work group consisted of many of the original members including assisted living providers, the North Dakota Long Term Care Association, AARP, Protection and Advocacy, the Centers for Independent Living, and representatives from the ND Department of Health and the ND Department of Human Services. The main purpose of the group was to determine if additional regulations or best practices should be implemented.

§

One of the items the work group discussed was whether there would be any problem with an assisted living facility evaluating a prospective tenant in light of the services offered by the facility. The Department of Human Services' Legal Advisory Unit undertook some research at the request of the work group after members expressed concerns that a provision allowing an assisted living facility to exclude tenants based on their medical or physical condition would be considered a violation of the

Fair Housing Act or the Americans with Disabilities Act or both. The Department concluded that it likely would violate either or both of those Acts and based on that conclusion, the Department could not support a provision to allow or require an assisted living facility to undertake such an evaluation to assist in determining occupancy of the facility.

Notwithstanding that conclusion, subsection 1 of section 1 of House Bill No. 1263 contains a provision allowing a facility to undertake an evaluation that may result in the exclusion of a tenant based on the prospective tenant's physical or medical condition.

This concern was also raised in the testimony on HB 1263 recorded on January 21, 2009. At that time, Amy Nelson of the Fair Housing of Dakotas stated that a tenant may not be asked about the tenant's ability to care for himself or herself, but a facility may ask a tenant about the tenant's ability to meet the tenancy criteria.

The Department agreed during the work group meetings, and continues to agree, that the "requirements" set forth in subsections 2, 3, 4, and 5 of section 1 of the bill should be set as best practices for assisted living facilities. As written, there is no means of enforcement if an assisted living facility fails to abide by these duties and educational requirements and there are no penalties identified for an assisted living facility's failure to comply with the duties and educational requirements. The Department would have no oversight as there is nothing in the bill that suggests that an assisted living facility's licensure is dependent upon its compliance with this section.

If it is the intent of this legislation to have the Department as the licensing authority review for compliance in these areas, the Department

will need additional resources to evaluate facilities for compliance and will need to know what the expected sanction is for a facility's failure to comply.

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

#6

NDLA, S HMS

From: Lee, Judy E.
Sent: Saturday, March 14, 2009 11:39 PM
To: NDLA, S HMS
Subject: FW: HB 1263

Copies, please.

Senator Judy Lee
1822 Brentwood Court
West Fargo, ND 58078
home phone: 701-282-6512
e-mail: jlee@nd.gov

-----Original Message-----

From: rita raffety [mailto:r Raffety@good-sam.com]
Sent: Wednesday, March 11, 2009 9:18 AM
To: Lee, Judy E.; Erbele, Robert S.; Dever, Dick D.; Heckaman, Joan M.; Marcellais, Richard; Pomeroy, Jim R.
Subject: HB 1263

Senate Human Services Committee Members:

Thank you for your service to the citizens of North Dakota. I know that you have many issues on your plate and each one demands your time and energy.

I am writing in regards to HB1263. As an administrator of an assisted living facility, I feel strongly that we need this legislation. It is important that we have admission and discharge criteria. People come to assisted living because we offer security and socialization, in addition to a place to live. I want to be sure that the people that live in my assisted are not beyond the level of care that we can deliver. Once someone declines and they are no longer safe to live in assisted living, I need a legal avenue to be able to guide them to another setting. An admission agreement provides this. Fair housing does not allow us to ask medical questions to base our decision on whether or not to admit, but this bill gives us that right. I have denied admission if I felt the applicant was beyond the point medically or due to mental cognition, that they would not be safe in our assisted living.

As an industry, we want to maintain a standard. HB 1263 not only mandates admission criteria, but also mandates leaders to be educated, and mandates that quality is measured. Please vote "yes" to HB1263.

Rita J. Raffety
Administrator
Good Samaritan Society Larimore
501 Front Street E
Larimore, ND 58251-4010
701-343-6244 (phone)
701-343-2153 (fax)

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The Evangelical Lutheran Good Samaritan Society.

NDLA, S HMS

From: Lee, Judy E.
Sent: Tuesday, March 10, 2009 1:56 PM
To: NDLA, S HMS
Subject: FW: Email CC of P&A Testimony 1263

Mary -
Please make copies for us.

Senator Judy Lee
1822 Brentwood Court
West Fargo, ND 58078
home phone: 701-282-6512
e-mail: jlee@nd.gov

-----Original Message-----

From: Murry, Bruce D.
Sent: Tuesday, March 10, 2009 9:42 AM
To: Lee, Judy E.
Cc: NDLA, Intern 02
Subject: Email CC of P&A Testimony 1263

TESTIMONY - PROTECTION AND ADVOCACY PROJECT HOUSE BILL 1263 (2009) SENATE APPROPRIATIONS
COMMITTEE Honorable Judy Lee, Chairman March 10, 2009

Chairman Lee, and members of the Senate Human Services Committee, I am Bruce Murry, a lawyer with the North Dakota Protection and Advocacy Project (P&A). P&A is a state agency advocating for North Dakotans with disabilities. P&A recommends amendments to HB 1263.

The federal Fair Housing Act and the North Dakota Human Rights Act all prohibit discrimination based upon disabilities unless there is strong justification. Attachments to the testimony of the North Dakota Long Term Care Association show that providers sometimes misunderstand these complicated requirements. See Attachment D to NDLTCA Testimony to House Human Services Committee on January 21, 2009. A tenant who is willing to fulfill the terms of the lease has the right to move in without respect to disability. For example, a person may have adequate insurance to fund all services necessary to avoid violating the rights of neighbors and the landlord. P&A therefore recommends the following amendment to avoid needless violations of the law:

On page 1, line 10, after the word "criteria." insert "The facility and landlord must comply with any applicable federal and state law in making the determination."

Given this change, P&A believes that HB 1263 would promote individual rights by providing notice and clarity to tenants. We believe the remaining risk of discrimination is outweighed by the benefits of clarity. P&A needs to reserve the right to object to particular violations of the law in the unlikely event providers do in fact illegally discriminate.

Last Fall (2008) P&A suggested to NDLTCA that the bill could allow the exclusion of tenants posing imminent threats to health, safety, and the rights of the landlord and neighbors. P&A and others also suggested to NDLTCA that the facility evaluate whether it met the tenant's needs. However, P&A recognizes these changes would be the best practice, and stylistic, and does not insist upon them.

P&A testimony today challenges part of this bill. However, P&A wishes to affirm the efforts of NDLTCA in proactively raising this issue. They worked in good faith, centered their thinking on individual tenant rights, and sought to accommodate the concerns of advocates. Attachment D simply shows that the good intentions of high quality providers may produce accidental -- but real -- discrimination.

Thank you for your consideration.

NDLA, S HMS

From: Lee, Judy E.
Sent: Saturday, March 14, 2009 11:10 PM
To: NDLA, S HMS
Subject: FW: HB 1263- Assisted living regulations

Mary –

Did I already ask you to make copies of this for us? If so, we certainly don't need two, but we do need one each. I got interrupted in my e-mail efforts and didn't make note of which saved messages I had forwarded to you already.

Senator Judy Lee
1822 Brentwood Court
West Fargo, ND 58078
home phone: 701-282-6512
e-mail: jlee@nd.gov

From: Shelly [mailto:Shelly@ndltca.org]
Sent: Thursday, March 12, 2009 5:54 PM
To: Lee, Judy E.; Erbele, Robert S.; Heckaman, Joan M.; Dever, Dick D.; Marcellais, Richard; Pomeroy, Jim R.
Subject: HB 1263- Assisted living regulations

Hello Members of Senate Human Services,

I know you are busy dealing with all the bills that need to be referred to appropriations, but I wanted to leave you with some positive thoughts on why I think HB 1263 is good for the consumers of assisted living. We have many federal issues confronting us and I will be out of state next week dealing with those issues and I may miss your discussion on HB 1263. The five requirements in HB 1263 are recommended by the National Assisted Living Workgroup in their report to Congress. There were 50 plus organizations represented on this workgroup, including AARP and the Alzheimer's Association. It was felt the states are not doing enough to regulate assisted living and the report provides some excellent guidance. As the group representing assisted living we wanted to be proactive and bring forth requirements that will promote and enhance quality in ND. We believe these are the bare minimums and in the future we may need more. Of top priority in the report to Congress were clear, concise understandable tenancy criteria. Their recommendations went much further in this area, suggesting that all kind of health information be gathered, so you could best serve the tenant. If we don't know what kind of health needs the proposed tenant has how can we best develop a service plan that meets their needs? If they need skilled care, it is traumatic to ask them to leave a few days after their move in. Can you imagine how many upset families we would have. To avoid these situations we need to gather information upfront prior to move in.

We don't need this information for the housing component but for the service component of assisted living. Currently 22 states have an extensive criterion that is gathered prior to a tenant moving into assisted living. I believe there is a lot of good in HB 1263. Can we try it and if after two years P&A or Fair Housing say there is a problem lets fix it. We are committed to providing education on Fair Housing and other federal laws that impact assisted living. Thank you for considering my views and have a great weekend. Shelly

NDLA, S HMS

From: Lee, Judy E.
Sent: Saturday, March 14, 2009 11:12 PM
To: NDLA, S HMS
Subject: FW: HB 1263

Mary -

Copies, please.

Senator Judy Lee
1822 Brentwood Court
West Fargo, ND 58078
home phone: 701-282-6512
e-mail: jlee@nd.gov

From: Kathy Klein [<mailto:somerset@srt.com>]
Sent: Thursday, March 12, 2009 1:42 PM
To: Lee, Judy E.; rerberle@nd.gov; Dever, Dick D.; Heckman, Jim; rmarcellaid@nd.gov; Pomeroy, Jim R.
Subject: HB 1263

Dear Chairman Lee and Senators,

I am writing in opposition to HB 1263. I did not know of the hearing or would have appeared personally to testify. I was on the original LTC workgroup that put together the licensing bill, but was not invited back to the new workgroup working on this one. I do not know why... Perhaps it is because I felt the bill we put together covered both the resident's rights and did not put unnecessary costs on either the state department of human services or our residents. Any additional requirements add costs to the residents and no benefits to them. I am the facility Director at Somerset Court in Minot. The requests of 1263 are already all part of our current practice for new residents and training for staff. I do not feel it should be mandated, as facilities have to evaluate prospective residents to determine whether we can meet their needs. I agree with Carol Olsen that the cost to enforce this would cost the department too much. I have requested the ombudsman report for the past 4 years and recommend you do the same. The program is working, people who have a problem have someone to address it- the ombudsman. I would also like to be on the record for opposing any legislation that provides for medicaid funding in Assisted Living. Currently basic care has provisions for the medicaid waiver and that is meeting the needs. Adding that to Assisted Living would add many regulations and costs to all of the residents, not just the few who use the medicaid waiver. You need to look at the whole picture, not just the one presented to you by those who jumped on the bandwagon looking for a cause. In this difficult economy, that would be a bill bigger than the state govt would be willing to pay and add greatly to costs of residents who are currently or plan to access Assisted Living Facilities. I am available for comment at 701-838-4500 or 701-721-1190 if you wish to speak further. My stand is that HB 1263 be opposed and not passed, it will only add to the costs our residents are currently paying and provide no benefit to them. Thank You

Kathy Klein
Director
Somerset Court

NDLA, S HMS

From: Lee, Judy E.
Sent: Saturday, March 14, 2009 11:15 PM
To: NDLA, S HMS
Subject: FW: HB1263-Assisted Living Regulations

Mary –
Copies, please.

Senator Judy Lee
1822 Brentwood Court
West Fargo, ND 58078
home phone: 701-282-6512
e-mail: jlee@nd.gov

From: Nancy Andrews [<mailto:NAndrews@valleymemorial.org>]
Sent: Thursday, March 12, 2009 8:02 AM
To: Lee, Judy E.
Subject: HB1263-Assisted Living Regulations

Senator Lee,

I would like to take this opportunity to encourage you to support HB 1263. I have worked for Valley Memorial Homes for almost 26 years; providing a level of service that resembled assisted living far before its time. I am also a member of the board of directors for NCAL (National Center for Assisted Living) and have held a position on this board since 2002. As a board member I experience first-hand what is happening across the United States. I feel it is time to resemble the other states in what North Dakota is doing in the arena of Assisted Living. As a provider I want to ensure that we provide the best possible level of care and services that we can. Allowing us to obtain health information on a person prior to their moving in is imperative. We serve a population with the average age of 86.7 in the two facilities that I operate in Grand Forks. Making a decision to move to an assisted living facility – or any change for that matter – for a person of that age can be devastating. If we cannot obtain health information prior to a person coming in; we run the risk of only finding that we cannot meet their needs. If we do not have the knowledge of the person's needs prior to move-in; it is impossible to know if their needs can be met in the assisted living facility. This would be a travesty! While I understand the rationale that Fair Housing is using; I would hope that the Fair Housing of the Dakotas would understand this situation; and as 22 other states in the nation; agree to this change in the regulation. This is not only a request from the AL industry in North Dakota but also a recommendation from the National Assisted Living Workgroup to the US Senate Special Committee on Aging (2001). I would be happy to visit more regarding this issue if you have questions prior to making your decision. Please feel free to contact me. I thank you for your attention to this matter and for all the hard work you are doing on behalf of the state of North Dakota.

Nancy K. Andrews, CASPF
Director of Housing & Assisted Living
Valley Memorial Homes
4000 24th Ave S
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NDLA, S HMS

From: Lee, Judy E.
Sent: Thursday, March 12, 2009 2:30 PM
To: NDLA, S HMS
Subject: FW: HB 1263

Mary –
Please make copies of this for us.

Senator Judy Lee
1822 Brentwood Court
West Fargo, ND 58078
home phone: 701-282-6512
e-mail: jlee@nd.gov

From: Cathy Schmidt [mailto:cjschmidt@mslcc.com]
Sent: Thursday, March 12, 2009 2:24 PM
To: Lee, Judy E.
Subject: HB 1263

Dear Chairman Lee:

I am the director of an assisted living facility here in Bismarck and attended the hearing on HB 1263 on Tuesday. I was impressed by your knowledge of the assisted living/basic care system and was sorry to hear that you had to learn much of the system through your own personal experience with a family member.

Senator Lee, as you know, Fair Housing continues to testify that we can't ask medical questions. Twenty-two other states have this requirement. We can hardly be expected to admit tenants into our facility and take care of their needs if we don't know what their needs are. If we can't help a family find the right placement by asking questions they will be left on their own to move in and out of facilities until they get it right. That's not "fair" to anyone.

There didn't appear to be opposition to the rest of HB1263 as everyone knows there should be minimal standards at the very least. I currently serve as a Board Member and the Assisted Living Committee chair of the North Dakota Long Term Care Association and I assure you that you have the support of this membership. Please vote to pass HB 1263.

Thank you for all you do!

Cathy Schmidt
Director
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2500 Valley View Ave
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(701) 221-3018