2025 SENATE HUMAN SERVICES

SB 2316

2025 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Lincoln Room, State Capitol

SB 2316
1/27/2025

Relating to long-term care services for patients with ventilator or psychiatric needs.

11:00 a.m. Chairman Lee opened the hearing.

Members Present: Chairman Lee, Vice-Chairman Weston, Senator Van Oosting, Senator Clemens, Senator Hogan, Senator Roers.

Discussion Topics:

- Geropsychiatric similarities
- Home and Community-Based Services waivers
- Ventilator-dependent individuals
- Out-of-state facility placements
- Staffing challenges

11:01 a.m. Senator Tim Mathern, introduced the bill and submitted testimony in favor #31794 and #31616.

11:06 a.m. Dustin Gawrylow, testified in favor and submitted testimony #31574.

11:17 a.m. Sarah Aker, Executive Director of Medical Servies with ND Health and Human services, testified in neutral and submitted testimony #31456.

11:23 a.m. Niki Wegner, President of ND Long Term Care Association, testified in neutral and submitted testimony #31495.

11:29 a.m. Deanna Berg, Administrator at Baptist Health & Rehab, from testified in neutral and submitted testimony #31673.

Additional written testimony:

Michael Connelly submitted testimony in favor #31478 and #31465.

11:37 a.m. Chairman Lee closed the hearing.

Andrew Ficek, Committee Clerk

NORTH Dakota Be Legendary.
Health & Human Services

Testimony
Senate Bill No. 2316
Senate Human Services Committee
Senator Judy Lee, Chairman
January 27, 2025

Chairman Lee, and members of the Senate Human Services Committee, I am Sarah Aker, Executive Director of Medical Services with the Department of Health and Human Services (Department). I appear before you to provide neutral testimony related to Senate Bill No. 2316.

North Dakota Medicaid currently pays for long-term care services to individuals with ventilator or psychiatric needs. These individuals can receive services in a nursing facility or in their own home. If services are not available in North Dakota, ND Medicaid will pay for services in an out-of-state facility. The Medicaid cost of long-term care services for individuals with ventilator or psychiatric needs is included in the Governor's budget based on current utilization of services.

Subsection 1 of Section 1 requires the Department to contract with 4 regional providers for long-term care services for individuals with ventilator or psychiatric needs. The average cost per person for Nursing Facility services was $135,686 in SFY2024. The department assumes that the contract will require the regional provider to reserve a bed for the purposes of the bill. This department estimates the yearly contract cost for each regional provider to be $250,000, with an annual fiscal impact of $1,000,000; $2,000,000 per biennium. We anticipate that a contract for the 2025-2027 biennium would be approximately 18 months, so anticipate a $1,500,000 fiscal impact for this bill. The Department anticipates a 50/50 administrative match on this bill to reserve beds for

Medicaid members. If the bill sponsor intends for the bill to reserve beds for non-Medicaid members, then the bill would require additional general funds.

Subsection 2 requires the Department to pay for costs of providing care at a certified long-term care facility in another state. The Department already covers the cost of providing care in another state if the services are not available within the state. Therefore, there is no fiscal impact for Subsection 2.

Subsection 4 of Section 1 states a long-term care facility is eligible to receive additional funding equal to the cost of care at an out-of-state facility if the individual has ventilator or psychiatric care needs was receiving services at an out-of-state facility in the previous year. According to the Genworth 2023 Cost of Care Survey, the national median cost of care in a nursing facility for 2023 was $104,028. The average cost of care for a Medicaid individual in a nursing facility in North Dakota was $122,631 for SFY 2023. North Dakota's average payments to nursing facilities generally exceeds the national average. The Department does not anticipate a fiscal impact for this subsection.

This concludes my testimony. I am happy to answer any questions the committee may have. Thank you.

I would encourage a DO PASS recommendation on SB2316. I have a broad spectrum of experience the last three decades in the fields of addiction, social work, insurance, long term care, working with the disabled, advocacy, and now representation. I respect what it takes to represent in an elected seat as we take on more responsibility than what we carry as we are born with.

North Dakota has had a long uncomfortable history of care to meet the needs of citizens within all of the pressures that the world relentlessly throws at us. In the early 1900's resources at best were scarce, norms of the day led to many misunderstandings and many needs were all addressed the same way with large institutions that were understaffed. Within the resources available right decisions were silenced by significant wrongs that happened in places like the now destroyed San Haven.

Bumpy histories have also followed many programs we continue to try to improve on today, but it comes as a heavy cost. It does not help that the needs and norms of society are able to change at a much faster rate than anything we come up with to address them. That is why SB2316 is before you.

We have had a lot of time, money and effort put into centralizing care and yet we also have a long history of knowing the good and bad consequences of how that impacts our topographically large state. Breaking the resources up into regional areas takes a lot of stress off the citizens and allows families to stay connected to loved ones without adding expensive travel and time onto the plate of caring for their loved ones. I know families that plan trips to visit loved ones and when we have a storm it is six months to a year before they can accrue vacation time to make their next attempt to visit. More often than not, families become disconnected as the outside world demands life lived be at a much faster rate than the life of people receiving services for physical and mental challenges.

Since the pandemic, the term ventilator has become a part of the normal conversation when people have coffee and talk about healthcare. Our resources and how the medical system views this care still seems to be pre-pandemic and for many it is causing challenges. I personally know people that have been sent to Portland, Chicago,

Representatives of the House, House Judiciary Committee

I would encourage a DO PASS on HB1361

Working in the addiction, mental health and medical fields I have has some experience fighting the chaos created by human trafficking. The trauma by the victims is always life long and changes that person. Many times the perpetrator, knows how to skirt the law and with a bill like HB1361 they will face significant retribution for the evil choices they make when harming another person.

Sincerely,

Mike (Michael) Connelly

1/20/2025

Testimony on Long-Term Care Services for Patients with Ventilator or Psychiatric Needs
Senate Human Services Committee
January 27, 2025
Senate Bill 2316

Chair Judy Lee and members of the Senate Human Services Committee, my name is Nikki Wegner, President of the North Dakota Long Term Care Association. Our association represents 182 assisted living, basic care, and nursing facilities here in North Dakota. Thank you for the opportunity to testify as neutral on Senate Bill 2316, specifically regarding long term care services for patients with ventilator or psychiatric needs.

Senate Bill 2331, passed during the 1993 legislative session, established the framework we still use today for addressing medically complex individuals. One of its sponsors, Senator Mathern, included an emergency clause that made the legislation effective as of March 26, 1993. This law empowered the Department of Human Services to negotiate higher rates for caring for individuals with intense needs. We thank Senator Mathern for his foresight over 30 years ago and believe this approach remains effective and beneficial today.

The challenges in meeting the needs of medically complex individuals extend beyond funding alone. When evaluating new admissions, nursing facilities carefully assess whether they can meet the individual's needs or secure the necessary resources, such as additional nurses or access to respiratory therapy. However, a workforce crisis in both of these critical fields presents a significant hurdle. Our members are actively pursuing various workforce development strategies to address this challenge and ensure the availability of skilled professionals.

Facilities across the state already have the flexibility to negotiate higher rates for individuals with complex care needs when the required resources are available. Instead of creating four regional centers, this process ensures individuals have the freedom to choose a facility if they are capable of meeting their unique needs.

In addressing psychiatric needs, North Dakota currently has three geropsychiatric facilities, and we are actively working with the Department of Health and Human Services to explore the addition of another facility. Additionally, we are proposing an amendment to House Bill 1012 to allocate $3 million for developing and implementing a behavioral health programming model for nursing and basic care facilities. This initiative seeks to close critical gaps in behavioral health care in these settings.

Nursing and basic care facilities face significant challenges, including financial constraints, strict regulations, and limited behavioral health resources, which often result in residents remaining in hospitals or cycling through emergency departments. To address these issues, we propose starting with a focused group of facilities to implement this program. This phased approach will allow us to tailor a model proven effective in other states to North Dakota's needs.
The program will deliver intensive staff training, implement person-centered behavioral support plans, provide comprehensive psychiatric care, and develop a skilled direct care provider network. By starting small, we can refine the program, collect meaningful data, and build momentum for statewide expansion during the next legislative session.

Behavioral Health Solutions, a Nevada-based company operating in nine states, brings extensive expertise in behavioral health programming. Their demonstrated success includes reducing emergency room visits by 72%, lowering costs, and significantly improving residents' quality of life. By partnering with existing psychiatric providers, Behavioral Health Solutions will introduce additional resources to North Dakota, enhancing service delivery and care outcomes.
This initiative offers a sustainable solution to better manage behavioral health needs, reduce reliance on higher-cost care settings, and improve the quality of life for some of our most vulnerable residents.

Thank you for your consideration, and I look forward to any questions you may have.

Nikki Wegner MS, OTR/L, President
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SB 2316 - Testimony by Dustin Gawrylow, as a private citizen (corrected version)

Madam Chairwoman and Members of the Committee,

For the record my name is Dustin Gawrylow, and on this particular bill I am speaking as a private citizen and not behalf of any organization.

I would like to thank Senator Mathern for prime sponsoring this bill, as well as you Madam Chairwoman for co-sponsoring. As well as the other co-sponsors: Senator Cleary, Representative Johnston and Representative Hendrix. Some may notice that this is an unusually diverse coalition, which was my goal to help generate more attention to the issue.

Personal Background and Interest In This Issue

My interest, understanding, and frustration on this issue has developed over the last year due to a situation involving my mother's healthcare situation.

I will try to minimize the personal and emotional aspects of this issue, but to give some context: my 70 year old mother broke her leg last March, and due to complications during/after surgery suffered from aspiration, which led to a collapsed lung due to over-suctioning, which has led to her being ventilator dependent at night and intermittently during the days.

After four weeks in ICU, my mother was transferred to Vibra in Mandan. After 100 days, the Medicare coverage window ran out, and three attempts to appeal to Medicare were denied.

From this point, I have learned the hard way just how broken the system is.

I learned about how facilities like Vibra are called "Long Term Acute Care Hospitals" but "long term" does not mean what people think it means. They either cannot receive or do not accept Medicaid as they are not actually meant to be "long term" like a nursing home.

In mid-July 2024, after the 100 days lapsed, my family went into frantic panic because we were told the only option was for her to be sent away to a facility in Provo, Utah because no skilled nursing home near by would accept a patient on a ventilator and North Dakota Medicaid.

Research and Investigation

I did not believe this to be true, so I spent two days straight calling facilities in North Dakota, Minnesota, South Dakota, Montana, and Wyoming - simply trying to find a facility that would take her that was also within a reasonable driving distance.

I personally contacted over 15 facilities in these states.

I learned that the last facility in North Dakota that accepted ventilator patients and took Medicaid was in Fargo, but they ceased to accept those patients in 2022, and that they would have stopped earlier but COVID kept the demand up to justify the program.

I learned that in Minnesota, there are only two facilities in the Twin Cities that accept ventilator patients and have reciprocity with North Dakota Medicaid - and those two facilities only have 40 beds between them in the ventilator units. But both stated the waiting list was 2-5 years, as the only way beds are opened up is when a resident/patient dies.

I was able to get the most information about the business supply/demand dynamics after spending two hours speaking to the admissions coordinator at the Advanced Care Hospital of Montana in Billings. She explained that the upper midwest is a desert when it comes to these services. They accept Medicare but do not accept North Dakota Medicaid, and that they too send the patients they cannot handle to a facility in Provo, Utah.

When we realized there were no facilities within a reasonable range of Bismarck, and that the only option was to send my mother to a facility 1,000 miles away to be alone and probably die alone, I decided something needed to be done.

That was the inspiration for this bill.

Which is more of a placeholder bill, that needs the details filled in.

The following is the concept language that I sent to a few legislators to explain the issue.

Bill Intent:
To protect and prevent North Dakota residents from being transferred out of state due to a lack of skilled nursing care for patients partially or completely dependent on ventilators.

Reason:
As of July 1st, 2024 there were no skilled nursing home facilities in North Dakota that would service patients with ventilator needs.

Objective:
Mandate and fully fund at least one skilled nursing to facilitate inside the boundaries of North Dakota to provide ventilator care to North Dakota residents - both private pay and those covered by North Dakota Medicaid.

If no skilled nursing home in North Dakota is willing to provide ventilator care, then the state of North Dakota will cover the associated costs of such care at any certified LTAC (Long Term Acute Care) facilities until an appropriate alternative is found.

Furthermore:
The state of North Dakota will work with neighboring states like South Dakota, Montana, and Wyoming to accommodate similar patients at the cost of their states to develop a critical mass of demand for ventilator services.

Funding:
All costs will be covered that are not otherwise covered by existing programs.

Retroactivity:
Any nursing home or LTAC that can document patients that were cared for without guaranteed payment by other programs in the last two calendar years shall be eligible for reimbursement based on a case by case audit of such deficiencies.

In developing this guidance, I was communicating with Scott Schneider of the Mandan Vibra facility. I have attached the communications between him and myself just on this particular bill concept.

Organizing A Fix

This issue mirrors that of the "rural doctor fix" we often hear about at the national level when it comes to Medicaid funding in general.

It is my understanding that Medicare and Medicaid reimburse facilities upward of $1,800 per day for these patients, and that that amount is not enough to justify having permanent staff to take care of such patients. There is a "critical mass" issue. Of the two facilities in Minnesota that do accept these patients, one has 16-beds and the other has 24-bed. Which appears to be the level required to cover the costs of permanent staff.

From the time Medicare cut off authorization on July 12th until we found an apartment here in Bismarck AND lined up minimal in-home care on December 2nd, my mother was staying at the Mandan Vibra facility basically as a squatter incurring a $1,800/day charge that she can never pay as she receives $1,335/month from Social Security.

Taxpayers Do Not Actually Have A Safety Net

During this whole fiasco, it became apparent that families that are productive taxpayers (like my parents) and pay into the Medicare and Medicaid system really do not have a safety net when it comes to be their time to need help.

Conclusions

I would like to ask this committee to craft a bill that would create mechanisms and funding needed to create a situation where North Dakota taxpaying citizens can know that when it is their time to need extensive medical care, they can receive it in North Dakota and not be shipped out of the state.

While the fiscal note on this fix will likely be large - do we really want to be a state that cannot ensure its citizens have medical treatment and long term care inside the state?

This issue connects to other major issues the state is dealing with - like workforce development - how can we keep working families in North Dakota if their family members have to be sent a 1,000 miles away?

Keeping our elderly relatives close to us here in North Dakota should be as big of an issue as childcare and workforce development because it is “Standard of Living” issue.

I urge you to craft this bill to find a way to at least create pilot programs to start the processes of fixing this problem.

Thank you for your consideration.

Dustin Gawrylow - (701)-290-9331

North Dakota Senate

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COMMITTEES:
Appropriations
Appropriations - Human Resources Division

January 27, 2025

Senate Human Services Committee

Madame Chairman Lee and Committee Members,

My name is Tim Mathern, Senator from District 11 in Fargo. I am the prime sponsor of SB 2316 which I introduced at the request of citizens in North Dakota. The intent of the bill is that we provide and pay for individuals who need nursing home level ventilator care or nursing home level psychiatric care in the state. The draft is somewhat unclear probably needing some amending to meet the purpose which I will focus on.

I introduced this measure for three main reasons.
1. My conversations suggest that some nursing homes are not able or not willing to care for some persons in their home community.
2. I believe some individuals with health needs are left at institutions like the state hospital, private hospitals, or referred out of state even though loved by people in their home community not able to serve them.
3. I believe your committee, the North Dakota Department of Health and Human Services, and our private nursing home providers could arrive at a manner to keep our citizens within a reasonable distance of their home community.

I understand your committee is also working on creative ways for individuals with complex health care needs to receive care in their home. I support those programs as a primary response leaving this bill as only a secondary solution. I also understand there are workforce issues but these can be addressed by higher reimbursement. The market works, I know a solution will cost money. Through the Appropriates Committee I will do all I can to get you the money for the positive outcome you design.

Others are here to testify. I ask you for a Do Pass recommendation on SB 2316.
Thank you for your service to our state.

Tim Mathern

Testimony on Long-Term Care Services for Patients with Ventilator or Psychiatric Needs
Senate Human Services Committee
January 27, 2025
Senate Bill 2316

Chair Judy Lee and members of the Senate Human Services Committee, my name is Deanna Berg. I am the administrator at Baptist Health & Rehab. Thank you for the opportunity to testify as neutral on Senate Bill 2316, specifically regarding long term care services for patients with ventilator or psychiatric needs.

At Baptist Health & Rehab, we have cared for residents on ventilators since August of 2015. We have had as many as 5 residents at one time in the building. We currently have 3 residents that are on ventilators for all or part of the day.

Residents on ventilators tend to be complicated. We are currently working on negotiating a rate with the ND Department of Health and Human Services (HHS) for individuals with a noninvasive vent that we may be able to care for at the Baptist Health & Rehab or surrounding facilities. One of the major reasons that we have been unable to take more residents on noninvasive ventilators is due to the current reimbursement. Luckily, we do have the option of negotiating a rate with the HHS and we are working on that.

One major reason we haven't been able to accept more noninvasive, vent-dependent residents at Baptist is the critical staffing shortage in North Dakota. Nurses and CNAs are incredibly difficult to find. Thankfully, we're blessed to be part of Cassia, a parent company based in Edina, MN, which has been helping us recruit nurses from overseas since 2010. Our first nurse from the UAE (United Arab Emirates) joined Baptist in 2018, and since then, we've welcomed fourteen others.

Unfortunately, immigration delays have significantly impacted the timely arrival of these nurses, which has been a real challenge for our facility. To fill the gaps, Cassia is now recruiting nurses from Kenya, Canada, Australia, and other regions. But the reality is that even competitive wages aren't enough—there simply aren't enough workers willing to stay in North Dakota. Many of the international nurses we've welcomed stay for about two years or less, often moving to warmer states or areas where they have family once their contracts are up.

At the moment, we're slated to have three additional UAE nurses arrive by the end of the year, assuming all goes as planned. This will help, but it's not enough to meet the growing demand. To take on more vent-dependent residents, we would need to add more staff, including at least one

nurse. However, adding staff has to make financial sense. If we can secure a negotiated rate and accept several noninvasive residents, we may be able to afford hiring an additional staff member to support this level of care.

This staffing crisis isn't unique to us. Many other nursing facilities in North Dakota are also working hard to bring in international nurses. At Baptist, we rely heavily on contract nursing to meet our current needs while waiting for more of our overseas recruits to arrive. Without additional nursing staff, we simply can't take on more vent-dependent residents.

I've seen how much the landscape has changed since I became a nurse. When I graduated as a Registered Nurse (RN), I was lucky to secure a position at the Fargo VA. Back then, positions were competitive, and I felt blessed to land that job. Today, it's a completely different story. If I were a new RN in Bismarck now, I'd have my pick of 30 or more job openings in hospitals, clinics, long term care, and home health. And even if a facility isn't hiring at the moment, chances are they will be soon. The demand is overwhelming, and there simply aren't enough nurses or certified nursing assistants (CNAs) to meet it.

Some argue that increasing pay could solve this crisis, but it's not that simple. Contract nursing agencies seem to have a pool of nurses, but many of them come from out of state or are individuals who, for various reasons, can no longer work at local facilities. Contract nurses often stay for only a few months, drawn by higher wages and the freedom to choose where and when they work. They don't have the same investment in our residents that our regular staff does. While contract nurses play a critical role in keeping care going, they aren't the long-term solution.

Our residents deserve consistent, compassionate care from a team that knows and values them. That's what we're committed to providing, even as we navigate these staffing challenges.

One of the biggest challenges we face is ensuring a respiratory therapist is on call and available 24/7. At Baptist, we only accept stable non-invasive vent-dependent residents because we don't provide vent weaning services due to not having a respiratory therapist on staff. Right now, the respiratory therapist we rely on isn't even based in Bismarck, but works with us through an outside company. Unfortunately, like every other area of healthcare, there just aren't enough respiratory therapists to fill all the open positions, despite ongoing recruitment efforts.

Residents coming to us on ventilators from the hospital often qualify for up to 100 days of Medicare coverage. During this time, the facility is responsible for covering all costs, including medications, labs, room and board, treatments, and the rental of the ventilator or other equipment. Ventilator rentals alone cost around $1,000 per month. Our current reimbursement for a Medicare Part A stay is $813.51 per day, which helps but doesn't always cover the full cost of care.

For those who don't have Medicare Part A, the situation is more complex. These individuals either pay privately or are covered by Medicaid. In Medicaid cases, the state of North Dakota typically rents the ventilator to own, so after it's paid off, it becomes the resident's property. However, once the vent is owned, Medicaid no longer covers regular maintenance costs—only repairs. This can lead to alarms and interruptions in treatment if maintenance is overdue, creating added stress for both staff and residents.

Caring for these individuals is incredibly complex. All of them have tracheostomies, many have feeding tubes, catheters, or rectal tubes, and some require CPD shaker vests to clear their airways. These residents often need frequent suctioning and have intensive breathing treatment schedules. For example, one medication might need to be administered every six hours, another every four, and yet another twice daily—just for breathing treatments alone. Many also have seizure disorders or other complicating conditions.

Supplies are a significant cost burden. Items like ventilator components (heated passive wire circuits, HME valves that might need to be changed three times a day, filters, adapters, T-pieces), shaker vests, catheters, enteral feeding supplies, trachs, cannulas, suction machines, tubing, and canisters all add up quickly. Unfortunately, Medicaid and private pay don't cover these supplies, leaving the facility to absorb the costs.

Additionally, providing high-quality care requires extensive staff training. To handle these residents successfully, staff must be well-trained and equipped to manage emergencies. Training and preparedness come with their own costs, but they are essential to ensure the safety and well-being of our residents.

When evaluating new admissions, nursing facilities carefully assess whether they can meet the individual's needs or secure the additional resources necessary to provide quality care. Facilities statewide already have the flexibility to negotiate higher rates for individuals with complex care needs when these resources are available. Rather than limiting care options to four regional centers, this approach allows individuals to choose a facility that is best equipped to meet their unique needs, promoting greater accessibility and personalized care.

Thank you for your time and consideration. I'm happy to answer any questions you may have.

Deanna Berg
Administrator
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701-989-7402
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Senate Human Services Committee

Madame Chairman Lee and Committee Members,

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I introduced this measure for three main reasons.

1. My conversations suggest that some nursing homes are not able or not willing to care for some individuals who are from their community.

2. I know some individuals with complex health needs are left at institutions like the state hospital, private hospitals, or referred out of state even though loved by people in their home community that is not able to serve them.

3. I believe your committee, the North Dakota Department of Health and Human Services, and our private nursing home providers could arrive at a manner to keep our citizens within a reasonable distance of their home community. The concept of four regional centers is just one idea of creating scale that makes services available closer to home. It could be more or less, just so care is available around the state.

I understand your committee is also working on creative ways for individuals with complex health care needs to receive care in their home. I support those programs as a primary response leaving this bill as only a secondary solution. I also understand there are workforce issues but these can be addressed by higher reimbursement. The market works, I know a solution will cost money. Through the Appropriations Committee I will work to get you the money for the positive outcome you design.

Others are here to testify. I ask you for a Do Pass recommendation on SB 2316.

2025 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Lincoln Room, State Capitol

SB 2316
2/4/2025

Relating to long-term care services for patients with ventilator or psychiatric needs.

3:33 p.m. Chairman Lee opened the hearing.

Members Present: Chairman Lee, Vice-Chairman Weston, Senator Van Oosting, Senator Clemens, Senator Hogan, Senator Roers.

Discussion Topics:

- Reimbursement
- Respite care

3:35 p.m. Sarah Aker, Executive Director of Department of Health and Human Services, answered committee questions.

3:41 p.m. Senator Roers moved Do Not Pass.

3:41 p.m. Senator Hogan seconded the motion.

Senators	Vote
Senator Judy Lee	Y
Senator Kent Weston	Y
Senator David A. Clemens	Y
Senator Kathy Hogan	Y
Senator Kristin Roers	Y
Senator Desiree Van Oosting	Y

Motion passed 6-0-0.

Senator Roers will carry the bill.

3:45 p.m. Chairman Lee closed the hearing.

Andrew Ficek, Committee Clerk

REPORT OF STANDING COMMITTEE
SB 2316 (25.0753.01000)

Human Services Committee (Sen. Lee, Chairman) recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2316 was placed on the Eleventh order on the calendar. This bill does not affect workforce development.