

**Testimony**  
**Department of Human Services**  
**Engrossed Senate Bill 2083 –**  
**House Human Services**  
**Representative Robin Weisz, Chairman**  
**March 16, 2015**

Chairman Weisz, members of the House Human Services committee, I am Karen Tescher, Assistant Director of the Long Term Care Continuum in the Medical Services Division for the Department of Human Services (Department). I am here today to support Engrossed Senate Bill 2083, which was introduced at the request of the Department.

There are currently 71 licensed assisted living (AL) facilities in North Dakota. The Department is responsible for the annual licensure of these AL facilities. The Department of Health is responsible for the annual food and lodging licensure of the facilities.

The Department has received an increased number of complaints and concerns over the past two years. Based on these concerns, the Department is proposing to add more guidelines and requirements for the AL facilities to assure safety for the tenants residing in AL facilities in North Dakota.

The ND Long Term Care Association proposed amendments to the bill and the Department worked with them in developing the amendments which were adopted by the Senate.

Section 1 of the Engrossed Bill amends North Dakota Century Code section 50-32-01 to include additional definitions specifically related to:

“abuse,” “financial exploitation,” “mental anguish,” “physical injury,” and “sexual abuse or exploitation.”

Section 2 of the Engrossed Bill amends North Dakota Century Code section 50-32-02. The proposed changes to this section will:

- Allow the Department to issue a provisional license valid for no longer than 90 days which can be renewed for an additional 90 days to correct deficiencies. If the corrections have not been made after 90 days, the Department may deny the AL facility’s application or may revoke its license. Currently chapter 50-32 does not include language to allow for a provisional license when deficiencies are found. Revocation is the alternative. By adding language to allow for provisional licenses, the Department and the AL facility can continue to work together while the deficiencies are being corrected, versus requiring tenants to leave their current living arrangements because of a revocation only to have the facility resolve identified deficiencies a short time later and have its license reinstated. The proposed language for a provisional license was obtained from the skilled nursing facility Administrative Rules chapter 33-07-03.2-03.
- Allow the Department to conduct an onsite visit of an AL facility prior to issuing a license.
- Require an AL facility to notify the Department in writing within 30 days of a transfer or change of ownership, a change of name of the facility, a change of administrator, or a change in bed capacity. This was one of the amendments adopted by the Senate. The bill,

as introduced, would have required the AL facility to notify the Department 30 days *in advance* of the change.

Section 3 of the Engrossed Bill amends North Dakota Century Code section 50-32-03. The proposed changes to this section will:

- Require the Department to establish a method to investigate complaints, including allegations of abuse of a tenant, and require the Department to create rules to establish a process for the investigation of complaints.

Section 4 of the Engrossed Bill amends North Dakota Century Code section 50-32-05. The proposed changes in this section are as follows:

- In subsection 1, the new language will require AL facilities to have tenancy criteria that address the specific needs that can be met within the facility and the conditions under which a tenant may be required to move out of the facility. Additionally, this subsection will require a facility to annually reevaluate a tenant's ability to meet the tenancy criteria; sooner if there has been a significant change in the tenant's needs or if the tenant has been hospitalized.
- Subsection 2 will prohibit AL facilities from serving certain individuals for whom assisted living is not an appropriate level of care. An assisted living facility may not serve, and may not include in its tenancy criteria the option of serving, an individual who is bedbound with limited potential for improvement, except an individual receiving hospice care; an individual who requires extensive skilled nursing care; or who needs restraints. The amendments adopted by the Senate removed individuals with a

known active substance abuse problem from the list of individuals that an AL facility may not serve.

- Subsection 3 will prohibit an assisted living facility from advertising or holding itself out to the public as a facility that provides memory care services to individuals with memory care needs without additional licensure as a basic care or nursing facility. The Department may revoke the license of an AL facility that represents itself as being an AL facility that provides memory care services. The Senate amendments changed the phrase "represent itself" to the phrase "advertise or hold itself out to the public" . Additionally, the phrase "without additional licensure as a basic care or nursing facility" was added at the end of the first sentence, and the reference to "Alzheimer's disease or dementia" was removed.
- In subsection 4, the proposed changes would require a facility to complete an assessment within seven days of a hospice election to ensure there is a coordinated plan of care among hospice, the AL facility, the tenant, and any appropriately appointed representative of the tenant.
- In subsection 5, the changes proposed would require an AL facility to complete a service plan when a tenant moves in and to update the plan annually; sooner if there has been a significant change in the tenant's needs or if the tenant has been hospitalized.
- Subsection 6 would require that of the annual 12 hours of continuing education required for the administrator each year, at least 6 hours must be directly related to AL. In addition, training or

education related to vulnerable adult protection services would be required annually.

- Subsection 7 would require the AL facility to update the initial evaluation and service plan at least annually. The Senate amendments in paragraph f, require a service plan to identify, rather than include, third-party contracts for any tenant requiring third party services to ensure the tenant meets the tenancy criteria of the assisted living facility.
- Subsection 9 would require an AL facility to provide the Department with the results of the most recent consumer satisfaction survey during the facility's license review. The amendment adopted by the Senate removed a requirement that the facility provide the Department with its plans to correct any survey results that demonstrate consumer dissatisfaction.
- Subsection 10 would require an AL facility to develop and follow a policy on medication administration. The Senate amendments added medication assistant III to the list of facility staff who can administer medications.
- Subsection 11 would require an AL facility to have policies and procedures for receiving, investigating, and correcting medication errors. The policies must include the process for reporting significant medication errors or a pattern of errors as may be required by the state board of nursing or the state department of health. The bill, as introduced, would have required the AL facilities to report any medication administration errors.

- Subsection 12 would require an AL facility to develop policies for receiving, investigating, and resolving complaints, received from tenants and families.
- Subsection 13 of section 50-32-05 currently exists in subsection 5 of North Dakota Century Code section 50-32-02 which is being amended in section 2 of this bill. It makes more sense for it to be located within section 50-32-05, so the Department proposes it be moved.

Section 5 of the Engrossed Bill repeals 50-32-02.1 because there are no longer any facilities to which it applies.

This concludes my testimony and I would be happy to answer any questions.