

Testimony
Senate Human Services Committee
House Bill 1215
March 13, 2017, 10:45 AM
North Dakota Department of Health

Good morning, Chairman Lee and members of the Human Services Committee. My name is Bruce Pritschet, and I am the Health Facilities Division director of the North Dakota Department of Health (DoH). I am here to provide testimony in opposition to House Bill 1215. As written, this bill provides basic care facilities with options for sharing of staff that would place them in known conflict with federal requirements, and a possible fraud situation. This bill also provides no limits on the number of beds in each attached facility that would be allowed to share staff, nor definition of an attached facility, which may result in health and safety concerns for residents in both facilities. If it is the decision of the committee to move the bill forward, we have also included amendments for consideration to remove the known conflict with federal requirements.

In 2016, the department requested permission from the Centers for Medicare and Medicaid Services (CMS) to be allowed to share staff between basic care facilities and federally certified skilled nursing facilities. We received correspondence from CMS in response to our request dated May 16, 2016 which indicated that staff cannot be shared between a federally certified facility and a non-federally certified facility. Please refer to the attached letter. The CMS letter stated:

While we understand the circumstances you describe, we are not able to find any provision that would permit such sharing of staff between a CMS certified provider and a non-CMS certified provider. Additionally, there is no provision that would provide for a waiver to allow the sharing of staff between a CMS certified provider and a non-certified CMS provider.

The CMS letter further states:

The expectation is that any staff, at all times that staff is scheduled to work, in any CMS certified facility would be available at all times for the CMS beneficiaries and their needs within the CMS certified facility. The time schedule to work would include that time the staff person was to be on duty as well as scheduled breaks and any meal breaks. Any CMS survey, conducted by the State Survey Agency or by the Regional Office, that found sharing of staff between a CMS certified facility and a non-CMS certified facility should include the appropriate citations for non-compliance that apply.

The CMS letter concludes with the statement:

It would be our hope that any non-CMS certified provider or program would consider the necessary staffing needs for their residents or patients. This would

include anticipating the needs for those individuals in everyday care, as well as emergency situations.

The amendment proposed by the department removes “a nursing home” (CMS certified facility) from the new proposed language in this bill, as sharing of staff with a non-certified facility would place the federally certified nursing facility out of compliance with federal requirements, which places the certification status and access to federal funding at risk. We believe that sharing of staff in this situation could also place the facility at risk for fraud when using staff from one facility to care for residents in another facility.

As can be seen by the definition of a basic care facility in the statute, residents with Alzheimer’s, dementia, or special memory care needs can be cared for in basic care facilities. We have been informed by the Department of Human Services, that to be eligible to receive CMS Home and Community Based Services (HCBS) Waiver funding for residents with Alzheimer’s who require skilled level of care and reside in a secured Basic Care Alzheimer’s Unit or Facility, staffing is required to be dedicated twenty-four hours per day seven days per week to meet the health and safety needs of these individuals and to meet the requirements of the waiver. The amendments as proposed by the department would result in individuals with Alzheimer’s, dementia, or special memory care needs residing in basic care facilities to continue to receive the dedicated twenty-four-hour seven days a week care as required to comply with the CMS HCBS waiver and to meet the health and safety needs of these individuals.

While the proposed amendments by the department do not remove the potential for sharing of staff between an assisted living facility and basic care facility that is physically attached, we do have concerns with this option. We have concerns because as written, there is no definition of attached facility or limit to the size of the facilities that can share staff. For example, attached could mean a five bed facility in one wing of another facility or it could mean a 90 bed facility attached to another large facility by a wall or covered walkway.

Basic care facilities are currently required to have response staff available at all times to meet the twenty-four-hour per day scheduled or unscheduled needs of individuals. This means that there needs to be a minimum of one awake staff member onsite twenty-four-hours per day seven days a week to meet the health and safety needs of the residents. Assisted living facilities are not required to have awake staff twenty-four-hours per day. As proposed, there are no size restrictions on the number of combined beds in the physically attached assisted living facilities and basic care facilities. As a result, the one basic care staff member required to be awake and respond to the needs of the basic care residents could also be assigned to cover both the assisted living facility and basic care facilities regardless of size.

We have attached, for your consideration, a copy of our proposed amendments which would eliminate the known conflict with federal regulations should you choose to move forward with this bill.

I would be happy to address any question that you may have at this time.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1215

Page 1, line 11, overstrike “.”

Page 1, line 12, overstrike “a. Makes”, and insert immediately thereafter “makes”

Page 1, line 13, overstrike “;”, replace with “.”

Page 1, line 14, overstrike “b. Is” and insert immediately thereafter “A basic care facility may also be”

Page 1, line 15, remove “.”

Page 1, line 16, replace “c. Is” with “may be physically”, overstrike “a nursing home or” and insert “an” and replace “its” with “the combined”

Renumber accordingly

HOUSE BILL NO. 1215

Introduced by

Representatives Weisz, Devlin, Kreidt

Senator J. Lee

1 A BILL for an Act to amend and reenact subsection 1 of section 23-09.3-01 of the North Dakota
2 Century Code, relating to the definition of basic care facility.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Subsection 1 of section 23-09.3-01 of the North Dakota
5 Century Code is amended and reenacted as follows:

- 6 1. "Basic care facility" means a residence, not licensed under chapter 23-16 by the
7 department, that provides room and board to five or more individuals who are not
8 related by blood or marriage to the owner or manager of the residence and who,
9 because of impaired capacity for independent living, require health, social, or personal
10 care services, but do not require regular twenty-four-hour medical or nursing services
11 and:
12 ~~a. Makes~~ makes response staff available at all times to meet the twenty-four-hour per
13 scheduled and unscheduled needs of the individual; ~~or~~
14 ~~b. Is~~ A basic care facility may also be kept, used, maintained, advertised, or held out
15 to the public as an Alzheimer's,
16 dementia, or special memory care facility; ~~or~~
17 ~~c. Is~~ may be physically attached to ~~a nursing home or an~~ assisted living facility and ~~its~~
the combined staff are available
to meet the needs of all residents and comply with state and federal regulations.

Renumber accordingly