

LEGISLATIVE COMMITTEE MINUTES

**SB60**

# Bill as Introduced

SB 60 - AS INTRODUCED

2013 SESSION

13-0896  
01/04

SENATE BILL

**60**

AN ACT

relative to assisted living facilities and landlord tenant law.

SPONSORS:

Sen. Odell, Dist 8; Sen. Gilmour, Dist 12; Rep. Donovan, Sull 4; Rep. Rosenwald, Hills 30; Rep. Grenier, Sull 7

COMMITTEE:

Commerce

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ANALYSIS

This bill excludes assisted living facilities and community residences for the developmentally disabled and chronically ill from the definition of tenant for purposes of landlord/tenant law. This bill also requires that security deposits for assisted living facilities be subject to RSA 540-A.

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Explanation:

Matter added to current law appears in *bold italics*.

Matter removed from current law appears [~~in brackets and struckthrough.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Thirteen*

AN ACT relative to assisted living facilities and landlord tenant law.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1       1 Assisted Living Facilities; Advance Payments and Security Deposits. Amend RSA 161-J:6 to  
2 read as follows:

3       161-J:6 Advance Payments and Security Deposits. The residence shall establish a written policy  
4 for the refund of unused advance payments or security deposits in the event of termination of a  
5 residential services agreement or death of a resident which shall include the terms and conditions  
6 under which the advance payment money or security deposit may be withheld by the residence.  
7 ***Advance payments other than security deposits shall be subject to the terms and conditions***  
8 ***contained in RSA 161-J:4, II. Security deposits shall be subject to the terms and conditions***  
9 ***contained in RSA 540-A:6 and RSA 540-A:7.***

10       2 Assisted Living Facilities; Applicability of RSA 540 and 540-A. Amend RSA 161-J:7 to read as  
11 follows:

12       161-J:7 Applicability of RSA 540 and 540-A. All provisions of RSA 540 and RSA 540-A shall  
13 apply to [~~assisted living residences,~~] independent living retirement communities[~~]~~ and housing for  
14 older persons where the residential premises, however designated, are leased or rented to the  
15 resident, unless otherwise provided by RSA 151 and RSA 420-D or other applicable law.

16       3 Assisted Living Facilities; Actions Against Tenants. Amend RSA 540:1, IV(c) to read as  
17 follows:

18               (c) Rooms in student dormitories, nursing homes, hospitals ***and any other facilities***  
19 ***licensed under RSA 151 or certified under RSA 126-A***, convents, monasteries, asylums, or group  
20 homes.

21       4 Effective Date. This act shall take effect 60 days after its passage.

SB 60 – AS AMENDED BY THE SENATE

02/14/13 0205s

2013 SESSION

13-0896

01/04

SENATE BILL **60**

AN ACT relative to assisted living facilities and landlord tenant law.

SPONSORS: Sen. Odell, Dist 8; Sen. Gilmour, Dist 12; Rep. Donovan, Sull 4; Rep. Rosenwald, Hills 30; Rep. Grenier, Sull 7

COMMITTEE: Commerce

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02/14/13 0205s

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14 older persons where the residential premises, however designated, are leased or rented to the  
15 resident, unless otherwise provided by RSA 151 and RSA 420-D or other applicable law.

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17 follows:

18 (c) Rooms in student dormitories, nursing homes, hospitals ***and any other facilities***  
19 ***licensed under RSA 151 or certified under RSA 126-A***, convents, monasteries, asylums, or group  
20 homes.

21 4 Effective Date. This act shall take effect upon its passage.

CHAPTER 61  
SB 60 - FINAL VERSION

02/14/13 0205s

2013 SESSION

13-0896  
01/04

SENATE BILL

**60**

AN ACT

relative to assisted living facilities and landlord tenant law.

SPONSORS:

Sen. Odell, Dist 8; Sen. Gilmour, Dist 12; Rep. Donovan, Sull 4; Rep. Rosenwald, Hills 30; Rep. Grenier, Sull 7

COMMITTEE:

Commerce

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CHAPTER 61  
SB 60 – FINAL VERSION

02/14/13 0205s

13-0896  
01/04

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Thirteen*

AN ACT relative to assisted living facilities and landlord tenant law.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 61:1 Assisted Living Facilities; Advance Payments and Security Deposits. Amend RSA 161-J:6  
2 to read as follows:

3 161-J:6 Advance Payments and Security Deposits. The residence shall establish a written policy  
4 for the refund of unused advance payments or security deposits in the event of termination of a  
5 residential services agreement or death of a resident which shall include the terms and conditions  
6 under which the advance payment money or security deposit may be withheld by the residence.  
7 ***Advance payments other than security deposits shall be subject to the terms and conditions***  
8 ***contained in RSA 161-J:4, II. Security deposits shall be subject to the terms and conditions***  
9 ***contained in RSA 540-A:6 and RSA 540-A:7.***

10 61:2 Assisted Living Facilities; Applicability of RSA 540 and 540-A. Amend RSA 161-J:7 to read  
11 as follows:

12 161-J:7 Applicability of RSA 540 and 540-A. All provisions of RSA 540 and RSA 540-A shall  
13 apply to [~~assisted living residences,~~] independent living retirement communities[;] and housing for  
14 older persons where the residential premises, however designated, are leased or rented to the  
15 resident, unless otherwise provided by RSA 151 and RSA 420-D or other applicable law.

16 61:3 Assisted Living Facilities; Actions Against Tenants. Amend RSA 540:1-a, IV(c) to read as  
17 follows:

18 (c) Rooms in student dormitories, nursing homes, hospitals ***and any other facilities***  
19 ***licensed under RSA 151 or certified under RSA 126-A***, convents, monasteries, asylums, or group  
20 homes.

21 61:4 Effective Date. This act shall take effect upon its passage.

22 Approved: June 6, 2013

23 Effective Date: June 6, 2013



# Amendments

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Committee on Education  
Sen. Sanborn, Dist. 7  
February 4, 2013  
2013-0168s  
01/04



Amendment to SB 60

1 Amend the bill by replacing sections 3 and 4 with the following:

2

3 3 Assisted Living Facilities; Actions Against Tenants. Amend RSA 540:1-a, IV(c) to read as  
4 follows:

5 (c) Rooms in student dormitories, nursing homes, hospitals *and any other facilities*  
6 *licensed under RSA 151 or certified under RSA 126-A*, convents, monasteries, asylums, or group  
7 homes.

8 4 Effective Date. This act shall take effect upon its passage.

Commerce  
February 5, 2013  
2013-0205s  
01/04



Amendment to SB 60

1 Amend the bill by replacing sections 3 and 4 with the following:

2

3 3 Assisted Living Facilities; Actions Against Tenants. Amend RSA 540:1-a, IV(c) to read as  
4 follows:

5 (c) Rooms in student dormitories, nursing homes, hospitals *and any other facilities*  
6 *licensed under RSA 151 or certified under RSA 126-A*, convents, monasteries, asylums, or group  
7 homes.

8 4 Effective Date. This act shall take effect upon its passage.

# Committee Minutes

**SENATE CALENDAR NOTICE  
COMMERCE**

Senator Andy Sanborn Chairman  
 Senator Jeb Bradley V Chairman  
 Senator Sam Cataldo  
 Senator Andrew Hosmer  
 Senator David Pierce

|                                       |   |
|---------------------------------------|---|
| For Use by Senate Clerk's Office ONLY |   |
| <input type="checkbox"/>              | Bill Status                                   |
| <input type="checkbox"/>              | Docket  |
| <input type="checkbox"/>              | Calendar                                      |
| Proof: <input type="checkbox"/>       | Calendar <input type="checkbox"/> Bill Status |

**Date: January 23, 2013**

**HEARINGS**

**Tuesday**

**1/29/2013**

COMMERCE

LOB 101

1:00 PM

(Name of Committee)

(Place)

(Time)

**EXECUTIVE SESSION MAY FOLLOW**

|         |      |  |
|---------|------|--|
| 1:00 PM | SB51 | relative to the definition of "professional service."  |
| 1:20 PM | SB52 | relative to names of limited partnerships.   |
| 1:40 PM | SB60 | relative to assisted living facilities and landlord tenant law.  |
| 2:10 PM | SB71 | establishing a committee to study the use and misuse of prescription drugs in workers' compensation cases. |

**Sponsors:**

**SB51**

Sen. David Boutin  
 Rep. Candace Rouchard

Sen. Jim Rausch

Rep. Lynne Ober

Rep. Gene Chandler

**SB52**

Sen. David Boutin  
 Sen. Peggy Gilmour  
 Sen. John Reagan  
 Rep. John Hunt

Sen. Sharon Carson  
 Sen. Sylvia Larsen  
 Sen. Andy Sanborn  
 Rep. William Infantine

Sen. Sam Cataldo  
 Sen. Bob Odell  
 Sen. Nancy Stiles  
 Rep. Suzanne Smith

Sen. Martha Fuller Clark  
 Sen. Jim Rausch  
 Sen. David Watters  
 Rep. Joe Duarte

**SB60**

Sen. Bob Odell  
 Rep. James Grenier

Sen. Peggy Gilmour

Rep. Thomas Donovan

Rep. Cindy Rosenwald

**SB71**

Sen. Lou D'Allesandro

# SENATE COMMERCE COMMITTEE

*Patrick Murphy, Legislative Aide*

## **SB 60 Relative to assisted living facilities and landlord tenant law.**

**Hearing Date:** January 29, 2013

**Time Opened:** 1:40 P.M.

**Time Closed:** 2:30 P.M.

### **Members of the Committee Present:**

Senator Sanborn, Senator Bradley, Senator Cataldo, Senator Hosmer, Senator Pierce

### **Members of the Committee Absent:** None

**Bill Analysis:** relative to assisted living facilities and landlord tenant law.

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**Sponsors:** Sen. Odell, Dist 8; Sen. Gilmour, Dist 12; Rep. Donovan, Sull 4; Rep. Rosenwald, Hills 30; Rep. Grenier, Sull 7

**Who supports the bill:** Senator Odell, Dist 8; Senator Gilmour, Dist 12; Betsy Miller, NH Association of Counties; John Martin, DHHS; John Poirier, NH Health Care Association; Kathryn Kindopp, NHAC; Alex Amann, Inn at Parker Station LLC; Eldon Munson, Gary Cahoon, Cindy Goudrault, and Christen Bergeron from NH ARCH

**Who opposes the bill:** Cheryl Driscoll and Sarah Mattson from NH Legal Assistance

### **Summary of testimony presented in support:**

Senator Odell, Dist 8

- Introduced SB 60 at the request of constituents. This will move assisted living facilities out of the landlord tenant statutes so they are more appropriately regulated.

Eldon Munson, President of NH Association of Residential Care Homes (ARCH)

- We have 150 licensed residential care homes in NH, licensed by the DHHS under RSA 151 and administrative rules He-P 804 and 805. The rules of assisted living govern both the care and support that is given as well as the residential service.
- Licensed residential care is not currently excluded from landlord tenant law in NH as other licensed entities are, such as hospitals, and nursing homes.
- Assisted living facilities do not rent apartments or dwelling space on a basis comparable to commercial ventures, but rather the living space is secondary to the care provided for the individual.
- Landlord tenant statutes are inappropriate for assisted living facilities due to criteria at the time of discharge or transfer of a resident.

Gary Cahoon, Vice President of NH ARCH

- SB 60 proposes that all health care entities licensed under RSA 151 or certified under RSA 126-A should be treated the same as nursing homes, hospitals, and group homes. Many provisions of landlord tenant law are not appropriate to healthcare settings.

- In 2012 a Plymouth District Court judge ruled against an assisted living facility on the basis that landlord tenant law, RSA 540 and 540-A, was applicable. The judge acknowledged that the statutes were in conflict and that a legislative solution was needed. SB 60 is that solution.

John Martin, NH DHHS

- It makes no sense to regulate these health care facilities under the landlord tenant statutes. There are too many conflicts between these different statutes.

Cindy Goudrault, NH ARCH, Rose Haven Assisted Living

- Gave examples of conflicts between landlord tenant laws and assisted living care setting. Landlord tenant law requires 24 hour notice before entering the living space of a tenant. To provide care on a daily basis to an elderly resident with dementia, this requirement is inappropriate.
- Transfer and discharge as regulated by DHHS works just fine, why also require the extra paperwork associated with the landlord tenant process.
- Landlord tenant law doesn't allow for an admission fee like DHHS regulations. This would cause private pay rates to go up throughout the duration of a residents stay, costing the resident more in the long run.
- Assisted living facility staffs are not landlords, they are caregivers.

Christen Bergeron, NH ARCH, Bedford Falls Senior Living Community

- Current law is unclear in how landlord tenant statutes may regulate the senior living business, especially with respect to programs offered and fee structures.

Betsy Miller, NH Association of Counties

- Expressed concern with the amendment language from NH Legal Assistance. Concerned it could confuse the issue and thinks it should be a stand alone bill.

John Poirier, NH Health Care Association

- Assisted living business models depend on clear regulations. The current double regulation of this industry is a burden. Opposed to the amendment language from NH Legal Assistance.

Kathryn Kindopp, NHAC

- Prior to the recent court decision we didn't realize landlord tenant law applied to assisted living facilities.

**Summary of testimony presented in opposition:**

Sarah Mattson, NH Legal Assistance

- No objection to removing assisted living facilities from landlord tenant regulations. Opposed to SB 60 as drafted because RSA 151 doesn't provide sufficient consumer protections under the transfer and discharge regulations.
- Proposed amendment language to address the transfer and discharge concerns. This language would equal the regulations that nursing homes follow for transfers and discharges.

**Fiscal Note:** None

**Future Action:** Pending

# Speakers



# Senate Commerce Committee: Sign-In Sheet

Date: January 29, 2013

Time: 1:40 p.m.

Public Hearing on SB 60

SB 60

relative to assisted living facilities and landlord tenant law.

| Name  | Representing                             | Support                             | Oppose                   | Speaking? | Yes                                 | No                       |
|---|--|-------------------------------------|--------------------------|-----------|-------------------------------------|--------------------------|
| <del>Sen Fitzmaurice</del>                            | <del>Dist. #12</del>                     | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Speaking? | <input type="checkbox"/>            | <input type="checkbox"/> |
| <del>Eldon Munson</del>                               | <del>NH ARCH</del>                       | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Speaking? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <del>Gary Cahoon</del>                                | <del>NH ARCH</del>                       | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Speaking? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <input checked="" type="checkbox"/> Cindy Gaudreault  | NH ARCH                                  | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Speaking? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <input checked="" type="checkbox"/> Christen Bergeron | NH ARCH                                  | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Speaking? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <input checked="" type="checkbox"/> Betsy Miller      | NH Assn of Counties                      | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Speaking? | <input type="checkbox"/>            | <input type="checkbox"/> |
| <input checked="" type="checkbox"/> JOHN B. MARTIN    | DHHS BUREAU OF LICENSING & CERTIFICATION | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Speaking? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <input checked="" type="checkbox"/> John Poirier      | NH Health Care Assoc.                    | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Speaking? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <input checked="" type="checkbox"/> Kathryn Kindopp   | NHAC NHA Affiliates                      | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Speaking? | <input type="checkbox"/>            | <input type="checkbox"/> |
| <del>Senator Odell</del>                              | <del>Dist 8</del>                        | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Speaking? | <input type="checkbox"/>            | <input type="checkbox"/> |
|   |  | <input type="checkbox"/>            | <input type="checkbox"/> | Speaking? | <input type="checkbox"/>            | <input type="checkbox"/> |
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|   |  | <input type="checkbox"/>            | <input type="checkbox"/> | Speaking? | <input type="checkbox"/>            | <input type="checkbox"/> |
|   |  | <input type="checkbox"/>            | <input type="checkbox"/> | Speaking? | <input type="checkbox"/>            | <input type="checkbox"/> |



# Testimony

Address to NH Senate Commerce Committee

January 29, 2013

Good Afternoon Chairman Sanborn, Vice Chairman Bradley and Members of the Committee on Commerce. I wish to thank for the opportunity to speak with you today.

My name is Eldon Munson, and I am the President of the New Hampshire Association of Residential Care Homes (NH ARCH). I am also a resident of Frankestown, in Senate District 8, and I want to thank Senator Bob Odell for his support in sponsoring Senate Bill 60. Today I will speak to you briefly about assisted living and Senate Bill 60 and why NH ARCH felt it necessary to bring these issues forward. I am joined by other members of NH ARCH today who will also testify and help make clear why this bill is important.

There are 150 licensed Residential Care Homes in New Hampshire. These homes are licensed by the Department of Health and Human Services under RSA 151 (the health care licensing law) and the He-P 804 and 805 rules. To give you a sense of where they fit in, these providers are part of the community-based care segment of long-term care. They fit in between home care on one side and nursing homes on the other.

Regarding NH ARCH: our board consists of volunteers from our membership and we advocate for our member homes and for the interests of the residents we serve. NH ARCH represents approximately 90 of the licensed residential care homes and is the New Hampshire affiliate of the national assisted living organization, the Assisted Living Federation of America (ALFA). NH ARCH members include small owner operated homes with as few as 3 residents and large facilities, often affiliated with a corporate entity, with as many as 156 residents. The typical smaller (25 resident or less) home in NH, which represents about half of the NH ARCH membership, is a traditional small business and provides employment for the owner, perhaps members of their family, and additional employees as well. Many assisted living communities are not-for-profit organizations, either because of their own business model, or due to ownership by a larger entity that may be a not for profit. I am a member of the board of trustees of the Scott-Farrar Home in Peterborough, a nonprofit home licensed for 20 beds, which offers affordable care for residents and has been doing so for 103 years.

A key issue of operations in assisted living in New Hampshire is payment for services. The predominant source of payment for assisted living is private pay. A small number of residents (less than 600, fewer than 12% of the total licensed beds) are supported by Medicaid in NH under the Choices for Independence (Home and Community Based Care) waiver program, which will pay for qualified persons in assisted living. The program currently pays \$2185 per month for a resident. This compares to a typical private pay charge of \$4000 a month.

As noted above, residential Care is licensed under RSA 151 and further regulated by RSA 161. RSA 151 also provides for the licensing of hospitals and nursing homes, as well as a number of other, non-residential health care organizations. No residential entity can provide assistance to individuals unless licensed (or covered under other certification or exempt categories of operation). The licensing and rules regulating assisted living is managed by Office of Licensing Support of The Department of Health and Human Services, which issues licenses and inspects residential care homes annually. The rules of assisted living govern both the care and support that is given as well as the residential service (room and

board) that persons receive. The statutes and regulations govern the health care, physical environment, dining, activities, safety, and personal services received. Health care may include nursing (up to, but not including 24 hour nursing care), rehabilitation therapies, assistance with activities of daily living (dressing, bathing, eating, transfers) and personal care. The licensure of assisted living is divided between Residential Care (sometimes called the social model of care, with less provision for nursing or health related care), and Supported Residential Care, which allows more provision of healthcare such as nursing, in a resident's care plan. The safety of residents is enforced in residential care as required by the life safety code in New Hampshire.

One of the great strengths of the NH Residential Care Regulations is that all care in the residence is based on the individual needs of the person. An assessment upon admission and repeated at certain points in the person's stay governs what care a person must receive. This allows a variety of service, not only to seniors but to other individuals, to be offered in assisted living. Persons with brain injury, individuals with mental health issues, and other residents from the community may be served in homes licensed under assisted living. Alzheimer's care, dementia or memory care may be offered in licensed residential care in specialized units including secure (locked) facilities.

In summary, Licensed Residential Care Homes in NH:

- Provide health care and a social environment in the community
- Are largely privately pay
- Are often small businesses with owner/operators on site, and are significant employers in their communities
- Serve as many as 600 assisted living residents supported by Medicaid (Choices for Independence/Home and Community Based Care under waiver)
- Are licensed and inspected according to NH Statute, under the same sections of law as hospitals and nursing homes
- Are required to assess individual resident profiles and meet the individual profile of needs of each person.

NH ARCH is in support of SB 60, sponsored in the Senate by Senator Odell, to correct what we believe is an oversight in the statutes: licensed residential care is not excluded from landlord tenant law in New Hampshire as other licensed entities are, such as hospitals, nursing homes, etc. We believe this is a mistake in the statutes and support this bill which will correct that error.

NH ARCH objections to assisted living not being exempt from landlord tenant include the following:

- Assisted Living is health care, and regulated as such by a number of Health Care Statutes, including RSA 151 and RSA 161. Assisted living does not rent apartments or dwelling space on a basis comparable to commercial ventures, but rather includes living space secondary to care of the individual.
- Landlord Tenant Statutes, Chapters 540 and 540A, are inappropriately applied to assisted living and have the potential of interfering with RSA 151 and RSA 161 in a number of areas, including:

the following of discharge criteria at the time of discharge or transfer of a resident, and in the common business practice of collecting certain fees at time of admission in assisted living.

At this time I will close my remarks so my fellow ARCH members may speak and continue the explanation of why the landlord-tenant laws must be kept distinct from licensed residential care in NH.

I thank the Committee members for their kind attention and would be happy to answer any questions that I can at this time. Otherwise I believe these other ARCH members here today can help you understand why the changes proposed in SB 60 are so important and why we ask for your support of the bill.

January 29, 2013

Chairman Sanborn, members of the Senate Commerce Committee, thank you for the opportunity to speak in support of Senate Bill 60. My name is Gary Cahoon. I am the Vice President of the NHARCH board and the owner/administrator of Friendship Manor, a 22-bed residential care home in New Ipswich.

I hope to briefly make clear how we got where we are today with regard to assisted living and landlord/tenant law.

In the definition section RSA 540 defines tenant and tenancy by delineating what is not tenancy. RSA 540:1-a states "the term 'tenant' or 'tenancy' shall not include occupants or occupancy in the following places . . . (c) rooms in student dormitories, nursing homes, hospitals, convents, monasteries, asylums or group homes." When this part of the statute was adopted in 1985 the terms "assisted living" or "residential care" were not in current use in New Hampshire. I believe the Legislature thought the term "group home" would cover homes like Friendship Manor that existed at that time. SB 60 proposes that all health care entities licensed under RSA 151 or certified under RSA 126-A should be treated the same as nursing homes, hospitals, and group homes. It is self-evident that many provisions of landlord/tenant law are not appropriate to healthcare settings.

In 2002, HB 1220 established RSA 161-J, commonly referred to in residential care circles as the Standard Disclosure law. The principle intent of this act was to help consumers make apples-to-apples comparisons between different assisted living homes by requiring all homes to use a standard form to disclose what services they provided at what cost. HB 1220 also offered a definition of "assisted living", but failed to define it as a licensed entity. RSA 161-J:7 states that "all provisions of RSA 540 and RSA 540-A shall apply to assisted living residences, independent living retirement communities, and housing for older persons . . . unless otherwise provided by RSA 151 and RSA 420-D or other applicable law." I believe the intent of this paragraph was to subject unlicensed or otherwise unregulated assisted living homes, etc., to landlord/tenant law. However, this distinction between licensed and unlicensed was lost in 2003 when SB 34 added RSA 161-J:9 to the statute. J:9 states that only entities licensed pursuant to RSA 151 may use the term assisted living.

There is another inherent conflict in RSA 161-J. The statute enumerates the conditions under which advance payments, seemingly distinct from security deposits, may be charged. If all provisions of 540-A apply, as stated in J:7, then advance payments other than security deposits would not be allowed. According to 540-A a landlord may only charge for rent and a security deposit.

This issue came to a head in 2012 when a judge in Plymouth District Court ruled against an assisted living home on the basis that landlord tenant law (RSA 540 and 540-A) was applicable. The judge did acknowledge that the statutes were in conflict and that a legislative solution was most likely needed. We propose that SB 60 is that legislative solution.

# TITLE LV

## PROCEEDINGS IN SPECIAL CASES

### CHAPTER 540

### ACTIONS AGAINST TENANTS

#### Section 540:1-a

**540:1-a Definitions.** – In this chapter:

I. "Nonrestricted property" means all real property rented for nonresidential purposes and the following real property rented for residential purposes:

(a) Single-family houses, if the owner of such a house does not own more than 3 single-family houses at any one time.

(b) Rental units in an owner-occupied building containing a total of 4 dwelling units or fewer.

(c) [Repealed.] *2006 repealed*

(d) Single-family houses acquired by banks or other mortgagees through foreclosure.

II. "Restricted property" means all real property rented for residential purposes, except those properties listed in paragraph I.

III. "Rental unit" means a suite of one or more rooms located within a single building rented by the owner to one or more individuals living in common for nontransient residential purposes.

IV. The term "tenant" or "tenancy" shall not include occupants or occupancy in the following places and the provisions of this chapter shall not apply to:

(a) Rooms in rooming or boarding houses which are rented to transient guests for fewer than 90 consecutive days.

(b) Rooms in hotels, motels, inns, tourist homes and other dwellings rented for recreational or vacation use.

(c) Rooms in student dormitories, nursing homes, hospitals, convents, monasteries, asylums or group homes.

(d) A single-family home in which the occupant has no lease, which is the primary and usual residence of the owner.

(e) Residential real estate under RSA 540-B. *SB 44, 2001 added*

(f) Vacation or recreational rental units under RSA 540-C. *2010 added*

**Source.** 1985, 249:1. 2001, 277:1. 2006, 312:2, eff. Jan. 1, 2007. 2010, 203:3, eff. Jan. 1, 2011.



### Section 161-J:7

**161-J:7 Applicability of RSA 540 and 540-A.** – All provisions of RSA 540 and RSA 540-A shall apply to assisted living residences, independent living retirement communities, and housing for older persons where the residential premises, however designated, are leased or rented to the resident, unless otherwise provided by RSA 151 and RSA 420-D or other applicable law.

Source. 2002, 192:1, eff. Jan. 1, 2003. 2003, 114:7, eff. Jan. 1, 2004.

### Section 161-J:8

**161-J:8 Enforcement.** – In addition to other appropriate penalties, any violation of the provisions of this chapter shall constitute an unfair or deceptive act or practice within the meaning of RSA 358-A. Any right, remedy or power set forth in RSA 358-A may be used to enforce the provisions of this chapter.

Source. 2002, 192:1, eff. Jan. 1, 2003.

### Section 161-J:9

**161-J:9 Use of Term "Assisted Living."** – The term "assisted living" may only be used in a title, brochure, admission agreement, or other written or promotional materials by an entity that is licensed pursuant to RSA 151.

Source. 2003, 114:8, eff. Jan. 1, 2004.

### Section 161-J:10

**161-J:10 Registration With Department of Justice.** – Any person, corporation, partnership, association or other entity operating an independent living retirement community in this state shall file an annual registration statement with the consumer protection bureau of the department of justice, with a copy to the department of health and human services, bureau of health facilities administration. The registration statement shall include the name and address of the independent living retirement community, the name and address of the registered agent if a corporation, and a complete description of the type of all available services. The independent living retirement community shall insure that the registration statement is available to all current and prospective residents of the community upon request.

Source. 2003, 114:8, eff. Jan. 1, 2004.

Cynthia Gaudreault  
Rose Haven Assisted Living Home  
8 Jennifer Drive  
Merrimack, NH 03054  
(603)424-5919

January 29, 2013

Address to NH Senate Commerce Committee

I would like to thank the Committee for the opportunity to speak today.

My name is Cynthia Gaudreault, and I am the administrator at Rose Haven Assisted Living, my family owns and operates Rose Haven, a 28 bed Supported Residential Care Home in Merrimack, NH, which we purchased in November, 1991. I reside in our building with my husband and two teenage sons; I have been the administrator for 19 years. My father owns Rose Haven and my three brothers and I all work at Rose Haven along with my niece who is a freshman at UNH in Durham, who now also works as a personal care aide, while home on school break. We have 13 full-time and part-time employees that work for us and one who has been with us 15 years.

Now I would like to share with you what we do on a daily basis that makes us more than just an apartment that a person would rent.

- Private bedrooms with common living areas
- 24 hour awake care staff to assist our residents with any personal needs any time of the day
- Assistance with activities of daily living (ADL's) which includes: getting residents up daily and assisting with daily hygiene, and dressing, incontinence care, oral hygiene
- Bathing assistance based on need level
- Health maintenance management ie: arranging doctors appointments and sometimes travel to appointments and consultation with doctors when needed due to dementia or other cognitive issues, monitoring of skin integrity, monitoring behaviors and medication effectiveness related to either dementia or psychiatric issues,
- Medication management which includes staff supervision at each dosing via packaging system and ordering of all medication prescribed by a physician
- Family style dining with 3 home cooked meals a day
- Housekeeping & Laundry
- Care Planning and progress notes according to HEP 805 rules regulated by DHHS
- Communication with family or POA/Guardian of needs (physical and emotional)
- Discharge planning
- Annual inspections done by Office of Program Support(OPS)

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(603)424-5919

We provide care to people with all kinds of needs ranging from Dementia/Alzheimer's to Parkinson Syndrome to Mental Health issues and many types of medical needs, so love and respect is definitely a vital part of what our residents receive on a daily basis. Many of our residents consider Rose Haven their home; we have two ladies that have been at Rose Haven since 1984, and at least five others that have been with us greater than 10 years. Several of our residents do not have any family at all and others that only have visits on major holidays, so they are totally dependent on the staff at Rose Haven for emotional and physical support and most residents consider us their family. I feel touch is a very important part of what my staff does on a daily basis, because love and compassion is what really makes people thrive. Our motto at Rose Haven is "A Home where Love Blooms."

Problems with Landlord/Tenant law in an Assisted Living setting:

- 1) 24 hour notice to enter living space- for my 93 yo lady that has dementia and needs gentle touch and quiet music to keep her calm for the day, to notify her in advance that we are going to enter her room is not reality. We have 13-15 people that get some level of ADL care on a daily basis that requires the necessity of our staff to enter their bedroom on a regular basis throughout the day. I do require my staff to knock and announce themselves prior to opening any resident's bedroom door.
- 2) Transfer or Discharge Planning is defined under RSA 151 and done with notification of Long Term Care Ombudsman Office and OPS and sometimes BEAS. So for us to have to then follow Landlord/Tenant law would be a lot more work for me as admission and discharge coordinator, in small business all our staff wear many hats.
- 3) Not being able to charge an Admission Fee would cause me to raise my private pay rate higher for the entire time that person lives with us. This can be avoided by allowing Admission Fee which is defined in my contract. Our admissions fee is less or equal to one month's rent.

So I would like to close with the thought, that we are not a LANDLORD and we don't have tenants, we are a small family operated Assisted Living HOME, which there are many other homes like us in the State of NH, and we all do a great job at loving people and providing them with the 24 hour care and safety they deserve.

I would like to thank the Committee members again for the opportunity to speak to you today and am willing to answer any questions that I can at this time.

TESTIMONY OF  
CHRISTEN BERGERON  
EXECUTIVE DIRECTOR,  
BEDFORD FALLS, A BENCHMARK SENIOR LIVING COMMUNITY  
TO THE SENATE COMMERCE COMMITTEE  
JANUARY 29, 2013

Good afternoon. My name is Christen Bergeron and I am here to testify in support of Senate Bill 60.

I am the Executive Director of the Bedford Falls Senior Living Community, which is licensed as a supported residential care facility by the State's Department of Health and Human Services. We are located in Bedford, New Hampshire and can provide a home for up to 114 residents in need of assisted living services. We just opened our doors three months ago, and are very excited as our "community" grows with more move-ins.

We support S.B. 60 because, if it is passed, it will clarify that there is truly a free market for assisted living services in our state. Without S.B. 60, current laws make it unclear how Landlord-Tenant law may regulate and negatively affect competition in the senior living business, especially with respect to our program offerings and fee structures.

I can assure you that there is lively competition among assisted living facilities in our state. As a new facility that has just opened, Bedford Falls has the advantage of offering a brand new building with many "state of the art" amenities. This feature is very important in distinguishing ourselves from our competitors – which include other assisted living facilities, nursing homes, continuing care retirement communities and other types of housing for seniors.

With many different options for retirement living, there is a lot of competition within our business market. In addition to the physical location, we also compete against one another with respect to the room sizes, the dining experience, and the array of health services that we can offer or arrange.

Perhaps most important, our customers are very price-sensitive, so assisted living providers must be very conscious of what fees they charge and how prices will affect a family's decision to move in. In addition to the regular daily or monthly assisted living fees, many providers charge "security deposits," just like some apartment homes choose to do, depending on their rental market. Other providers do not charge these deposits at all, or they may negotiate the fees in order to secure a customer's business.

Like a large number of assisted living providers around the country, we collect an "advance fee" which we call a "community fee." Typically, a community fee is a one-time charge at or before move-in, similar to an entrance fee. I understand many facilities charge a community fee to cover costs associated with upkeep of the common areas of the assisted living residence. For us, the purpose of our community fee -- which is partly refundable -- is to help cover various costs associated with transitioning a new resident to the community. It is almost like an application fee, as it can help cover costs associated with assessing a potential resident's needs and helping us to align our services and staffing to meet those needs. If, for any reason, we could not collect the community fee, we would have to re-allocate these costs, which would translate into higher overall daily fees that we charge every resident, across the board.

Like all other assisted living providers in New Hampshire, we carefully explain and disclose all our fees in writing before someone chooses to move in, so they are free to compare our community and our prices with our competitors.

Assisted Living providers in New Hampshire should continue to be free to determine how they allocate their costs, by developing their own fee structures and responding to the market within their own cities and towns.

My company, Benchmark has had great success operating in New Hampshire in the past. Benchmark currently runs four senior living communities, which provides homes to 225 seniors and provides jobs to over 280 employees in our state.

By passing S.B. 60, you will help keep New Hampshire a great place for seniors and their assisted living providers.

Thank you.

**Proposed Amendment to SB 60**  
**Submitted by New Hampshire Legal Assistance**  
**January 29, 2013**

**Amend RSA 151:21 as follows:**

V. The patient shall be transferred or discharged after appropriate discharge planning only for medical reasons, for the patient's welfare or that of other patients, if the facility ceases to operate, or for nonpayment for the patient's stay, except as prohibited by Title XVIII or XIX of the Social Security Act. No patient shall be involuntarily discharged from a facility because the patient becomes eligible for medicaid as a source of payment. No facility shall willfully seize, hold, or otherwise directly or indirectly deny a patient access to and possession of such patient's room or rooms other than through the procedure set forth in RSA 151:26.

XIV. The patient shall be free to retain and use personal clothing and possessions as space permits, provided it does not infringe on the rights of other patients. No facility shall willfully seize, hold, or otherwise directly or indirectly deny a patient access to and possession of such patient's property, provided it does not infringe on the rights of other patients, and shall maintain and exercise reasonable care in the storage of the property of a patient who has vacated his or her room or rooms, either voluntarily or involuntarily, for a period of 28 days after the date upon which such patient vacated. During this 28-day period, the patient or his or her representative shall be allowed to recover his or her property without payment of rent or storage fees. After the 28-day limit has expired, such property may be disposed of by the facility without notice to the patient.

**Amend RSA 151:23 as follows:**

I. An owner, administrator, employee, or representative of a facility shall not transfer, discharge or harass, or retaliate or discriminate against a patient because the patient has exercised a right protected under this subdivision.

II. There shall be a rebuttable presumption that an action was in retaliation for the patient exercising a right under this subdivision if a transfer, discharge, increase in rent or other fees, or other substantial alteration in the terms of the patient's occupancy, was instituted by a facility within 6 months after the facility received notice of the patient exercising such right.

**Amend RSA 151:26, II (a) (1) as follows:**

Transfer or discharge of a patient shall in all instances be preceded by written notice which shall contain the following:

- (1) The reason, with specificity, for the proposed transfer or discharge;
- (6) Material that describes patients' rights under this chapter, including the rights of a patient facing a proposed transfer or discharge from the facility. For patients who are 60 years of age or older, this written material shall include contact information for the provider(s) of legal services under Title VII of the Older Americans Act.

**Add the following sections to RSA 151:26, II as follows:**

(d) At the time written notice is delivered to the patient, the facility staff shall:

(1) Communicate orally to the resident, in a language he or she understands, all of the information contained in the written notice. If the patient is hearing-impaired or cannot communicate orally, the facility shall consult with the Bureau of Elderly and Adult Services on how to communicate with the resident and communicate the information contained in the written notice according to the bureau's recommendations;

(2) Offer to assist the patient in contacting a family member, a legal representative, the office of the state long term care ombudsman, or any other organization identified in the notice; and

(3) Document the date and time of the oral communication and offer of assistance in the patient's clinical record.

(e) The facility shall document delivery of the notices required by this section to the patient by:

(1) Including in the clinical record of the patient a statement signed and dated by the patient acknowledging receipt, provided the patient is able to sign a receipt;

(2) Recording the date of delivery to the patient in the resident's record; and

(3) Recording when the notice was mailed to the patient's legal representative or family members, if applicable.

(g) If fewer than 30 days notice of a transfer or discharge is given under RSA 151:26, II(b), the facility, shall, in addition to complying with all other provisions in this section, shall:

(1) Provide oral notice to the patient, the patient's legal representative, and any family members, if applicable and as directed by the patient;

(2) As soon as is practicable, provide the written notice required by subparagraph II(b) to any family members as directed by the patient;

(3) Document the date and time of the oral and written notices in the patient's clinical record.

(h) The facility shall make, and document in the patient's record, reasonable efforts to work with the patient, the patient's legal representative, or the patient's family to resolve any nonpayment of rent or other fees prior to giving notice of transfer or discharge.

(i) No patient shall be transferred or discharged for nonpayment of rent or other fees if before the expiration of the written notice required by subparagraph II(a), the patient pays or tenders all arrearages to the facility.



# Committee Report

STATE OF NEW HAMPSHIRE  
SENATE  
REPORT OF THE COMMITTEE  
FOR THE CONSENT CALENDAR

Date: February 7, 2012

THE COMMITTEE ON Commerce

to which was referred Senate Bill 60

AN ACT                      relative to assisted living facilities and landlord tenant  
law.

Having considered the same, the committee recommends that the Bill:

**OUGHT TO PASS WITH AMENDMENT**

BY A VOTE OF:    5-0

AMENDMENT # 0205s

CONSENT CALENDAR VOTE: 5-0

Senator David Pierce for the Committee

Currently, assisted living facilities are regulated under both landlord tenant and health and human services statutes. This bill, as amended by the Committee, will remove assisted living facilities from the landlord tenant statutes while leaving the more appropriate health and human services regulations in place.

Patrick Murphy 271-8631

## Docket of SB60

**Bill Title:** relative to assisted living facilities and landlord tenant law.

### *Official Docket of SB60:*

| <b>Date</b> | <b>Body</b> | <b>Description</b>  |
|-------------|-------------|---|
| 1/3/2013    | S           | <b><u>Introduced</u></b> and Referred to Commerce; <b><u>SJ 4</u></b>   |
| 1/24/2013   | S           | Hearing: 1/29/13, Room 101, LOB, 1:40 p.m.; <b><u>SC6</u></b>   |
| 2/7/2013    | S           | Committee Report: Ought to Pass with Amendment <b><u>#2013-0205s</u></b> , 2/14/13; Vote 5-0; CC; <b><u>SC8</u></b> |
| 2/14/2013   | S           | Committee Amendment 0205s, AA, VV   |
| 2/14/2013   | S           | <b><u>Ought to Pass with Amendment</u></b> 0205s, MA, VV; OT3rdg; <b><u>SJ 5</u></b>                                |
| 3/27/2013   | H           | Introduced and Referred to Judiciary; <b><u>HJ31</u></b> , PG.1074  |
| 4/2/2013    | H           | Public Hearing: 4/9/2013 11:00 AM LOB 208   |
| 4/10/2013   | H           | Executive Session: 4/16/2013 11:00 AM LOB 208   |
| 4/17/2013   | H           | Majority Committee Report: Ought to Pass for April 24 (Vote 13-6; RC); <b><u>HC33</u></b> , PG.1096-1097            |
| 4/17/2013   | H           | Minority Committee Report: Inexpedient to Legislate; <b><u>HC33</u></b> , PG.1096-1097                              |
| 4/24/2013   | H           | <b><u>Ought to Pass</u></b> : MA VV; <b><u>HJ38</u></b> , PG.1247   |
| 4/24/2013   | H           | Enrolled; <b><u>HJ38</u></b> , PG.1257  |
| 5/2/2013    | S           | Enrolled  |
| 6/6/2013    | S           | Signed by the Governor on 06/06/2013; Chapter 0061; Effective 06/06/2013  |

# Other Referrals

# COMMITTEE REPORT FILE INVENTORY

SR 60 ORIGINAL REFERRAL      \_\_\_\_\_ RE-REFERRAL

1. THIS INVENTORY IS TO BE SIGNED AND DATED BY THE COMMITTEE AIDE AND PLACED INSIDE THE FOLDER AS THE FIRST ITEM IN THE COMMITTEE FILE.
2. PLACE ALL DOCUMENTS IN THE FOLDER FOLLOWING THE INVENTORY IN THE ORDER LISTED.
3. THE DOCUMENTS WHICH HAVE AN "X" BESIDE THEM ARE CONFIRMED AS BEING IN THE FOLDER.
4. THE COMPLETED FILE IS THEN DELIVERED TO THE CALENDAR CLERK.

DOCKET (Submit only the latest docket found in Bill Status)

COMMITTEE REPORT

CALENDAR NOTICE

HEARING REPORT

HANDOUTS FROM THE PUBLIC HEARING

PREPARED TESTIMONY AND OTHER SUBMISSIONS

SIGN-UP SHEET(S)

ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:

- AMENDMENT # 0168s      \_\_\_\_\_ - AMENDMENT # \_\_\_\_\_

- AMENDMENT # 0205s      \_\_\_\_\_ - AMENDMENT # \_\_\_\_\_

ALL AVAILABLE VERSIONS OF THE BILL:

AS INTRODUCED      \_\_\_\_\_ AS AMENDED BY THE HOUSE

FINAL VERSION       AS AMENDED BY THE SENATE

OTHER (Anything else deemed important but not listed above, such as amended fiscal notes): \_\_\_\_\_

DATE DELIVERED TO SENATE CLERK 7-17-13

PM  
\_\_\_\_\_  
BY COMMITTEE AIDE