

CONSENT CALENDAR

April 19, 2022

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Committee on Health, Human Services and Elderly
Affairs to which was referred SB 281,**

**AN ACT relative to nursing home policies regarding
notice of vacancy. Having considered the same, report
the same with the following amendment, and the
recommendation that the bill OUGHT TO PASS WITH
AMENDMENT.**

Rep. Jim Kofalt

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	Health, Human Services and Elderly Affairs
Bill Number:	SB 281
Title:	relative to nursing home policies regarding notice of vacancy.
Date:	April 19, 2022
Consent Calendar:	CONSENT
Recommendation:	OUGHT TO PASS WITH AMENDMENT 2022-1335h

STATEMENT OF INTENT

This bill as amended would prohibit nursing home or assisted living facility from enforcing a 30-day notice of vacancy policy in the event of a resident's death. This prevents families (or the estate) from incurring charges for any longer than 10 days beyond the resident's death. It also provides that, in such cases, the month in which the resident passes shall be the last month for which payment is due, provided that the deceased resident's family vacates property from the unit in a timely manner.

Vote 20-0.

Rep. Jim Kofalt
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

Health, Human Services and Elderly Affairs

SB 281, relative to nursing home policies regarding notice of vacancy. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Jim Kofalt for Health, Human Services and Elderly Affairs. This bill as amended would prohibit nursing home or assisted living facility from enforcing a 30-day notice of vacancy policy in the event of a resident's death. This prevents families (or the estate) from incurring charges for any longer than 10 days beyond the resident's death. It also provides that, in such cases, the month in which the resident passes shall be the last month for which payment is due, provided that the deceased resident's family vacates property from the unit in a timely manner. **Vote 20-0.**

Rep. Weber, Ches. 1
April 5, 2022
2022-1335h
05/04

Amendment to SB 281

1 Amend the bill by replacing section 1 with the following:

2

3 1 New Section; Nursing Home Policies Regarding Notice of Vacancy. Amend RSA 151 by
4 inserting after section 25-a the following new section:

5 151:25-b Nursing Home Policies Regarding Notice of Vacancy. A public or private nursing home
6 or assisted living facility, for which residents are paying out of pocket, shall not enforce a 30-day
7 notice of vacancy policy in the event of the resident's death. The nursing home or assisted living
8 facility shall be entitled to rent and fees for not more than 10 days from the date of the resident's
9 death. If there is personal property to remove that impedes the reuse of the room, the 10-day period
10 shall not begin until after the family, estate, or responsible party has removed the deceased person's
11 personal property. If the room is occupied by a new resident before the expiration of the 10-day
12 period, rent and fees for the 10-day period shall be prorated from the date of such occupancy and
13 returned to the family, estate, or other responsible party.

Amendment to SB 281
- Page 2 -

2022-1335h

AMENDED ANALYSIS

This bill prohibits a private nursing home or assisted living facility from enforcing a 30-day notice of vacancy policy in the event of a resident's death.

HOUSE COMMITTEE ON HEALTH, HUMAN SERVICES AND ELDERLY AFFAIRS

EXECUTIVE SESSION on Bill # SB281

TITLE: AN ACT relative to nursing home policies regarding notice of vacancy.

DATE: 4/19/2022

LOB ROOM: 210-211

MOTION:

Adoption of Amendment # 2022-1335h

Moved by Rep. _____ Seconded by Rep. _____ Vote: 21-0

MOTION:

OTP/A

Moved by Rep. _____ Seconded by Rep. _____ Vote: 21-0

CONSENT CALENDAR: X YES NO

Minority Report? Yes No If yes, author, Rep: _____ Motion _____

Respectfully submitted: _____
baf
Rep. Beth Folsom, Clerk

STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK



9/28/2021 11:15:01 AM
Roll Call Committee Registers
Report

2022 SESSION

Health, Human Services and Elderly Affairs

Bill #: SB281 **Motion:** _____ **AM #:** 2022-1335h **Exec Session Date:** 4/19/2022

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Pearson, Mark A. Chairman	Y		
Layon, Erica J. Vice Chairman	Y		
McMahon, Charles E.	Y		
Acton, Dennis F.	Y		
Gay, Betty I.	Y		
Cushman, Leah P. Rep Dolan	Y		
Folsom, Beth A. Clerk	Y		
Kelsey, Niki	Y		
King, Bill C.	Y		
Kofalt, Jim	Y		
DeLemus, Susan	Y		
Weber, Lucy M. Rep. Query	Y		
MacKay, James R.	Y		
Snow, Kendall A.	Y		
Knirk, Jerry L.	Y		
Salloway, Jeffrey C.	Y		
Cannon, Gerri D.	Y		
Nutter-Upham, Frances E.	Y		
Schapiro, Joe	Y		
Woods, Gary L.	Y		
Merchant, Gary	Y		
TOTAL VOTE:	21	0	

STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK



9/28/2021 11:15:01 AM
Roll Call Committee Registers
Report

2022 SESSION

Health, Human Services and Elderly Affairs

Bill #: SB281 Motion: OTPA AM #: _____ Exec Session Date: 4/19/2022

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Pearson, Mark A. Chairman	Y		
Layon, Erica J. Vice Chairman	Y		
McMahon, Charles E.	Y		
Acton, Dennis F.	Y		
Gay, Betty I.	Y		
Cushman, Leah P. Rep. Dolan	Y		
Folsom, Beth A. Clerk	Y		
Kelsey, Niki	Y		
King, Bill C.	Y		
Kofalt, Jim	Y		
DeLemus, Susan	Y		
Weber, Lucy M. Rep. Query	Y		
MacKay, James R.	Y		
Snow, Kendall A.	Y		
Knirk, Jerry L.	Y		
Salloway, Jeffrey C.	Y		
Cannon, Gerri D.	Y		
Nutter-Upham, Frances E.	Y		
Schapiro, Joe	Y		
Woods, Gary L.	Y		
Merchant, Gary	Y		
TOTAL VOTE:	21	0	

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9 death. If there is personal property to remove that impedes the reuse of the room, the 10-day period
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11 personal property. If the room is occupied by a new resident before the expiration of the 10-day
12 period, rent and fees for the 10-day period shall be prorated from the date of such occupancy and
13 returned to the family, estate, or other responsible party.

2022-1335h

AMENDED ANALYSIS

This bill prohibits a private nursing home or assisted living facility from enforcing a 30-day notice of vacancy policy in the event of a resident's death.

UNAPPROVED

HOUSE COMMITTEE ON HEALTH, HUMAN SERVICES AND ELDERLY AFFAIRS

PUBLIC HEARING on Bill # SB281

BILL TITLE: AN ACT relative to nursing home policies regarding notice of vacancy.

DATE: 4/5/2022

ROOM: LOB 205-7

Time Public Hearing Called to Order: 11:20am

Time Adjourned: 11:37am

Committee Members: Reps. M. Pearson, Layon, Folsom, Acton, McMahon, Cushman, Kelsey, Gay, B. King, Kofalt, MacKay, DeLemus, Weber, Knirk, Nutter-Upham, Salloway, Snow, Cannon, Schapiro, Woods and Merchant,

TESTIMONY

Sen. Gannon presented the bill.

The bill adjusts the length of time that a private nursing home or assisted living facility can continue to charge for the space from 30 to 10 days after which the residents personal items are removed.

Brendan Williams, NH Health Care Assoc.

Supports basic bill, prefer 15 days, strike sentence on lines 5-6 as it is confusing

Alex Koutroubas, NH Association of Residential Care homes

Prefer 15 days.

Amendment will be forthcoming from Rep Weber.

Respectfully submitted,

Rep. Beth Folsom, Clerk

House Remote Testify

Health, Human Services and Elderly Affairs Committee Testify List for Bill SB281 on 2022-04-05

Support: 6 Oppose: 1 Neutral: 0 Total to Testify: 0

Export to Excel

<u>Name</u>	<u>City, State</u> <u>Email Address</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Non-Germane</u>	<u>Signed Up</u>
Cavanaugh, Senator Kevin	Manchester, NH kevin.cavanaugh@leg.state.nh.us	An Elected Official	Myself	Support	No	No	3/29/2022 12:57 PM
Watters, Senator David	Dover, NH david.watters@leg.state.nh.us	An Elected Official	Myself	Support	No	No	3/30/2022 8:34 AM
Kroll, Heidi	Concord, NH kroll@gcglaw.com	A Lobbyist	NH Chapter of the National Academy of Elder Law Attorneys (NAELA)	Support	No	No	3/31/2022 11:25 AM
Rosenwald, Cindy	Nashua, NH cindy.rosenwald@leg.state.nh.us	An Elected Official	SD 13	Support	No	No	4/1/2022 11:52 AM
Piemonte, Tony	Sandown, NH tony.piemonte@leg.state.nh.us	An Elected Official	Myself	Support	No	No	4/4/2022 10:15 AM
Hallock, Linda	Cornish, NH LINDASH@MAIL.COM	A Member of the Public	Myself	Oppose	No	No	4/4/2022 6:38 PM
Sherman, Senator	SD 24, NH jennifer.horgan@leg.state.nh.us	An Elected Official	SD24	Support	No	No	4/5/2022 10:05 AM

Archived: Friday, April 22, 2022 9:19:07 AM
From: [Brendan Williams](#)
Sent: Thursday, April 7, 2022 2:36:06 PM
To: ~House Health Human Services and Elderly Affairs
Subject: Senate Bill 281
Importance: Normal

Hon. Members, House Health, Human Services and Elderly Affairs:

I am writing to circle back on my testimony on SB 281 (relative to nursing home policies regarding notice of vacancy).

First, I thank the committee for its willingness to strike the ambiguous sentence.

Second, I wanted to respond to a concern of Rep. Knirk that perhaps government payers continue to pay after a resident's death. I testified that I did not believe this to be the case, and DHHS has confirmed this. Nursing homes must inform DHHS of the death of a resident, and individuals must need a nursing home level of care to be eligible for Medicaid care in such a facility. See He-E 802.02(b)(2); He-E 802.03(a)(3). Ergo, nursing homes don't get reimbursed after the date of death because the individual would no longer need a nursing home level of care.

Finally, I would again ask that you change the references to 10 days in the bill to 15. In New England, only Connecticut has impaired freedom of contract by providing the type of language in SB 281. See Conn. Gen. Stat. §19a-700. Again, we are fine with the objective of Sen. Gannon's bill, but believe we should only go as far as Connecticut has. As I testified, to transition a room in an assisted living facility for new occupancy is not as easy as it is in a nursing home, especially at a time of an existential workforce crisis (assisted living units are analogous to those in an apartment building and might require, for instance, wall patching, painting, carpeting, appliance replacement, furniture repair or replacement, etc.).

The U.S. Supreme Court, in a 7-1 decision authored by Justice Kagan, ruled that those entering into contracts with long-term care facilities can waive constitutional rights, including the right to a jury trial. *Kindred Nursing Centers, L.P. v. Clark*, 137 S. Ct. 1421 (2017). I am not advocating that. I do think, however, that a prospective resident can quite knowingly agree to a long-term care facility contract in which he or she agrees to pay for not more than 15 days from the date of his or her death, or 15 days following removal of personal property after death, whichever is later.

I believe we are already in tricky territory if we selectively presume adult incapacity in the entering of certain contracts, because there are a host of other contracts that I can think of that might then be examined in a similar light (e.g., insurance contracts, reverse mortgages, everyday leases, etc.).

Thank you for your service and the opportunity for us to make our case. All my best, and have a good weekend.

Brendan W. Williams, M.A., J.D.

President/CEO

New Hampshire Health Care Association

5 Sheep Davis Road, Suite B, Pembroke, N.H. 03275

(603) 226-4900/Cell: (360) 791-3979



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Archived: Friday, April 22, 2022 9:19:07 AM
From: Alex Koutroubas
Sent: Thursday, April 7, 2022 2:47:22 PM
To: ~House Health Human Services and Elderly Affairs
Subject: Re: Senate Bill 281
Importance: Normal

Dear HHS&EA Committee:

I would strongly echo Brendan Williams' comments on the change from 10 to 15 days' notice of vacancy.

A brief example, an assisted living facility with 55 apartments in NH has experienced two deaths per month on average. SB 281 will mean a loss of revenue approaching six figures for a small to medium sized community of this size. Communities with substantially greater apartments or higher acuity and therefore greater deaths would financially be affected even more.

On the opposing size spectrum, smaller homes who may rely on outside contracted workers to get an apartment rent ready and then have to arrange for re-occupancy and movers (especially in bad weather out of town moves, or delayed dischargers from SNF/Hospitals) this could also be detrimental to their bottom line as that process typically is longer than 10 days for a full turn.

With so many of Assisted Living Homes needing to increase wages, offer sign on bonus and increase perks and also those of us who create staffing schedules a month in advance based on staffing needs to meet care criteria, taking a drastic loss of revenue like this is not alleviating the overwhelmingly increasing cost of doing business.

Thank you for your consideration of our views for a reasonable amendment.

Alex Koutroubas, Representing NHARCH
<https://nharch.org/>

-- Alex Koutroubas
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Office: 603-228-1601 ext 2003
Cell: 603-440-5113



From: Brendan Williams <bwilliams@nhhca.org>
Date: Thursday, April 7, 2022 at 2:35 PM
To: HHSEA@leg.state.nh.us <HHSEA@leg.state.nh.us>
Subject: Senate Bill 281

Hon. Members, House Health, Human Services and Elderly Affairs:

I am writing to circle back on my testimony on SB 281 (relative to nursing home policies regarding notice of vacancy).

First, I thank the committee for its willingness to strike the ambiguous sentence.

Second, I wanted to respond to a concern of Rep. Knirk that perhaps government payers continue to pay after a resident's death. I testified that I did not believe this to be the case, and DHHS has confirmed this. Nursing homes must inform DHHS of the death of a resident, and individuals must need a nursing home level of care to be eligible for Medicaid care in such a facility. See He-E 802.02(b)(2); He-E 802.03(a)(3). Ergo, nursing homes don't get reimbursed after the date of death because the individual would no longer need a nursing home level of care.

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I believe we are already in tricky territory if we selectively presume adult incapacity in the entering of certain contracts, because there are a host of other contracts that I can think of that might then be examined in a similar light (e.g., insurance contracts, reverse mortgages, everyday leases, etc.).

Thank you for your service and the opportunity for us to make our case. All my best, and have a good weekend.

Brendan W. Williams, M.A., J.D.

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SB 281 - AS INTRODUCED

2022 SESSION

22-2879

05/04

SENATE BILL **281**

AN ACT relative to nursing home policies regarding notice of vacancy.

SPONSORS: Sen. Gannon, Dist 23; Sen. Rosenwald, Dist 13; Sen. Watters, Dist 4; Sen. Avard, Dist 12; Sen. Sherman, Dist 24; Sen. Cavanaugh, Dist 16; Sen. Prentiss, Dist 5; Rep. Simpson, Rock. 36; Rep. Cushing, Rock. 21; Rep. Welch, Rock. 13; Rep. Weyler, Rock. 13; Rep. Piemonte, Rock. 4

COMMITTEE: Health and Human Services

ANALYSIS

This bill prohibits a private nursing home or assisted living facility from enforcing a 30-day notice of vacancy policy in the event of a resident's death and provides that, in such cases, the month in which the resident passes shall be the last month for which payment is due.

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 Twenty Two

AN ACT relative to nursing home policies regarding notice of vacancy.

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

1 1 New Section; Nursing Home Policies Regarding Notice of Vacancy. Amend RSA 151 by
2 inserting after section 25-a the following new section:

3 151:25-b Nursing Home Policies Regarding Notice of Vacancy. A private nursing home or
4 assisted living facility, for which residents are paying out of pocket, shall not enforce a 30-day notice
5 of vacancy policy in the event of the resident's death. The month in which the resident passes shall
6 be considered, for the purpose of rent and fees, the last month of residency. The nursing home or
7 assisted living facility shall be entitled to rent and fees for not more than 10 days from the date of
8 the resident's death; provided that if the room is occupied by a new resident before the expiration of
9 the 10-day period, rent and fees for the 10-day period shall be prorated from the date of such
10 occupancy and returned to the family, estate, or other responsible party.

11 2 Effective Date. This act shall take effect 60 days after its passage.