MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M

ROLL NUMBER

DESCRIPTION

2133

2007 SENATE HUMAN SERVICES

SB 2133

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2133

Senate Human Services Committee

☐ Check here for Conference Committee

Hearing Date: 1-10-07

Recorder Job Number: 864

Committee Clerk Signature Mary K Morson

Minutes:

Senator J. Lee, Chairman, opened the hearing on SB 2133 relating to consumer-directed care for medical assistance recipients.

Karen Tescher (Assistant Director of LTC Services, Dept. of Human Services) testified in support of SB 2133. (Attachment #1)

Senator J. Lee asked if management in her testimony should be maintenance.

Ms. Tescher replied yes.

Senator J. Lee said she had a friend with ALS who was at home and had nurse care. She thought Medicare provided some services to ALS victims even though they might be under the age of 65. She asked if there are issues here with the Older Americans Act that affect people who are sixty. What do we do with folks under sixty? Will this help us to address those concerns with those who are not able to be served because they are not old enough to qualify in those other programs?

Ms. Tescher said they would really have to look at each situation and make sure they are eligible for the services. These would be individuals that, rather than being in a nursing home if they so choose not to be, that it would be an opportunity for them to get the services in their home.

Senator J. Lee asked if any progress is being made for respite care for people on ventilators.

Ms. Tescher said that is an issue. They get calls and nursing facilities are looking at it and willing to help out. It is an area that still needs work.

Senator J. Lee said part of the issue for the family in her example is that they are going to max out their insurance coverage. That's another issue—it's extremely costly care.

Ms. Tescher said she thought the attendant care portion of this bill should help in that way because it allows for the service to be provided after appropriate training by a nurse for an attendant to do that and be there to assure the person is being taken care of rather than having more expensive level of nursing care.

Senator J. Lee noted that there is a fiscal note but no fiscal impact.

Linda Johnson Wurtz (Associate State Director for Advocacy for AARP, ND) said that a majority of their 79,600 members in ND prefer to age as long as they can in their homes. This bill moves down that road so they support this legislation.

Kathy Hogan (Director of Cass County Social Services and speaking on behalf the Director's Association) spoke in favor of SB 2133. (Attachment #2-- includes a position statement of the Home and Community Based Services.)

Recipient liability was discussed. You have to use a portion of your income to pay a portion of the cost of your care. For the medically needy population which is most of the clients served in this category, they're allowed to live on $500/month. Any other expenses have to go first for the medical care. People are choosing not to receive HCBS service because they can't pay their recipient liability. There is in OAR, the dept's budget, to increase that from 60% of the poverty level to 83% of the poverty level and they are strongly supporting that. That would allow someone to live on $683 versus $500. Recipient liability is like a co-pay and has to be paid first.

Senator J. Lee asked what Cass County does about basic care versus HCBS.

Ms. Hogan replied that basic care is one of the services available through HCBS case management. There are significant differences county to county in the availability of basic care services. There are 10 beds in Arthur so they don't have that service available in Cass County.

There was discussion on the services in different counties.

Senator Heckaman asked where adult day care fits in.

Ms. Hogan said that adult day care is one of the services available if you are eligible for home and community based services. It would be a service that could be authorized, but it is limited in terms of its availability.

Bruce Murry (lawyer with ND Protection and Advocacy Project) spoke in support of SB 2133. (Attachment #3)

Connie Kalonek (Executive Director of ND Board of Nursing) affirmed that they have been working with the DHS on this issue. There are two ways in which nursing can be provided in the home. One is to nurse delegation, which is in the law and rules. Secondly, through this consumer directed care. They have been working with the department to find a reasonable and fair approach so that nurses can be somewhat involved in the consumer directed care but their overall liability is carefully crafted out so that they are not liable once they have taught the individuals how to provide their care but only during the time they are being taught. This seems to be a reasonable approach for those who care for themselves or have a family member care for them in their home.

There was no opposing testimony.

Dave Peske (ND Medical Association) spoke in a neutral position. He pointed out that he had a question on line 13-15 and planned to talk to the department about it. On line 15, it assumes

the patient has a connection to a physician and that the physician would then be asked if the care being contemplated can be safely provided in the individual's home. He would like to explore that further before the committee acted on SB 2133.

Senator J. Lee responded that it was an important issue to consider. Somebody could go against the wishes of his/her physician as well. The physician shouldn't be liable if the person doesn't follow the physician's advice, either.

Senator Dever suggested Mr. Peske might also consider whether the physician is liable for determining who is a competent adult.

Senator Warner said they must be establishing a threshold somewhere with physican involvement.

Ms. Hogan said that, in terms of eligibility for HCBS, there is a functional assessment done based on ability to toilet and transfer and bathe and those things. There's not always a physician involvement. It's a functional assessment and a financial assessment.

Ms. Tescher said this is a service for a very specific population and the criteria to be admitted into it are also very specific, including ventilator dependant at least 20 hours per 24 hour period. Because Medicaid is physician driven the physician would have to be involved at the outset to determine if the individual is competent, medically stable.

With no further testimony, the hearing on SB 2133 was closed.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2133

Senate Human Services Committee

☐ Check here for Conference Committee

Hearing Date: 1-17-07

Recorder Job Number: 1271

Committee Clerk Signature Mary K Monson

Minutes:

Senator J. Lee, Chairman, opened SB 2133 for discussion on the portion of the bill that Dave Peske had shown concern with, lines 13-15, and the liability of the physician. They talked about the doctor asking for a disclaimer to be signed.

Senator Dever asked if a family could do that with a Medicaid patient.

Senator J. Lee gave an example of a non licensed care provider who cares for her husband who has Lou Gehrig's disease. The nurses won't deal with the trach so her doctor has trained her to do it.

No action was taken pending more information and proposed amendments by Dave Peske.

The committee was recessed.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2133

Senate Human Services Committee

☐ Check here for Conference Committee

Hearing Date: 1-23-07

Recorder Job Number: 1716

Committee Clerk Signature Mary K Morrison

Minutes:

Senator J. Lee, Chairman, opened SB 2133, for discussion on the proposed amendment by Dave Peske. (Meter 1:30)

Mr. Peske reminded the committee that he had questioned the involvement of a physician in approving the ability of an unlicensed person to provide certain services in home. He felt that was not an area that a physician would have any control over. Melissa Hauer and Karen Tescher, Dept. of Human Services, provided the text of the federal waiver language that was sent in to the dept. of human services and got approval for. They prepared an amendment that basically puts into the bill the same type of language from their waiver which says that a physician doesn't have to determine that an unlicensed person can safely provide these services. All the physician does under this bill is the same as under the federal waiver. They determine that the patient to be served is stable and competent.

Senator Dever moved to accept the amendment. Second by Senator Erbele.

Carried 6-0-0 on a roll call vote.

Senator Warner moved a Do Pass on SB 2133 as amended. Second by Senator Heckaman.

Roll call vote 6-0-0. Passed. Carrier is Senator Warner.

FISCAL NOTE

Requested by Legislative Council
01/02/2007

Bill/Resolution No.: SB 2133

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	$0	$0	$0	$0	$0	$0
Expenditures	$0	$0	$0	$0	$0	$0
Appropriations	$0	$0	$0	$0	$0	$0

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
$0	$0	$0	$0	$0	$0	$0	$0	$0

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill amends and reenact section 50-24.1-18.1 of NDCC relating to consumer-directed care for medical assistance recipients.

There is no fiscal impact.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

   B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

   C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Debra A. McDermott	**Agency:**	Dept Human Services
Phone Number:	328-3695	**Date Prepared:**	01/04/2007

DHS

PROPOSED AMENDMENTS TO SENATE BILL NO. 2133

Page 1, line 14, replace "adult or a minor child" with "individual", after "home," insert "and which is based upon the determination of a", remove "which the adult's or minor child's" and remove "determines"

Page 1, line 15, replace "can be safely performed" with "that the individual is medically stable and is competent to direct the care provided" and remove "under the direction of a competent"

Page 1, line 16, remove "adult who resides in the home"

Page 1, line 22, replace "a person" with "an individual"

Renumber accordingly

78148.0101
Title.0200

Adopted by the Human Services Committee
January 24, 2007

1-24-07

PROPOSED AMENDMENTS TO SENATE BILL NO. 2133

Page 1, line 14, replace "adult or minor child" with "individual", after the underscored comma insert "and", replace "the adult's or minor child's" with "is based upon the determination of a", and replace "determines" with "which concludes that the individual is medically stable and is competent to direct the care provided"

Page 1, line 15, remove "can be safely performed" and remove "under the direction of a competent"

Page 1, line 16, remove "adult who resides in the home"

Page 1, line 22, replace "a person" with "an individual"

Renumber accordingly

Date: 1-23-07
Roll Call Vote #: 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2133

Senate **HUMAN SERVICES** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken amendment by Dave Peske

Motion Made By Sen. Dever Seconded By Sen. Erbele

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee, Chairman	✓		Senator Joan Heckaman	✓	
Senator Robert Erbele, V. Chair	✓		Senator Jim Pomeroy	✓	
Senator Dick Dever	✓		Senator John M. Warner	✓	

Total (Yes) 6 No 0

Absent 0

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Date: 1-23-07
Roll Call Vote #: 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2133

Senate **HUMAN SERVICES** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 78148.0101 Title.0200

Action Taken Do Pass as Amended

Motion Made By Senator Warner Seconded By Sen. Heckaman

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee, Chairman	✓		Senator Joan Heckaman	✓	
Senator Robert Erbele, V. Chair	✓		Senator Jim Pomeroy	✓	
Senator Dick Dever	✓		Senator John M. Warner	✓	

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Warner

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2133: Human Services Committee (Sen. J. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2133 was placed on the Sixth order on the calendar.

Page 1, line 14, replace "adult or minor child" with "individual", after the underscored comma insert "and", replace "the adult's or minor child's" with "is based upon the determination of a", and replace "determines" with "which concludes that the individual is medically stable and is competent to direct the care provided"

Page 1, line 15, remove "can be safely performed" and remove "under the direction of a competent"

Page 1, line 16, remove "adult who resides in the home"

Page 1, line 22, replace "a person" with "an individual"

Renumber accordingly

2007 HOUSE HUMAN SERVICES

SB 2133

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2133

House Human Services Committee

☐ Check here for Conference Committee

Hearing Date: February 21, 2007

Recorder Job Number: 3571 & 3572

Committee Clerk Signature Judy Schock

Minutes:

Chairman Price: We will open the hearing on SB 2133.

Karen Tescher, Assistant Director of Long Term Care Services with Medical Services Division of the Department of Human Services: See attached testimony.

Dr. Connie Kalanek, Assistant Director of ND Board of Nursing: The board does support the legislation in SB 2133. We just want to be on record for support.

Chairman Price: Anyone else to testify in favor? Anyone else to testify in opposition? If not we will close the hearing on SB 2133.

Chairman Price: Let's take up SB 2133.

Representative Conrad moves a do pass on SB 2133, seconded by **Representative Potter.**

Chairman Price: asks for discussion.

Representative Weisz: Any reason why we have to add all the language to the bill. Does it mean if anything is not listed in here it is not going to be able to fall under attended care?

Chairman Price: Line 19, 20, and 21 might be able to give you that ability.

The vote was taken with12 yeas, 0 nays, and 0 absent. **Representative Potter** will carry the bill to the floor.

Date: 2/21
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. "Click here to type Bill/Resolution No."

House HUMAN SERVICES S. B. 2133 Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do pass

Motion Made By Rep. Conrad Seconded By Rep. Potter

Representatives	Yes	No	Representatives	Yes	No
Clara Sue Price – Chairman	✓		Kari L Conrad	✓	
Vonnie Pietsch – Vice Chairman	✓		Lee Kaldor	✓	
Chuck Damschen	✓		Louise Potter	✓	
Patrick R. Hatlestad	✓		Jasper Schneider	✓	
Curt Hofstad	✓				
Todd Porter	✓				
Gerry Uglem	✓				
Robin Weisz	✓				

Total (Yes) "Click here to type 12 Yes Vote" No "Click here to type 0 No Vote"

Absent 0

Floor Assignment Rep. Potter

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2133, as engrossed: Human Services Committee (Rep. Price, Chairman) recommends **DO PASS** (12 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2133 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

SB 2133

Attachment #1

Testimony
Senate Bill 2133 – Department of Human Services
Senate Human Services Committee
Senator Judy Lee, Chairman
January 10, 2007

Chairman Lee, members of the Human Services Committee, I am Karen Tescher, Assistant Director of Long Term Care Services, of the Department of Human Services. I am here to provide testimony in support of this bill.

The Department requested the changes identified in this bill as "clean up" to language from 2005 House Bill number 1148. Based on the direction from the 2005 Legislative Assembly, over the 2005-2007 interim, the Department has worked with and submitted to the Centers for Medicare and Medicaid Services (CMS) a plan for providing home and community-based services to individuals who are ventilator-dependent. The Department expects to implement this service in the next several months. The services to be offered include attendant care and nurse management.

In Section 1, Line 10 of this bill, the Department is requesting the words "attendant care program" be used to replace "personal care". CMS will not allow for supervision to be paid under personal care, while it is allowed under attendant care.

The definition of Health Management Services in this bill includes the services provided by "attendants" such as bathing, dressing, feeding, etc. as well as services supervised by nurse managers, such as catheter irrigation and medication administration. The Nurse Managers would be

responsible for assisting the recipient in training the attendants to perform medical services, without direct, on-site supervision.

The Department has worked closely with the North Dakota Board of Nursing during the 2005-2007 interim, and they do not anticipate any Nurse Practices Act conflicts with the proposals in this bill.

The Department expects no fiscal impact for this bill, as the Health Management services are already included in the 2007-2009 Executive Budget request. This is not an expansion of service, rather a request to ensure the language in state law is consistent with services to be approved by CMS.

I would be happy to answer any questions that you may have.

Attachment # 2

Testimony
SB 2133
Senate Human Services Committee

Chairman Lee, members of the Committee, my name is Kathy Hogan. I am the Director of Cass County Social Services and I am here today representing the ND County Social Service Director's Association. We speak in support of this bill.

County Social Service agencies are responsible for managing cases that receive state funded Home and Community Based Services for persons that are elderly or have a physical disability. After reviewing this proposed change, the Director's are very pleased because we believe that this will help assure that critical service options are available for individuals that have significant needs.

Over the last four to six years there has been an erosion of state funded HCBS services because of federal requirements and state fiscal limits. We believe that this erosion of the infrastructure of HCBS has resulted in individuals needing to seek higher levels of care such as basic care or skilled nursing both of which are significantly more expensive. This bill appears to clarifying the definition of health maintenance services for high need individuals. The County Director's look forward to working with the ND Department of Human Services to strengthen home based services and we believe that this clarification could be very helpful.

As a point of reference, I have attached a position statement on the Home and Community Based Services that was developed in December 2006 to serve as a reference on major challenges facing HCBS at this point in time. SB 2133 hopefully will provide a needed service options for low income individuals.

Thank you for your time and I am more than willing to answer any questions.

2007-2009 Home and Community Based Services
ND County Director's Association
Public Policy Concerns

Over the last four years, the basic infrastructure of publicly funded Home and Community Based Services for the elderly and persons with physically disabled have gradually been weakened by low levels of reimbursements and policy changes that limit HCBS services accessibility. At a time when many public policy makers recognize the need to strengthen and expand HCBS services, there continues to be a significant imbalance between institutional care and community based options.

North Dakota was an early leader in HCBS services but because of funding limitations and efforts to increase federal funds, the current HCBS structure has become vulnerable and complicated. HCBS programming has become more dependent on county property tax to maintain the basic infrastructure. There are three specific areas of concerns that the ND County Social Service Directors have identified that have led to the current challenges in the system.

POLICY CHANGES

Requiring Medicaid for Personal Care Services Persons requiring personal care services must apply for Medicaid if their resources are within the Medicaid guidelines. They must then pay their monthly recipient liability amount before Medicaid will pay for the services. Example: A woman has only $200 in assets but has an income of $800 a month. If she requires Personal Care Services, Medicaid guidelines would require her to pay the first $280 a month before additional services would be covered. If she was not required to apply for Medicaid for Personal Care Services, her cost based on the fee scale for SPED would be zero.

Case Example 1: Case Example: Client is Native American woman whose medical needs are covered by Indian Services. She was receiving SPED funded Personal Cares at no fee but was required to apply for Medicaid when the Medicaid State Plan was established. While on Medicaid she was not eligible for Indian Medical Services. She had a $350.00 recipient liability for $900.00 worth of Personal Cares. After three months of trying to pay the recipient liability and not being able to afford it, she discontinued the service. She spent most of her days crying and worrying about how she was going to meet her bills, she had a payee trying to help her. The family decided it was better that she not have the Personal Cares because her mental health was suffering and she was becoming more depressed. She has intermittent help from the county homemakers. It is only a matter of time before client will require placement in a nursing home due to her inability to pay for home care.

Case Example 2: A female under the age of 60 who is permanently restricted to a wheelchair because of serious medical problems was discharged from a nursing facility with Personal Care services under the Medicaid State Plan. Her recipient liability is approximately $400 per month. She was unable to pay the $400 to her provider on top of paying for her rent and other bills, so the private provider terminated her from services. At that point the client chose to drastically reduce the amount of Personal Care services provided to her in order to eliminate her ability to "meet" the need for Medicaid. She requested that her Medicaid case be closed. The client went on the SPED program, receiving far less services than she actually needs. The result is that the client has been in and out of the hospital since this time due to illnesses, falls and basically becoming ill from lack of care. The county social worker received a call in September that the local fire department is called an average of once a week, every week, to assist this client with getting picked up off the floor or from sliding down in her wheelchair and needing assistance. The client recently was taken to the hospital and then to a nursing home where she is getting an adequate

amount of care. Without being able to afford an appropriate amount of in-home care this client does poorly in the community. It is this client's desire to remain in her own residence in the community rather than be in a nursing home. This cycle has been on-going. Estimated monthly cost of adequate home based service is $1,000/month. Nursing home average monthly cost is $4,569/month

Case Example 3: A female in her upper 80's residing in senior housing, needed assistance with housekeeping and personal care. Since her resources were within the Medicaid guidelines she was eligible for the Medicaid State Plan and was required to apply for Medical Assistance. While she was waiting for a Medicaid determination, she was receiving her services under the SPED program with no fee. Ultimately, she was determined eligible for Medical Assistance with a $111.00 recipient liability. At that point she became eligible for the state plan and had to meet her $111 recipient liability each month in order to receive services. She was unable to pay the liability and requested that her case be closed. She is now living in Minnesota where her services are covered.

Solution - Increased poverty levels for Medicaid medically needy program for 60% to 83%.

Limitation of Supervision - Supervision is not a reimbursable task under the Medicaid State Plan, meaning that a caregiver cannot be paid to be with a client while their primary caregiver is at work, unless they are performing an authorized task such as bathing or dressing. When the authorized tasks are done the caregiver must leave. Under the Respite Care program a person can be paid for supervision but Respite Care cannot be provided to a client while a caregiver is at work.

Case Example 1: A female in her late 70's with moderate to severe dementia, requiring 24 hour supervision, lives with her spouse. Her spouse works part time and needs someone to be with her while he is working. She was eligible for the Medicaid State Plan and Medicaid Waiver. The original plan was to provide personal care in the morning under the Medicaid State Plan so that she could get assistance with bathing and dressing. The provider then would have transported her to Villa Maria for adult day care for the remainder of the day. The non-medical transportation and adult day care would have been reimbursed under Medicaid Waiver. Later this woman would have been returned home and to the care and supervision of her spouse. The adult day care environment was too stimulating and created other problems. Adult Day Care was discontinued. In the end all we could cover under our services would have been two hours of personal care. What this individual needed was to be supervised in her own home. We could not provide that under our current mix of services. Ultimately she was placed in a nursing facility.

Case Example 2: A 75 year old woman lives with her daughter in the daughter's home. The daughter works part time. While the daughter works, a caregiver from an agency comes in to help the mother with Personal Care tasks under the Medicaid State Plan. As the QSP cannot be paid for supervision, the daughter has left the mother alone for periods of time while she is at work. The daughter is not comfortable having to do this as her mother is at "nursing home level of care". The daughter would like to continue to provide a home and care to her mother but is looking for a different option such as a nursing home. Safety is a real concern for this woman. Estimated cost to maintain this client at home is 2,800 and the average monthly cost for nursing home care is $4,569.

Solution – to allow supervision activities to be covered through various HCBS funding streams.

Service Caps - The current Service Caps for certain HCBS Programs do not meet the needs of all recipients of Home and Community Based Services. There is no allowance for flexibility for the

uniqueness of HCBS recipient's needs. As the QSP rates continue to increase so does the need to raise the service caps or the client actually loses hours of service.

Case example 1: An 83 yr old male receiving Adult Family Foster Care services in a private home. His Foster Care providers had been licensed for a number of years and had provided care for at least three different persons. Foster Care providers requested 8 days Respite Care time to attend a family reunion out of state. They had not used all the vacation time all of the previous years. The request was denied as monies would exceed monthly Respite Care cap. Arrangements were made for Mr. C. to stay in a Nursing Home while Adult Family Foster Care providers went to reunion. Mr. C. had dementia and was very confused and angry about staying in a nursing home. The relationship with the provider was destroyed as Mr. C. no longer trusted his care provider and was only able to go back to his foster home for a short period of time before he required permanent placement in a nursing home. The Adult Family Foster Care provider was so frustrated with the Respite Care policy that he relinquished his license and no longer provides Adult Family Foster Care.

Case example 2: 85 yr old female(Ms. A.) who is totally bed bound and non verbal due to stroke is being cared for by daughter in daughter's home at a cost of approx $2400/mo. Daughter requests Respite Care for 10 days to attend her child's wedding in California. Request denied as monies would exceed monthly Respite Care cap. Care provider does not go to her daughter's wedding but is forced to place her mother in a nursing home one month later (at a cost of $5000+/month) due to exhaustion and inability to get an extended break from caring for her mother. The cost of granting the Respite Care exception would have been a one time cost of approx $2000.

Case example 3: A young man with quadriplegia, living independently in his own apartment. He has limited use of his extremities and requires assistance with bathing, dressing, toileting, transferring, medication assistance and all environmental, household tasks. He is able to get around in a motorized wheelchair and can feed himself using a brace and adaptive utensils. He receives homemaker service and an emergency response service funded by the Medicaid Waiver. He also receives 960 units of personal care service under the Medicaid State Plan. His actual care needs exceed the 960 unit limit by 221 units. His care provider does not live with him but spends the night when the client is experiencing medical complications such as pressure sores or bowel impaction. He is not reimbursed for any cares he provides through the night

Solution – Establish procedures to allow for flexibility to allow for client needs. Increase the number of allowable Personal Care hours from 960/month to a comparable nursing level care cost, allowing the client to chose living situation

QUALIFIED SERVICE PROVIDERS

The accessibility and availability of Qualified Service Providers continues to be a challenge throughout the state. Because of the reimbursement levels, many individuals who want to work with vulnerable individuals have better salary/benefits at institutions (state hospital, Developmental Center, nursing homes or DD programs). In many counties, the county social service agency is the only option. Although some QSP agencies state that they are available to provide services in a rural area, that service is contingent on the agency's ability to find an employee and often that is not happening. QSP's are not reimbursed for travel time, so individual and agency providers are reluctant to travel any distance to provide services. January through November 2006, 1518 payments were made to QSP's. The majority 114(75%) only served one person. Of the 370 QSP's that served more than 1 person, 63 were agency providers. Accessibility is an issue.

Case example 1: A 54-year old man with a traumatic brain injury returned to his home in a small rural town. His wife is in need of Respite Care so she can go shopping, etc. since there is no grocery store where they live. Although there appears to be an adequate number of QSP's who provide Respite Care on the State's QSP list for that county, no QSP's can be found to provide service since it would entail the closest QSP to travel 46-50 miles round trip.

Solution - Either an adequate increase in QSP's hourly wages so they feel mileage can be included; and/or the ability for QSP's to be reimbursed for mileage.

Collection of fluctuating recipient liabilities is a major challenge for qualified service providers.

Case example 1: QSP billing completed and submitted for payment. Client had a recipient liability of $610 for June 2006. The Medicaid Payment System did not withhold the RL from the QSP payment. The client did not receive and RL Notice for payment for the month of June 2006. Client continued on services and billing s to Medicaid continued. QSP billing submitted for October Services to Medicaid. The QSP received a remittance advice stating that the $610 RL for June 2006 was being withheld from his October Payment as well as part of the RL for the Month of October. The service amount billed for the month of October did not meet the total of the June and October RL amounts therefore the balance of the October's RL would be withheld from the QSP's November payment.

Case Example 2: QSP billing submitted to Medicaid for July Service Provision. Billing error occurred. Partial payment received per remittance advice of August 8, 2006. On August 9, 2006, provider requested for adjustment submitted. Three weeks later, the HCBS/CM contacted Medical Services provider relations regarding status of the Adjustment claim. Case manager was informed that it could take 3 to 4 weeks from the date of the adjustment claim received for the claim to be processed and payment made to the qsp. Case management continued to check the MMIS system on a weekly basis on the claim status. On 11/6/2006, case manager was informed that no such claim existed in the system and to resubmit the provider request for adjustment form again. The form was resubmitted on 11/6/06 and to date no payment has been received by the QSP. Delays in payment are a serious hardship for many QSP's.

Solution - New MMIS system should address these issues but by the time it is implemented, there will be major erosion in the availability of QSPs.

HCBS CASE MANAGEMENT REIMBURSEMENTS

Counties have provided HCBS case management for low income elderly/disabled since the 1970's. Over the last four years, the program expectations have increased significantly and reimbursements have been flat or decreasing. Even though several changes may occur at different times during a month, case management may only be billed once that month regardless of the amount of service provided. The reimbursement rate does not reflect actual costs. The county property tax has been used to supplement the costs of HCBS case management. The ND Department of Human Services in collaboration with the ND County Social Service Director's Association modified cost reporting procedures in July 2006 to separate out HCBS Case Management costs to allow for more accurate statewide comparison of costs and reimbursements.

In Cass County in 2005, HCBS case management cost $519,268 and the county was reimbursed $193,215 or 37% of actual cost.

Solution – Fund HCBS case management at actual cost.

Attachment # 3

TESTIMONY – PROTECTION AND ADVOCACY PROJECT

SENATE BILL 2133 (2007)

SENATE HUMAN SERVICES COMMITTEE

Honorable Judy Lee, Chairman

January 10, 2007

Chairman Lee, and members of the Senate Human Services Committee, I am Bruce Murry, a lawyer with the North Dakota Protection and Advocacy Project (P&A).

The Department of Human Services takes an excellent step toward community integration with this bill.

The level of care for someone using a ventilator is expensive for a home and community care provider or a nursing facility. However, legal and administrative barriers have prevented the total budget of care from following a person into the community.

P&A strongly supports this bill to reduce the administrative and legal barriers – to a service more integrated with the community.

Testimony
Senate Bill 2133 – Department of Human Services
House Human Services Committee
Representative Clara Sue Price, Chairman
February 21, 2007

Chairman Price, members of the Human Services Committee, I am Karen Tescher, Assistant Director of Long Term Care Services, with the Medical Services Division of the Department of Human Services. I am here to provide testimony in support of this bill.

The Department requested the changes identified in this bill as "clean up" to language from 2005 House Bill number 1148. Based on the direction from the 2005 Legislative Assembly, over the 2005-2007 interim, the Department has worked with and submitted to the Centers for Medicare and Medicaid Services (CMS) a plan for providing home and community-based services to individuals who are ventilator-dependent. The Department expects to implement this service in the next several months. The services to be offered include attendant care and nurse management.

In Section 1, Line 10 of this bill, the Department is requesting the words "attendant care program" be used to replace "personal care". CMS will not allow for supervision to be paid under personal care, while it is allowed under attendant care.

The definition of Health Management Services in this bill includes the services provided by "attendants" such as bathing, dressing, feeding, etc. as well as services supervised by nurse managers, such as catheter irrigation and medication administration. The Nurse Managers would be

responsible for assisting the recipient in training the attendants to perform medical services, without direct, on-site supervision.

The Department has worked closely with the North Dakota Board of Nursing during the 2005-2007 interim, and they do not anticipate any Nurse Practices Act conflicts with the proposals in this bill.

The Department expects no fiscal impact for this bill, as the Health Management services are already included in the 2007-2009 Executive Budget request. This is not an expansion of service, rather a request to ensure the language in state law is consistent with services to be approved by CMS.

I would be happy to answer any questions that you may have.