

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SEN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2307

2001 SENATE HUMAN SERVICES

SB 2307

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2307

Senate Human Services Committee

☐ Conference Committee

Hearing Date February 7, 2001

Tape Number	Side A	Side B	Meter #
1	X		
February 7, 2001 2		X	43.2
March 26, 2001 1		X	
Committee Clerk Signature			

Minutes:

The Human Services Committee was called to order by SENATOR LEE with all Senators present.

The hearing was opened on SB 2307.

SENATOR GRINDBERG, sponsor of the bill, explained the bill. Made reference to amendments. There is a need to challenge the progression of command. Services are there to provide for individuals in communities. How do we improve services to make their life better. Why do we have audits 3 years in arrears. These folks contract with the state to provide services. Why do we legislate how much they should pay people. If you should amend pilot projects state wide - not only one region. SENATOR FISCHER: What did the '95 legislature do?

SENATOR GRINDBERG quoted the codes enacted in SB 2012, some of which has not happened..

PAUL ORNBERG, Vocational Training Center, supports bill. Providers need to do what they need to do. Reimbursement regulation by Dept. Of Human Services audit that you spend as rules apply. Need flexibility in district. Develop budget and get approval and a final contract.

Amendments were presented.

TOM NEWBERGER, Director of Red River Human Services Foundation, supports bill.

(Written testimony)

Neutral position:

DAVE ZENTNER, Dept Human Services, provided information on the bill. (Written testimony)

SENATOR FISCHER: Explain lines 3 and 4, page 2. Could one audit meet all requirements:

Because providers already pay, could be hired by state, paid by provider. MR. ZENTNER: Yes,

we could use outside firm. SENATOR LEE: How can we benefit by observing other states? MR.

ZENTNER: Every state's program is different. The department is willing to look at other states.

It is not a simple project. Federal government gives us 70% and they think they should have a

say. We should try to work together to solve these problems. SENATOR FISCHER: If

Minnesota is getting the same money as ND why would it be difficult to get approval from the

Fed government. MR. ZENTNER: We have two different programs with this. SENATOR

FISCHER: Maybe we should roll the whole state in this. MR. ZENTNER: It is an option.

SENATOR MATHERN: What is the major difficulty in coming to resolutions or creating a new

system and prevented change in this issue? MR. ZENTNER: Differences of opinion. All

providers are not necessarily in disagreement with the system. You do run into those issues that

they spend money and then we come back after the fact and say you spent it inappropriately.

You can go to a prospective system or a fee for service. SENATOR KILZER: Some providers

have lost money? MR. ZENTNER: If they have cost for program they do have cost settlement.

Page 3

Senate Human Services Committee

Bill/Resolution Number SB 2307

Hearing Date February 7, 2001

SENATOR FISCHER: What is cost settlement? MR. ZENTNER: You determine cost of services.

BARB FISCHER: There is some limit on cost to be recognized. There is on therapy.

SENATOR LEE: Audits seem to be big objection; projects could be made simple, more efficient.

Hearing was closed on SB 2307..

February 7, 2001, Tape 2, Side B, Meter 43.2

Discussion was resumed on SB 2307. The amendments of Paul Ornberg were discussed.

SENATOR MATHERN moved the adopt the amendments. SENATOR KILZER seconded the motion. Roll call vote carried 6-0. SENATOR FISCHER presented an amendment. SENATOR FISCHER moved the amendment "If the Federal determines approval." SENATOR MATHERN seconded. Roll call vote carried 6-0. SENATOR MATHERN moved a DO PASS AS AMENDED. SENATOR ERBELE seconded the motion. Roll call vote carried 6-0. SENATOR MATHERN will carry the bill.

March 25, 2001, Tape 1, Side B

Discussion on the return of SB 2307 from the House. SENATOR FISCHER moved a motion to DO CONCUR. SENATOR MATHERN seconded the motion. Voice vote carried.

FISCAL NOTE
Requested by Legislative Council
03/21/2001

Bill/Resolution No.:

Amendment to: Engrossed
 SB 2307

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.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

The engrossed bill with House amendments requires the Department of Human Services and developmental disabilities services providers to make recommendations regarding a statewide reimbursement system to be reported to the legislative council. The work is to be completed during the interim. This interim work will not have a fiscal impact on the Department.

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, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Brenda M. Weisz	Agency:	Department of Human Services
Phone Number:	328-2397	Date Prepared:	03/21/2001

FISCAL NOTE

Requested by Legislative Council
01/23/2001

Bill/Resolution No.: SB 2307

Amendment to:

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.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

This is a bill that proposes to set up a pilot project in the southeast human service center region for reimbursement of Developmental Disabilities (DD) service providers.

The fiscal impact is difficult to determine since the bill does not define allowable and nonallowable costs, there are no cost containment measures, and it doesn't allow for an audit of the reported costs.

The formula, as proposed in paragraph 2.b. of the bill, results in a negative number of units for reimbursement for residential services, further complicating the analysis of the fiscal impact.

Currently, the Department of Human Services pays the providers an estimated \$36,200,000 per biennium for DD services in this region. The Department's current waiver would have to be analyzed to determine if federal participation could continue to be accessed for these services under the pilot program.

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, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Brenda M. Welsz	Agency:	Department of Human Services
Phone Number:	328-2397	Date Prepared:	01/26/2001

Paul Oruberg

SB 2307 Amendments

line 16, #2 - change "a" to "the".

It will read, "Reimbursement must be based on the capped "base" or "target" number system.

line 22-24, 2.b. - Residential services units must be calculated as follows:

The product of three hundred sixty-five times twenty-four minus the product of two hundred thirty times eight.

OR

2.b. Residential services units must be calculated as follows:

The product of two hundred thirty times eight subtracted from the product of three hundred sixty-five times twenty-four.

p. 2, line 1, #3 - add the word 'personnel' after center. It would read, "All contracts and negotiations must be between the regional human service center personnel and the provider."

Date: 2/7/01

2307

Committee

or

Legislative Council Amendment Number

Action Taken

Motion Made By

Seconded

By

[illegible]**Total**

(Yes)

No

Absent

Floor Assignment

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

Ornberg Amendments

Roll Call Vote #: ~~23~~ 2

Date: 2/7/01

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2307Senate HUMAN SERVICES

Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken AmendmentMotion Made By Sen Fischer Seconded By Sen Mathern

Senators	Yes	No	Senators	Yes	No
Senator Lee, Chairperson	✓		Senator Polovitz	✓	
Senator Kilzer, Vice-Chairperson	✓		Senator Mathern	✓	
Senator Erbele	✓				
Senator Fischer	✓				

Total (Yes) 6 No 0Absent 0

Floor Assignment _____

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

Sen Fischer's Amend

Date: 2/7/01
007

2307

☐ Subcommittee on _____
or
☐ Conference Committee

Action Taken Do Pass as Amended

Motion Made By Sen Nathan Seconded By Sen Erbeke

[illegible]

Total (Yes) 6 No 0

Absent 0

Floor Assignment San Joaquin

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

REPORT OF STANDING COMMITTEE

SD 2307: Human Services Committee (Sen. Lee, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2307 was placed on the Sixth order on the calendar.

Page 1, line 16, replace "a" with "the"

Page 1, line 23, replace "subtracted from" with "minus"

Page 2, after line 4, Insert:

"If the secretary of the United States department of health and human services determines that funds otherwise available for the program in this state must be reduced or eliminated if the department of human services administers the program in accordance with any provision of this Act, the department of human services shall administer the program in a manner that avoids the reduction or loss."

Renumber accordingly

2001 HOUSE HUMAN SERVICES

SB 2307

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2307

House Human Services Committee

☐ Conference Committee

Hearing Date March 5, 2001

Tape Number	Side A	Side B	Meter #
3	x		120 to end
Committee Clerk Signature <i>Corinne Easton</i>			

Minutes:

Chairman Price, Vice Chairman Devlin, Rep. Dosch, Rep. Galvin, Rep. Klein, Rep. Pollert, Rep. Porter, Rep. Tieman, Rep. Weiler, Rep. Weisz, Rep. Cleary, Rep. Metcalf, Rep. Niemeier, Rep. Sandvig

Chairman Price: I will open the hearing on SB 2307 and the clerk will read the title.

Sen. Grindberg District 41: I appear in support of SB 2307. I would like to touch briefly on the bill. Section one of the bill sets up a pilot program. It provides for reimbursement of private providers of individuals with developmental disabilities. It goes on to say the Department may not require any provider in the region to participate in this program. It talks about rules adopted before January 1 of this year regarding reimbursement and providers. That is the basic premise we are trying to accomplish this. One of the things that have always been near and dear to me is the passion with which the private entities in this state contract with the state to provide these services. We all recognize the bureaucracy involved Medicaid and Medicare programs as it

relates to the Department of Human Services and that role with those individuals providing services. We don't seem to be making any headway in making the job easier for the folks doing the good work. It appears that the bureaucracy is increasing. As a contract provider to the state, why should the state be telling me what to pay my people? This thing is so cumbersome, I don't know why anyone would want to do the work. I think this proposal will raise the awareness of the complexity and issues that surround those who are doing the work. That is my perspective and interest in this bill. To make this more efficient and easier to administer.

Chairman Price: Do you have a vision of what this new provider will look like? Are we looking at strictly services like a group home, employment services, what are we looking at?

Sen. Grindberg: I will defer that question to the providers.

Chairman Price: Are you familiar with the Minot Vocational Adjustment Workshop?

Sen. Grindberg: No, I am not?

Chairman Price: I am wondering if that is the vision you are working towards? Who does everything from provide the group home setting to having people in day programs, they do outreach in the area. They are also the fifth largest employer in Minot, in that they are the largest employer of people with disabilities in the state. They have a lot of Federal contracts. They currently bought The Donut Hole and operate it in Minot. They operate the laundry for Trinity Medical Center in Minot.

Sen. Grindberg: It certainly sounds like they are participating in the program. Yes, that is my intent of this bill.

Chairman Price: Do we need this if we can already do those types of things?

Sen. Grindberg: I will allow some people who are more up to date on the particulars to answer that question.

Paul Ornberg - Executive Director of the Vocational Training Center in Fargo: (See written testimony and other handout.)

Chairman Price: Any questions of Mr. Ornberg? Do you envision offering any new services?

Ornberg: No, what I envision is This is simply a method where I am receiving x dollars a day for a person today, I get to have that x dollars and I use it to provide the services, but I do not have to go and get permission to do this, or to do that, or have an audit two years later, where someone comes in and says you should not have spent this money. This is not necessary. I have a very good Board of Directors that police that. I am not free to just use the dollars, I see this in other providers. What I believe is when these facilities have those funds, they then have the latitude to operate. The board of directors will keep them honest and up front.

Chairman Price: So you are saying he has different latitudes in his facility than in your facility?

Ornberg: No, we all have the same kind of rules. Basically the administrative code says this... It tells us what we can and cannot spend. We are also on a target number, I will tell you this year my target number, which is the maximum expense that the DD division will spend at the facility I run is \$1,055,000,065.00. I know what next year is going to be. That number will be this one plus anything the Legislature grants us as an increase. That will give me a number. In working with the SE Human Service Center people, they want me to have 51 people everyday in my work activity which is now called Day Support. You would simply take the number of days times the number of individuals, divide it into the dollar amount which is fixed and that is what I am paid. That is what I am paid, then I can utilize the dollars. This would be for any facility. The old name for work activity is now called Day Support. We have extended services targets. Some of us provide support in employment, that comes through Voc Rehab. There you can spend your dollars, but it is not audited, the application of dollars comes into our audit process. It is very

confusing for most people to deal with, and I don't believe it needs to be. Every other state I have dealt with does not have this. They are paid the dollars. The people in Minnesota are paid their dollars and they utilize it. That is whole crux behind this and it is a matter of experiment within one region.

Chairman Price: You said other states you have been consulting for, which states have you been a consultant for and how recently?

Ornberg: I have worked in Minnesota, and Missouri and...

Chairman Price: The last five years, ten years?

Ornberg: Yes.

Ornberg: Mr. Jeff Pederson is Executive Director of Friendship Inc. in Fargo and he was planning to be here and couldn't. He asked if I could hand out his written. (See testimony).

Chairman Price: We are getting some confusion here on your support of the bill, you want to eliminate the audit and the whole thing is how you are reimbursed and what you have to provide to the state as an audit. Is it part of it getting back to the money that has to be returned to the state because it hasn't been used. Or...

Ornberg: In my situation I will tell you two things, one is since we were the first organization in the state serving clients in 1962, we came into the DD system in 1981 with what was called a historical budget. There were four or five of us, plus we had a rate. Others came in and were told basically what their salary rates were, and so on. They got their reimbursement. The historical basis is that everybody's budget is a little bit different. I maintain that I have an audit, every year, so when they are done, I believe the Dept. Of Human Services could put out a form, saying here is the format we want. Eide Bailey or any other providers could take this form and they could fill it out and that is it. We don't need a provider audit coming after the fact and then making an

adjustment on the expenses. I don't want to get into the little picky things, but there are many things that drive me nuts about the provider audit. It isn't a matter of an audit, I don't have a problem with the audit, the problem I have is that a simple little thing, like an expense to the Fargo Chamber of Commerce, is questionable? Now that is one of the rules that are in the process of being changed. We have to belong to the Chamber of Commerce. In Fargo, my dues are \$254.00 but I have to go find those dollars someplace else. There are expenses. I had one that I always thought was so neat because it was so cunning. We were asked to provide two of my staff to be presenters at a facility in Grand Forks. The Independent Living Center. My staff drives up from I-29 and crosses one and half blocks into, comes back, comes down, they are paid their miles and meals and two years later, it is an audit exception because they traveled out of state without getting prior approval. That is foolish. Did it get corrected, yes. I appealed it. It is not necessary for that audit to go on. That is what I am saying. It is not required Federally to allow what we have as allowable costs. Other questions.

Chairman Price: The back of the 2nd page of the bill, lines 5-9. If anything in this program is not determined by the department, if you feel this possibly could jeopardize any of our Federal funds?

Ornberg: Absolutely. How it could, if the Dept. Of Human Services decided not to change their waiver, not to do anything about. And as they testified earlier you cannot have two reimbursement systems and we have one kind in Fargo and one in the rest of the state, could it jeopardize, yes. I suspect the Title 9 people from Denver would come in and find an audit exception and say you can spend all the money you want, but you cannot take 70% of the cost as Medicaid expenditures. Is that a possibility, yes. Would it require the department to change some things, yes. What is being proposed to have, is not an illegal thing. It can be done with Federal

rules. The last paragraph talks about the Department does not have to do this, that was an amendment by the Senate, if it would jeopardize any of their funding. I don't know where it will go?

Chairman Price: You mentioned Mr. Kolling. What exactly is the relationship of your group with Mr. Kolling. What is his job title as it relates to your facility?

Ornberg: Basically any time I have to submit a budget, it goes into the Division of Developmental Disabilities. Previously Mr. Kolling would review those budgets and give you a stamp of approval or not. I will go to him to decide the number of staff I can have for reimbursement. When everything is done and Provider Audit comes and does an audit, they do their audit and if I don't agree with what they have said I will appeal it. I don't know his exact title today, but someone else has moved into his position.

Chairman Price: If this were to pass, then for example, you added a staff person, now if this were to pass and you added a staff person, would there be any way the State should say your ratios are wrong? We pay based on the preset formulas regardless of how you are staffed?

Ornberg: Actually, the way things are today, it would almost be preset. Except to me it wouldn't make any difference, if I were contracting under this system, I would be contracting with Mr. Sayler, the director. One of his divisions, Developmental Disabilities Coordinator would come with us and perhaps there was a severely disabled person they want us to work with, but they have already determined that this person, because of his disability, needs to have a one to one staff. My current staff ratios are already set by the clientele I have here. So we would come to an agreement with them and yes, we will bring this person in, but this staff person is needed. What we would then do is deal with the adjustment at the Human Service Center. Just the same way that I deal with it now.

Chairman Price: When you have VR and DD within the Human Service Center, then you have

Mr. Hinslen at the State Office. Is there some confusion as to who is in charge?

Ornberg: I have been in the business so long, I am not confused. I think Mr. Hinslen has a difficult job in the fact that the Division of Vocational Rehabilitation has a purchaser service system. When they buy from me, we are taking people who don't qualify for Developmental Disabilities, but they still have disabilities and we are working with them. I get paid a flat fee from the Division of Voc Rehab. Each month I send the bill, they send me the check and that's it. If at the end of the year I have lost money on that program, that is my dilemma. You cannot back date anything. It is a straight forward purchase. I would say that he has to manage both ends.

Rep. Metcalf: You mentioned you get paid so much money and if you lost money that is your problem. But who sees that the services you are contracted for were actually provided in the context they were supposed to be done?

Ornberg: Currently, we provide it and we have quality reviews done by the Regional Case Managers. I believe where there are contracts at SE with other providers for other services, not the DD sector, they have a contract. With that contract it behooves SE to look every month at the billing process, what was billed what goes on, that is a contract audit. I am a believer that everyone needs audits in contracts. To me, it would be no change. (gives examples).

Chairman Price: Further questions? Anyone else testifying in favor? Any opposition? Neutral?

Dave Zentner - Director of Medical Services for the Department of Human Services: (See written testimony). I appear before you today to provide information on this bill.

Chairman Price: How many providers are there in the Region?

Zentner: 7 or 8.

Rep. Devlin: You talked about the possibility of a directive being issued to substitute a different system. Who would issue the directive? Or did I misunderstand what you said?

Zentner: I guess what I was suggesting, rather than this bill passing, maybe the Legislature would want to direct the department. Mr. Ornberg is correct, there is nothing requiring the state to have a retrospective system. We can go to something else, we do it with nursing homes right now. It is just coming to a consensus on what is the best method to use. What would work best for providers on a state wide basis.

Chairman Price: How many providers are there statewide that would fall under ...

Zentner: About 30-35.

Chairman Price: How many of those providers are in support of this bill?

Zentner: I have no idea.

Chairman Price: Does anybody gotten any?

Ornberg: There are 26 providers that belong the ND Association of Private Facilities. NDACF. Of that group we did present to them the intent of this legislation and ask them to support it. Since it hasn't included any of them, what happens is, there has been no response. I have personally had response and requests from other providers to be included in the bill. And to make it state wide. The whole intent is to have a pilot that shows you that there are other systems available more amiable than what we currently have.

Chairman Price: Any other questions?

Doug Seiler - Regional Director of the Southeast Human Service Center: I am here today to provide information on this bill. (See written Testimony).

Chairman Price: Any questions? Anyone else to testify on SB 2307. I will close the hearing on SB 2307.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2307 B

House Human Services Committee

☐ Conference Committee

Hearing Date March 14, 2001

Tape Number	Side A	Side B	Meter #
Tape 1	X		4370 to 5280
Committee Clerk Signature <i>Corinne Easton</i>			

Minutes:

COMMITTEE WORK:

CHAIRMAN PRICE: Pull out SB 2307. This is the with a request for a pilot from Southeast Human Services.

REP. SANDVIG: Since this bill came out and we had testimony hearing on it I've received a couple of letters from other community facilities. They want the pilot project. They've tried to put it through with study resolutions before. They think the department can do something about this. They can get rid of the rules regarding this and apply for a waiver. The study resolution isn't the answer to this because they've done it before and it never happened.

REP. POLLERT: Isn't Minot doing something around this - that they are doing this by being creative and having a pilot project?

CHAIRMAN PRICE: Yes. There are real differences throughout the state as to the feelings of the providers on this issue. They want more money for reimbursement in the budget for their

Page 2

House Human Services Committee

Bill/Resolution Number SB 2307

Hearing Date March 14, 2001

workers. They are in a situation much like the nursing homes where they do the work and then are audited later and the payment is based on it. We discussed the possibility of changing this bill to say "the department and the providers will have an interim and in two years you've got to sit down and some of the things you discuss will be: purchase of service agreement where rates are established in advance with no audit settlement, audits will be conducted by an independent firm provided by the provider, they will report to us quarterly in the interim on their progress. They need to come back with an agreement. Does the committee want me to draw up drafted language. Senator Fischer and I will do that. I want to call a couple of providers that are making it work.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2307 C

House Human Services Committee

☐ Conference Committee

Hearing Date March 19, 2001

Tape Number	Side A	Side B	Meter #
Tape 1	X		Tape didn't work
Committee Clerk Signature <i>Corinne Easton</i>			

Minutes:

COMMITTEE WORK:

CHAIRMAN PRICE: SB 2307. This is the bill for the pilot project for Southeast Human Services on how they are reimbursed DD providers. (Tape quit working - sorry.)

REP. METCALF: Motioned a Do PASS the amendment.

REP. SANDVIG: Second.

(14 Yes, 0 No, 0 Absent)

VICE CHAIRMAN DEVLIN: Moved a DO PASS as amended.

REP. TIEMAN: Second.

14 YES 0 NO 0 ABSENT CARRIED BY REP. SANDVIG

VR
3/19/01

HOUSE AMENDMENTS TO SB 2307

HOUSE HS

3-19-01

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to require the department of human services and developmental disabilities services providers to make recommendations regarding a statewide reimbursement system and to report to the legislative council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. DEPARTMENT OF HUMAN SERVICES AND DEVELOPMENTAL DISABILITIES SERVICES PROVIDERS - RECOMMENDATION - REPORT TO LEGISLATIVE COUNCIL. The department of human services, in cooperation with developmental disabilities services providers representing each of the eight human service regions, shall prepare a joint recommendation for consideration by the fifty-eighth legislative assembly regarding a new statewide developmental disability services provider reimbursement system. During the 2001-02 interim, the department of human services shall report quarterly to the legislative council regarding the progress in preparing a joint recommendation under this section."

Renumber accordingly

Date: 8-19-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2307

House Human Services Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS Amendment

Motion Made By Rep. Metcalf Seconded By Rep. Sandvig

Representatives	Yes	No	Representatives	Yes	No
Clara Sue Price - Chairman	✓		Audrey Cleary	✓	
William Devlin - V. Chairman	✓		Ralph Metcalf	✓	
Mark Dosch	✓		Carol Niemeier	✓	
Pat Galvin	✓		Sally Sandvig	✓	
Frank Klein	✓				
Chet Pollert	✓				
Todd Porter	✓				
Wayne Tieman	✓				
Dave Weiler	✓				
Robin Weisz	✓				

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Date: 3-19-01
Roll Call Vote #: 2

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2307

House Human Services Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS as Amended

Motion Made By Rep. Devlin Seconded By Rep. Tieman

Representatives	Yes	No	Representatives	Yes	No
Rep. Clara Sue Price, Chairman	✓		Rep. Audrey Cleary	✓	
Rep. William Devlin, V, Chairman	✓		Rep. Ralph Metcalf	✓	
Rep. Mark Dosch	✓		Rep. Carol Niemeier	✓	
Rep. Pat Galvin	✓		Rep. Sally Sandvig	✓	
Rep. Frank Klein	✓				
Rep. Chet Pollert	✓				
Rep. Todd Porter	✓				
Rep. Wayne Tieman	✓				
Rep. Dave Weiler	✓				
Rep. Robin Weisz	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Sandvig

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

REPORT OF STANDING COMMITTEE

SB 2307, as engrossed and amended: Human Services Committee (Rep. Price, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2307, as amended, was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to require the department of human services and developmental disabilities services providers to make recommendations regarding a statewide reimbursement system and to report to the legislative council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. DEPARTMENT OF HUMAN SERVICES AND DEVELOPMENTAL DISABILITIES SERVICES PROVIDERS - RECOMMENDATION - REPORT TO LEGISLATIVE COUNCIL. The department of human services, in cooperation with developmental disabilities services providers representing each of the eight human service regions, shall prepare a joint recommendation for consideration by the fifty-eighth legislative assembly regarding a new statewide developmental disability services provider reimbursement system. During the 2001-02 interim, the department of human services shall report quarterly to the legislative council regarding the progress in preparing a joint recommendation under this section."

Renumber accordingly

2001 TESTIMONY

SB 2307

Information for SB2307

Introduction:

In 1981, legislative action created the Department of Human Services and a new division, the Division of Developmental Disabilities.

In 1982, the Developmental Disabilities Division developed a plan and gave it to the court in the ARC lawsuit. The plan delineated how the state would provide services to individuals with developmental disabilities. The judge and plaintiff accepted the plan and it became known as "the court order." In that same era Medicaid, or Title 19 of the Social Security Act, rules were amended allowing for a revenue source to provide home and community based services to eligible individuals. This action was financially very beneficial to North Dakota.

In order to implement and finance their plan, "the court order", the Developmental Disabilities Division in conjunction with other Department of Human Services entities wrote and implemented a series of administrative codes, the NDAC 75 -04 --- rules. These codes were to serve as guides in implementing the plan developing additional services. In the beginning it was always stated that the rules were needed to help providers develop consistent services on a statewide basis. They were to be used until all service providers understood the process and excellent services were available throughout the state. Service providers know the rules, understand the process and North Dakota has great services. Due to revenue sources (reimbursement) not increasing at a sufficient yearly rate, services are deteriorating.

The 1995 Legislature, via SB2012, gave facilities "flexibility" in the utilization of a facilities budget. In other words, facilities are supposed to be able to spend any revenue received and the state audit can only review the total expenditure. Budgets and cost reports must be submitted in detail on a line-by-line and column-by-column basis. Provider audit of the Department of Human Services continues to apply all reimbursement administrative codes which in some cases nullifies flexibility.

In June 1995 the Executive Director of DHS, Henry C. "Bud" Wessman, in conjunction with the Disability Services Division, issued a policy. The policy established the "target number" system. The target number system takes each facilities final 1993 provider audit expenditures as a base. Any inflationary increases

in the following years would be added to the base and the sum is the target number. The facility will only be reimbursed to the maximum of the base. The effect of the policy was to freeze each providers reimbursement at 1993 expenditure level. It also circumvented some sections of NDAC 75-04-05. Most facilities did not recognize the long term loss of revenue and were afraid of the retribution if they fought the policy. The target number system remains in place.

Problems

The various administrative codes are still in existence and they are 15 to 20 years old. Changes that have occurred are very minor. A basic controlling nature, particularly in NDAC 75-04-05. developed. Certainly some changes should have occurred of a substantial nature in two decades.

The rules are also not applied to all providers. The state provided services are not audited to the specifics of the rules.

In the last decade the rules have been used, applied, in a \$ controlling nature rather than their advisory intent. This is probably due to the personalities of the applicators rather than a rule itself.

Proposed, or talked about, new rules could be beneficial to consumer services and allow for diversity of consumer needs while granting more private agency flexibility. They lack recognition of provider problems and treat all areas of the state as if there were no differences. They fail to recognize that many things are different in Dickinson and Grand Forks. Also, it fails to recognize that a test will never determine the needs of a consumer and what cost should be for meeting a need.

Audits of every year are done by DHS of facilities and are usually settled in the second year after a year ends. Two year after-the-fact audits can only serve as controlling mechanisms. The State, Developmental Disabilities, needs to be the purchaser of a product and not be concerned with the profit or loss of a provider. If the product is defective then do not buy the product.

The current rules and their application are critical factors in the long-standing animosity between the State, Developmental Disabilities, and the providers. It is also a problem within state agency relationships.

Action Plan

Via legislative action this approach is requested..

- I. Establish a pilot project in the southeast region of the delivery system. The pilot would involve the current Developmental Disabilities providers and would be optional. Any provider in the region could volunteer or elect the options of the pilot project. The pilot would:
 1. Void NDAC 75-04-05.
 2. Providers would be paid a per day or half-day rate per person. The rate would be based on the cost for the provider to provide the service. The provider would determine the amount of other revenue it would put into the fee for service.
 3. All facilities are currently, and project in the future, under a capped system called a target number. The FY 2001 target number plus any percent of increase and any other enhancements granted by the legislature, plus staff enhancements, would be the "base" or "target" for FY 2002. The per day rate per person would be determined by dividing the "base" or "target" by the units. Units would be determined by multiplying the number of consumers times days of service.
 - A. Day Services would be $230 \times \text{\# of consumers} = \text{units}$. A unit would be a day which is anything over 4 hours or half day which is anything under 4 hours.
 - B. Residential services would be $(365 \text{ days} \times 24 \text{ hours}) - (230 \text{ days} \times 8 \text{ hours}) = \text{units}$ used for billing.
 - C. The per hour unit would not be used as it does not allow for reimbursement when hours exceed the basic amount. (Example: currently the day provider must bill for exact hours but cannot exceed 8 hours in a day.) Per hour is also a micro-management tool.
 4. All contracts and negotiations would be between SEHSC and the provider.
 5. There would be no audits. Providers would provide SEHSC with a copy of their annual financial report and census data.

6. SEHSC Developmental Disabilities case management would be responsible for referrals and keeping providers at or near capacity.
7. Approval by regional Developmental Disabilities and agreement by the provider would determine additional (increases in) funding for new clientele with increased staffing needs. This could be done at any time during the year.

Results

Under this scenario the following would happen:

1. Animosity between providers and Department of Human Services/Developmental Disabilities would have a chance to end.
2. Reduction in state expense for provider audit where turn-over is very high which yields inconsistent and different audits each year.
3. The Developmental Disabilities state office could become an entity that provides assistance to the system rather than what has evolved over 20 years, a control agent.
4. Policies would move from the old or current to the future.

Current Policy TO Future

- | | |
|---|--|
| <p>A. Many narrow controlling policies</p> <p>B. Based on circumstances</p> <p>C. Focused on operations/process</p> <p>D. Directs all facility functions</p> <p>E. Confuses roles</p> <p>F. Stagnant</p> <p>G. Each policy is a driver</p> <p>H. Policies are written then decisions are made</p> | <p>A. Broad but meaningful policies</p> <p>B. Based on values</p> <p>C. Focused on end results</p> <p>D. Sets goals for clients</p> <p>E. Clarifies roles thus allowing differences</p> <p>F. Dynamic (changing)</p> <p>G. Values drive the system</p> <p>H. Decisions based on values which then are policy</p> |
|---|--|
5. Would foster the process of meeting consumer needs rather than stopping an action because it is against policy.

6. Would stop the process of assigning a \$ (dollar) value to a consumer's disability.

7. Would allow North Dakota to have a reimbursement system similar to other states, and introduces progressive practices.

Other Information

1. This proposal is similar to what is done in a majority of other states. A purchase of service system is sometimes called fee for service.

2. It is the system used by other divisions within the North Dakota Department of Human Services. DD and VR make up the Disability Services Division and VR uses purchase of service. There are no rules or audits.

3. In states like Minnesota, Michigan and Missouri the purchase of service contracts are between the private provider and a county entity. These states do not have a regional human services configuration and Medicaid funds are channeled through a county. In some cases the county provides some of the matching funds.

4. When DD funding started, 1981, the federal regulations required that costs would be reasonable. Our established NDAC 75-04-05, Reimbursement Rules for DD Providers, as its verification of reasonableness. The federal reasonable rule has been removed from the federal regulations. About the only absolute federal rule is that the Medicaid dollars can only be spent on eligible individuals and the purchased service must be received.

5. State employees, (DD casemanagers) determine eligibility, providers do not. The ISP, developed by the DD casemanager, is the document that must be filed to trigger payments and the use of Title 19 (Medicaid) funds. The private non-profit provider does not bill for an ineligible person, they won't get paid and they do not determine eligibility. Everything is controlled by State DHS system.

6. It has been stated/inferred by some DHS employees that the rules must be or the federal dollars would be jeopardized. If this is the truth, why are the state operated DD services not audited by provider audit using the same rules as used to audit the private sector? Also, if a federal rule, why can the State change rules whenever they decide to?

7. When Provider Audit of the Department of Human Services does an audit they go way beyond the scope of necessity. All non-profits have audits by private audit firms. DHS provider audit need only to do periodic audits and then use the information from the private audit. It is beyond the scope of necessity for them to question depreciation changes, the need for certain purchases, whether some staff travel or training was needed, or not accept something when a rule was changed or reinterpreted two years after the period of the current audit. The auditors make unilateral decisions predicated on their own or their superior's bias. A facility must then wait for a report and make an appeal to the Division of Developmental Disabilities. Making a facility fiscal decision in the best interest of the consumer and facility should not be reversed two years later by the whim of provider audit. The current system fosters the opportunity for the state (or some state employees) to make life uncomfortable if a provider disagrees or opposes state policies. A good system is good and equitable for all parties. It safeguards the system, fosters trust and acceptance and is designed in a way that one party cannot use the process against the other.

8. The Developmental Disabilities Division has already stated that they are planning to implement a phase of service system. This pilot project would serve as a trial project. Since they are planning, it means they have thought about it and know it is legal and can be done.

Summary

The Developmental Disabilities system was designed to develop services for individuals with developmental disabilities. During the formative years 1981-85 all participants were to learn a process. Once the process was learned, the rules would change or end in order for the process to change and be more dynamic in meeting the needs of the individuals with more severe disabilities. Now, twenty years later, we have 20 year old rules and a process which has lead to frustration, stagnation and accusations. The old rules cannot and do not assist in dealing with today's problems, high turnover of staff, severe lack of job applicants for staff positions and new solutions to old problems. We have rules that are not applied to all Title 19 expenditures and we function under a "TARGET NUMBER" which circumvents NDAC and was implemented as a get even or control method. NDAC 75-04-05 is a dinosaur.

It is time to recognize that providers are North Dakota citizens. We know that there is not an open check book in state government. We must also be congratulated for the thousands of dollars (\$\$) we raise to supplement program costs to serve North Dakota's citizens with developmental disabilities. State operated programs do not and usually cannot raise auxiliary dollars (\$\$). If the State operated all programs the costs to the state would escalate by millions. We, the providers, including consumers, staff and Boards, are good North Dakota citizens who deserve the opportunity to be trusted.

**TESTIMONY BEFORE THE SENATE HUMAN SERVICES COMMITTEE
REGARDING SENATE BILL 2307
FEBRUARY 7, 2001**

Chairman Lee, members of the committee, I am David Zentner, Director of Medical Services for the Department of Human Services. I appear before you today to provide information on this bill.

Currently, residential and habilitation services for individuals with developmental disabilities are provided through two Medicaid payment mechanisms. The first, Intermediate Care for the Mentally Retarded (ICF/MR) facility services, is classified as institutional care by the federal government. ICF/MR facilities provide 24-hour care to individuals who require a structured environment. Medicaid funds can be used to pay for room and board and direct services because the facility is certified as an institution. A daily rate is calculated based on the estimated cost of the service. Providers are required to bill by resident and account for each day they provided a service to a resident. The current payment system is retrospective in nature and at the end of the fiscal period an audit is conducted. If the actual allowable costs exceed payments, the provider receives an additional payment. If the actual allowable costs are lower than payments, the provider is required to return the difference to the department.

The second payment mechanism is for services provided through a Section 1915c Medicaid waiver. The federal government allows states to request a waiver to pay for services that are not ordinarily covered through the Medicaid Program. These services must be alternatives to ICF/MR services and in the aggregate the cost of the services cannot exceed the cost that would have been incurred if the recipients were residing in an ICF/MR facility. Waivers are based on a particular class of recipients such as Elderly and Disabled or Developmental Disabled. The initial waiver is for three years and renewal waivers can be for five years. Federal funds can only be accessed for direct services. Room and board costs are

generally the responsibility of the recipient. The payment system is similar to that used to pay for ICF/MR services.

All providers, except those who contract directly with a managed care entity, must enroll in the Medicaid Program and must agree to accept our payments as payment in full for services provided to Medicaid eligible individuals.

This bill would establish a pilot project in the Southeast Region of the state for the payment of the above type of services. In order to determine if the proposal would meet federal Medicaid guidelines for payment purposes, we contacted the Denver Regional Office of the Health Care Financing Administration (HCFA) to discuss the provisions of the bill.

First we explored how to implement this bill for ICF/MR facilities. We were informed that it would be highly unlikely that HCFA would approve a Medicaid State plan amendment to accomplish the requirements contained in the bill. Federal regulations do permit states to pay separate classes of ICF/MR facilities differently. However, geographic location is not considered a class. For example, facilities could be classified on the basis of ownership (government vs. non-profit) or size. In addition, HCFA noted that the bill allows facilities not to participate in the pilot program. If a facility falls into a particular class of ICF/MR provider, it must be paid under the process used for that class and cannot opt to obtain payment through another mechanism.

The only possible method to accomplish the requirements of the bill for ICF/MR would be to request a 1915b freedom of choice waiver. It would require a defined recipient population to obtain services from a managed care entity, which we assume would be the Southeast Human Service Center. Medicaid would pay a "capitated" per member per month amount to the center. The center would be at risk if costs exceeded the "capitated" rate. If costs were exceeded, the center would need to find additional state funds to cover the shortfall. The rate paid

must be actuarially sound. HCFA defines this term as meaning it cannot cost any more than it would cost to provide the services using the current payment mechanism.

Freedom of choice waivers are generally implemented to reduce costs and to improve access and quality of services delivered. The federal government requires that recipients have the choice of at least two managed care options in a particular area. For that reason, we would have to enter into contracts with two different managed care organizations or provide recipients with a choice of one managed care entity or selecting a primary care provider who would direct care and bill directly for services on a fee for service basis. Another option would be to allow recipients to voluntarily participate in the managed care process or to remain on the current fee for service system. It is our understanding that HCFA is reluctant to approve these types of waivers especially if they include habilitation services. The complicated nature of the waiver process makes implementing the provisions of this bill at best very difficult.

Preparation and submission of waiver requests is not a simple task. We currently have a freedom of choice waiver that in part includes a "captitated" payment process in Grand Forks County. The administrative effort to prepare a waiver is great. It took the Department at least six months to gather the information, prepare and submit the waiver request to HCFA. The federal government then has 90 days to approve the waiver. However, if they have any questions, they are permitted to stop the clock at any time during the period. After the state submits answers, the 90-day clock resumes. It is not unusual for the waiver approval process to take in excess of six months. These waivers require assurances that Medicaid recipients receive appropriate services, require fiscal accountability through the contracting process between the Medicaid agency and the managed care entity and require both fiscal and quality review oversight.

There would also be two other possible ways to pay ICF/MR facilities differently in the southeast region. One would be to convert all current ICF/MR facilities to residential group homes. This could be costly to the state because room and board costs would no longer be eligible for federal funding. In most instances, the cost of room and board would exceed available recipient funds requiring an infusion of state general fund dollars to make up the difference. The other possibility is the submittal of an 1115 demonstration waiver. These types of waivers are very complicated to prepare and, if they are ever approved, can take years to win final approval from the federal government.

Now let's turn to the other set of services provided through the Medicaid Program, Home and Community Based Services provided through the current 1915c Medicaid waiver process. Federal officials concluded that it might be possible to establish a separate 1915c waiver for those services provided in the southeast area of the state. The Department would need to simultaneously seek a waiver of the statewideness requirements in section 1902 (a) (1) of the Social Security Act in its current waiver and submit a separate waiver to cover the geographical area contained in this bill. Home and community based care waivers are not without federal requirements and assurances. For example, states must assure that providers meet standards of any state licensure or certification requirements and that facilities are in compliance with state standards for board and care facilities. Other assurances include financial accountability, evaluation and reevaluation of each recipient to determine eligibility for the waiver, choice of home and community based services as an alternative to institutional care, choice of providers cost neutrality, reporting on the impact of the waiver and that services must be limited to those allowed under the waiver. The State Medicaid Agency must make these assurances.

It must be noted again that waivers take a considerable amount of time to prepare and to obtain approval. The same 90-day process applies to this type of waiver.

In addition, service delivery under a waiver cannot begin prior to obtaining approval from the federal government and waiver approval is not retroactive.

While this bill does not establish a starting date for the pilot project, it is unrealistic to believe it could be implemented at the start of the biennium. Based on my experience with the preparation and submittal of waivers, it is likely it will take from six to nine months. In addition, we may have a difficult time convincing HCFA that a second waiver is in the best interest of our recipients since we are already operating a statewide system for the delivery of these services.

The other option available to the state would be to forgo federal funds and implement a state only pilot. The current expenditures for persons with developmental disabilities in the southeast region are about \$36.2 million for the biennium. If we chose not to use federal funds, the state would need to find an additional \$25.0 million in state funds to provide services in the region if all providers decided to participate in the pilot project.

It would appear that several of the provisions contained in this bill would be in conflict with assurances that must be made to the federal government if we wish to pursue waivers. For example, Section 1, lines 7 and 8 indicate that providers are not required to participate. If we submit a waiver based on geographical area, all providers in that area would have to participate. Page 2, lines 3 and 4 limit the type of financial reporting required. This appears to be in conflict with assurances that federal waivers require.

Lines 6 and 7 refer to a pilot program for reimbursement of providers of services to individuals with developmental disabilities. This language implies that any provider such as a nursing facility, hospital or physician who provided services to an eligible client could request to negotiate a payment rate. Also, Qualified Service Providers deliver certain services such as homemaker, personal care and

respite care to this population. Is it the intent to allow negotiations for any provider of services or only those that provide ICF/MR or DD waiver services?

Also we noted that page 1, lines 22 through 24 define how residential units are to be calculated. The wording of the bill would appear to result in a negative number and appears to contradict line 12 that requires services to be paid on a day or half-day basis. It would appear that the calculation would result in an hourly rate for residential services.

The Department was unable to calculate a fiscal note on this bill because there is little information available to determine what the potential fiscal impact will be. It is unknown if these negotiated rates will exceed current budget estimates because the bill does not provide for any limits on expenditures, but it is likely it will not be less than current expenditures. Also it is difficult to determine if any increases in staffing and other administrative costs will be necessary at the Southeast Human Service Center to develop the waivers and administer the payment process.

The Department is certainly willing to consider a different method of payment to providers who deliver ICF/MR and habilitation services to persons with developmental disabilities that would have statewide application. A directive that the Department to work with providers to establish a different system could be considered as an alternative to this bill.

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



Red River Human Services Foundation

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Together we can help
February 6, 2001

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Chief Executive Officer
Thomas R. Newberger, CPA

Honorable Judy Lee, Chair
Senate Human Services Committee
600 East Boulevard Ave.
Bismarck, ND 58505

Re: SB 2307

Dear Chair Lee and Members of the Human Services Committee:

My name is Tom Newberger. I am the Director of Red River Human Services Foundation in Fargo and Wahpeton. I am here today to support Senate Bill 2307.

I support this Bill because it will allow private, non-profit agencies to operate with fewer strings or obstacles attached, while maintaining accountability for services provided. Removing these obstacles will enable more direct services and reduce the administrative burden associated with the current system.

For example, we run an Individualized Supported Living Arrangement program where people with developmental disabilities live in their own apartment. As such, staff go into the apartment and assist the consumer with their daily needs, such as eating, medication, budgeting, behavior management and others. Staff must document progress and any concerns they have observed. Traditionally, we have used a pen and paper method to collect this data. Staff recommended computerizing the collection of this data so, in turn, I requested approval from the Disabilities Services Division to purchase a \$900 lap-top computer. The former Director of the Disabilities Services Division approved my request, which was appreciated, and I confirmed his approval in writing. Based on this telephone call, a lap-top computer was purchased.

A few days after the purchase, I had a telephone call from another administrator within the same Division asking what the computer would be used for, who would use it, where would it be kept and how could I assure that it would be used strictly for this program. I explained that I had previously received approval from the Director, but politely answered the questions from the other administrator.

As the Director of an agency, I should be able to make decisions based on the needs of the agency as long as I operate within my approved budget. By implementing SB 2307, the potential savings from this example alone would have included several long distance telephone calls, my time, the secretary's time, the Director of the Disabilities Services Division time, the administrators time, paper, an envelope and postage.

We are dedicated to affirming human worth, rights, and dignity by providing services to people with disabilities which enhance the quality of their lives, and enable them to live, work, and develop relationships within their communities.

Senator Judy Lee
February 6, 2001
Page 2

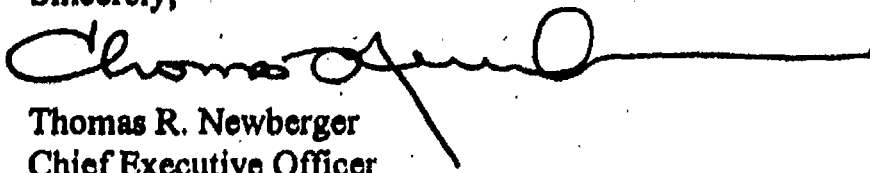
You will probably hear that we have budget flexibility, which is true to a point. During the 1995 session, the legislature gave Provider's budget flexibility across budget rows and columns. This helped greatly, yet we are still having costs disallowed, such as paying more than 25 cents per mile to staff and unapproved out-of-state travel. For example, if staff attend a conference in East Grand Forks, they are told to take I-29 in North Dakota to ensure mileage is not disallowed.

We are accountable to a Board of Directors and others, including the Accreditation Council, Title XIX for Intermediate Care Facilities, Health Inspectors, Life Safety Code Inspectors, parents, guardians, Protection and Advocacy, DD Case Management and the Division's Quality Assurance Program.

By allowing SB 2307 to pass, more time will be available for what matters the most and that's providing services to people with disabilities.

Thank you for the opportunity to share my thoughts with you.

Sincerely,



Thomas R. Newberger
Chief Executive Officer

c: Board of Directors

House Human Services Committee

My name is Paul Ormberg

I am the Executive Director of the Vocational Training Center in Fargo.

I have been the VTC Director since 1970. In the past 31 years I have been involved in every aspect of service delivery to individuals with disabilities in North Dakota. I have also been involved in development, changing and using different reimbursement systems. I was involved in the development of the current system.

This bill SB 2307 is needed legislation and I am in favor. The bill will allow for a pilot project in the SE region. Facilities would be reimbursed for the services we provide. We would use our reimbursement and other sources of revenue to continue to provide quality services. We would not have to always be asking for permission to implement an action and we would not have to wait for two years to see if we passed judgement on an expenditure.

Facilities have private audits and they all have a Board of Directors. The Boards are made up of volunteer interested citizens and in most cases have legislators also. These Boards started programs because there was a service need. They oversee the operations and are always trying to improve services and facilities. This bill would eliminate the many controlling rules and allow the Boards to function.

This bill would eliminate the audit process. We all have private audits and would submit them each year. We would expect a contract audit which is an analysis of the contract on an on-going basis. In a contract both parties have responsibilities.

This bill would also put the process of contracting at the local level where the consumer plans are made to resolve situations.

This bill will give the providers more latitude in solving problems in the area of obtaining and maintaining staff. It would not solve the low reimbursement factor but it would allow providers the full opportunity to try a different approach.

The bill changes the current system back to what existed in the 1960's and 1970's. Some divisions of the Department of Human Services have and successfully use a "Purchase of Service" system. It is not new and it is legal.

What I have just stated relates to the bill. Before closing I would like to present a few other factors.

1. I Will leave a copy of the written information given to the Senators on the Human Services Committee at that hearing.
2. I would ask that you recommend a "Do Pass" based on the merits of the legislation. I believe that the efforts by some state employees to end this bill because it has Paul Ornberg's "fingerprints" on it lacks administrative capability. It has been referred to as the Ornberg/ _____ bill and is our attempt to get even with the Department. I have nothing to get even with or for, and cannot understand how such an approach benefits anyone or anything.

Does SB 2307 have my fingerprints on it---YES. I was asked by twelve (12) different legislators over the past four years to give them some written information and verbal explanations. Legislators also reviewed audits and information from other providers.

3. In testimony in the Senate hearing the Department of Human Services pointed out some problems with the bill. I agree that it would cause the rewriting or amending of the current Title 19 waiver. I also believe that we, North Dakota,

probably cannot have two (2) reimbursement systems. As this reimbursement method was the idea of the Disability Services Division they would change everything by amending the waiver and the various administrative codes. It must be possible because some administrative codes are in the process of change as we meet. I also believe North Dakota currently has two (2) reimbursement methods. I say this because the waived programs run by the State do not go through the rate setting, audit process or rule application process applied to the private providers.

4. This bill specifies a pilot in the Southeast Region. That was done to demonstrate that a different system can work and thus give the objectors time to acclimate. I was asked about amending to state wide coverage. This is not my bill but I have no problem with such a change.

I thank you for listening and I would be happy to answer any questions.

**TESTIMONY BEFORE THE HOUSE HUMAN SERVICES COMMITTEE
REGARDING SENATE BILL 2307
MARCH 5, 2001**

Chairman Price, members of the committee, I am David Zentner, Director of Medical Services for the Department of Human Services. I appear before you today to provide information on this bill.

Currently, residential and habilitation services for individuals with developmental disabilities are provided through two Medicaid payment mechanisms. The first, Intermediate Care for the Mentally Retarded (ICF/MR) facility services is classified as institutional care by the federal government. ICF/MR facilities provide 24-hour care to individuals who require a structured environment. Medicaid funds can be used to pay for room and board and direct services because the facility is certified as an institution. A daily rate is calculated based on the estimated cost of the service. Providers are required to bill by resident and account for each day they provided a service to a resident. The current payment system is retrospective in nature and at the end of the fiscal period an audit is conducted. If the actual allowable costs exceed payments, the provider receives an additional payment. If the actual allowable costs are lower than payments, the provider is required to return the difference to the department.

The second payment mechanism consists of services provided through a Section 1915c Medicaid waiver. The federal government allows states to request a waiver to pay for services that are not ordinarily covered through the Medicaid Program. These services must be alternatives to ICF/MR services and in the aggregate the cost of the services cannot exceed the cost that would have been incurred if the recipients were residing in an ICF/MR facility. Waivers are based on a particular class of recipients such as Elderly and Disabled or Developmental Disabled. The initial waiver is for three years and renewal waivers can be for five years. Federal funds can only be accessed for direct services. Room and board costs are

generally the responsibility of the recipient. The payment system is similar to that used to pay for ICF/MR services.

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First we explored how to implement this bill for ICF/MR facilities. We were informed that it would be highly unlikely that HCFA would approve a Medicaid State plan amendment to accomplish the requirements contained in the bill. Federal regulations do permit states to pay separate classes of ICF/MR facilities differently. However, geographic location is not considered a class. For example, facilities could be classified on the basis of ownership (government vs. non-profit) or size. In addition, HCFA noted that the bill allows facilities not to participate in the pilot program. If a facility falls into a particular class of ICF/MR provider, it must be paid under the process used for that class and cannot opt to obtain payment through another mechanism.

The only possible method to accomplish the requirements of the bill for ICF/MR would be to request a 1915b freedom of choice waiver. It would require a defined recipient population to obtain services from a managed care entity, which we assume would be the Southeast Human Service Center. Medicaid would pay a "capitated" per member per month amount to the center. The center would be at risk if costs exceeded the "capitated" rate. If costs were exceeded, the center would need to find additional state funds to cover the shortfall.

Freedom of choice waivers are generally implemented to reduce costs and to improve access and quality of services delivered. The federal government requires that recipients have the choice of at least two managed care options in a particular area. For that reason, we would have to enter into contracts with two different managed care organizations or provide recipients with a choice of one managed care entity or selecting a primary care provider who would direct care and bill directly for services on a fee for service basis. Another option would be to allow recipients to voluntarily participate in the managed care process or to remain on the current fee for service system.

It is our understanding that HCFA is reluctant to approve these types of waivers especially if they include habilitation services. The complicated nature of the waiver process makes implementing the provisions of this bill at best very difficult.

Preparation and submission of waiver requests is not a simple task. We currently have a freedom of choice waiver that in part includes a "captitated" payment process in Grand Forks County. The administrative effort to prepare a waiver is great. It took the Department at least six months to gather the information, prepare and submit the waiver request to HCFA. It requires the time and expertise of program, financial and technology staff to complete a waiver request. The federal government then has 90 days to approve the waiver. However, if they have any questions, they are permitted to stop the clock at any time during the period. After the state submits answers, the 90-day clock resumes. It is not unusual for the waiver approval process to take in excess of six months. These waivers require assurances that Medicaid recipients receive appropriate services, require fiscal accountability through the contracting process between the Medicaid agency and the managed care entity and require both fiscal and quality review oversight.

There would also be two other possible ways to pay ICF/MR facilities differently in the southeast region. One would be to convert all current ICF/MR facilities to

residential group homes. This could be costly to the state because room and board costs would no longer be eligible for federal funding. In most instances, the cost of room and board would exceed available recipient funds requiring an infusion of state general fund dollars to make up the difference. The other possibility is the submittal of an 1115 demonstration waiver. These types of waivers are very complicated to prepare and, if they are ever approved, can take years to win final approval from the federal government.

Now let's turn to the other set of services provided through the Medicaid Program, Home and Community Based Services provided through the current 1915c Medicaid waiver process. Federal officials concluded that it might be possible to establish a separate 1915c waiver for those services provided in the southeast area of the state. The Department would need to simultaneously seek a waiver of the statewideness requirements in section 1902 (a) (1) of the Social Security Act in its current waiver and submit a separate waiver to cover the geographical area contained in this bill. Home and community based care waivers are not without federal requirements and assurances. For example, states must assure that providers meet standards of any state licensure or certification requirements and that facilities are in compliance with state standards for board and care facilities. Other assurances include financial accountability, evaluation and reevaluation of each recipient to determine eligibility for the waiver, choice of home and community based services as an alternative to institutional care, choice of providers, cost neutrality, reporting on the impact of the waiver and that services must be limited to those allowed under the waiver. The State Medicaid Agency must make these assurances.

It must be noted again that waivers take a considerable amount of time to prepare and to obtain approval. The same 90-day process applies to this type of waiver. In addition, service delivery under a waiver cannot begin prior to obtaining approval from the federal government and waiver approval is not retroactive.

While this bill does not establish a starting date for the pilot project, it is unrealistic to believe it could be implemented at the start of the biennium. Based on my experience with the preparation and submittal of waivers, it is likely it will take from six to nine months. In addition, we may have a difficult time convincing HCFA that a second waiver is in the best interest of our recipients since we are already operating a statewide system for the delivery of these services.

The other option available to the state would be to forgo federal funds and implement a state only pilot. The current expenditures for persons with developmental disabilities in the southeast region are about \$36.2 million for the biennium. If we chose not to use federal funds, the state would need to find an additional \$25.0 million in state funds to provide services in the region if all providers decided to participate in the pilot project.

It would appear that several of the provisions contained in this bill would be in conflict with assurances that must be made to the federal government if we wish to pursue waivers. For example, Section 1, lines 7 and 8 indicate that providers are not required to participate. If we submit a waiver based on geographical area, all providers in that area would have to participate. Page 2, lines 3 and 4 limit the type of financial reporting required. This appears to be in conflict with assurances that federal waivers require.

Lines 6 and 7 refer to a pilot program for reimbursement of providers of services to individuals with developmental disabilities. This language implies that any provider such as a nursing facility, hospital or physician who provided services to an eligible client could request to negotiate a payment rate. Also, Qualified Service Providers deliver certain services such as homemaker, personal care and respite care to this population. Is it the intent to allow negotiations for any provider of services or only those that provide ICF/MR or DD waiver services?

Also we noted that page 1, lines 22 through 24 define how residential units are to be calculated. We note that the calculation for residential services appears to

result in a product that is based on an hourly rate. The calculation results in a product of 6,920 units, which appears to contradict line 12 that requires services to be paid on a day or half-day basis. It would appear that the calculation would result in an hourly rate for residential services.

The Department was unable to calculate a fiscal note on this bill because there is little information available to determine what the potential fiscal impact will be. It is unknown if these negotiated rates will exceed current budget estimates because the bill does not provide for any limits on expenditures, but it is likely it will not be less than current expenditures. Also it is difficult to determine if any increases in staffing and other administrative costs will be necessary at the Southeast Human Service Center to develop the waivers and administer the payment process. The Director of the Southeast Human Service Center plans to provide information to you regarding this issue.

The Senate did add an amendment to the original bill that relieves the Department from the requirements of the bill if it would result in loss of federal funds. The Department is concerned that a great amount of staff time and other resources may be spent preparing to implement the requirements of this bill only to discover that we were unable to obtain federal approval.

The Department is certainly willing to consider a different method of payment to providers who deliver ICF/MR and habilitation services to persons with developmental disabilities that would have statewide application. A directive that the Department to work with providers to establish a different system could be considered as an alternative to this bill.

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

**NORTH DAKOTA DEPARTMENT OF HUMAN SERVICES
SOUTHEAST HUMAN SERVICE CENTER**

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Carol K. Olson, Executive Director
N.D. Department of Human Services
State Capitol, Bismarck, ND 58505

Douglas V. Seiler
Regional Director

Testimony Before The House Human Services Committee

Regarding Senate Bill 2307

March 5, 2001

Chairman Price, members of the Committee, I am Doug Seiler, and I am the Regional Director of the Southeast Human Service Center a unit of the Department of Human Services. I appear today to provide information on this bill.

Although this bill alludes to the Southeast Human Service Center as a pilot region, the Southeast Human Service Center was not a direct author, sponsor or supporter of this bill.

Although, we do sub-contract with agencies on our own on the regional level, these contracts must conform with reimbursement requirements as laid out by state/federal programs, Health Care Finance Administration (HCFA) and the Department of Human Services. As you are all aware, the regions provide input on programmatic needs, and the program and policy personnel put together the necessary state plans between the State of North Dakota and the

appropriate federal governmental agencies to assure that quality assurances are in place, as well as, appropriate fiscal guarantees to these departments.

I have not played a direct role in the development of waivers for the State. By that I mean as regional and direct providers of service, we do initiate discussion with the waiver development team, which would be assistive in the delivery of services. We leave the waiver development to the experts within the Department.

I have purposefully asked to follow Mr. Zentner's testimony. In the short time that I have been in the Department, I have found David and his staff immensely helpful in looking at meaningful and creative ways to deliver services in North Dakota and at the same time maximize federal dollars. His reputation nationally is superb. I also know his history indicates he knows what he is doing, as the number of audit exceptions, which are laid on the ND Department of Human Services are few and far between.

I speak to these issues for two reasons:

- 1) For over the last four and a half years, through the support and involvement of David, several of his staff, a consultant, and numerous statewide personnel, we have tried to put together a waiver for services for children's mental health. Although we are close, we still have not reached our goal. David talked in his testimony about a 1115 waiver. It is that waiver that we are exploring here. I assure you that not reaching our goal**

is not an issue of all of us not trying, it is a matter of how the system works. Thus, it is very feasible that we would expend an immense amount of time and possibly be no closer two years from now.

2) North Dakota has been able to access Title XIX dollars for the provision of services in a rehabilitation model for the mentally ill. This is an example of the progressiveness of North Dakota in this arena.

I have recently been made aware that Minnesota is now applying for the rehabilitation option. This is an option the state of North Dakota has had for years. I must then ask that we all pay special attention to Mr. Zentner when he states that his office has contacted the Denver Regional Office of the Health Financing Administration. (HCFA)

Based on the information provided, we need to evaluate the feasibility of the project. I have no doubt that the exploration David has done is valid.

Southeast Human Service Center personnel would never begin to suggest that we have the expertise within our current staff to write a waiver let alone perhaps understand it.

We simply ask, is the bill a good bill. The timetables and process of waiver application are laid out well by Mr. Zentner. Could Southeast act as a conduit for contracting of federal funds? It may be possible, but as a Regional

Director, I can assure you we would request no part of this if it is not within the purview of the federal agreements we have in place, if it will cost us more in North Dakota general funds, or if it will in any way hamper the delivery of services to Developmentally Disabled or disrupt current quality assurance measures.

I thank you for the opportunity to visit with you today. I will answer any questions I can on this bill.

SB 2307
TESTIMONY
HOUSE OF REPRESENTATIVES
COMMITTEE
ON
HUMAN SERVICES
MARCH 5, 2001

Chairperson Price and members of the House Committee on Human Services, good morning. My name is Jeff Pederson and I am the President/Chief Executive Officer of Friendship, Inc. Friendship, Inc. is one of the largest non-profit providers of services to people with developmental disabilities in North Dakota. I apologize that I am unable to be here today as previous engagements have interfered with my ability to testify in person. Thank you, however, for the opportunity to submit written testimony.

I am testifying today in favor of Senate Bill 2307 on the simple principal that there must be a better/easier methodology for reimbursement. I serve on the State Developmental Disability Advisory Council and have worked closely with Mr. Gene Hysjullan and other members of the Department of Human Services Disability Services Division staff. I have the utmost respect for each member of the Division. They have been willing to work with providers to improve services to the people who receive our services and that is what is most important.

This bill is not about whether or not the current reimbursement system is workable. Most providers would say that the current system, although it is not perfect, works. The question is, can it be improved, streamlined and simplified? I believe it can.

Why do I want it simplified? A majority of our time is spent on budgetary considerations (i.e., how this will effect administrative allocation, what about production allocation, will this fit in the green sheet programs, we have money in the budget to do this but is it reimbursable, etc?). As I mentioned earlier, the system is workable but also very cumbersome with a majority focus on accounting and budget procedure.

My feeling is that we need to focus on outcomes for people first. How can we best meet the needs of John or Jane Doe with the resources we have? How creative can we be in delivering quality services with the resources we have?

This bill is not about greater profits for developmental disabilities providers; we are service providers and non-profits. This bill is not about personal attacks on the Department of Human Services. This bill is about streamlining and simplifying so that providers and Department of Human Services staff can focus more on quality outcomes for people with developmental disabilities. It's about utilizing the talents of provider staff and Department of Human Service staff on creative and innovative service delivery. I personally have utilized Department of Human Services staff in a variety of consulting roles and have been extremely delighted in the collaboration efforts that have come about!

When the dust settles on this bill, we will continue to work together to improve and provide the best service delivery system we possibly can. After all, our most vulnerable citizens deserve it!

Thank you for the opportunity to submit this testimony. I would be happy to talk with any member if I can be of further assistance. My telephone number is (701) 235-8217.

Sandra Leyland
<slayland@fraseritd.org>
rg>

To: "ssandvig@state.nd.us" <ssandvig@state.nd.us>
cc:
Subject: SB 2307

03/08/2001 05:56 PM
Please respond to
"slayland@fraseritd.org"

Dear Representative Sandvig,
Thank you for your support. I will definitely continue to contact other committee members.

I would like to note that providers do not want to see our Federal Medicaid \$\$ jeopardized. However, we are painfully aware that state employees will not move to make changes without Legislative pressure.

If switching the entire system threatens our reimbursement we would be appreciative if they would at least agree to look at and address regulations which are negatively effecting us. In the past few years there have been several committees comprised of private providers and state employees established to review the system and make changes. The result is always the same. I can't help but wonder how other states reimburse differently and still access the federal funds.

Again THANK YOU. I hope you will be able to attend NDACF's social on Monday night.

Sincerely
Sandra Leyland

Honorable Sally M Sandvig
State Representative
600 East Boulevard Avenue
Bismarck ND 58505

Ref: Senate Bill 2307

Dear Representative Sandvig,

I am asking for your support of Senate Bill 2307. My request is due to the fact that I believe there is a more efficient way to conduct business with the Department of Human Services. The current reimbursement system 75-04-05, is cumbersome and can actually hinder our efforts to provide a quality service to people challenged with disabilities.

As a service provider, my main focus is the needs of my clients and how I can best assist them with reaching their desired, personal goals. In today's world, that focus requires creativity and dedication. I believe that the Department of Human Services and other service providers also share this focus. Collectively we lack the ability to put personalities and old biases aside and move forward with a system which allows everyone to be more efficient in their roles of supporting vulnerable adults. We need you to support this bill.

On Monday, I was able to listen to testimony in favor of the bill by Senator Tony Grindberg and Mr. Paul Ornberg. I concur with their comments and offer the following comments of my own.

For the past nine years I have been the Executive Director of Fraser Ltd.

During this time I have learned a great deal about the needs of my clients. It is very clear to me that more time could be spent focusing on their issues and running Fraser if I did not need to always be concerned about the impact of an illogical reimbursement system.

For example, Fraser purchased a building in 1997 which allowed for numerous program and income generating opportunities. According to current regulation, 75-04-05-16.1a.4, we should have depleted our entire fixed asset replacement funds when we purchased this property rather than obtaining a loan from the bank. Because we felt it would be detrimental to the upkeep and support of our group homes, we did NOT choose to deplete this fund. The result of our action is the disallowment of 22% of our interest expense each year. In essence, under the current system we are penalized for making things better.

Please note, that this purchase to date has improved program conditions for elderly developmentally disabled people, provides child care for special needs and typically developing children, sick child care services and is currently providing successful income opportunities for the organization.

Because of regulations similar to what I have just described we are in constant battle over budgetary procedures. I believe there is a better way and that the Department of Human Services and private service providers can work together.

Thank you for your attention to our issues. I would be happy to talk with you if I can be of any further assistance.

Sincerely,

Sandra Leyland
Executive Director