MICROFILM DIVIDER

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

GREAT SEAL
STATE OF NORTH DAKOTA

ROLL NUMBER

DESCRIPTION

2071

2007 SENATE HUMAN SERVICES

SB 2071

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2071

Senate Human Services Committee

☐ Check here for Conference Committee

Hearing Date: 1-09-07

Recorder Job Number: 813

Committee Clerk Signature	Mary K Monson

Senator J. Lee, Chairman, opened the hearing on SB 2071 relating to medical assistance and transfers involving annuities. All members were present.

Senator J. Lee noted there was a fiscal note with minimal fiscal impact.

Curtis Volesky: (Director of Medicaid Eligibility for the Dept. of Human Services) Provided written testimony in support of SB 2071. (See attached.)

Senator J. Lee asked Mr. Volesky to give a brief summary on the transfer of assets and why the Dept. of Human Services is concerned about annuities and how it affects Medicaid.

CurtisVolesky explained that, under existing law, annuities not meeting certain criteria would be considered a disqualifying transfer. Long term care centers or nursing facilities are very expensive. Some individuals have tried to either transfer their property away or make it unavailable. Sometimes annuities would be set up to make that money unavailable. Annuities could be set up so the bulk of the proceeds in the annuity would go to whoever the beneficiary is instead of the individual to help pay for the cost of their care. To prevent some of that, the legislature, in the past, came up with the current state law stating that annuities people set up had to meet certain criteria in order to not be considered a disqualifying transfer. Changes have been made over the years to set limits on the monthly payment from the annuity and to indicate that the Dept. had to be named a primary beneficiary in most of the annuities.

The Deficit Reduction Act basically indicated that annuities are considered an available asset and will be considered a disqualifying transfer unless they are set up to meet specific criteria. This bill proposes to make changes in our state law so it reflects Deficit Reduction Act changes.

Senator Warner asked Mr. Volesky to elaborate on subsection 6, specifically a definition of a disabled child.

Mr. Volesky said that a disabled child is a child who is considered disabled to Social Security disability criteria and that child can be of any age.

Senator Warner asked if a child who fit the WSI description of disabled or who had a working lifetime but no longer able to work would be qualified as a disabled child.

Mr. Volesky replied that individual would.

Senator J. Lee said that it is important to note that the goal has never been to impoverish a surviving spouse either. In addition to disabled children or minor children the spouse will have the support available to them. After the death of those survivors the assets would have to be credited towards any bill that they had with Medicaid. Long term care is something that can protect people from these issues. Adequate long term care insurance is encouraged.

Mr. Volesky said the current state law requires a person to have insurance for 3 years to overlook the disqualifying transfer. The Deficit Reduction Act changed the lookback to 5 years.

Senator Dever asked if all the provisions of this bill are necessary to be consistent with the Federal regulations or if there was some flexibility.

Mr. Volesky replied that there could be some flexibility.

Terry Weis (NAFA) The Association of Financial Advisors supports SB 2071 and has been working with the Legislature and Human Services. This is bringing everything into compliance with the Deficit Reduction Act.

There was no opposing or neutral testimony.

The hearing on SB 2071 was closed.

Senator Dever moved a **Do Pass**. Seconded by **Senator Erbele**. Roll call vote 6-0-0.

Passed. Floor carrier is **Senator Dever.**

FISCAL NOTE
Requested by Legislative Council
02/23/2007

Amendment to: SB 2071

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 section 50-24.1-02.8 of the NDCC, relating to medical assistance and transfers involving annuities. The Department is unable to determine the number of recipients that might be affected, therefore the fiscal impact cannot be determined, but is expected to be minimal.

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 of Human Services
Phone Number:	328-3695	**Date Prepared:**	02/23/2007

FISCAL NOTE

Requested by Legislative Council
12/27/2006

Bill/Resolution No.: SB 2071

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 section 50-24.1-02.8 of the NDCC, relating to medical assistance and transfers involving annuities. The Department is unable to determine the number of recipients that might be affected, therefore the fiscal impact cannot be determined, but is expected to be minimal.

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

Date: 1-9-07
Roll Call Vote #: 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2071

Senate **HUMAN SERVICES** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass

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 Senator Dever

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

REPORT OF STANDING COMMITTEE (410)
January 9, 2007 1:22 p.m.

Module No: SR-05-0366
Carrier: Dever
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2071: Human Services Committee (Sen. J. Lee, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2071 was placed on the Eleventh order on the calendar.

2007 HOUSE HUMAN SERVICES

SB 2071

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2071

House Human Services Committee

☐ Check here for Conference Committee

Hearing Date: February 12, 2007

Recorder Job Number: 3394

Committee Clerk Signature	Judy Schock

Minutes:

Chairman Price: opens up the hearing on SB 2071.

Curtis Volesky, Director of Medicaid Eligibility of the Department of Human Services: See attached testimony.

Gregory C. Larson, attorney in Bismarck: I am here on my own and I have purposed amendments, and goes through them. See attached.

Chairman Price: Did you purpose these to the Senate side?

Mr. Larson: No I did not.

Representative Potter: How are the dates chosen?

Mr. Larson: The idea is we originally passed the bill in 2003, and that went until session 2005. We made some amendments to what we were doing in 2003 we didn't want to disturb those, so it would be after the session 2005. The deficit reduction act passed Feb 8, 2006. Actually for federal law purposes the states needed to comply with that.

Representative Hofstad questions Sub section 7, and **Mr. Larson** goes over that with the committee.

Terry Weis, ND Association of Insurance Advisors: I support the bill and there aren't many changes but there is one we have to make to meet the federal guidelines

Chairman Price: Is there anyone else who would like to testify on SB 2071? If not is there any opposition to SB 2071, hearing none we will close the hearing on SB 2071..

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2071

House Human Services Committee

☐ Check here for Conference Committee

Hearing Date: February 21, 2007

Recorder Job Number: 3577

Committee Clerk Signature	Judy Schock

Minutes:

Chairman Price: Take out SB 2071.

Melissa Hauer: goes through the amendments with the changes only on page 5 sub section 7 lines 12.

Representative Conrad moves the amendment, seconded by **Representative Weisz.** The verbal vote was unanimous. **Representative Porter** moves a do pass as amended, seconded by **Representative Hofstad. Chairman Price** asks for discussion, if not the roll was taken with 12 yeas, 0 nays and 0 absent. **Representative Weisz** 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. 2071 Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Move Amendment

Motion Made By Rep. Conrad Seconded By Rep. Weisz

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

Absent 6

Floor Assignment Rep.

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

Date: 2/21
Roll Call Vote #: 2

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

House HUMAN SERVICES S.B 2071 Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass As Amended

Motion Made By Rep. Porter Seconded By Rep. Hofstad

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

Absent 0

Floor Assignment Rep. Weisz

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

REPORT OF STANDING COMMITTEE

SB 2071: Human Services Committee (Rep. Price, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2071 was placed on the Sixth order on the calendar.

Page 5, line 7, replace "as determined by" with "of" and replace "department" with "maximum amount allowed"

Page 5, line 12, replace "as determined by" with "of" and replace "department" with "maximum amount allowed"

Renumber accordingly

2007 TESTIMONY

SB 2071

Testimony
Senate Bill 2071 – Department of Human Services
Senate Human Services Committee
Senator Judy Lee, Chairman
January 9, 2007

Chairman Lee, members of the Senate Human Services Committee, I am Curtis Volesky, Director of Medicaid Eligibility for the Department of Human Services. I am here to testify in support of Senate Bill 2071.

The Deficit Reduction Act (DRA), which was signed into law in 2006, identified specific treatment of annuities for Medicaid disqualifying transfer purposes. The recommended changes to this section of the North Dakota Century Code are intended to insure State law reflects the DRA mandates, while still maintaining the applicable annuity provisions currently in State law.

The language in Subsection 1 is removed because the Deficit Reduction Act does not allow employee benefit annuities to be treated as annuities for Medicaid transfer purposes.

The first paragraph of Subsection 2, includes changes for simplification, and to clarify that it applies to annuities purchased before August 1, 2005. Annuities purchased after that date are subject to Subsections 4, 6, and 7. It also includes language to clarify that an annuity that meets the provisions of this subsection, is not considered an available asset.

In the first paragraph of Subsection 4, some language is identified for removal because Subsection 1 already defines all such arrangements as annuities for purposes of this section. New language is added to clarify that Subsection 4 does not apply to annuities purchased on or after February 8, 2006, because of changes required by the DRA.

The language being removed from Subsection 5, page 3, line 19, and page 4, lines 6 and 7, is not needed because the wording in line 23, page 3, already limits this subsection to annuities identified in Subsection 4.

New Subsection 6 includes the DRA transfer provisions for annuities. Two of the subsections contain key differences from our existing law.

- Subdivision (a) requires that the State be named as the first remainder beneficiary on the annuity for at least the total amount of Medicaid benefits paid. It provides for the State to be named in the second position after a community spouse or minor or disabled child.
- Subdivision (e) requires the annuity to be actuarially sound.

The remaining provisions are the same as those previously identified in our existing State law.

New Subsection 7 identifies criteria that allow annuities to be excluded as an available asset. The annuity must meet the provisions of Subsection 6, and the additional requirements regarding limits on the amount of the monthly annuity payment, and the requirement for a guarantee period as identified in our existing State law.

New Subsection 8 clarifies the DRA requirement that the annuity provisions of this section do not apply to employee benefit annuities, except those employee benefit annuities that do not name the State as the first remainder beneficiary are considered to be a transfer of assets. The subsection also defines employee benefit annuities.

I will be glad to answer any questions regarding my testimony. Thank you.

Testimony
Senate Bill 2071 – Department of Human Services
House Human Services Committee
Representative Clara Sue Price, Chairman
February 12, 2007

Chairman Price, members of the House Human Services Committee, I am Curtis Volesky, Director of Medicaid Eligibility of the Department of Human Services. I appear before you to provide information regarding the changes made to the annuity provisions through SB 2071.

The Deficit Reduction Act (DRA), which was signed into law in 2006, identified specific treatment of annuities for Medicaid disqualifying transfer purposes. The recommended changes to this section of the North Dakota Century Code are intended to insure State law reflects the DRA mandates while still maintaining the applicable annuity provisions currently in State law.

The language in Subsection 1 is removed because the Deficit Reduction Act does not allow employee benefit annuities to be treated as annuities for Medicaid transfer purposes. The remaining language provides a comprehensive definition of annuities.

The first paragraph of Subsection 2 includes changes for simplification and to clarify that it applies to annuities purchased before August 1, 2005. Annuities purchased after that date are subject to Subsections 4, 6, and 7. It also includes language to clarify that an annuity that meets the provisions of this subsection is not considered an available asset.

In the first paragraph of Subsection 4, some language is identified for removal because Subsection 1 already defines all such arrangements as annuities for purposes of this section. New language is added to clarify that Subsection 4 does not apply to annuities purchased on or after February 8, 2006, as those later annuities are subject to changes required by the DRA.

The language being removed from Subsection 5, page 3, line 19, and page 4, lines 6 and 7, is not needed because the wording in line 23, page 3, already limits this subsection to annuities identified in Subsection 4. This change is only for simplification purposes.

New Subsection 6 includes the DRA provisions relating to whether an annuity purchased or changed on or after February 8, 2006 must be considered a transfer. Two of the subsections contain key differences from our existing law.

- Subdivision (a) requires that the State be named as the first remainder beneficiary on the annuity for at least the total amount of Medicaid benefits paid. It provides for the State to be named in the second position after a community spouse or minor or disabled child.

- Subdivision (e) requires the annuity to be actuarially sound.

The remaining provisions are the same as those previously identified in our existing State law.

New Subsection 7 identifies criteria that allow annuities purchased or changed on or after February 8, 2006 to be excluded as an available asset. The annuity must meet the provisions of Subsection 6 and the additional requirements in existing state law regarding limits on the amount of the monthly annuity payment and the requirement for a guarantee period.

New Subsection 8 clarifies the DRA requirement that the annuity provisions of this section do not apply to employee benefit annuities, except that employee benefit annuities that do not name the State as the first remainder beneficiary are considered to be a transfer of assets. The subsection also defines employee benefit annuities.

I will be glad to answer any questions regarding my testimony. Thank you.

February 12, 2007

House Human Services Committee
SB#2071

CHAIRMAN PRICE AND COMMITTEE MEMBERS:

My name is Gregory C. Larson. I am an attorney in Bismarck appearing here today on my own behalf.

1. This bill changes and updates the annuity statute that you enacted in 2003 and amended in 2005.

2. I am proposing an amendment to make the following changes:

   a. On page 5, line 7, replace "determined by the department" with "allowed by federal law"
   b. On page 5, line 12, delete "allowed"
   c. On page 5, line 12, replace "determined by the department" with "allowed by federal law"
   d. On page 5, line 14, add a new paragraph c. as follows:

      "c. The monthly payments from the annuity, unless specifically ordered otherwise by a court of competent jurisdiction, do not exceed the maximum monthly income amount allowed for a community spouse as determined under 42 U.S.C. 1396r-5."

   e. On page 5, line 14, existing paragraph "c." should be re-lettered as paragraph "d".

The reason for these changes is to have the new subsection 7 comply with how the Department of Human Services is treating annuities under current law. In 2005, you made changes to the annuity statute which provided that the monthly income amount allowed for the at home spouse, when the other spouse is in the nursing home, would be the maximum income amount that federal law allows.

Since this change in the 2005 legislature was contained in subparagraph e of subsection 2 and that section is now being changed with the reference that it only applies to annuities purchased before August 1, 2005, it is imperative that the change from the 2005 session be added to new subsection 7.

Each year, this maximum monthly maintenance needs allowance for a community spouse is increased to keep up with inflation.

These changes have been discussed with the Department of Human Services and they have agreed that they would not oppose such amendments because that is what they are doing right now in regard to annuities.

[OVER]

I respectfully request that the committee give this bill with the amendment a do pass. Thank you for your time and consideration. I would be glad to answer any questions.

PROPOSED AMENDMENTS TO SB 2071

On page 5, line 7, replace "determined by the department" with "allowed by federal law"

On page 5, line 12, delete "allowed"

On page 5, Line replace "determined by the department" with "allowed by federal law"

On page 5, line 14, add a new paragraph c. as follows:

> "c. The monthly payments from the annuity, unless specifically ordered otherwise by a court of competent jurisdiction, do not exceed the maximum monthly income amount allowed for a community spouse as determined under 42 U.S.C. 1396r-5."

On page 5, line 14, re-letter existing paragraph "c" as paragraph "d".

Renumber accordingly