

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/11/2017**

Bill/Resolution No.: SB 2187

- 1 A. **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.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
Counties			
Cities			
School Districts			
Townships			

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

The bill instructs the Department of Human Services (Department) to implement the new Developmental Disabilities (DD) rate setting methodology on August 1, 2017 or once the Department certifies that the Centers for Medicare and Medicaid has approved the new rate setting method.

- 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.*

The DD rate setting methodology, which SB 2187 would require to be implemented, was developed by the Steering Committee. The Department planned to implement the methodology 1-1-2017, but halted plans when some providers expressed concerns about changes in their revenue under the new methodology. SB 2187 would require the Department to implement the system, using the same methodology as the Department planned to implement on 1-1-2017. While there will be varied impacts on individual providers, SB 2187 does not require the Department to change the methodology that has been developed; therefore, as introduced, SB 2187 should have no fiscal impact on HB 1072.

HB 1012 does not contain any of the cost or caseload changes used by the Department in constructing the 2017-2019 budget; therefore, funding to accommodate the cost and caseload changes would need to be added to HB 1012 in order for the Department to sustain DD services in 2017-2019.

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 or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

**Name:** Debra A. McDermott

**Agency:** Human Services

**Telephone:** 328-3695

**Date Prepared:** 01/16/2017



**2017 SENATE HUMAN SERVICES**

**SB 2187**

# 2017 SENATE STANDING COMMITTEE MINUTES

Human Services Committee  
Red River Room, State Capitol

SB 2187  
1/18/2017  
Job Number 27034

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature

*Mame Johnson*

## Explanation or reason for introduction of bill/resolution:

A bill relating to developmental disability reimbursements; and to provide a contingent effective date.

## Minutes:

10 Attachments

**Chair J. Lee:** Brought the meeting to order. All members present.

**Chair J. Lee:** Introduced the bill.

**Bruce Murry, Executive Director of the North Dakota Association of Community Providers (NDACP)** testified in favor, please see attachment #1(5:35-6:40).

**Senator Anderson:** Please give us a brief summary of the changes.

**Mr. Murry:** This proposed system is more objective, based on the supports intensity scale, developed by AIDD (Association for Intellectual and Developmental Disabilities). It allocates services according to objective plan, rather than a negotiated or individually determined plan. The disadvantage is the system doesn't account for outliers, with special needs the system doesn't account for. The 20% who disagree wonder if the outlier's system will be able to address those people's needs, or whether they can work with the department to fix the remaining issues before implementation. We're confident that we can continue to work with the department making sure that nobody's left without services, or gets services in a way that violates their civil rights.

**Senator Piepkorn:** NDACP is the membership organization for 31 providers, is that the total number of providers?

**Mr. Murry:** There are 4-5 more licensed providers who aren't members.

**Chair J. Lee:** addressed the fact that there is no Fiscal impact for this bill.

**Jon Larson, Executive Director of Enable Inc. (11:45-15:45)** testified in support, please see attachment #2.

**Chair J. Lee:** Please give an example of a provider, and what was bad about the previous system?

**Mr. Larson:** Our current system is a retrospective system. It bases current rates on past expenses, inflated forward it requires a provider to spend it or lose it, and requires an audit that can happen up to two years after the fact to determine what costs were appropriate and results in a payback of extra money that may have been received by the provider. It's a heavy administrative burden. It has in place economic insecurities for providers because of uncertainties that are built into it. It's a spend it or lose it sort of system.



**Chair J. Lee:** The audit can create a problem a year later, and they have to pay back the money, and they may not have the resources to pay, this is the problem we are trying to alleviate.

**Mr. Larson:** The current system is based on negotiations which isn't a bad system, it's done by people who know the patients best, but is somewhat subjective. The proposed system is based on an objective needs assessment, there will be more partiality in determining appropriate unit rates.

**Chair J. Lee:** Is this an assessment tool that is used elsewhere in the country?

**Mr. Larson:** Yes, the Supports Intensity Scale (SIS) is used in a number of states.

**Senator Anderson:** It's not uncommon to have a retrospective review when federal dollars are involved, that's very similar to what Medicare does with hospitals. They get a review and you have to pay back or get more in the next year.

**Senator Piepkorn:** I'm trying to get a handle on the number of people involved. We've got 4-5 organizations who are not members of your group.

**Bruce Murry:** It's 5.

**Senator Piepkorn:** Between those 5 and the 20% of your organization who aren't with you on this, what percentage of the total population does that account for. The total number of clients you serve is not represented by your 80% in favor.

**Chair J. Lee:** You don't know if the 5 who don't belong to the association approve or don't approve of the plan.

**Mr. Larson:** I don't know the answer, one of the provider association directors is here to testify, and represents a large agency, the other agencies who are not members, would represent a small percentage of our total population.

**Tom Newberger, Chief Executive Officer for Red River Human Services Foundation,** testified in favor **(21:35-26:15) please see attachment #3.**

**Chair J. Lee:** Do you think that those who are opposing are losing money?

**Mr. Newberger:** The majority of providers who are opposing this system do lose dollars. There may be one or two who are not losing dollars who do oppose it.

**Senator Kreun:** The estimate is \$2.6 million to operate. What is the estimate for the new system?

**Mr. Newberger:** I don't have a number for that, the \$2.6 is from 2010, it's at \$3 million today, ND is the only state in the nation with the current retrospective system. All states have moved away because of the cost to transfer data back and forth, the new system will save us time and money, but I don't have a dollar amount.

**Chair J. Lee:** Why are some losing money under the system and some gaining?

**Mr. Newberger:** All providers are unique; providers spend money on different things. Dues to national companies, differing levels of staff, etc.

**Senator Piepkorn:** For clarification, there are losers in the current system, there will be losers in the new bill?

**Mr. Newberger:** I don't like the term loser, as Mr. Larson indicated, staffing levels are based on negotiations, it's an unfair system. If a provider negotiates very hard, they end up with more hours, if a provider doesn't push, they will end up with fewer hours and the program manager may say no. The new system will balance it out. The providers will be losing money in hours of support, because in the past they've received too many hours. They're will be people who are gaining hours.

**Chair J. Lee:** The important thing is the reimbursement will be less scientific, it will be a national standard, based on the needs of the patient. All of us are concerned about making sure we handle these outliers properly. Those that have high multiple needs, this has been



an issue for a long time. Based on the assessment there will be a way to compensate the provider for greater needs. The idea is to have a national standard so there is a unit that is provided, this is the reimbursement for this unit, regardless of provider. We all agree the outliers need to be properly addressed. We don't want anybody to not get services. The system isn't designed to keep the providers in business. It's intended to serve the needs of the people with the disabilities, who need the best possible services we can provide. I'm not against any of the providers, they all do good work. Our job is not to keep a particular organization in business. This isn't intended to let somebody railroad their way into a community and provide services where they're being provided by somebody else. This is a messy reimbursement system. When we started talking about this in 2011, we thought we'd have it in 2 years. Department is engaged, a lot of expertise has gone into it, as well as engagement with the families of consumers. We need to keep our eye focused on the people. The best way to do that is to figure out with an assessment, which is unique to each individual, what services he or she needs. Do you, Mr. Newberger, have any objections yourself?

**Mr. Newberger:** Just some minor ones, nothing that would change my mind. You mentioned the outlier process, which will allocate additional funds to providers, the providers who are opposing it don't know how many additional dollars they will receive. We have a steering committee on February 15th, SIS will look at a) home living, b) community living, which focuses on community living activities 3a 3b medical and behavioral needs. My objections are the outlier process and employment, which isn't included, but I believe that we can do that down the road.

**Chair J. Lee:** Sen. Poolman mentioned to me her concerns, because she is on the Board of the Anne Carlson Center, where medically fragile children are cared for. There is so much not to like about the old system, we need to figure out how to move on the new one.

**Mr. Newberger:** My final comment, the outlier process only pertains to small percentage of people where the SIS doesn't address all of their needs. It's 5-10% of the people that it does not address. For the vast majority of people, it meets their needs better than any other system. The providers that are losing, how many consumers do they support? Friendship is losing, they provide supports to 325 people, Community Options provides support to 270 people. Rounding those up is 600 people, other providers for the most part are small. Total number of people is 7500, so less than 10%, but again in my opinion, those people have negotiated hours that are so high they are hurting other people the new system is going to balance it out.

**Senator Piepkorn:** Could we define outlier?

**Mr. Newberger:** An outlier is a person whose needs are unique, challenging, difficult; it may be medical, behavioral, a combination of the two. As Mr. Larson mentioned there is never a perfect system. An outlier is a person who has an assessment that doesn't identify all their needs, because of that they aren't going to receive the hours that are necessary to successfully have them in the community. The outlier process will allocate dollars to the outlier because of their unique special needs.

**Senator Anderson:** Perhaps some of these small providers specialize in the outlier population. That's why they're more concerned. Might that be true.

**Mr. Newberger:** A new provider is Kade, they're from Ohio, they are the largest percentage reduction in budget of any provider. They provide unbelievable service for challenging people. Example story. (41:10-42:00) Kade is in favor of this system, despite the reduction. The rest of the providers, I don't know if they're large losers or not. Small providers, I don't believe they will be hurt that significantly.



**Chair J. Lee:** There are other providers who support even though they will lose dollars, because they will save administrative dollars. (43:15-45:10) Talked about the Grafton facility.

**Mr. Newberger:** I support Grafton; it plays an important role. Our agency still utilizes that resource for extreme issues, we work with the Center and send extreme cases there temporarily, until they decide they'll behave, then they can come back to their facility. Grafton is a state-wide safety net.

**Senator Piepkorn:** Is Grafton still a state facility?

**Chair J. Lee:** Yes, it is.

**Chair J. Lee:** Message from upset individual (47:00-49:40).

**Borgi Beeler, CEO Kalix testified in support (50:05-55:45), please see attachment #4.**

Let me give an example of an outlier: it shouldn't be used for large # people. The outlier system is designed for people who are high functioning, so the SIS isn't detecting that they need support. Example (56:47-57:14) SIS doesn't pick up on him. That's what the outlier process is for.

The committee discussed the example and types of supervision.

**Mr. Murry:** Supplemented his testimony, there are 8 licensed DD providers who are not with NDACP. 4 of them provide infant development services only, and are not affected by this payment system. Collectively they serve only a few people, less than 5.

**Chair J. Lee:** There are people who are supporting this who are losing money, are all the people who oppose it losing money?

**Mr. Murry:** All but one or two, there are people who are losing money who support the system they plan to change the way they do business, or they believe it's more fair, there's one large provide who stands to gain economically, but is ethically opposed.

**Chair J. Lee:** Briefed the committee on testimony emailed from **Bryan Wetch, President of Community Options(opposition). Please see attachment #5 (1:02:40-1:05:15)** briefed testimony **Jeff Pederson Friendship Inc.(opposition) please see attachment #7(1:05:35-1:08:00)**. Attachment #6 provided for committee reference.

**Tina Bay, Department Human Services:** 1:08:40 The outlier process, SIS may miss certain populations, so we created a subcommittee that looked at several different criteria; we worked with our consultant, looked at other states, and we came up with some criteria, for example someone with inappropriate sexual behavior, respiratory infections, seizure disorders, etc. These would be put into our outlier category. In preparation prior to January 1<sup>st</sup>, we requested the providers to assess their support based on the hours SIS provided, and submit additional support request based on the criteria in the outlier system. We received approximately 400-500 requests, some requests for different services for the same person. We approved 100 requests. We have \$6 million per year set aside to address outlier criteria. When we asked how many people would be impacted DDS serves 7000, not all will be impacted by this change, 3500-4000 would be affected by this change.

**Senator Heckaman:** Is that adversely affected?

**Ms. Bay:** No, just impacted by change in methodology. If someone is being discharged from the Life Skills and Transition Center, for up to one year after discharge, they will qualify automatically for outlier funding. After one year, they would need to meet assessment, we've put in that safety net so we can continue to see transitions out of the Center.

**Senator Anderson:** Some of the criticisms, categorizes people without regard to their specific needs. Some people might not want as many services as the SIS criteria set, others might want more. Comment about that, also, Arizona lawsuit and the difficult appeal process they have, and what system you have in place for appeals.



**Ms. Bay:** Regarding the appeal, we have recommended administrative rule changes, did have an appeal process for consumers, if they felt SIS did not adequately meet their needs. They would have ability to appeal and request a new assessment. As other testimony stated, the SIS is used in other states for identifying needs. There are states using it for resource allocation, other sue it for plan development any standardized assessment will have pros and cons. That's why we made the outlier process to address the needs.

**Chair J. Lee:** Who was involved in developing the plan?

**Ms. Bay:** The bill in 2011 instructed the department to work with steering providers, we have 9 providers on 5 department staffs. Someone from medical services, fiscal unit, the Division itself. Every meeting has been public, the majority of our providers have attended those meetings to listen to the work and provide feedback.

**Chair J. Lee:** For those who are objecting, are there some who are significantly different from others as far as administrative cost? Does it make difference if they are local vs national? Kade, a big national outfit, they are in support of this. Tell me is there a comparison pretty much ND based facilities, those of a larger organization whether those connections make a difference in costs?

**Mr. Larson:** There is a UBI (universal budget impact) statement that each provider received, to see how the proposed payment system would impact their agency. Every agency has studied the reasons for that. This may be old and does not include outlier process, but nonetheless there are reasons, none that were universal, we worried as a steering committee that this would affect small providers or large or rural, but there was no unifying reason, it had more to do with service delivery models. It is true some providers have cost for home office associations, Friendship INC. from Fargo, part of the CHI chain, and then REM is part of the Mentor network, a large for profit service provider in the Midwest. Easter Seals is a nonprofit, but they have home office costs.

**Chair J. Lee:** Any idea of administrative costs for these providers? Money that is going out of state.

**Mr. Larson:** I would hesitate to identify those costs. I would know them on a hearsay basis.

**Senator Anderson:** It's rare for us to see a situation where something new is proposed with a UBI so that everybody knows how much it's going to impact; somebody deserves credit for all that work.

**Gordon Hauge, President and CEO, Easter Seals Goodwill:** In terms of the home office costs, we pay dues to 2 national organizations, though those costs, they are brought back into state for advertising. There are providers who have these cost, I don't look at those costs against my programming. Some have to, those home office costs are very high. If you don't have external funding or other ways of developing revenue to help support your organization, you have to rely on your programming dollars to take care of it. We don't as an agency, it doesn't affect us within our programming.

**Mr. Newberger:** One of your questions was about the number of states using SIS. There are over 20 states using it, Canada as well. You brought up the lawsuit in AZ. AAIDD(American Association on Intellectual and Developmental Disabilities) I was visiting with Maggie Nygren, about the lawsuits filed by NM, CO, AZ. The lawsuits were based on due process contesting the funding, not the accuracy of the scores, but the connect between the scores and the funding. In ND we've utilized national consultants that are skilled and knowledgeable on this. It's not related to the SIS, it's the funding component. In Alberta, Canada the reason for the lawsuit, they felt it was too intrusive, too many questions. We need detail in US. What does it take to operate, what do the people need? HSRI (Human Services Resource Institute) 1:24:00 "developed to measure the construct of support, the SIS has greater faced validity

than the ICAP, or other traditional assess, the assessment of support needs using SIS is done by 3 people know the person best involved." "The SIS directly measures the support needed to enable an individual to participate successfully in life in his or her in community.

**Chair J. Lee:** Would you email us those 3 pieces of info to us please? Especially the lawsuit.

**Mr. Newberger:** A public comment made at a previous meeting this large provider pays \$3.4 million in costs per biennium.

**Chair J. Lee:** Closed the hearing.

Attachments #8-#10 were provided after the hearing for the committee's reference.



# 2017 SENATE STANDING COMMITTEE MINUTES

Human Services Committee  
Red River Room, State Capitol

SB 2187  
1/25/2017  
Job Number 27396

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature

*Mame Johnson*

## Explanation or reason for introduction of bill/resolution:

A bill relating to developmental disability reimbursements; and to provide a contingent effective date

## Minutes:

0 Attachments

**Chair J. Lee:** Brought the meeting to order.

Committee discussion about retrospective reimbursement for developmental hours.

**Senator Anderson:** Now it's based on the needs of the individual rather than the expense of the provider. That's a good response to use for individuals who are worried about the reimbursement and care of individual relatives, now the reimbursement will be based on the needs of the individual rather than the expense of the provider.

**Chair J. Lee:** There may be some individuals who are evaluated to need more services, it isn't the goal to make them fewer. It makes sense to look at this. The big rub is CHI Friendship has \$1.7 million a year going out of state, they get a few hours of accounting service, and not much else. It's the franchise fee.

**Senator Heckaman:** I understand the need for the system, I want to make sure we address the outliers. To know that we can tell the people who consider themselves in the line of fire, there's going to be consideration to take care of this.

**Chair J. Lee:** Asked Ms. Sagness to tell Ms. Bay about the idea for an amendment to specifically address the outliers.

**Senator Piepkorn:** It seems that there's an argument between two groups, winners and losers, unless the people who are getting more money, unless people get raises, they'll provide more services, or include more people in their services. If that's the thing, we expect them to do more good work with that money.

**Chair J. Lee:** there are many providers, and only two have raised objections.

**Senator Piepkorn:** That money that goes out of state, does that go in the general operating fund?

**Chair J. Lee:** Yes.

**Chair J. Lee:** Ended the hearing on SB 2187.



# 2017 SENATE STANDING COMMITTEE MINUTES

Human Services Committee  
Red River Room, State Capitol

SB 2187  
2/1/2017  
Job Number 27752

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature

*Mame Blum*

## Explanation or reason for introduction of bill/resolution:

Relating to developmental disability reimbursements; provide a contingent effective date.

## Minutes:

Attachments: #1 -3

**Chair J. Lee:** Opened the discussion on SB 2187. We will have a skype call with the architect of the payment system for the SIS Assessment, Mr. John Villegas-Grubbs.

**Chair J. Lee:** Would you explain to us about this payment system and what your work as a consultant was in working through that payment system?

**Mr. Grubbs:** The state of ND solicited a project whereby a standard fee system would be developed for implementation and then linked to the scale as an assessment instrument for the purposes of establishing the rate on the standard fee. We worked in ND for 3 years, and the last two years was dedicated to Supports Intensity Scale (SIS) attachment.

**Chair J. Lee:** We know how the old plan would work compared to the proposed one. Do you have observations on what kind of impact it might have on the individuals who are being serve?

**Mr. Grubbs:** Let me do that by some comparison to another approach. When you go to a standard fee system, whatever the design of that standard fee system, a number of things happen. One of them is that there is no more negotiating. Negotiations stop as a process in which compensations are determined. There are a number of good things that happen; portability for instance. Anyone receiving the same level of support would be paid same rate so they would be able to move their services freely because the finances of that would not a barrier. To go from negotiated systems to standard fee is much more fair because the history of negotiated rates usually evolves so that some providers have very good rates because they happen to be skilled negotiators. Under standard fee systems, that is no longer the case. This is true of any standard fee system whether it is the one that we developed or not. When you link to an assessment instrument like the support intensity scale, then you are actually moving closer to a fairer and equitable system because there is at least something guiding the decisions that are made about what support an individual needs. In general, the movement from a negotiated system with no assessment instrument to an environment



where you have a standard fee and an assessment instrument guiding those decisions is far more fair and equitable.

The Supports Intensity Scale itself is an excellent instrument. Many people consider it the best currently available widely distributed assessment instrument for developmental disabilities. In the report that we issued to the state of Maryland where we are currently involved, there are some thirty states using Supports Intensity Scale. Twenty-seven of which are using it to either perform the resource allocation or to assist in the resource allocation process. So what happens is a system under a standard fee structure with an assessment instrument ranked becomes more standardized, becomes more fair and equitable, and it also becomes easier to understand. It is much easier to understand why something is set at a certain rate and what is actually in that rate. The stand fee system, the brick method is a very transparent system. It is easily understood. Going into the future, this system is simpler, easier to understand, easier to update with new values, (the process of updating is what we refer to as 'rebasings') and to link it to an assessment instrument such as the Supports Intensity Scale makes the process a little more uniform between people who are being offered services. The only thing we have cautioned is that any assessment instrument should be used in combination with some opportunity to make an exception and in ND, there is an exceptions protocol developed.

**Senator Anderson:** How is SIS administered?

**Mr. Grubbs:** There are instructions that are included in the document itself. It's basically an interview and it occurs either with the person who is intended to receive the services or a family member related to that individual. Sometimes the providers are interviewed on behalf of the individual and often times the provider is present during the interview.

**Senator Heckaman:** When you talk about the opportunity for exceptions what are you considering? We have an amendment here that discusses outliers.

**Mr. Grubbs:** The term outlier has a somewhat broad application. An individual could be considered an outlier if the supports that seemed to be indicated by the use of the Supports Intensity Scale are quite high or quite low; something you would consider as a somewhat extraordinary case. It doesn't mean that the Supports Intensity Scale has inaccurately assessed the individual, it's that there is something about the individual that is different than the norm. The problem with most assessment instruments is that there may be different reasons for a person to be an outlier. As long as there is a protocol outside of the assessment instrument regardless of which assessment instrument it is, then you have given the system itself a safety valve so someone who needs something that is different or unpredictable is not just left without provision but there is a mechanism whereby that person can be appropriately supported.

**Senator Heckaman:** How is that handled? How do you determine those exceptions?

**Mr. Grubbs:** The exceptions protocol in every state are developed by the state. JGVA assists in the development the exception to protocols but we don't usually provide those protocols to our state government clients. It has been our experience that the exceptions protocol is initiated when there is someone in the process of the assessment who profoundly disagrees with the results of the assessment and that there is some process whereby that case can be



evaluated using information that may be in addition to the information provided by the assessment instrument. JVGA has always recommended that there be some exceptions to protocol and no system by fully automatic because these are people's lives we are talking about and there are some aspects that cannot be predicted. The short answer is that the exceptions protocol, however it may be designed, is usually initiated by some sense among the team members who are doing the assessment that the assessment instrument has not accurately captured the needs of the individual.

**Chair J. Lee:** So if a family member for example thought that it had not been accurately captured they would be able to request?

**Tom Newberger:** Do you support the idea of moving forward with the system as its been developed?

**Mr. Grubbs:** My answer to that is unequivocal. I believe the system is very well done and I wouldn't hesitate to implement it for any reason. I don't think it is well done and should be implemented because we had a role in it; I think the way the work was done in ND should be held as an example of how this kind of project should be conducted. By that I mean there was very strong and constant involvement on the part of the provider community. When we designed what we refer to as smoothing approach for the attachment to the Supports Intensity Scale, we worked on that with the provider community. The reason why that is so critical is very simple. They know these people better than an outside consulting firm would know them. We understand the structures; we understand the architecture better than anyone but this is designed to match the needs of ND and no one knows those needs better than the providers. There were times when the project in ND was difficult. There were discussions that were taxing both to JVGA and to the provider community and to the state because we were addressing some very difficult problems. But the fact that the provider community and the families were intimately involved resulted in a treatment and gathering of the data that could have been better. In fact, we had not recently been asked to another Supports Intensity Scale attachment. We were asked in the state of Maryland to evaluate the use of the Supports Intensity Scale; they were not planning to use it as a resource allocation support but our opinion is that the Supports Intensity Scale is currently the best of them all for the assessment of people with development disabilities. If we were to be asked to do an assessment instrument attachment using SIS, I would model it after the work in ND.

**Chair J. Lee:** We've had one provider that's opposed because they feel that their payments are going to be significantly reduced. Do you have any comments on how we can address this most fairly?

**Mr. Grubbs:** Thank you for the opportunity to comment on that. It is always the case; we have done ten different state standard fee systems at about fifteen or so implementations or modifications. There are always some number of providers who are somewhat unique in some way and it is not a good fit. It would be wonderful if that never happened but that is not realistic. I think the difficulty is that there is usually something about the way the providers conduct their business that is not consistent with this standardization. When it results in that provider suffering financially, it is usually because they are doing something very worthy and admirable but they have some ability to do that that the state may not be able to provide for all providers. That's where it becomes unfortunate if for example, a provider is paying a very



high direct support wage. That is a wonderful thing, but it is rarely the fact that the state can afford to do that for all providers. So you are in a very difficult situation on how to support the providers as a community without punishing providers for doing the right thing and that is a very serious dilemma. When it comes to something like the direct support wage, unfortunately there is no ready answer for how you help that provider survive under the new system. I have situations when that's the case where providers get together and they form a cooperative in order to keep that provider with very high wages operating.

Mr. Grubbs gave an example of a case he dealt with in Washington DC.

That is what happens when you go from individually negotiated rates to a standard system. It's an unfortunate situation where what is good for one may not be possible for all.

**Bruce Murray, ND Association of Community Providers:** (21:05-22:55) Mr. Murray read a letter from Yaw Karikari, CEO, KAYD (See Attachment #1).

**Jon Larson, President, ND Association of Community Providers:** (24:05-25:55) (See Attachment #2).

**Senator Anderson:** We've heard a criticism that the SIS assessment is done by one individual who doesn't know the participant. Can you answer that and how you envision this assessment would be done?

**Jon Larson:** I can tell you that because the assessment has been going on for three years now by another firm out of SD. It is a group of people who have been very specifically trained in administrating SIS assessment. When they come to our agency to evaluate a single person, they will come into interview that person and the people that know them best. Often times a family member, a provider staff member, and typically a representative from a representative from the state, a regional program manager. They really are conducted by the people who know the individual best. It is not conducted by a single uninvolved person. It is an objective evaluator filling out the form with data from people who know the individual best.

**Senator Heckaman:** This was to be implement January 1<sup>st</sup>. The reason it wasn't was there was a concern about some parties coming in and throwing the word homestead there. As a result of that, we are here at this point. What can you tell me about that?

**Tina Bay:** We've had several delays. They law that was implemented in SB 2043 also tied it to implementation of our MMIS system so the very first day was in part because of the delay of the MMIS implementation. Since then we've had 2 additional delays, and part of it was we had the provider association coming to us. The last delay was as a result of the feedback we received during our public comment period we had for our waiver.

**Chair J. Lee:** Would it be accurate to say that it was in response to feedback and comments that the process was continued so that you could work through some of the bumps along the road?

**Tina Bay:** That is correct.



**Senator Anderson:** Could you explain what you envision for this outlier or exception procedure and how would that work? How would it proceed if I and my family member didn't agree?

**Tina Bay:** We do have a policy already developed that we have been working through. After that assessment is completed, the client and their team look to see that their score doesn't cover the amount of hours that they need, they can request an outlier. They will work through the process (See Attachment #3). What has to be demonstrated is that that person has one of those areas that would bring them to that next level of review. We also added the life skills and transition center to make sure that the system does not prohibit people from moving out of the institution. If someone is coming from the life skills and transition center, for the first year they are in the community the provider and team can request outlier funding regardless if they have any of that criteria listed above. What happens is they fill out the form, the division has been reviewing the request and checking to see if the provisions are there and are appropriate for the enhanced funding and then they would be assigned additional funding for that based on their needs.

**Chair J. Lee:** I have had a couple people mention the Ann Carlson Center and obviously those are medically fragile children. Tell us how they plug into the SIS and the outlier situation.

**Tina Bay:** During one of our development, we made the decision to only have 1 ICF rate for immediate care facilities. During one of the talks we were having there was some concern that we did have a rate that would focus on some folks with more medical needs. During on the delays we went back and did that work and now we have two rates for intermediate care facilities. We have the regular rate and we have one for medically intense. There are criteria as well that that person would need to have to fall under ICF medical intensive rate, but I believe several of the folks who live at Ann Carlson would also be eligible for that. If they are not eligible for that, they may qualify based on the outlier policy we have.

**Chair J. Lee:** I know everybody has worked very hard to make sure we do not have FN but that we are operating within the dollars that are already appropriated and I think that is very important. Do you feel confident the outlier formula will be adequately served with the dollars that are currently in the fund? I'm not eager to amend on an outlier fund but if that is what we need in order to make this work, I would like to discuss it.

**Tina Bay:** Within our budget we have a bucket fund. That money has been meant to deal with folks who have exceptional medical or behavioral needs. We took that funding appropriation and put that into our outlier funding for this group. We did our first roundabout wire request and then we had the postponement of the system so we did not get through all provider's outlier requests, however we got through a significant amount of them and based off of what we approved, we did have enough funding.

**Chair J. Lee:** So you don't see that as a problem. Everyone is nervous about not having enough to meet the needs so that's reassuring to hear that.

**Senator Anderson:** Did we have any suggested amendments.

**Committee Discussion:** (35:50 - 38:10) The committee discussed the amendments.

**Senator Heckaman:** Moved to Adopt Amendment.

**Senator Piepkorn:** Seconded the motion.

**A Roll Call Vote Was Taken: 7 yeas, 0 nays, 0 absent.**

**Motion carried.**

**Senator Anderson:** Moved Do Pass As Amended.

**V-Chair Larsen:** Seconded the motion.

**Committee Discussion:** Chair J. Lee and Senator Clemens briefly discussed the bill.

**A Roll Call Vote Was Taken: 6 yeas, 1 nay, 0 absent.**

**Motion carried.**

**Chair J. Lee will carry the bill.**

OK  
2/1/17

February 1, 2017

PROPOSED AMENDMENTS TO SENATE BILL NO. 2187

Page 1, line 2, after "reimbursements" insert "; to provide for a report to the legislative management"

Page 2, after line 14, insert:

**"SECTION 2. REPORT TO LEGISLATIVE MANAGEMENT.** The department of human services shall continue to meet with the developmental disability ratesetting steering committee to seek input and assistance throughout the implementation of the ratesetting methodology, which may include addressing potential client service changes resulting from implementation of the ratesetting methodology. The department must address the unique and special care needs of individuals within the developmental disability system through an outlier process. The department shall provide a report to the legislative management during the 2017-18 interim regarding the outlier process used and the ratesetting implementation."

Renumber accordingly



Date: 2/1 2017Roll Call Vote #: 1

**2017 SENATE STANDING COMMITTEE  
ROLL CALL VOTES**

BILL/RESOLUTION NO. 2187Senate Human Services Committee☐ SubcommitteeAmendment LC# or Description: 17.0808. 01001

Recommendation: ☒ Adopt Amendment  
☐ Do Pass    ☐ Do Not Pass    ☐ Without Committee Recommendation  
☐ As Amended    ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ \_\_\_\_\_Motion Made By Sen. Heckaman Seconded By Senator Piepkorn

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee (Chairman)	<u>X</u>		Senator Joan Heckaman	<u>X</u>	
Senator Oley Larsen (Vice-Chair)	<u>X</u>		Senator Merrill Piepkorn	<u>X</u>	
Senator Howard C. Anderson, Jr.	<u>X</u>				
Senator David A. Clemens	<u>X</u>				
Senator Curt Kreun	<u>X</u>				

Total (Yes) 7 No 0Absent 0

Floor Assignment \_\_\_\_\_

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



Date: 2/1 2017Roll Call Vote #: 2

**2017 SENATE STANDING COMMITTEE  
ROLL CALL VOTES**

BILL/RESOLUTION NO. 2187Senate Human Services Committee☐ SubcommitteeAmendment LC# or Description: 17.0808.01001

Recommendation: ☐ Adopt Amendment  
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☒ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ \_\_\_\_\_Motion Made By Sen. Anderson Seconded By Sen. Larsen

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee (Chairman)	X		Senator Joan Heckaman	X	
Senator Oley Larsen (Vice-Chair)	X		Senator Merrill Piepkorn	X	
Senator Howard C. Anderson, Jr.	X				
Senator David A. Clemens		X			
Senator Curt Kreun	X				

Total (Yes) 6 No 1Absent 0Floor Assignment Sen. Lee

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

**REPORT OF STANDING COMMITTEE**

**SB 2187: Human Services Committee (Sen. J. Lee, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2187 was placed on the Sixth order on the calendar.

Page 1, line 2, after "reimbursements" insert "; to provide for a report to the legislative management"

Page 2, after line 14, insert:

**"SECTION 2. REPORT TO LEGISLATIVE MANAGEMENT.** The department of human services shall continue to meet with the developmental disability ratesetting steering committee to seek input and assistance throughout the implementation of the ratesetting methodology, which may include addressing potential client service changes resulting from implementation of the ratesetting methodology. The department must address the unique and special care needs of individuals within the developmental disability system through an outlier process. The department shall provide a report to the legislative management during the 2017-18 interim regarding the outlier process used and the ratesetting implementation."

Renumber accordingly

**2017 HOUSE HUMAN SERVICES**

**SB 2187**

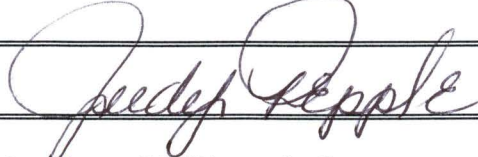
# 2017 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee  
Fort Union Room, State Capitol

SB 2187  
3/15/2017  
29264

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to developmental disability reimbursements; to provide for a report to the legislative management; and to provide a contingent effective date.

## Minutes:

1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13

Chairman Weisz: called the committee to order.  
Opened the hearing on SB 2187.

Sen. J. Lee  
Introduced SB 2187  
( Attachment 1) 2:48

Chairman Weisz: Are there any questions from the committee?

12:10

Representative Schneider: Initially when this came out it was brought to my attention that those with more needs or more difficult diagnosis would lose some of their services.

J. Lee: We looked at this very carefully and would never allow that to happen. We have taken 8 years to do this, so hopefully we have done it right. The last thing we want is for those to not have the services they need.

Chairman Weisz: Are there more questions from the committee?

Chairman Weisz: Is there testimony in support of SB 2187?

Bruce Murry, Exe. Director of the ND Assoc. of Community Providers  
(Attachment 2)

15:16

Chairman Weisz: Are there questions from the committee?

16:42

Chairman Weisz: Is there further testimony in support of SB 2187?



Jon Larson, Exe. Dir. Of Enable, Inc.  
(Attachment 3)  
22:06

Chairman Weisz: Are there any questions from the committee?

Representative P. Anderson: This assessment that is going to be done. How often will it be done?

J. Larson: It will be done on a 3 year cycle. We have already been using this, so we familiar with it.

Representative P. Anderson: How many of the individuals in the pool would fall under unique needs?

J. Larson: We serve about 2700 and we feel there might be 5 % that fall into that category. So they are calling about 5% of our population to be outliers. So there is an outlier process to deal with those needs.

Chairman Weisz: Why would there be loss of community placement. Why would they lose that placement?

24:00

J. Larson: I feel that I will be paid a little more for some and a little less for others. those concerns may have a wide range of causes. I can only speculate. I am looking at this as not a different way of providing services, but a different way of getting paid for the services I provide. It is based on averages. For some people I will get paid a little less and for others I may get paid a little more. As an agency director I feel that I have to manage to meet the needs of all the people that I am committed to serve. So extremes that may exist in some places may make some agencies feel that that will hinder their ability to provide services.

Chairman Weisz: Would that occur because of the mix of clients?

J. Larson: that is a possibility.

Vice Chairman Rohr: What is the age range of your clients?

J. Larson: From age 3 through the rest of their life.

Vice Chairman Rohr: So when you talk about your 5% outliers, is that the age where they would use the assessment tool for children?

J. Larson: No, there is a separate assessment tool called the ICAP that will be used for children between the ages of 3 and 16.

Vice Chairman Rohr Who makes the determination for the outliers system.

J. Larson: The outliers system is a well- defined list of diagnosis or descriptors that would make a person eligible.

Representative Schneider: Who chose the SIS tool?

J. Larson: The SIS tool was decided a number of years ago, probably about 6 years ago. It is probably recognized as the most widely, most researched, most valid tool for determining needs of people with intellectual disabilities. It was a decision by the legislature.

Representative Schneider: Are you aware that there have been lawsuits against this system.

J. Larson: I am aware of that. I think that is more do to the people using the system and not the system.

Representative Schneider: You said that you had 20% that were not in favor of this? Could you give us some idea of what the objections are and how you have tried to resolve that?

J. Larson: We are a fairly small association. I believe we have 26 members. I think we had 5 dissenting members. We have worked very diligently over the past 6 years to assure that any new proposal would not have any negative affect on any of those we support. When you are dealing with averages there are going to some people that will be on both sides of that average. We have continued to work on refining the tools that we have to minimize those and the outlier process is one of those things that we continue to work on.

Representative Schneider: I am sure that the hard to serve folks were the issues. Did those people have other issues and were they addressed? If they were, what was done.

J. Larson: I would say that in my opinion the most difficult area that we continue to deal with are people with behavioral needs. I think the assessment tool that we have and the process that we are utilizing meets the needs from extraordinary medical needs as well and where it doesn't I think the outlier process should take care of it. There are some people with behavioral needs that don't have high support needs. It is a challenge trying to figure out how to meet all of those needs.

Representative McWilliams: Do you see anyone falling through the cracks with this system and if so, how many.

J. Larson: That is a difficult number for me to give, but there are things put in to place to try to meet their needs in another fashion. It may be difficult in some scenarios to continue to meet the needs of those individuals.

Representative McWilliams: Can you give us more information on the outlier process?

J. Larson: We have a policy here with that explanation. I will see that you get a copy of it. He went through the outlier process.

Representative McWilliams: Elopement?



J. Larson: That might be somebody that lives in a group home that has a tendency to run away without permission.

Representative P. Anderson: Are there any clients that will have to leave where they are living?

J. Larson: The intent of this payment system is that there shouldn't be anyone that would have to leave their current home.

Representative Schneider: Would that express concerns that this might cause people with complex problems and behavioral issues to end up in a life skills transition center at a greater rate than what would normally happen and if so how have those concerns been dealt with?

J. Larson: I have heard that concern to what extent it may occur someone else could maybe testify to that better. The outlier process is in place to assure that that doesn't happen.

Vice Chairman Rohr: I heard that some of the provider services were over paid and some were under paid. What guidelines will you use for those categories?

J. Larson: The payments are based on averages. They will look at all provider's expenses and determine to be average rates. They will probably not be dead on for every single person so there may be some that get paid more for some and less for others. The system is designed to meet that average. It doesn't mean that a provider will get over paid. It means they may get paid a little bit more for a person and they may get paid a little bit less for another person.

Chairman Weisz: Further questions? Seeing none. Thank you.  
35:40

Chairman Weisz: Is there further testimony in support of SB 2187?

Tom Newberger, Chief Exe. Officer for Red River Human Services Foundation.  
(Attachment 4)

41:47 Chairman Weisz: Are there any questions from the committee?

Representative P. Anderson: What can you say to me about simpler, easier, averages. Those words do not make me feel good about that.

T. Newberger: The new system is based on averages. Under the current system I cannot tell you how many different rates there are across the state for the same service. The new system is much more fair. If everyone in this room had the same needs, you would all receive the same level of hours and support. Yes, under the current retrospective system that we have, which is much more complicated, you may receive 2 hours and Mary may receive 16 hours. It is based on how hard and how well the provider negotiates his hours.

Representative McWilliams: Are there providers then that will lose money since they are

better negotiators?

T. Newberger: Yes, there will be people that will lose money because of that, but there is a real need for fairness. Even those people support this system, because it will make it easier to manage their staff. As a CPA going from a retrospective system to a prospective system is a good thing. I have watched our hours very carefully. I support this system because it is the fairest. Yes, there will be people that will lose money, but it will depend on how they choose to spend their dollars.

Representative McWilliams: As a CPA you watched your dollars very closely and as a business owner I do the same. Going from a retrospective system to a perspective system do you know what percentage of cost savings you will have and what the cost savings for your administrative cost will be?

T. Newberger: I don't have the actual dollar amount, but the savings will come from the fact that we as providers will not have to touch the data so many times. Right now we probably touch it about 6 times and the state touches it 8 times. It goes back and forth. How much exactly that will save our agency I don't know.

Representative McWilliams: With the savings you will see is it your intention to put those savings back into customer service and providing greater services to help prevent those people from falling through the cracks?

T. Newberger: In our agency the biggest gain we will see is in hours for people that we support. We have a sheltered workshop and we will be able to get people out of the sheltered workshop and into the community, so our focus will be on the people we support.

Chairman Weisz: are there any more questions?

Chairman Weisz: Is there further testimony in support of SB 2187?  
49:07

Chairman Weisz: Is there any testimony in opposition to SB 2187?

Jeff Pederson, President of CHI Friendship  
(Attachment 5)  
1:00

Chairman Weisz: Are there any questions from the committee?

Representative McWilliams: Do you think there is a middle ground between the two?

J. Pederson: Yes, I do. One of the things we heard about was that the system is behind about 3 or 4 years and I think we should hang on to that system until we get those up to date.

Chairman Weisz: Are there further questions from the committee.

Chairman Weisz: Further testimony in opposition to SB 2187?



Michele Gilbertson, Provider  
(Attachment 6)

1:01:30

Chairman Weisz: Questions from the committee?

1:04:45

Chairman Weisz: Is there further testimony in opposition?

Margo Fauss, mother  
(Attachment 7)

1:04:24

Chairman Weisz: Are there any questions from the committee?

Representative Schneider: Is Paul working with Michele Gilbertson?

M. Fauss: Yes.

Representative Schneider: When Paul went from 24 hour care to 3 hours. Was that a result of the SIS assessment?

M. Fauss: Yes, that is what they told us would happen with this new program. They said we might have to be released and then we would be floating.

Chairman Weisz: Further questions from the committee?

Chairman Weisz: further testimony in opposition to SB 2187?

Paula Storm, CHI Friendship Board member  
(Attachment 8)

1:08

Chairman Weisz: Are there any questions from the committee?

Representative D. Anderson: Is there any other kind of assessment that could be used?

P. Storm: I don't know, but I could google it.

Representative D. Anderson: I don't believe one assessment would be appropriate. I don't believe you can assess someone in 2 or 3 hours.

Representative P. Anderson: Do you think the things that going on in Katie's life are working well for her?

P. Storm: Yes, I am pleased with what we have going on in Katie's life is probably the best she has ever had. Katie would like to work more and have more hours to be able to show what she can do.

Representative P. Anderson: Does this new process scare you?

P. Storm: Yes.

Chairman Weisz: Is there further testimony in opposition to SB 2187?

1:27:35

Matt Smith

(Attachment 9)

1:28

Chairman Weisz: Is there further opposition to SB 2187.

Katie Storm

(Attachment 10)

1:29

1:35

Chairman Weisz: Are there any questions from the committee?

Chairman Weisz: Is there further testimony in opposition to SB 2187.

Trevor Hinsz, Father of a downs syndrome daughter

(Attachment 11)

Chairman Weisz: Questions from the committee?

Chairman Weisz: is there further testimony in opposition to SB 2187?

Jason Thorp

(Attachment 12)

1:40

Chairman Weisz: Questions from the community?

Chairman Weisz: Where do you work?

J. Thorp: Lowe's Hardware for 15 years.

Bradley Jacobson

If SB 2187 is approved his employment support will be cut 80%. Please vote no on this bill.

Suzanne Carrol, Employment Specialist

(Attachment 13)

1:52

Chairman Weisz: Are there questions from the committee?

Representative P. Anderson: How many people do you assist?

S. Carroll: It fluctuates, but with our department we support about 60 people.

Representative P. Anderson: How many of those 60 will not be able to work if this program is changed in this way?

S. Carroll: All but one of the people we submitted would not be able to work. Also our office would probably not be able to stay open at all.

Representative McWilliams: What does WIOA mean?

S. Carroll: It is on page 2. It means the Workforce Innovation and Opportunity Act.

Representative Porter: When we see testimony like this we hear two different things from the two sides. Your position is that someone being able to work outside of a workshop would be diminished greatly. Then there are others that say the services will be absorbed in the workshop type setting. As we are trying to get through this and trying to figure out the best thing for ND. Your opinion is that the ability for folks to work outside of the workshops and be in the community will be severely diminished by the passing of this bill.

S. Carroll: Yes.

Westlind: I am trying to grasp the negative aspect of this bill. Was it the intent of the bill to get rid of the employment?

S. Carroll: I don't know what the intent was, but I do know that vocational rehab was not even given any information on this until October and they are the ones that we have to go through to establish employment. With the SIS assessment is that it focuses on hard skills like to use a calculator or operate a cash register, what it doesn't touch on are the soft skills. People with developmental disabilities are not always as able to pick up on the social norm. Some of the people that are not quite as high functioning may have a really nice personality and be able to work with people and the employer might be more willing to work with them and someone that scores higher on the SIS might be a really cranky person and no one wants them to work for them. I think it is the difference of how people test on paper and what real world implications are. That is why I don't see a good balance in using only one assessment tool.

Westlind: Give me an example of what a job coach does and how many hours that person might work.

S. Carroll: It is very individualized. Most people have to be able to work half of their shift without a job coach. They usually only have a couple of hours out of their shift with coaching. It is not usually an 8 – 5 sort of thing. We are often the advocate for the clients. Sometimes the job coach is to help with training in hard skills or sometimes it is being the middle man and a go between with management.

Representative McWilliams: A job coach works with individuals one on one or what?

S. Carroll: Usually it is one on one, but it is not the whole shift. Sometimes there are two people that work at the same place, so you can coach two at once. They don't usually work the same hours though.



Representative Schneider: The least restrictive alternative is a big deal. If you lose those hours and you don't know what they will do during the day. If they are put back into the sheltered workshop, I would think that would be a huge violation of federal law.

S. Carroll: I think the potential is always there if you are not using those dollars to provide the least restrictive environment. I know it is already an issue with WIOA for high school kids.

Chairman Weisz: Further questions?

Chairman Weisz: further testimony in opposition?

One of the clients: When I first started working for Friendship I was nervous like today, but the best day of my life was when I met Susan. They helped me get my job and to be able to do it.

Chairman Weisz: Is there further testimony in opposition to SB 2187?

Chairman Weisz: We will close the hearing on SB 2187

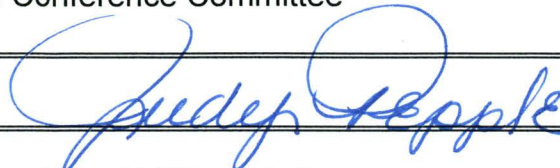
# 2017 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee  
Fort Union Room, State Capitol

SB 2187  
3/27/2017  
29719

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to development disability reimbursements; and to provide a contingent effective date.

## Minutes:

Chairman Weisz: called committee to order.

Attendance taken

Chairman Weisz: opened the discussion on SB 2187

We have received a few emails on this. I visited with the department. The current law that is in place says that we are going to a perspective rate system. I firmly believe we have to go there. If we kill the bill it doesn't change anything in the current law which will say that the department must continue to proceed to go forward to try to implement a perspective rate system. If we recommend a do not pass it will give them time to stay in committee to continue to try to resolve the differences that there are. They are already getting closer, but they are still not there. It doesn't stop the process, but it does give them time to work on it. My recommendation would be to kill the bill.

Representative Skroch: Since we heard this bill I have received a lot of input from emails and visiting with people. I would move for a do not pass

Representative McWilliams: second

Chairman Weisz: we have a motion and a second for a do not pass on SB 2187.

Representative Schneider: If we vote a do not pass, I know it will continue to move forward how is this going to effect the clients.

Chairman Weisz: Everything will stay the way it is for now. The perspective rates won't go into effect until it is all settled. The dollars are already in the budget, so that doesn't change. The protection will be that if and when they come to a final agreement, they will have to go to administrative rules before they can put it in place.

Representative Schneider: Is there a place for P & A to be part of this?

Chairman Weisz: There are 6 different organizations that are involved and trying to iron out the differences.

Representative Skroch: I am concerned with the bill and the usage of the SiS. There is a lawsuit in the works somewhere now.

Chairman Weisz: I don't let someone trying to sue us be a reason to not do what is right.

Representative Skroch: I am more concerned with the accuracy to assessing their needs and allows them to be able to continue.

Representative McWilliams: I have spent a lot of time studying this bill. They are looking at trying to make this fair and a level playing field. It is trying to use an average for each person and that is already being done. I don't understand what is going to be changed. I think it is a disservice to those that need services to put them in a one size fits all. The SIS test is to look as statistical averages across the state of ND.

Chairman Weisz: The payment will change significantly. The facility will get a specific payment rate. It does not determine what they will use for which client. It will be a perspective rate, so it will be a night and day difference.

Representative McWilliams: I know we can go to a prospective payment system. What I understand about the bill is that the SISS test is going to be used to set the rate.

Chairman Weisz: The dollars don't follow the client. They do that assessment and then the payment rate is set, but the money does not follow the client. They will still have to figure out what that client needs. They will determine where their money will go. Every facility has that flexibility. The payment is to cover the average. They might use more money to meet the needs of client A and less money than the average on Client B.



Representative Skroch: In the fiscal note it shows millions of dollars being shifted from one provider to another, but not a savings. How does that work?

Chairman Weisz: The fiscal note does not show any shifting. With the retrospective payment system, it depended on who could negotiate the best. We are looking at averages, but that doesn't say what that client needs. The facility is still going to have to meet the needs of the clients they have. They are wanting to get it to average out, but they are feeling that they don't have enough hours for the people that need a one on one.

Chairman Weisz: Is there further discussion on SB 2187?

Seeing none, we have a do not pass motion on the floor. The clerk will call the roll for a do not pass on SB 2187.

Roll call vote   Yes   13   No   0   Absent   1

Chairman Weisz: I guess I will carry this one.

Date: 3/27/17  
Roll Call Vote #: \_\_\_\_\_

2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2187

House Human Services

Committee

☐ Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation: ☐ Adopt Amendment  
☐ Do Pass ☒ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Rep. Skroch Seconded By Rep. McWilliams

Representatives	Yes	No	Representatives	Yes	No
Chairman Weisz	✓		Rep. P. Anderson	✓	
Vice Chairman Rohr	✓		Rep. Schneider	✓	
Rep. B. Anderson	absent				
Rep. D. Anderson	✓				
Rep. Damschen	✓				
Rep. Devlin	✓				
Rep. Kiefert	✓				
Rep. McWilliams	✓				
Rep. Porter	✓				
Rep. Seibel	✓				
Rep. Skroch	✓				
Rep. Westlind	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Chr. Weisz

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



**REPORT OF STANDING COMMITTEE**

**SB 2187, as engrossed: Human Services Committee (Rep. Weisz, Chairman)**  
recommends **DO NOT PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).  
Engrossed SB 2187 was placed on the Fourteenth order on the calendar.

**2017 TESTIMONY**

**SB 2187**



SB 2187  
Attach #1  
1/18

**Senate Human Services Committee  
Senator Judy Lee, Chairman  
NDACP Testimony, January 18, 2017  
Senate Bill 2187**

Good morning, Chairman Lee and members of the Senate Human Services Committee. I am Bruce Murry, Executive Director of the North Dakota Association of Community Providers (NDACP). NDACP is the membership organization of 31 licensed providers of services to North Dakotans with developmental disabilities.

NDACP supports Senate Bill 2187.

Our members have invested countless hours in the Steering Committee for the proposed payment system. Our association has also focused internally on the benefits, risks, and other possible outcomes of the proposed payment system over the last eight years. By a margin of over 80%, our members support moving forward with SB 2187.

While our members are DD service providers, we all agree it is individual North Dakotans with developmental disabilities that matter in assessing the proposed payment system. All of our members are committed to providing services in the community to people with developmental disabilities. We stand ready to assist any individual whose services are disrupted by the proposed payment system.

I would like to introduce the following CEOs of DD providers:

Jon Larson, Executive Director, Enable, Inc., Bismarck

Tom Newberger, CEO, Red River Human Services Foundation, Fargo;

Borgi Beeler, President/CEO, Kalix, Minot (independent of NDACP).

Thank you for your time and consideration this morning.

**Testimony on SB 2187  
Senate Human Services Committee  
January 18, 2017**

Chairman Lee and members of the committee, my name is Jon Larson. I am the executive Director of Enable, Inc, a licensed service provider for people with intellectual disabilities in Bismarck and Mandan. I am also privileged to serve as the current president of our state provider association, the North Dakota Association of Community Providers (NDACP). I am here to testify in support of SB2187.

I would like to provide a little bit of the history of the work that has been done to develop this new payment system and then briefly discuss the current status and impact of this process. The 2009 legislature required the Department of Human Services to work with a consultant to study the effectiveness of the current DD reimbursement system to fairly and adequately meet the needs of people with the most severe medical and behavioral challenges. Burns and Associates were hired, and determined North Dakota's retrospective DD reimbursement system to be the most complex in the country, and in need of transformation.

Based on their recommendations, the 2011 legislature directed DHS to work with a Steering Committee, including representation from the provider community, to design a new payment system that would allocate resources to individuals based on their needs as measured by a nationally-recognized assessment tool called the Supports Intensity Scale (SIS). The Steering Committee has worked diligently with DHS and various consultants since the spring of 2011 to accomplish this task. The contract with the primary consultant, JVGA, ended in June 2014, and a final report outlining a process involving the use of scores from the Supports Intensity Scale (SIS), a cross-walk to connect a range of scores to increments in authorized support hours, and a unit rate matrix with standardized rates for defined services, which would result in a unique annual Individual Budget Allocation for every client.

In early January 2015, the Department of Human Services agreed to delay the implementation of the new payment system because of concerns expressed by providers related to the large degree of variances that were found when compared to the current



2187  
#2  
1/18

payment system. NDACP agreed to continue to work to find solutions to these remaining issues. NDACP hired the consultant company of JVGA to help address specific problems with the system design. The resulting recommendations were then provided to the Steering Committee for review, with many of the recommendations incorporated into the current design. Work also continued on a separate assessment tool for children and for developing a process for adequately addressing the needs of "outliers", where the new system did not adequately provide for the unique needs of these high needs individuals.

The plan was to implement this new system on January 01, 2017 but The Department decided to again delay the implementation due to concerns raised by some providers about the detrimental effect implementation would have on some consumers, including possible loss of community placement. Providers continue to work with the Department to alleviate these concerns and our steering committee continues to meet.

It is true that some service recipients will see a reduction in the number of support hours as compared to what they are currently receiving. This is one of the complications of implementing a new system that is based on a needs assessment and standardized rates. Providers are committed to minimizing any negative effects that may result to consumers, but there may be some unintended consequences of implementing this new payment system. No payment system is going to be perfect and without complications. Much work has been done by DD providers and the DD division to address the many concerns that have arisen designing this new system. In a recent meeting of our association, 82% of our members were in favor of moving forward with the new payment system.

Thank-you for your continued support and for this opportunity to talk to you today. I would be glad to answer any questions you may have.

Jon Larson, Executive Director Enable, Inc.  
President, North Dakota Association of Community Providers (NDACP)

SB 2187  
Attach #3  
1/18

Testimony  
Senate Bill 2187 – New DD Payment System  
Senate Human Services Committee  
Senator Lee, Chair  
January 18, 2017

Chairman Lee and members of the Senate Human Services Committee, for the record, my name is Tom Newberger. I am the Chief Executive Officer for Red River Human Services Foundation. We provide supports to people with Developmental Disabilities in Fargo, West Fargo and Wahpeton, North Dakota. I am here today to explain why I support Senate Bill 2187 for a new DD payment system.

I have worked in this field for nearly 31 years. I have a financial background and I am a Certified Public Accountant. During my first six-years in this industry, I was the Chief Financial Officer, working directly with the current payment system. My education, background and experience has given me a unique perspective on both the current payment system and the proposed system that SB 2187 supports. I will now briefly explain why the current system needs to be replaced and the benefits of the new system.

Current Payment System:

The current system we operate under is a retrospective payment system. Under this system, the DD Division approves a budget for a provider, we spend the funds, we are audited and then a settlement is reached between the Provider and State. Basically we are constantly looking backwards financially to see how we spend our dollars. It can take three to four years to reach a settlement with the State. These delays have cost some Providers huge losses that they cannot afford to pay back, and because of this, some providers, such as Lutheran Social Services in Fargo, ended their DD programs. Since settlements can take so long, a provider may make a financial mistake and repeat that mistake for four years because we do not receive timely financial feedback from the State. According to Burns & Associates, a national consultant for the state, they reported in their February 25, 2010 report on page 36, (attachment #1) *"When compared to other rate-setting designs used by States, North Dakota's system is one of the most, if not the most, difficult to administer."*



2187  
#3  
1/18

Also under the current system, the process and assessments used by the State to allocate funds to people we support is not fair. According to JGVA, another national consultant for the State, they said in their May 2014 report on page 18 (attachment #2) that *"This is a problem because the process is not uniformly applied to all persons receiving services and, therefore, individuals who might benefit from additional services may not receive them."* They go on to say on the same page *"Provider's budgets are based on historical audited costs and negotiated FTE's. Rates based on negotiations can lead to an unfair distribution of resources, because they may be influenced more by the ability of the provider to make the case for them, than by an impartial assessment of the individual needs."* Finally, *"Inconsistent processes...can result in people with very similar needs receiving different levels of funding for their service."*

#### New Payment System:

The new payment system is considered a prospective system, meaning we look forward rather than backwards. Payment rates for services will be consistent and fair. More importantly, the impact on the people we support will also be more consistent. Overall, people with the same needs will receive the same number of hours of support. According to JGVA on page 4 of their May 2014 report (attachment #3), the new system will be simpler. They go on to say *"A simpler system is easier to operate and frees the community to focus on the things that affect the quality of life for consumers."*

From a financial perspective, the new payment system will be less expensive for the State and providers to operate. Burns & Associate said in their July 4, 2010 report at the bottom of page 30 (attachment #4), *"moving from a retrospective to a prospective system...is vastly simpler and cheaper" to operate.* They also said at the top of the same page *"Our estimate is that approximately \$2.6 million per year is spent just to operate the (current) reimbursement system."*

In closing, I would strongly encourage a do-pass on Senate Bill 2187. It will create more fairness, be less expensive to operate and will better meet the needs of people with developmental disabilities. Thank you Chairman Lee and I am open to any questions.

PJ.2

## CHAPTER 5: ADMINISTRATION AND OPERATIONAL ANALYSES

While the previous chapter reported B&A's findings on the quantitative analysis of the current reimbursement system, Chapter 5 presents the results of our analysis of the administrative and operational features of the system. The analysis reported in this chapter is based on four sources of information:

- A detailed walk-through of the current system provided by DDD staff
- Focus groups, interviews and written comments received from DDD program managers and service providers (summarized in Chapter 3)
- Quantitative analysis of assessments, claims and payments/costs (summarized in Chapter 4)
- B&A's and HSRI's experience with rate-setting systems and assessments in other States

The administrative costs of the current system and comparisons to alternatives identified for North Dakota will be addressed in future deliverables.

### Overview

North Dakota's current reimbursement system mixes a cost based reimbursement structure with additional compensation specifically related to individuals who are medically fragile and/or behaviorally challenged. By itself, the components of the current system specific to the identification and compensation of the enhanced needs of those individuals who are medically fragile and/or behaviorally challenged including the Oregon Medical and Behavioral assessment scales and distribution of the targeted appropriation "buckets" are relatively straightforward. However, evaluating the adequacy of those payments is problematic given the complexity of the system as a whole.

Within the current reimbursement system, the State uses three assessment tools to accomplish its goals. These assessment tools coupled with the interim rate-setting and budgeting process, audit and cost settlement, make operation of North Dakota's current reimbursement system very complex and resource intensive. When compared to other rate-setting designs used by States, North Dakota's system is one of the most, if not the most, difficult to administer.

The remainder of this chapter discusses the key administrative and operational challenges within the current system examining:

- The disconnect between payment based on the assessed needs of individuals and a cost based reimbursement structure
- Features of the interim rate-setting, audit and cost settlement process that make North Dakota's system resource intensive



2187  
#3  
1/18

everyone's results can be lined up, from one end to the other (by arranging scores from the low end to high end, for example). That makes it possible to compare any person being assessed with the results from the group whose results were lined up, which is called the "norm group."

If researchers wanted to create a norm group so that doctors could compare a person's height to the population of the United States, for example, the norm group might be made up of people who are chosen randomly from phone books in different cities around the country. Then, if a patient goes to a doctor's office to be measured, the doctor could trust that the patient can be accurately compared to the measurements of the norm group. That allows the doctor to tell patients whether they are taller than most people in the U.S., about the same height as most people in the U.S., or shorter than most people in the U.S. Any time there is a need to compare an individual with others for some purpose, having a standardized assessment with a set of norms is very helpful.

A study completed by Burns & Associates in 2010 showed that DHS-DDD has used two different assessments and a budgeting process to help decide how much state funding is given to service providers. They use one assessment to give special funding to service providers for people with extraordinary behavioral and medical needs. For instance, if a person needs care provided by a nurse, this assessment is used to help qualify that person for the special funding. They use another assessment to help decide whether that person has a disability that is serious enough to qualify for funding, in general. This assessment also helps DHS-DDD decide how much funding they will get for certain services. Besides the fact that DHS-DDD has had to deal with two different assessments in setting rates, another problem with the process is that only people who providers think might qualify for the special funds are assessed for them. This is a problem because the process is not uniformly applied to all persons receiving services and, therefore, individuals who might benefit from additional services may not receive them. Service providers also have to turn in budgets every year as part of the way DHS-DDD decides how much funding they will get. Providers' budgets are based on historical audited costs and negotiated FTEs which consists of the base staff ratio and any enhancements needed. Rates based on negotiations can lead to an unfair distribution of resources, because they may be influenced more by the ability of a provider to make the case for them, than by an impartial assessment of individual needs.

Inconsistent processes for identifying needed services and rates that are based on a history of negotiations can contribute to the issue mentioned in the introduction, because they can result in people with very similar needs receiving different levels of funding for their services. The report by Burns & Associates concluded that the current process of rate-setting was very labor intensive for both the providers and the state and the process did not accurately reimburse providers for providing supports to consumers. Therefore, the 2011 Legislative Assembly instructed DHS-DDD, in conjunction with developmental disabilities service providers, to develop a prospective or related payment system with an independent rate model utilizing the Supports Intensity Scale (SIS). First, the legislature wanted to reduce the effort needed to manage the budget process, with the special requests



2187  
#3  
1/18

present, and although we were not committee members, we served primarily to inform the committee in matters of how standard rate systems behave, how assessments can be linked to budgets, quality initiatives and how to measure them, as well as limits that would be placed by the Federal Government through Medicaid regulations. Stakeholders were invited to witness the meetings and many did.

The committee served to guide the development of the new payment system so that it would be a good fit for North Dakota. JVGA always prefers to work closely with provider agencies, believing that their contribution is vital in matters of service design and also in setting up ways to pay for services. JVGA has completed standard rate projects in nine states (with North Dakota) and this project has involved more provider input than any other in our history. The complexity of the environment and the variety of input into the design has been a challenge but the efforts of everyone involved will pay off. The standard rate system has elements unique to North Dakota; the assessment process and how it connects to resources has been (and continues to be) carefully thought out; and the quality initiatives that have been identified and quantified reflect the long-standing philosophy of providing the best services and greatest degree of hope for a better life for people who need these supports.

So, why do this project?

1. We believe that the simplest and most truthful answer to this question is that the state is seeking fairness for providers and consumers in this program. That fairness translates to three conditions:
  - a) If two providers provide the same level of supports in the same way, they will get paid the same amount of money.
  - b) If two people are determined to need the same supports provided in similar ways, they will get those similar supports.
  - c) The quality of these services and the positive impact they have will never be left out of the measurement of the success of the program.

There are a variety of other reasons for doing this kind of project that are related to fairness. For example, if the level of supports a person receives is paid the same amount regardless of which provider provides it, then money does not become a barrier for the person if their life takes them away to new sites and settings. This concept is recognized as valuable in Medicaid and is referred as "money follows the person." In fact, Medicaid has offered grants in the past to states who are attempting to accomplish this, when moving people from institutional programs to community-based services.

Another reason that many states have moved in the same direction as North Dakota is to simplify the system. A simpler system is easier to operate and frees the community to focus on the things that affect the quality of life for consumers.

2187  
#3  
1/8

## Opportunity Costs

Perhaps the most significant problem with the current cost-based reimbursement system is the administrative burden it places on the financial parties – the providers and the State. The process of accounting for every dollar and ensuring that providers are paid according to their own individual costs is a tremendous task, as outlined in Chapter 3. Our estimate is that approximately \$2.6 million per year is spent just to operate the reimbursement system. This includes the providers' costs, but since their costs are reimbursed by the State it is really all State and Federal cost.

Nevertheless, about \$1 million per year of State staff resources are committed to this process every year. These are resources that could be dedicated to other projects if the reimbursement operations were not consuming them. Plans for additional training, program enhancements, or reductions in case manager caseloads would be potential uses for this time.

Adopting a prospective rate system that paid a fixed fee for each unit of service such as an hour or day of service provided would free the State staff from having to audit and prepare reconciliations once the cost-based system is closed out. The state could use as filed cost reports to perform rebasing periodically (e.g. every three to five years) or could choose to audit the year used in rebasing. This audit process is not done by a number of states. As filed cost reports are currently used in North Dakota for nursing facility rate-setting. There are certainly significant changes in the financial dynamics when moving from a retrospective to a prospective system, but the operation of the latter is vastly simpler and cheaper.

Because of the demands of health care reform on state Medicaid agencies, North Dakota will need to weigh this project in the context of the additional populations, physician reimbursement, eligibility and systems changes required by the Patient Protection and Affordable Care Act.



SB 2187  
Attach # 4  
1/18

**Testimony on SB 2187**  
**Senate Human Services Committee**  
**January 18, 2017**

Chairman Lee and members of the committee: My name is Borgi Beeler, and I am the CEO of Kalix, a licensed service provider for over 200 people with intellectual disabilities in Minot, Grand Forks, Belcourt, Rolla, and Langdon, ND. For those of you that don't recognize the name – up until 2012 we were known as the Minot Vocational Adjustment Workshop, or MVAW. Thank you for your time today as I speak in support of Senate Bill 2187, which would facilitate moving forward with a new payment system to fund support services for people with intellectual disabilities based on the Supports Intensity Scale (SIS).

I know the current payment system well. I'm a CPA and I spent over 20 years working with the payment system as part of the Kalix accounting department before becoming CEO almost ten years ago. When the process of developing a new payment system started in 2009, I really wasn't excited about it. I liked the current system – I understood it, and we received sufficient funding. Yes, it's complicated and providers sometimes struggled with errors and timing of audits, but I thought that the flaws were manageable.

I've changed my mind, for two reasons. First, the current payment system consumes huge amounts of management resources. Enhancements must be negotiated, budgets must be submitted and approved, cost reports must be prepared, audits must be performed, and audit findings must be reviewed and sometimes contested. The new payment system doesn't eliminate the paperwork, but it does drastically reduce the time-consuming part of the process - the negotiation and contesting. Quite honestly, we have better ways to spend our time.

That brings us to the second reason that I've changed my mind. The current payment system sets FTE budgets using two factors: hopelessly outdated ratios based on average needs from the early 80s and negotiated enhancements. That system worked for many years – providers would submit a rationale for the needed level of staffing for people, and the Department would agree to the number of FTE that should be included in the budget. In recent years, the system has gradually become more difficult until providers are now submitting great amounts of information as often as every three months to justify each additional direct care FTE. Again, both provider staff and state staff can find ways to spend our time more productively.

The new payment system eliminates negotiation and sets rates based on the SIS. The opposition has stated that the SIS is inaccurate and biased towards congregate settings. Both complaints are true. The SIS is inaccurate – because no objective system could ever completely capture each person's



2197  
#4

1/19

need for support. However, the SIS is far more accurate than the current subjective system of negotiation, and using the SIS for reimbursement will result in a fairer allocation of resources than the current system. Listen to the experts – the reports from the consultants engaged by the Department.

Some providers are opposing the new payment system because it will result in decreased reimbursement for their programs. Is that because the SIS – a standardized national system developed by teams of experts, validated by statisticians, and widely used in many states – is inaccurate? Or is it because the current undefined and subjective negotiation system pieced together over the last thirty years through eight separate regional offices in North Dakota is inaccurate? If the new system is unfair because payments to some providers will be reduced, shouldn't we also consider the old system to be unfair because payments to some providers are lower than the SIS would indicate is appropriate?

And of course using an objective method of setting reimbursement combined with eliminating audit settlement will create incentives to providers to reduce costs – that includes finding ways to increase efficiency, innovation and creativity, as well as sharing staff and utilizing congregate settings. The balance is provided by competition – people will choose to enroll with providers that offer better, more desirable, services. Over time, the new payment system will foster the growth of providers that successfully offer a quality service within the payment specified by the SIS.

It won't be perfect right away – the Steering Committee has already addressed some issues and is continuing to look at ways to resolve other issues. Providers and the Department are committed to work together to ensure a viable system.

I can't promise that the transition won't disrupt some services or result in some changes. But North Dakota has a strong tradition of quality services, and I believe that taking this step will further strengthen our system and improve our services.

By the way, you might guess from my comments that Kalix has suffered on the losing end of negotiation in the past, and is anticipating increased reimbursement under the new system. But you'd be wrong. According to Department calculations dated March 2016, Kalix reimbursement will decrease about \$245,000. And yes, I still support the new system. It's the right thing to do. It will result in better services and more effective use of funding.

Please contact me if you have questions.

Borgi Beeler

[bbeeler@kalixnd.org](mailto:bbeeler@kalixnd.org)

701-852-1014 or 701-721-1451

65<sup>th</sup> Legislative Session  
Testimony  
Senate Human Services Committee  
January 17, 2017

Good afternoon Chairman Lee and members of the Committee. My name is Bryan Wetch, I am President of Community Options, Inc. I am asking for this committee to vote Do Not Pass on the amendment to SB 2187.

Community Options is a community based provider that serves 278 people with intellectual/developmental disabilities (DD/ID) in 7 regions across the state of North Dakota. The majority of those we support live and work in community based settings.

Community Options is not opposed to the implementation of a prospective system. However, there are several factors that need to be resolved prior to launching. A launch of August 1, 2017 would likely be too soon for those factors to be resolved. This could result in a loss of community based services for people with DD/ID across the state of North Dakota.

The system increases funding for people with ID/DD in some cases by tens of thousands of dollars and underfunds others by similar amounts. The system allocates resources to some people who do not want additional services and under allocates to some people who have the most significant needs.

Community Options, according to the last Universal Budget Impact (UBI) delivered by the Department of Human Services (DHS), estimates a reduction in reimbursed services of 2.1 million dollars. These reductions in reimbursement rates will lead to creating efficiencies that favor facility based models rather than individualized services. This is the opposite of the demands placed on agencies by HCBS and The Olmstead Act as sheltered/congregate environments are more restrictive than a community setting. Community Options will need to make efficiencies that in turn will have an impact on the way we have historically provided services. Community Options serves very few people in congregate situations. We support a number of people who choose to live alone or need to live alone, due to violent behavior, property destruction, intense medical, or other high needs. Under this proposed system, their funding has been reduced potentially forcing living situations that may risk their community based placement. The safety of both other people with ID/DD and community members is also a concern.

Although the state has developed an outlier process, the results have not been defined. These funds need to be determined in order to gauge the impact of the services provided to people with ID/DD. There is a concern that the outlier bucket is underfunded and will not adequately support those with higher needs. In July of 2016, we submitted 88 outlier considerations across multiple programs and regions in North Dakota and have yet to receive any response to these requests. Without this information we are unable to determine the service impact to the people we support.

There are several questions that should be carefully considered. Who will take those we may have to discharge? Who will support an individual living in a rural area, where efficiencies can't be made? Will those people be required to move to a larger city to have their needs met? Will those customers who have community based services, be forced into sheltered workshops or lose their jobs because the provider does not have adequate funding to continue to support them? Will a provider admit a person into their program if they know the person is underfunded and their needs could not be met? Will an individual be forced to choose a non-preferred provider based upon the reimbursement they are receiving? Does the SIS take into consideration the staffing required for community based services or



2187

#5

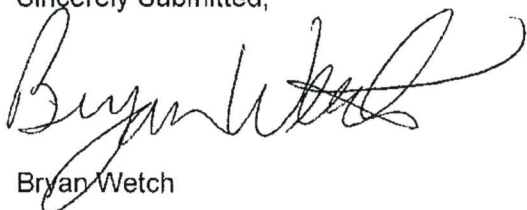
1/18

does it favor a facility based model? There is concern that if some of the high need individuals we serve are discharged from our program, there is a chance they will return to the Life Skills and Transition Center in Grafton.

In my opinion, the system does not accurately reflect the needs of the people we support or have supported for years. If the system issues are not addressed prior to the launch date of August 1, 2017, it could result in the loss of services for people with ID/DD. Community Options has declined to renew its membership with NDACP based upon the position they have taken in support of the implementation date. It is my opinion; the implementation of the payment system should be postponed until the aforementioned factors are resolved.

In conclusion, Community Options is asking for you to vote Do Not Pass on the amendment for SB 2187. Thank you for your time. If there any questions please do not hesitate to contact me at [bryanw@coresinc.org](mailto:bryanw@coresinc.org)

Sincerely Submitted,



Bryan Wetch



**CHI Friendship**

*Nurturing abilities, achieving dreams.*

801 Page Drive  
Fargo, ND 58103-2315

P 701.235.8217  
F 701.235.7538  
chifriendship.com

SB 2187  
Attach # 6  
1/8

July 26, 2016

The Honorable Jack Dalrymple  
Governor of North Dakota  
600 East Boulevard Avenue  
Bismarck, ND 58505-0100

Maggie Anderson, Executive Director  
ND Department of Human Services  
600 East Boulevard Avenue  
Bismarck, ND 58505

Tina Bay, Director  
Developmental Disabilities Division  
Department of Human Services  
1237 W Divide Avenue, Suite 1A  
Bismarck, ND 58501-1208

ND Department of Human Services  
Attn: Developmental Disabilities  
Division/Marella Krein  
1237 W Divide Avenue, Suite 1A  
Bismarck, ND 58501

Dear Governor Dalrymple, Maggie, Tina, and Marella,

My letter is written as a result of the public comment period established as a result of changes to the Home and Community Based Service Waiver and with the intent of commenting specifically on the new Developmental Disabilities Reimbursement System which is an integral part of these changes.

First let me say I have a true appreciation of all the work the members of the Steering Committee have done over the past four plus years. It has been enormous. The members of NDACP and the members of Tina's group from DHS have put forth an outstanding effort and I hope all of us can appreciate Tina's role in leading this effort.

My concerns are for the loss of resources people with intellectual/developmental disabilities will experience in this new reimbursement system of which many of you know I have opposed. It's certainly not that CHI Friendship is opposed to change as we have closed group homes and allowed people to experience greater privacy and independence over the years. We have closed sheltered work environments and moved our vocational service into the community. We have piloted the Level System with P&A etc., etc.

What I am opposed to is a system that does not, in my opinion, accurately reflect current needs of many of the people we have supported for years. From a staffing perspective, a system that allocates resources to some people who do not want additional resources and under allocates resources to some of the people who are in greatest need is not a sound system.

Concerns:

1. The outlier process and the dollars associated may be inadequate. How do we assure adequate funding for the outliers without depleting the funded percentages of the needed rates.



- 2187  
#6  
4/18
2. The SIS Assessment does not take into account the staffing required for community based day supports. Staffing ratios are much higher in a community based vocational program for many reasons: safety, supervision, personalized training, etc.
  3. The premise the system was based on was budget neutrality. This has led to some rates not being fully funded. Doesn't this indicate that the system is underfunded based on needs?
  4. We anticipate that we will need to move back into a sheltered work environment where we can have fewer staff for people supported. We also view this as a direct violation of the Olmstead Act as a sheltered environment is more restrictive than a community setting. This was tested in Oregon with the case of Lane v. Brown.
  5. We anticipate having to close our Extended Services Program which serves approximately 70 to 80 people in the communities of Fargo, Grafton and Park River. Our budget will drop from over \$850,000 to approximately \$400,000, a drop of 52%. The staffing hours approved will go from a total of around 161 hours of direct support for people per week to 54 hours of support hours per week. This is a 67% reduction of support hours! All of the people with disabilities in this program are making minimum wage or more. These people will not be able to maintain their current job placements with this drastic reduction in support hours. The only option will be to end the program which again may end up being an Olmstead Act violation.
  6. If people are discharged from a program because of lack of adequate resources, there is a chance they could return to the Life Skills and Transition Center in Grafton. Again, this is not the least restrictive environment for people to live.
  7. DHS has responded to this concern stating, "The DD program manager will work with the rest of the person's team to find another provider that can support the person's needs." What provider would admit a person into their program if they knew the person was underfunded and their needs could not be adequately met?
  8. There has been other litigation in the implementation of using SIS in other states such as New Mexico. Has DHS studied the effects and caveats of solely using SIS as a means of resource allocation (see attached).
  9. The new reimbursement system will not enhance the ability of people choosing services. People supported, parents, guardians and families may want to stay with a current provider but if the provider cannot meet the needs of safety, active supports/training and desired outcomes based on lack of resources, choice is not being followed.
  10. As a person who has spent 28 years in the field of developmental disabilities within the great state of North Dakota, five as the Director of Administration at the Developmental Center and 23 years as the President of CHI Friendship, I must say to implement this new reimbursement system knowing the potential and realized effects it will have on our state's most vulnerable population, is the most irresponsible decision I have witnessed. The decision will cause detrimental results on people's lives, loss of friends, loss of supports, loss of jobs, and loss of choices.
  11. The current reimbursement system allows for greater person-centered supports and funding based on team decisions and not on a subjective assessment that is conducted for two hours once every three years. The state of North Dakota has long been recognized as a leader in services and supports for people with disabilities by the

2187  
#6  
4/18

organization The Council on Quality and Leadership for People with Disabilities. The way it is currently being scheduled for implementation and the associated effects on people's lives is a step backwards. It unfortunately took a lawsuit in the early 1980's to be the springboard of adequately funding community based services and upholding people's rights in North Dakota. Please, let's not head down this path again!

12. Maybe the most viable option is to pilot the new reimbursement system for a biennium with a provider who gains resources and one who would lose resources to study the pitfalls and successes of the system and to make changes where needed before we impact hundreds of lives.

As an advocate for people with intellectual and developmental disabilities for over 28 years, it is imperative that we "do no harm" with this new system. It is imperative that we know the outcomes and effects on each person supported before we move forward. It is imperative that nobody is left with less support than is needed to maintain their home in the community and their job supports in place. North Dakota is better than this!

Please know I am willing to meet to further discuss the concerns stated in this letter. My greatest hope is that the implementation of the new reimbursement system will be postponed until all these concerns can be corrected.

Sincerely,



Jeff Pederson

cc: Mary Kay Rizzolo, President and CEO of CQL  
Parents and Guardians  
Board of Directors  
Protection and Advocacy, Teresa Larsen  
State Senator, Judy Lee  
State Senator, Tom Campbell  
State Representative, Kathy Hogan



2187  
#6  
1/18

Pederson, Jeff

---

## Lawsuit Filed by Individuals, The Arc and Disability Rights New Mexico

by parkeast | Jan 15, 2014 | Arc News | 0 comments

On Wednesday, January 15, 2014 The Arc of New Mexico, Disability Rights New Mexico and eight individual plaintiffs filed a lawsuit against state Department of Health (DOH) and the state Human Services Department (HSD) and top officials of those departments. The lawsuit challenges the way in which DOH/ and HSD have implemented the new waiver system. A request for preliminary injunction was also filed in an attempt to prevent further harm to those who are losing or at risk of losing services due to the implementation of revised system.

The lawsuit is necessary because of the state's refusal to make the modifications needed to comply with federal requirements. Although new waiver program was approved by federal government, state does not have permission to violate state and federal law.

### Claims Made/Complaints

1. Some individuals are being denied services that they need simply based on the scores they get through the assessment instrument (the Supports Intensity Scale, or SIS). Service plans should be individualized and take into account not only test scores but past experience and the independent judgment of the multi-disciplinary team that works with the individual.

Reductions or denials of services based simply on SIS test scores and assigned budget categories puts the health and safety of some individuals at risk. There is an urgent need to prevent further service reductions to these individuals, and that is the basis for the request for a preliminary injunction.

2. The state is restricting the ability of clients and families to appeal decisions that affect the services they receive. State imposed restrictions on what can be appealed and when it can be appealed violate federal law governing Medicaid.

3. The new system discriminates against individuals with the most severe disabilities by failing to provide a mechanism for them to obtain the full range of services they may need. The only option provided by the state that is supposedly designed to meet this need is deeply flawed. There are no clear eligibility criteria, and the program is unfamiliar or unknown to those making service decisions.

### Relief Sought

1. Declare that certain provisions of the state regulations issued in November 2012, and many of the policies and practices that have been developed by the state for the purpose of implementing the SIS-based waiver program, violate federal law.

2187  
#6  
1/18

2. Prohibit further implementation of the recent state regulations, policies and practices until such time as the state can fix the problems identified in the complaint.

Restore services to individuals that have been cut as a result of the new system, and prohibit any further service reductions until the violations of federal law have been corrected.

#### Clarification of Position

We are not opposed to use of the SIS as an assessment tool. It is a highly regarded, national model for assessing client needs. It was not intended to be a tool for establishing budgets, or for dictating how much of a particular therapy a person needs or should receive.

We support improved alignment of a client's service plan with the individual's needs and skills, as intended by the new waiver program, but believe that the final determination of the individual's service budget and package of services they receive should not be based on a single test score but on several factors, including the judgment of the inter-disciplinary team most familiar with the client.

We accept that, pursuant to a new assessment system, some clients may be determined to need a lesser amount of services than they previously received. However, in order to assure that the new system is applied fairly, everyone who is facing a reduction in services as a result of the new system should have the opportunity to appeal the decision, to make sure that it is appropriate in their circumstances and that the rules were followed.



SB 2187  
Attam #7  
1/18

## SENATE HUMAN SERVICE COMMITTEE

Wednesday, January 18, 2017

Legislative Testimony

Senate Bill No. 2187

Good morning, Chairperson Lee and Members of the Senate Committee on Human Services.

My name is Jeff Pederson, President of CHI Friendship. I am grateful for the opportunity to share with you my opposition of Senate Bill 2187 through this testimony. I regret prior commitments preclude me from sharing this testimony in person at this hearing.

First, let me describe who CHI Friendship is and the services we provide. CHI Friendship is one of the largest nonprofit, private providers to people with intellectual/developmental disabilities in the state of North Dakota. We support and serve approximately 325 people in Fargo, Grafton and Park River. CHI Friendship began in 1974 and provides a variety of services including both residential and vocational. I have had the privilege to serve in the capacity of President at CHI Friendship for the past 24 years. Prior to that, I served for 5 years as the Director of Administration at the State Developmental Center in Grafton which today is known as the Life Skills and Transition Center.

Please know North Dakota can and should take great pride in the outstanding services it provides to people with intellectual/developmental disabilities, some of our state's most vulnerable citizens.

Among the reasons North Dakota is recognized as such a strong leader in this field is because of the outstanding leadership at the Department of Human Services, the quality of care extended by North Dakota Providers and the important ongoing support of our State Legislature.

Without your support, the strength, innovation and quality of services to people with intellectual/developmental disabilities would not be among the national exemplars. Thank you for all that has been done and all that continues to be accomplished.

I am not here to represent our Association, the North Dakota Association of Community Providers (NDACP), and I am not here to represent my organization, CHI Friendship. I am here to represent the hundreds of people with intellectual/developmental disabilities whose level of services will be reduced, and whose employment and community placement opportunities will be jeopardized, under the mandated implementation of the New DD Reimbursement System proposed through Senate Bill 2187.

This is not the first time I have raised concerns regarding the negative impact to people with disabilities brought about by the implementation of this new system. I have attached a letter that was sent on July 26, 2016 to the Governor's Office, the Department of Human Services, Protection and Advocacy, State Legislators and the Council on Quality and Leadership (CQL) - our national accrediting organization. The letter addresses numerous concerns and potential Olmstead Act violations. These concerns must not be taken lightly as they directly impact peoples' lives!

You will hear in testimony today that "North Dakota's reimbursement system is one of the most complex systems in the nation." My response is rightfully so, as it is one of the most person



2187  
#7  
4/18

centered systems as well. For the past 28 years of being involved in providing supports and services to people with intellectual/developmental disabilities, we have used numerous assessment tools and interdisciplinary teams to best determine the needs and resources needed to support a person's goals. The new system will use a single assessment tool called the Support Intensity Scale (SIS) Assessment to assign support hours to a diverse population with widely varying degrees of needs.

This single assessment is administered in about 2 to 2 ½ hours by an assessor who does not even know the individual. This assessment attempts to quantify support hours by predicting the behavior of a person with complex needs through the integration of statistical averages. If this were remotely possible think of all the societal tragedies that could have been prevented.

Human behavior can be and is very unpredictable.

It has been stated that some providers "win" and some providers "lose" with this new reimbursement system. Let me be perfectly frank...this is not about providers, this is about people with some of the greatest needs in our communities and in our state.

Today, you may be provided articles purporting the use of the SIS assessment. I can provide you articles from guardians, family members and state organizations that will testify to the inaccuracies of this assessment. This new system is not a step forward for many people receiving supports...it is a step backward.

Take the analogy of personally being diagnosed with cancer. Neither you nor I would rely on a single blood test to determine our best course for improvement. We would ask for PET Scans, MRI's, etc. And, we would ask for the best possible team of experts available. So, too, is it for a

2187  
#7  
1/18

person with an intellectual/developmental disability. We shouldn't use one assessment (the SIS) to determine the best programming, supports and resources they may need. Utilize several assessments, utilize people who know them best, utilize a team of experts that have worked with them for 25 years. By relying solely on one assessment and not honoring people who have served as team members for years, we have done a great disservice to those most in need. We have diminished the human being to a statistical number.

The simple fact that many people will receive fewer supports than they currently need to be successful is not right. The simple fact that many may need to re-enter a sheltered work shop after being successful in the community is not right. The simple fact that many may be discharged from the provider of their choice is not right.

North Dakota is better than this! Again, do no harm to our state's most vulnerable population! Vote to protect people's right to be served in the least restrictive environments! Vote "DO NOT PASS" on Senate Bill 2187!

Please feel free to contact me should you have further questions on my testimony.

Thank you!



SB2187  
# 8  
1/18

Senate Human Services Committee  
Senator Judy Lee, Chairman  
SB 2187 Supplemental Testimony, January 18, 2017  
North Dakota Association of Community Providers

**Supplemental Information**

Chairman Lee and members of the Senate Human Services Committee, thank you for the opportunity to supplement my testimony.

There are eight licensed DD providers who are not NDACP members. Four of the eight provide services affected by the proposed payment system under SB 2187. Four others provide only infant development services, and are not affected.

One non-member, Kalix, testified today in favor of SB 2187. Another non-member, Community Options or CORES, wrote testimony opposed.

I am unaware of the positions of the two remaining non-member agencies providing services under SB 2187. They are ConnectAbility and Connections, serving fewer than five clients cumulatively.

Please see the contact information for DD providers who testified at today's hearing.

2187  
#8  
1/8

Senate Human Services Committee  
Senator Judy Lee, Chairman  
SB 2187 Supplemental Testimony, January 18, 2017  
North Dakota Association of Community Providers

**Providers Testifying on SB 2187**

**NDACP STAFF IN SUPPORT:**

Bruce Murry, Executive Director  
office: 701.390.1021  
Mail: PO Box 7037  
Bismarck, ND 58507  
[brucemurry@ndacp.org](mailto:brucemurry@ndacp.org) [NDACP.org](http://NDACP.org)

**MEMBERS IN SUPPORT:**

Easter Seals Goodwill ND  
Gordon Hauge, President & CEO  
211 Collins Ave  
Mandan, ND 58554  
701-663-6828  
[ghauge@esgwnd.org](mailto:ghauge@esgwnd.org)

Enable, Inc.  
Jon Larson, Executive Director  
1836 Raven Dr.  
Bismarck, ND 58501  
701-255-2851  
[jl Larson@enablend.org](mailto:jl Larson@enablend.org)

Red River Human Service Foundation  
Tom Newberger, CEO  
2506 35th Ave. S  
Fargo, ND 58104  
701-235-0971  
[tnewberger@rrhsf.org](mailto:tnewberger@rrhsf.org) [www.rrhsf.org](http://www.rrhsf.org)

Vocational Training Center (VTC)  
Scott Burtfield Executive Director  
424 9th Ave S  
Fargo, ND 58103

701-241-4858  
[scott@fargovtc.org](mailto:scott@fargovtc.org)  
<http://fargovtc.org>

**NON-MEMBERS IN SUPPORT:**

Borgi Beeler  
President/CEO  
Kalix, (f/k/a Minot Vocational Adjustment  
Workshop, Inc., or MVAW)  
P.O. Box 1030  
Minot, ND 58702-1030  
701-852-1014  
[www.kalixnd.org](http://www.kalixnd.org) <http://www.kalixnd.org>

**MEMBERS OPPOSED:**

CHI Friendship  
Jeff Pederson  
President  
801 Page Drive  
Fargo, ND 58103  
701-235-8217  
[jeffpederson@catholichealth.net](mailto:jeffpederson@catholichealth.net)  
[www.friendship-inc.com](http://www.friendship-inc.com)

**NON-MEMBERS OPPOSED:**

Community Options  
Bryan Wetch, President  
4909 Shelburne St.  
Bismarck, ND 58503  
701-223-2417  
[bryanw@coresinc.org](mailto:bryanw@coresinc.org)  
[www.communityoptionsnd.org](http://www.communityoptionsnd.org)



2187  
# 9  
1/18

**Testimony Supporting Senate Bill 2187**  
**Senate Human Services Committee**  
**Senator Judy Lee, Chair**  
**January 18, 2017**

Good Morning, my name is Scott Burtsfield and I am the Executive Director for the Vocational Training Center, a licensed service provider for people with intellectual and developmental disabilities, located in Fargo, North Dakota.

I want to thank Chairman Lee and fellow members of the Senate Human Services Committee for the opportunity to speak to you about Senate Bill 2187.

As you are aware, the 2011 legislature directed the Department of Human Services to form a steering committee to work with community providers (and others), to effectively eliminate a terribly antiquated, complex and inefficient retrospective payment system. The directive also included the task of designing a new payment system that would ensure a more accurate and efficient allocation of resources for individuals with intellectual and developmental disabilities.

This steering committee was formed and included a broad spectrum of community providers as well as regional and state stakeholders. The steering committee then undertook the tumultuous task of researching, designing and implementing a payment system that impartially and soundly allocated resources for the state's most vulnerable citizens.

As the process began to advance and move towards implementation, there was the discovery of some fairly significant issues that would have a detrimental impact on service providers. Consequently, the department wisely chose to postpone implementation and task the steering committee to produce solution-based outcomes to the identified problems.

Throughout this process, the Developmental Disabilities Division leadership have been diligent in their efforts to work collaboratively with community providers to assure that the best possible services and care are in place for the individuals we support through our organizations. This has been repeatedly observed through the Division's ongoing support

2187  
#9  
Y18

and cooperation with community providers in addressing matters that have transpired as a result of building this new system.

We realize that our task has not yet been completed. We still have work to do. We understand that there will surely be issues to resolve, and changes to make. For example, there remain issues surrounding Day Services including employment components. These are being addressed and will be resolved... through the concerted efforts of the Developmental Disabilities Division leadership and the state's service providers.

While many of us (providers) are apprehensive and concerned, knowing such a large change will be a daunting, nerve-racking endeavor on its best day, the majority of community providers still believe it is time to move forward with implementation. In fact, as a provider that is losing nearly 8 percent of our revenue with the implementation of this new payment system, I still believe that we should move forward with Senate Bill 2187.

Again, I wish to thank Chairman Lee and fellow members of the Senate Human Services Committee for the opportunity to speak to you about Senate Bill 2187.

Scott Burtsfield, Executive Director  
The Vocational Training Center

[scott@fargovtc.org](mailto:scott@fargovtc.org) (701) 551-3149

**NDLA, S HMS - Johnson, Marne**

---

SB2187  
#10  
1/18

**From:** [REDACTED]  
**To:** Lee, Judy E.  
-Grp-NDLA Senate Human Services; NDLA, S HMS - Johnson, Marne; NDLA, Intern 02 - Arendt, Ian  
**Subject:** FW: Senate Bill 2187

FYI –  
Copies, please

Senator Judy Lee  
1822 Brentwood Court  
West Fargo, ND 58078  
home phone: 701-282-6512  
e-mail: jlee@nd.gov

---

**From:** Gordon Hauge [mailto:ghauge@esgwnd.org]  
**Sent:** Thursday, January 26, 2017 7:23 AM  
**To:** Lee, Judy E. <jlee@nd.gov>  
**Subject:** Senate Bill 2187

---

**CAUTION:** This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

---

Dear Senator Lee,

I want to say "thank you" for your work and support of Senate Bill 2187. I know individuals have become passionate in their views concerning the new payment system and its implementation. I have had an opportunity to review the information received from John Villegas-Grubbs, Principal, of JVGA concerning the development of the new payment system for State of North Dakota. For me, the information provides clarity in the differences between the payment systems of Maryland and North Dakota. The information also provides an insight from the experience of JVGA as to what may happen to provider(s) when a new standard fee payment system is implemented. This information reinforces the work that you are doing to bring the new payment system into fruition. As a provider I know there is work that still needs to be completed to ensure that we are meeting the needs of people we support. The Passage of Senate Bill 2187 gives us that opportunity. We cannot just set aside the hard work of the Department of Human Services and Providers and allow a few to influence the wishes of the overwhelming majority. Again, thank you for all your efforts on Senate Bill 2187 and I support the passage of this Bill.

Take care.

Gordon L Hauge  
President & CEO

[REDACTED] er Seals Goodwill ND, Inc.  
[REDACTED] Collins Ave  
Mandan ND 58554  
1.800.247.0698 ext. 601



SB2187

#1

701.663.6828 ext.601  
701.391.1343 (Cell)  
701.663.6859 (Fax)



## KAYD HOME CARE, LLC

Let's Take Steps Together

855 Basin Ave  
Bismarck, ND, 58504  
701-255-0300  
701-729-6149

Dear Senators,

My name is Yaw Karikari and I am the CEO of KAYD Home Care, LLC, which currently operates in North Dakota and Ohio. KAYD is the newest DD provider in the state of North Dakota with operations in Bismarck and Fargo.

First, I would like to say it has been an honor providing services for individuals with developmental disability in the state. It has not been without challenges as KAYD provides services for mostly individuals with the severest needs.

I am in full support of moving forward with the new payment system although KAYD stands to lose 49% funding, which is largest in the state. I believe the system will force agencies to be creative in providing essential services needed for the most vulnerable citizens of North Dakota. The State of Ohio's payment system which resembles the proposed new payment system in North Dakota has worked seamlessly for agencies and individuals in the state. This system will challenge agencies to operate within the reimbursed funding without any padding.

In my experience, the state of North Dakota's current payment system is wasteful and difficult to understand. KAYD Home Care has been a provider in the state of North Dakota since December 2014 and we are yet to fully comprehend the cost report. The reason we deem it wasteful is, every agency's goal is to get to the 90-95% threshold so that they can keep the 5%. However, the new system will force agencies to run lean every way possible to conserve funds. As we all know, businesses are better stewards of their own funds as oppose to someone else's.

The goal of all agencies in the state of North Dakota is to provide quality services for our most vulnerable citizens while not being detrimental to state's purse. The new system will sustain funding for these individuals without waste. It is my hope that you vote to pass this legislation simply based on better care for individuals with developmental disability.

I am always available to answer any questions pertaining to this topic.

Sincerely,

Yaw Karikari, CEO  
KAYD Home Care, LLC

SB 2187  
Attache #1  
2/1

2187  
Attache #2  
2/1

SENATE HUMAN SERVICES COMMITTEE  
SENATOR JUDY LEE, CHAIRMAN  
SB 2187  
ADDITIONAL INFORMATION FROM NDACP  
FEBRUARY 1, 2017

Good afternoon Chairman Lee and members of the Senate Human Services Committee. I am Jon Larson, President of the North Dakota Association of Community Providers (NDACP).

SB 2187 is the final step to a process that began several years ago and builds on decisions that have been made in previous legislative sessions. HB 1556 (2009) required the Department of Human Services to study the DD provider payment system and to make recommendations in the 2011 legislative session. SB 2043 (2011) directed DHS to work with private providers and a consultant to develop a new payment system and mandated the use of the Supports Intensity Scale. The anticipated date for implementation was July 01, 2015. DHS and providers have worked diligently on this process and have held over 40 meetings to work through issues. Requiring implementation of this new payment system is not a rash decision -- it is the result of many years of collaborative work.

Our current system was developed during the time that North Dakota was under a lawsuit to develop community services. It was designed to give DHS control and to provide security to young providers for the many unknowns that were present then. It was and continues to be cumbersome and very expensive to administer.

**Benefits of the proposed system:**

- Person centered. Information from people who know person best.
- Objective (fair). Utilizes the leading evaluation tool for people with ID/DD to determine the unique needs of each individual. The Supports Intensity Scale (SIS) is recognized as one of the best tools for identifying support needs. North Dakota's expert consultant, JVGA, reports that 26 states currently use the SIS as part of their resource allocation.
- The DD Division, providers and the JVGA built a rate structure based on the value of a unit of a particular service, including all component costs. This was done by analyzing cost data from all existing providers.
- This system pairs the support needs identified by the SIS assessment with the uniform



2187

#2

2/1

rate structure to develop an individual rate for each person.

- This system responds in increased or decreased needs of individuals rather than being based upon geometric inflation of historical costs.
- This new system is cheaper to administer for the State and providers. Based on the consultant's report, the estimated saving from 2011 is \$2.6 million per year.
- FTE's will be based on identified needs rather than negotiations with DHS. This means some people will receive more support than they are currently receiving and some will receive less.
- Service Unit rates are consistent among all providers in the state.
- This system entails greater competition and individual choice in services. Individuals will receive the same level of supports regardless of the organization they choose to receive services from.
- The proposed payment system is equitable, allocating resources to individuals based on identified need and using a uniform rate structure.

#### **IMPORTANT CONSIDERATIONS:**

- The North Dakota Association of Community Providers (NDACP) supports implementing the new payment system and passage of SB218 by a strong majority (80%+)
- All providers have had an opportunity to voice their concerns during this lengthy development process and their concerns have been heard and changes have been made that will benefit the entire system.
- Problems for some providers remain because of business and service choices unique to each provider.
- The new system sets a fixed percentage all administrative expenses that the provider manages to deliver quality services.

Attached is a letter from Yaw Karikari of KAYD Services, Inc.

## Outlier Policy

SB 2187  
Attach #3  
2/1/17

### Health and Safety Outliers

If a client's needs exceed the hours identified by the multiplier calculation, the client may qualify as an outlier if they meet the following criteria:

1. Meet one of the outlined items in the qualification section;
2. Poses an imminent risk of harm to the health and safety of self and/or others;
3. Support needs exceed hours identified by the multiplier calculation; and
4. Other mitigation options were pursued prior to a request for additional support hours (i.e. shared staffing, positive reinforcement, environmental change/modification, etc.).

### General Guidance

Independent Habilitation, Residential Habilitation, ICF/IID:

If the teams recommended number of hours exceeds the multiplier calculation by less than two hours per day, the team should consider other options to meet the client's needs.

Day Habilitation, Prevocational Services, Small Group Supported Employment, Individual Supported Employment:

If the teams recommended number of hours exceeds the multiplier calculation by less than a half hour per day, the team should consider other options to meet the client's needs.

### Qualifications

#### Medical qualifiers:

- Uncontrolled seizure disorder
- Respiratory (trach care, oxygen, vent care)
- Gastrointestinal (IV fluids)
- Genitourinary (catheter care)
- Infection (active resistant infection & IV antibiotic)

#### Behavioral qualifiers:

- Inappropriate sexual behavior – ie: exposure and/or predatory behavior
- Self-injurious behavior
- Significant Property Destruction
- Physical aggression
- Elopement
- Criminal activity – ie: drug dealing/use, stealing

#### Life Skills Transition Center qualifiers:

If a client coming from LSTC and returns to the previous provider, he/she must have been in the LSTC for a minimum of 6 months to qualify for consideration as an outlier. If the client is leaving LSTC and enrolling with a new provider, there is no minimum timeframe. Clients coming from LSTC are not required to meet the imminent risk condition. Requests for outlier consideration may be made at any time after the client leaves LSTC, but the availability of outlier consideration expires after 12 months (if the request is made two months after leaving LSTC, it still expires 12 months after leaving LSTC). After 12 months, the client must meet one of the medical or behavioral qualifiers in order to be considered as an outlier. Clients leaving LSTC may still qualify for outlier consideration under one of the other criteria.

2187  
#3  
2/1

## Outlier Policy

The request should be made for a minimum of six months or a maximum of 12 months. The outlier needs to be re-requested if needs continue.

### Process to Request Outlier

1. If the team deems the client needs more hours than approved in the multiplier process and the client meets the all criteria outlined in the Health and Safety Outliers section above the team is to complete the Outlier Request Form.
  - a. Medical Outliers (section 3A of the SIS assessment) complete:
    - i. The first two sections of form (i.e. Client/provider information and team information);
    - ii. Medical Needs section;
    - iii. Staffing/Support Changes section;
    - iv. What team has tried so far? section;
    - v. Requested additional hours per day for outlier;
    - vi. Cessation Plan; and
    - vii. Signatures
  - b. Behavioral Outliers (section 3B of the SIS assessment) – complete:
    - i. The first two sections of form (i.e. Client/provider information and team information);
    - ii. Behavioral Needs, Frequency section;
    - iii. Intensity section;
    - iv. Duration section;
    - v. Community Safety/Risk to Others
    - vi. Staffing/Support Changes section;
    - vii. What team has tried so far? section;
    - viii. Requested additional hours per day for outlier section;
    - ix. Cessation Plan; and
    - x. Signatures
2. The provider submits fully completed Outlier Request form to the DDPA.
3. DDPA reviews Outlier Request.
  - a. The DDPA discusses request with the participant's DDPM.
  - b. Approved requests sent to the DD Division (Day & Residential Services Administrator)
  - c. Denied requests will be sent back to the provider as notification of the decision.
4. DD Division Outlier Request team will review the request for approval or denial. The Outlier Request team will meet weekly to review requests. Timeline for response will depend on the number of requests the team needs to review each week. Once a decision is made the Outlier Request team will inform the Regional office of its decision.
5. Regional office will notify provider of final approval or denial



A.H. 1  
SB 2187 3-15-17

(For Lee, Judy)

Scratch Pad for: SB 2187

SB 2187 is the result of 8 years of work to establish a new reimbursement system for the providers of services to individuals with developmental disabilities. In 2009 a consultant was hired to study the current system and how the needs of those with the most severe medical and behavioral challenges could be fairly and adequately met. The consultant determined that ND has probably the most convoluted and complicated payment system of any state. In 2011 the legislature directed the Dept. of Human Services to form a steering committee to work with stakeholders, including providers, to develop a new payment system.

The current system is retrospective, which means that a provider will submit a budget, the department will approve it, requests for reimbursement will be submitted, and payments are received. However, sometime in the next 18-24 months, an audit may find that they were overpaid for services rendered, and up to 3 years later, they may be ordered to repay funds that have long since been spent on providing services. This practice of always looking back at how money is spent means that providers can continue to make the same mistakes as they go along, until the audit says something is unacceptable. This program has actually resulted in some providers no longer providing services to these individuals. A consultant hired by the state said that the current system is not uniformly applied to all persons receiving services and, therefore, individuals who might benefit from additional services might not receive them. The consultant also stated that providers' budgets are based on historical audited costs and negotiated FTE's. Rates based on negotiations can lead to an unfair distribution of resources, because they may be influenced more by the ability of the provider to make the case for them, than by an impartial assessment of the individual needs. Inconsistent processes can result in people with very similar needs receiving different levels of funding for their service.

The new proposed system is prospective, looking forward, and is based on an assessment of the needs of each individual served, the Supports intensity Scale, or SIS. Payment rates for services will be consistent and fair. More importantly, the impact on the people who are supported will also be more consistent. People with the same needs will receive the same number of hours of support.

The new system will be simpler less expensive for the state and the providers to operate. The result is that, although several providers are likely to receive lower reimbursements for services, they still support the new system, because of the efficiencies they will see in administration. A consultant estimated that \$2.6 million/year is being spent by the state just to operate the current system. The new one is vastly simpler and cheaper to administer.

Currently, providers negotiate their reimbursement with the Department. Although services may be equivalent to those of another provider, the reimbursement will vary, based on the ability of one to negotiate a better rate.

The new system eliminates negotiation and sets rates based on assessments which are being done by teams of people who know the person served, often family members, to determine the proper services. The assessment system being proposed is used by nearly 30 other states to administer their services to individuals with developmental disabilities, including how they are funded. Administrative costs of providers will be limited to a certain amount in the new system.

An individual can choose to move from one provider to another, because the assessment information will indicate what supports that person needs, not just what one provider gets. People may choose a provider which offers better, more desirable services.

For those individuals whose needs do not totally meet the parameters of the assessment, an outlier system is in place which allows consideration of those with multiple medical and behavioral needs as well, so that all needs can be met in the most effective way.

The new plan will create incentives to providers to reduce costs--that includes finding ways to increase efficiency, innovation, and creativity, as well as sharing staff and utilizing congregate settings.

All providers have been involved in the development of the new system, and the vast majority support its adoption, even if it might mean a cut in funding. National consultants also see the new system as a model for other states to emulate.

Everyone involved knows that it will be some bumps in the road with such a big change, but they are prepared to work together to ensure that services are provided in the best way possible for our neighbors with disabilities.

The primary focus all along has been serving the individuals' needs in the best possible way, but it can be done even better with a streamlined assessment and payment system. Resources can be directed to services, not administration.

2187 does not reduce appropriate services for anyone. It establishes a reimbursement system based on an assessment of an individual's needs by a team of people who know the person. The proper services to meet that person's needs will be determined, and no matter which provider is giving the services, the fee will be the same. Among other things, the current reimbursements are negotiated by the providers, rather than being a standard fee for each service, so some are being paid more to provide the same services than others are, based on their ability to negotiate. The current system is very complicated and is retrospective, looking back at expenses, rather than forward at projected needs and reimbursing properly.

An outlier plan is in place to address those individuals with unique needs outside the regular spectrum of services, such as medically fragile, behavioral outbursts, sexually aggressive, etc.

The goal is to provide the best services for the individual with a streamlined system of reimbursement for the service provider based on an assessment system used in nearly 30 states.

It has no impact on the incomes of the individuals with disabilities. It also has no reduction in funding. The new system will use the funding provided as planned, but with efficiencies in the new system, there will be fewer dollars spent on administration with more available for services.

Senator Judy Lee



Att. 2  
SB 2187  
3-15-17

**House Human Services Committee  
Representative Robin Weisz, Chairman  
NDACP Testimony, March 15, 2017  
Senate Bill 2187**

Good afternoon, Chairman Weisz and members of the House Human Services Committee. I am Bruce Murry, Executive Director of the North Dakota Association of Community Providers (NDACP). NDACP is the membership organization of 31 licensed providers of services to North Dakotans with developmental disabilities.

NDACP supports House Bill 2187.

Our members have invested countless hours in the Steering Committee for the proposed payment system. Our association has also focused internally on the benefits, risks, and other possible outcomes of the proposed payment system over the last eight years. By a margin of over 80%, our members support moving forward with SB 2187.

While our members are DD service providers, we all agree it is individual North Dakotans with developmental disabilities that matter in assessing the proposed payment system. All of our members are committed to providing services in the community to people with developmental disabilities. We stand ready to assist any individual whose services are disrupted by the proposed payment system.

I would like to introduce two CEOs of DD providers with more information:

Jon Larson, Executive Director, Enable, Inc., Bismarck

Tom Newberger, CEO, Red River Human Services Foundation, Fargo;

Thank you for your time and consideration. Please feel free to contact me with any questions:

Cell: (701) 220-4933

Office: (701) 390-1021

Email: [brucemurry@ndacp.org](mailto:brucemurry@ndacp.org)

Website: [www.NDACP.org](http://www.NDACP.org)



**Testimony on SB 2187  
House Human Services Committee  
March 15, 2017**

Chairman Weisz and members of the committee, my name is Jon Larson. I am the executive director of Enable, Inc, a licensed service provider for people with intellectual disabilities in Bismarck and Mandan. I am also privileged to serve as the current president of our state provider association, the North Dakota Association of Community Providers (NDACP). I am here to testify in support of SB2187.

I would like to provide a little bit of the history of the work that has been done to develop this new payment system and then briefly discuss the current status and impact of this process. The 2009 legislature required the Department of Human Services to work with a consultant to study the effectiveness of the current DD reimbursement system to fairly and adequately meet the needs of people with the most severe medical and behavioral challenges. Burns and Associates were hired, and determined North Dakota's retrospective DD reimbursement system to be the most complex in the country, and in need of transformation.

Based on their recommendations, the 2011 legislature directed DHS to work with a Steering Committee, including representation from the provider community, to design a new payment system that would allocate resources to individuals based on their needs as measured by a nationally-recognized assessment tool called the Supports Intensity Scale (SIS). The Steering Committee has worked diligently with DHS and various consultants since the spring of 2011 to accomplish this task. The contract with the primary consultant, JVGA, ended in June 2014, and a final report outlining a process involving the use of scores from the Supports Intensity Scale (SIS), a cross-walk to connect a range of scores to increments in authorized support hours, and a unit rate matrix with standardized rates for defined services, which would result in a unique annual Individual Budget Allocation for every client.

In early January 2015, the Department of Human Services agreed to delay the implementation of the new payment system because of concerns expressed by providers related to the large degree of variances that were found when compared to the current

payment system. NDACP agreed to continue to work to find solutions to these remaining issues. NDACP hired the consultant company of JVGA to help address specific problems with the system design. The resulting recommendations were then provided to the Steering Committee for review, with many of the recommendations incorporated into the current design. Work also continued on a separate assessment tool for children and for developing a process for adequately addressing the needs of "outliers", where the new system did not adequately provide for the unique needs of these high needs individuals.

The plan was to implement this new system on January 01, 2017 but The Department decided to again delay the implementation due to concerns raised by some providers about the detrimental effect implementation would have on some consumers, including possible loss of community placement. Providers continue to work with the Department to alleviate these concerns and our steering committee continues to meet.

It is true that some service recipients will see a reduction in the number of support hours as compared to what they are currently receiving. This is one of the complications of implementing a new system that is based on a needs assessment and standardized rates. Providers are committed to minimizing any negative effects that may result to consumers, but there may be some unintended consequences of implementing this new payment system. No payment system is going to be perfect and without complications. Much work has been done by DD providers and the DD division to address the many concerns that have arisen designing this new system. In a recent meeting of our association, 82% of our members were in favor of moving forward with the new payment system.

Thank-you for your continued support and for this opportunity to talk to you today. I would be glad to answer any questions you may have.

Jon Larson, Executive Director Enable, Inc.  
President, North Dakota Association of Community Providers (NDACP)  
701-220-1892



## Outlier Policy

AH. 3A.  
SB 2187  
3-15-17

### Health and Safety Outliers

If a client's needs exceed the hours identified by the multiplier calculation, the client may qualify as an outlier if they meet the following criteria:

1. Meet one of the outlined items in the qualification section;
2. Poses an imminent risk of harm to the health and safety of self and/or others;
3. Support needs exceed hours identified by the multiplier calculation; and
4. Other mitigation options were pursued prior to a request for additional support hours (i.e. shared staffing, positive reinforcement, environmental change/modification, etc.).

### General Guidance

Independent Habilitation, Residential Habilitation, ICF/IID:

If the teams recommended number of hours exceeds the multiplier calculation by less than two hours per day, the team should consider other options to meet the client's needs.

Day Habilitation, Prevocational Services, Small Group Supported Employment, Individual Supported Employment:

If the teams recommended number of hours exceeds the multiplier calculation by less than a half hour per day, the team should consider other options to meet the client's needs.

### Qualifications

#### Medical qualifiers:

- Uncontrolled seizure disorder
- Respiratory (trach care, oxygen, vent care)
- Gastrointestinal (IV fluids)
- Genitourinary (catheter care)
- Infection (active resistant infection & IV antibiotic)

#### Behavioral qualifiers:

- Inappropriate sexual behavior – ie: exposure and/or predatory behavior
- Self-injurious behavior
- Significant Property Destruction
- Physical aggression
- Elopement
- Criminal activity – ie: drug dealing/use, stealing

#### Life Skills Transition Center qualifiers:

If a client coming from LSTC and returns to the previous provider, he/she must have been in the LSTC for a minimum of 6 months to qualify for consideration as an outlier. If the client is leaving LSTC and enrolling with a new provider, there is no minimum timeframe. Clients coming from LSTC are not required to meet the imminent risk condition. Requests for outlier consideration may be made at any time after the client leaves LSTC, but the availability of outlier consideration expires after 12 months (if the request is made two months after leaving LSTC, it still expires 12 months after leaving LSTC). After 12 months, the client must meet one of the medical or behavioral qualifiers in order to be considered as an outlier. Clients leaving LSTC may still qualify for outlier consideration under one of the other criteria.



## Outlier Policy

The request should be made for a minimum of six months or a maximum of 12 months. The outlier needs to be re-requested if needs continue.

### Process to Request Outlier

1. If the team deems the client needs more hours than approved in the multiplier process and the client meets the all criteria outlined in the Health and Safety Outliers section above the team is to complete the Outlier Request Form.
  - a. Medical Outliers (section 3A of the SIS assessment) complete:
    - i. The first two sections of form (i.e. Client/provider information and team information);
    - ii. Medical Needs section;
    - iii. Staffing/Support Changes section;
    - iv. What team has tried so far? section;
    - v. Requested additional hours per day for outlier;
    - vi. Cessation Plan; and
    - vii. Signatures
  - b. Behavioral Outliers (section 3B of the SIS assessment) – complete:
    - i. The first two sections of form (i.e. Client/provider information and team information);
    - ii. Behavioral Needs, Frequency section;
    - iii. Intensity section;
    - iv. Duration section;
    - v. Community Safety/Risk to Others
    - vi. Staffing/Support Changes section;
    - vii. What team has tried so far? section;
    - viii. Requested additional hours per day for outlier section;
    - ix. Cessation Plan; and
    - x. Signatures
2. The provider submits fully completed Outlier Request form to the DDPA.
3. DDPA reviews Outlier Request.
  - a. The DDPA discusses request with the participant's DDPM.
  - b. Approved requests sent to the DD Division (Day & Residential Services Administrator)
  - c. Denied requests will be sent back to the provider as notification of the decision.
4. DD Division Outlier Request team will review the request for approval or denial. The Outlier Request team will meet weekly to review requests. Timeline for response will depend on the number of requests the team needs to review each week. Once a decision is made the Outlier Request team will inform the Regional office of its decision.
5. Regional office will notify provider of final approval or denial

AH. 4  
SB 2187  
3-15-17

Testimony  
Senate Bill 2187 – New DD Payment System  
House Human Services Committee  
Chairman Weisz  
March 15, 2017

Chairman Weisz and members of the House Human Services Committee, for the record, my name is Tom Newberger. I am the Chief Executive Officer for Red River Human Services Foundation. We provide supports to people with Developmental Disabilities in Fargo, West Fargo and Wahpeton, North Dakota. I am here today to explain why I support Senate Bill 2187 for a new DD payment system.

I have worked in this field from nearly 31 years. I have a financial background and I am a Certified Public Accountant. During my first six-years in this industry, I was the Chief Financial Officer, working directly with the current payment system. My education, background and experience has given me a unique perspective on both the current payment system and the proposed system that SB 2187 supports. I will now briefly explain why the current system needs to be replaced and the benefits of the new system.

Current Payment System:

The current system we operate under is a retrospective payment system. Under this system, the DD Division approves a budget for a provider, we spend the funds, we are audited and then a settlement is reached between the Provider and State. Basically we constantly are looking backwards financially to see how we spend our dollars. It can take three to four years to reach a settlement with the State. These delays have cost some Providers huge losses that they cannot afford to pay it back, and because of this, some providers, such as Lutheran Social Services in Fargo eliminated their DD programs. Since settlement can take so long, a provider may make a financial mistake and repeat that mistake for four years because we do not receive timely financial feed-back from the State.

Also under the current system, the assessments used by the State to allocate funds for people we support is not fair. According to a national consultant, JGVA who was hired by the State, said

in their May 2014 report on page 18 that "this is a problem because the process is not uniformly applied to all persons receiving services and, therefore, individuals who might benefit from additional services may not receive them." They go on to say on the same page "Provider's budgets are based on historical audited costs and negotiated FTE's. Rates based on negotiations can lead to an unfair distribution of resources, because they may be influenced more by the ability of the provider to make the case for them, than by an impartial assessment of the individual needs." Finally, "Inconsistent processes...can result in people with very similar needs receiving different levels of funding for their service."

New Payment System:

The new payment system is consider a prospective system, meaning we look forward rather than backwards. Payment rates for a service will be consistently set and we live with it. More importantly, the impact on the people we support will be more consistent. Overall, people with the same needs will receive the same number of hours of support. According to JGVA in their May 2014 report on page 4 is the new system will be simpler. They go on to say "A simpler system is easier to operate and frees the community to focus on the things that affect the quality of life for consumers."

From a financial perspective, the new payment system will be less expensive for the State and providers to operate. According to another national consultant, Burns & Associate, their July 4, 2010 report on page 30 states, "moving from a retrospective to a prospective system...is vastly simpler and cheaper" to operate. They also "estimate that approximately \$2.6 million per year is spent just to operate the reimbursement system."

In closing, I would strongly encourage a do-pass on Senate Bill 2187. It will create more fairness, be less expensive to operate and will better meet the needs of people with developmental disabilities. Thank you Chairman Weisz and I am open to any questions.





Att. 5 SB 2187  
3-15-17

## HOUSE OF REPRESENTATIVES HUMAN SERVICE COMMITTEE

Wednesday, March 15, 2017

Legislative Testimony

Senate Bill No. 2187

Good afternoon, Chairman Weisz and Members of the House of Representatives Committee on Human Services. My name is Jeff Pederson, President of CHI Friendship. I am grateful for the opportunity to share with you my opposition of Senate Bill 2187 through this testimony.

First, let me describe who CHI Friendship is and the services we provide. CHI Friendship is one of the largest nonprofit, private providers to people with intellectual/developmental disabilities in the state of North Dakota. We support and serve approximately 325 people in Fargo, Grafton and Park River. CHI Friendship began in 1974 and provides a variety of services including both residential and vocational. I have had the privilege to serve in the capacity of President at CHI Friendship for the past 24 years. Prior to that, I served for 5 years as the Director of Administration at the State Developmental Center in Grafton which today is known as the Life Skills and Transition Center.

Please know North Dakota can and should take great pride in the outstanding services it provides to people with intellectual/developmental disabilities, some of our state's most vulnerable citizens.

Among the reasons North Dakota is recognized as such a strong leader in this field is because of the outstanding leadership at the Department of Human Services, the quality of care extended by North Dakota Providers and the important ongoing support of our State Legislature.

Without your support, the strength, innovation and quality of services to people with intellectual/developmental disabilities would not be among the national exemplars. Thank you for all that has been done and all that continues to be accomplished.

I am not here to represent our Association, the North Dakota Association of Community Providers (NDACP), and I am not here to represent my organization, CHI Friendship. I am here to represent the hundreds of people with intellectual/developmental disabilities whose level of services will be reduced, and whose employment and community placement opportunities will be jeopardized, under the mandated implementation of the New DD Reimbursement System proposed through Senate Bill 2187.

This is not the first time I have raised concerns regarding the negative impact to people with disabilities brought about by the implementation of this new system. I have attached a letter that was sent on July 26, 2016 to the Governor's Office, the Department of Human Services, Protection and Advocacy, State Legislators and the Council on Quality and Leadership (CQL) - our national accrediting organization. The letter addresses numerous concerns and potential Olmstead Act violations. These concerns must not be taken lightly as they directly impact peoples' lives!

You will hear or have heard in testimony today that "North Dakota's reimbursement system is one of the most complex systems in the nation." My response is rightfully so, as it is one of the most person centered systems as well. For the past 28 years of being involved in providing supports and services to people with intellectual/developmental disabilities, we have used numerous assessment tools and interdisciplinary teams to best determine the needs and resources needed to support a person's goals. The new system will use a single assessment

tool called the Support Intensity Scale (SIS) Assessment to assign support hours to a diverse population with widely varying degrees of needs.

This single assessment is administered in about 2 to 2 ½ hours by an assessor who does not even know the individual. This assessment attempts to quantify support hours by predicting the behavior of a person with complex needs through the integration of statistical averages. If this were remotely possible think of all the societal tragedies that could have been prevented.

Human behavior can be and is very unpredictable.

It has been stated that some providers “win” and some providers “lose” with this new reimbursement system. Let me be perfectly frank...this is not about providers, this is about people with some of the greatest needs in our communities and in our state.

Today, you may be provided articles purporting the use of the SIS assessment. I can provide you articles from guardians, family members and state organizations that will testify to the inaccuracies of this assessment. This new system is not a step forward for many people receiving supports...it is a step backward.

Take the analogy of personally being diagnosed with cancer. Neither you nor I would rely on a single blood test to determine our best course for improvement. We would ask for PET Scans, MRI's, etc. And, we would ask for the best possible team of experts available. So, too, is it for a person with an intellectual/developmental disability. We shouldn't use one assessment (the SIS) to determine the best programming, supports and resources they may need. Utilize several assessments, utilize people who know them best, utilize a team of experts that have worked with them for 25 years. By relying solely on one assessment and not honoring people who have



served as team members for years, we have done a great disservice to those most in need. We have diminished the human being to a statistical number.

In a nutshell, this new reimbursement system is based on averages with approximately 70% accuracy. We have seen where it grossly over allocates resources to people who don't need additional services as well as grossly under allocating resources to those in greatest need.

The Senate amended the bill to include an "outlier" process. To date, we have submitted 66 outlier requests. Of that total, 38 have been reviewed and only two approved. That is a 5% approval rating! This does not come anywhere close to increasing needed supports for the 66 people who were under allocated resources compared to what their current staffing needs are.

The consultant used by the state of North Dakota, JVGA stated in his report to the State of Maryland where he is currently consulting "JVGA recommends against the use of any assessment instrument to set individual budgets (resource allocation) until and unless the assessment instrument can be tested for its potential agreement with the service planning process going forward for a minimum of two years. JVGA further recommends that no assessment instrument be used to fully and completely establish such resource allocation; a subjective analysis of the community settings that either currently exist or are probable to develop be regarded and included in the planning process."

We have not even "test driven" this new system! The consultant recommended at least a two year period and not to use one assessment to determine resource allocation!

The simple fact that many people will receive fewer supports than they currently need to be successful is not right. The simple fact that many may need to re-enter a sheltered work shop

after being successful in the community is not right. The simple fact that many may be discharged from the provider of their choice is not right.

North Dakota is better than this! Again, do no harm to our state's most vulnerable population! Vote to protect people's right to be served in the least restrictive environments! Vote "DO NOT PASS" on Senate Bill 2187 and allow the Department of Human Services and the North Dakota Providers to work out this very complex issue of adequate and appropriate resource allocation. Please let us test drive the system before we are forced to buy it.

I would be happy to try and answer any questions that you may have on my testimony or please feel free to contact me at any time.

Thank you!



**CHI Friendship**

*Nurturing abilities, achieving dreams.*

801 Page Drive  
Fargo, ND 58103-2315

P 701.235.8217  
F 701.235.7538  
chifriendship.com

Att. 5  
562187  
3/15/7

July 26, 2016

The Honorable Jack Dalrymple  
Governor of North Dakota  
600 East Boulevard Avenue  
Bismarck, ND 58505-0100

Maggie Anderson, Executive Director  
ND Department of Human Services  
600 East Boulevard Avenue  
Bismarck, ND 58505

Tina Bay, Director  
Developmental Disabilities Division  
Department of Human Services  
1237 W Divide Avenue, Suite 1A  
Bismarck, ND 58501-1208

ND Department of Human Services  
Attn: Developmental Disabilities  
Division/Marella Krein  
1237 W Divide Avenue, Suite 1A  
Bismarck, ND 58501

Dear Governor Dalrymple, Maggie, Tina, and Marella,

My letter is written as a result of the public comment period established as a result of changes to the Home and Community Based Service Waiver and with the intent of commenting specifically on the new Developmental Disabilities Reimbursement System which is an integral part of these changes.

First let me say I have a true appreciation of all the work the members of the Steering Committee have done over the past four plus years. It has been enormous. The members of NDACP and the members of Tina's group from DHS have put forth an outstanding effort and I hope all of us can appreciate Tina's role in leading this effort.

My concerns are for the loss of resources people with intellectual/developmental disabilities will experience in this new reimbursement system of which many of you know I have opposed. It's certainly not that CHI Friendship is opposed to change as we have closed group homes and allowed people to experience greater privacy and independence over the years. We have closed sheltered work environments and moved our vocational service into the community. We have piloted the Level System with P&A etc., etc.

What I am opposed to is a system that does not, in my opinion, accurately reflect current needs of many of the people we have supported for years. From a staffing perspective, a system that allocates resources to some people who do not want additional resources and under allocates resources to some of the people who are in greatest need is not a sound system.

Concerns:

1. The outlier process and the dollars associated may be inadequate. How do we assure adequate funding for the outliers without depleting the funded percentages of the needed rates.



2. The SIS Assessment does not take into account the staffing required for community based day supports. Staffing ratios are much higher in a community based vocational program for many reasons: safety, supervision, personalized training, etc.
3. The premise the system was based on was budget neutrality. This has led to some rates not being fully funded. Doesn't this indicate that the system is underfunded based on needs?
4. We anticipate that we will need to move back into a sheltered work environment where we can have fewer staff for people supported. We also view this as a direct violation of the Olmstead Act as a sheltered environment is more restrictive than a community setting. This was tested in Oregon with the case of Lane v. Brown.
5. We anticipate having to close our Extended Services Program which serves approximately 70 to 80 people in the communities of Fargo, Grafton and Park River. Our budget will drop from over \$850,000 to approximately \$400,000, a drop of 52%. The staffing hours approved will go from a total of around 161 hours of direct support for people per week to 54 hours of support hours per week. This is a 67% reduction of support hours! All of the people with disabilities in this program are making minimum wage or more. These people will not be able to maintain their current job placements with this drastic reduction in support hours. The only option will be to end the program which again may end up being an Olmstead Act violation.
6. If people are discharged from a program because of lack of adequate resources, there is a chance they could return to the Life Skills and Transition Center in Grafton. Again, this is not the least restrictive environment for people to live.
7. DHS has responded to this concern stating, "The DD program manager will work with the rest of the person's team to find another provider that can support the person's needs." What provider would admit a person into their program if they knew the person was underfunded and their needs could not be adequately met?
8. There has been other litigation in the implementation of using SIS in other states such as New Mexico. Has DHS studied the effects and caveats of solely using SIS as a means of resource allocation (see attached).
9. The new reimbursement system will not enhance the ability of people choosing services. People supported, parents, guardians and families may want to stay with a current provider but if the provider cannot meet the needs of safety, active supports/training and desired outcomes based on lack of resources, choice is not being followed.
10. As a person who has spent 28 years in the field of developmental disabilities within the great state of North Dakota, five as the Director of Administration at the Developmental Center and 23 years as the President of CHI Friendship, I must say to implement this new reimbursement system knowing the potential and realized effects it will have on our state's most vulnerable population, is the most irresponsible decision I have witnessed. The decision will cause detrimental results on people's lives, loss of friends, loss of supports, loss of jobs, and loss of choices.
11. The current reimbursement system allows for greater person-centered supports and funding based on team decisions and not on a subjective assessment that is conducted for two hours once every three years. The state of North Dakota has long been recognized as a leader in services and supports for people with disabilities by the

organization The Council on Quality and Leadership for People with Disabilities. The way it is currently being scheduled for implementation and the associated effects on people's lives is a step backwards. It unfortunately took a lawsuit in the early 1980's to be the springboard of adequately funding community based services and upholding people's rights in North Dakota. Please, let's not head down this path again!

12. Maybe the most viable option is to pilot the new reimbursement system for a biennium with a provider who gains resources and one who would lose resources to study the pitfalls and successes of the system and to make changes where needed before we impact hundreds of lives.

As an advocate for people with intellectual and developmental disabilities for over 28 years, it is imperative that we "do no harm" with this new system. It is imperative that we know the outcomes and effects on each person supported before we move forward. It is imperative that nobody is left with less support than is needed to maintain their home in the community and their job supports in place. North Dakota is better than this!

Please know I am willing to meet to further discuss the concerns stated in this letter. My greatest hope is that the implementation of the new reimbursement system will be postponed until all these concerns can be corrected.

Sincerely,



Jeff Pederson

cc: Mary Kay Rizzolo, President and CEO of CQL  
Parents and Guardians  
Board of Directors  
Protection and Advocacy, Teresa Larsen  
State Senator, Judy Lee  
State Senator, Tom Campbell  
State Representative, Kathy Hogan



## Lawsuit Filed by Individuals, The Arc and Disability Rights New Mexico

by parkeast | Jan 15, 2014 | Arc News | 0 comments

On Wednesday, January 15, 2014 The Arc of New Mexico, Disability Rights New Mexico and eight individual plaintiffs filed a lawsuit against state Department of Health (DOH) and the state Human Services Department (HSD) and top officials of those departments. The lawsuit challenges the way in which DOH/ and HSD have implemented the new waiver system. A request for preliminary injunction was also filed in an attempt to prevent further harm to those who are losing or at risk of losing services due to the implementation of revised system.

The lawsuit is necessary because of the state's refusal to make the modifications needed to comply with federal requirements. Although new waiver program was approved by federal government, state does not have permission to violate state and federal law.

### Claims Made/Complaints

1. Some individuals are being denied services that they need simply based on the scores they get through the assessment instrument (the Supports Intensity Scale, or SIS). Service plans should be individualized and take into account not only test scores but past experience and the independent judgment of the multi-disciplinary team that works with the individual.

Reductions or denials of services based simply on SIS test scores and assigned budget categories puts the health and safety of some individuals at risk. There is an urgent need to prevent further service reductions to these individuals, and that is the basis for the request for a preliminary injunction.

2. The state is restricting the ability of clients and families to appeal decisions that affect the services they receive. State imposed restrictions on what can be appealed and when it can be appealed violate federal law governing Medicaid.

3. The new system discriminates against individuals with the most severe disabilities by failing to provide a mechanism for them to obtain the full range of services they may need. The only option provided by the state that is supposedly designed to meet this need is deeply flawed. There are no clear eligibility criteria, and the program is unfamiliar or unknown to those making service decisions.

### Relief Sought

1. Declare that certain provisions of the state regulations issued in November 2012, and many of the policies and practices that have been developed by the state for the purpose of implementing the SIS-based waiver program, violate federal law.



2. Prohibit further implementation of the recent state regulations, policies and practices until such time as the state can fix the problems identified in the complaint.

3. Restore services to individuals that have been cut as a result of the new system, and prohibit any further service reductions until the violations of federal law have been corrected.

#### Clarification of Position

We are not opposed to use of the SIS as an assessment tool. It is a highly regarded, national model for assessing client needs. It was not intended to be a tool for establishing budgets, or for dictating how much of a particular therapy a person needs or should receive.

We support improved alignment of a client's service plan with the individual's needs and skills, as intended by the new waiver program, but believe that the final determination of the individual's service budget and package of services they receive should not be based on a single test score but on several factors, including the judgment of the inter-disciplinary team most familiar with the client.

We accept that, pursuant to a new assessment system, some clients may be determined to need a lesser amount of services than they previously received. However, in order to assure that the new system is applied fairly, everyone who is facing a reduction in services as a result of the new system should have the opportunity to appeal the decision, to make sure that it is appropriate in their circumstances and that the rules were followed.

Att. 6  
SB 2187  
3-15-17

**To the House Human Services Committee**  
**Testimony regarding SB 2187**  
**3/15/17**

My name is Michele Gilbertson and I am the sister, aunt and mother of people with special needs. I am also a Direct Service Provider of in-home care. I am here to urge you to give SB 2187 a "Do Not Pass" recommendation.

Bill 2187 will redistribute funds to encourage "efficiencies in service." This is an admirable goal, especially in this year of fiscal belt-tightening. The problem with #2187 is that it unfairly affects rural North Dakotans. #2187 would gather groups of individuals with similar needs to receive services together. In small rural communities, there may be no one else receiving similar services to be paired with.

For example, the client who I work with in the small town of Lisbon, ND has no one with similar needs to be grouped with. If #2187 passes, this individual would be forced to move to a larger population center to seek services; farther away from his family, farther away from his home church. And I would be out of a job.

He currently lives in his own apartment on the edge of town with the help of 24/7 staff. He enjoys watching wild birds and deer right from his living room window. He also enjoys going to the grocery store where all the employees know him and greet him by name.

All North Dakotans should be able to choose where they live and not be forced into larger cities just to receive the care they need.

There are "outlier" provisions in the bill, but they don't take into consideration all extenuating circumstances. Please consider adding another provision that takes into account the geographical location of those needing services and the efficacy of traveling long distances to get appropriate care.

In September of 1980, the Association of Retarded Citizens successfully sued the State of ND to provide better living conditions at the State run institution in Grafton. The outcome was more individualized care. SB #2187 is a step backwards for the most vulnerable citizens of North Dakota.

Thank you for your time and attention.

AH. 7  
SB2187  
3-15-17

SB 2187

Don Fauss &lt;dm\_fauss@hotmail.com&gt;

Sun 3/12/2017 8:27 PM

Inbox

To: Donna Seelye &lt;dss56@live.com&gt;;

Good Afternoon! My name is Margo Fauss. Thank you for allowing me to testify on behalf of SB2187. My husband and I are legal guardians for our son, Paul. I am here to be the voice for our son and to ask you to vote NO on SB2187.

My name is Paul Fauss and I am 39 years old. I currently live in Lisbon, ND in an apartment. Because I am non-verbal I have staff from Community Options to help me with my daily tasks. They take me to my volunteer jobs, help me with cooking, cleaning, my finances and a host of other tasks, so I can live independently. There isn't anyone I could be paired with in the vicinity to share my staff. When I first got an apartment I lived in Valley City and went to a sheltered workshop. Because this was not a good fit, I decided to move to Lisbon. The distance is only thirty miles from my parents. Valley City was eighty miles. Since July of 2011 I've lived here and have been associated with Community Options. I am so grateful to have all my needs met. I am able to be home with my parents and family three weekends out of four.

If SB2187 passes I would go from 24 hour care to 3 hours. More than likely Community Options would have to release me and my only options would be to move to a larger community or move home with my parents.

In the eighties the state de-institutionalized facilities like Grafton and I feel by implementing SB2187 we are trying to make people like me be forced into that type of situation again.

Please give this careful consideration. A lot of people like me will be affected and have little or no voice. Sheltered workshops do not work for everyone. Please vote No on SB2187.

Thank you.



A.H. 8  
SB2187  
3-15-17

Testimony House of Representative Human Service Committee

March 15, 2017 2:30 pm

DD: SB2187

Paula Storm Parent and CHI Friendship Board Member

Good afternoon Chairman Weisz and House Human Services Committee members,

Thank you for the opportunity to share my concerns and thank you for serving on this committee.

Let me give you a brief summation of my background, I grew up on a farm, my degrees are in Elementary Education and Special Education and I did graduate work in Learning Disabilities at UND under the directions of Mary Lindquist an outstanding educator back in the day. Mary was a great friend of Anne Carlsen and my biggest regret was not going with her to meet Anne when asked to do so by Mary. I am the parent of Katie Storm who has Aspergers Syndrome part of the Autism Spectrum and has learning

issues etc. I am a substitute teacher and serve on the Board of CHI Friendship.

Katie receives services from both CHI Friendship job coaching and Residential Supports from Anne Carlsen in Fargo. I finally felt after years of ups, downs, Individuals Education Plans(IEP), classroom modifications, testing, counseling, failed jobs, melt downs etc. that we were finally at an equilibrium. Then the rumblings started over the implementation of the **SIS better known as the Supports Intensity Scale assessment** and the implications and the upheaval it would cause to Katie and the Providers serving her needs.

Katie has had a lot of testing through out her life starting as far back as 1st grade when she was learning to read, write and develop social skills. So when looking at the thorough testing that was completed to determine what kind of services Katie would qualify for and benefit from, several professional sources were used to gather clear comprehensive informational data. Katie completed several work assessments through Vocational Rehabilitation to determine her skill level, interpersonal abilities,

-2

flexibility, etc. This was in order to get informational data that was obtained in a real-time, on-the-job work environment. Katie saw a doctor of neuropsychology at Sanford to complete formal psychological testing. This report incorporated feedback from as far back as Katie's ( 34 years old) elementary years about 28 years worth of data. This report also include insight and information from family and friends to indicate the unique challenges that Katie struggles with which are on going! The point is that just like anyone who has serious health issues to manage, someone with ASD needs a team of people who have specialized training in different areas to administer the appropriate evaluations and feedback. The **SIS** score replaces professional team input in favor of an **ad hoc group** of *whoever meets basic criteria of the SIS assessment to talk around two hours about everything that they feel is lacking in the person-supported's skill set, that they think of that day with out pre-prep or documentation on hand to support the discussion.*

SB 2187 sponsor Judy Lee, has introduced this Senate Bill as the Developmental Disabilities system reimbursement project.



My understanding please correct me if I am wrong uses the **Supports Intensity Scale Assessment SIS** as developed and published by *American Association on Intellectual and Developmental Disabilities AAIDD* copy right 2004, 2007 updated 2017, as the only tool to determine payment for services for all clients.

I have a few questions for consideration:

1. Why only one tool called the **SIS**? Why put all your eggs in one basket? Each client served has a portfolio of tests, written reports, daily documentations by numerous agencies. There should be collaboration between the daily logs, real people observations by care support staff, medical professionals, parents instead of relying on this one tool the **SIS**! I am not seeing in this bill any verification or collaboration of documentation being discussed or suggested to be used to verify, supplement, or disqualify the results obtained from the **SIS assessment tool**. Why not?
2. I am concerned that the **SIS** is being used for determining job coaching hours. It was not designed and should not be used for that purpose. Funding for job coaching for the disabled is seriously limited already. Will the **SIS** result in even more reduction of employment Support

Services for disabled clients who are unable to work without job coaching support?

3. In reviewing materials published by AAIDD on the **SIS** I discovered on

Page 11 of **SIS Quick Facts** under the heading, **SIS and its use for people with Autism Spectrum Disorders (ASD)**, “ Please note that there are no separate norms for people with ASD. Also, for those people with autism whose intellectual functioning is higher and therefore whose social communication abilities are higher, **SIS** would not be an appropriate a tool to determine support needs.” Why are we legislating the use of the **SIS** to decide Katie’s job coaching needs and abilities when it is not designed for these purposes?

This would also apply to those who also have mental health diagnoses in addition to their Developmental Disability ( or any other corresponding health diagnoses). According to the **SIS** it is only intended to be used for people with a Developmental Disability. In reality most people are not one-dimensional and consist of more than one diagnoses in a single category.

Through the power of **Google** I have learned about the **SIS** assessment. On line you will find a copy of the **SIS** questions so you can visibly see and read what SB2187 is referring to and asking you to Pass. The **SIS** would become the only **tool used to determine services**. It would eliminate the other important tests and tools that are required to determine the need of the disabled. Even AAIDD quoted above, recognizes that the **SIS** is not an appropriate tool for determining support needs of persons with ASD.

Through my google searches I have learned that the **SIS** is given over 2 to 3 hours. It is a series of questions and the responses are ranked. Some questions I have about the **SIS** are:

-who attends these testing situations, ( **2 to 3 participants, or another name for participants is respondents, who have known the person being tested for at least 3 months can be family members, friends , staff, or service providers** from the **SIS** )

-what pre planning and documentations are used as qualifying facts supported by evidence from documented previous tests, recommendations



of medical, educational, counselors, etc. ( **none just verbal answers to questions**)

- what kind of information is given to parents or guardians, counselors etc. that makes up this DD persons care team in advance of participating in the **SIS** assessment? ( **Have any handouts been developed to give out prior to the administration of the SIS ?**)
- who (does/will do) conducts the **SIS** assessment in North Dakota were they trained to meet AAIDD training criteria or have experience working with folks who have intellectual or developmental disabilities do the assessors have a stake in the outcome of the SIS assessment? ( **Have these issues been discussed?**)
- who scores, interprets the answers to the questions asked? *"The **SIS** interviewer ( assessor) will make the final score determination based on information presented by the respondents. The Interviewer will tell the respondent team the score that is reordered for each item."*
- *An example of a question from the **SIS** that seems obvious and simple to answer is **Dressing — can someone dress themselves***

Put on your clothes, pull up, button, zip etc. Yes or No ?

But to a person with a disability putting on your own clothes may have numerous steps involved!

- *To put on clothes does it require help if help needed, how much, just pointing that you want to wear the red shirt today is not dressing ones self*
- ***other factors that go into dressing ones self***
- *Choose appropriate clothes for the day, event, time of year etc*
- *go to the store buy correct size, make sure not dry clean only, get to the cash register and pay and enough money to pay for what you bought*
- ***most importantly not having a meltdown during any of the above steps***

***So the simple act of dressing becomes complex in how you answer the question on the test so Dressing should get a NO if you get any help in the process of getting dressed! BUT .....if you have no experience or training in answering the questions on the **SIS** a true picture of a person or client being served through the DD program can be severely affected in what services they will receive based on the answer and on how it is***

8

*scored if you don't take into consideration that dressing has many steps involved in what seems to be a simple process you lose points and services.*

Those points add up and if you are trying to be nice and not realistic or understand what realistic really means many many services can be lost through faulty answers and scoring.

As my Grandfather used to say you don't just go put seeds in the ground and hope to get a crop!!!! A lot more goes into it!!!

Also, can you imagine what it is like to be on the receiving end of one of there **SIS** assessment meetings ? How would you like to sit with two people you know and trust and listen to them talk for two to three hours about everything that is wrong with you ? No wonder Alberta, Canada called the process "dehumanizing." That may be the reason some people are losing services, staff and family try to be positive when faced with this scenario and people are said to be able to do more than they actually independently can! **I can only imagine the meltdowns that occur in these SIS assessments!** Criticizing a farmers choice of tractor is enough for me.



After spending 10 years studying the **SIS** we are presented with a bill that does not even tell you that the **Supports Intensity Scale Assessment** is a product produced by AAIDD that the state is paying to use and will have to pay on going fees plus the state ND will be required to hire an independent contractor to do the assessments and score the tests, without collaborating the results with any other know documentation for DD clients. The bill provides no information about the fees and costs of implementing the **SIS**. *That is troubling!*

My **Google** search found that legal actions are being taken by parents and legislatures in other states and to counter **SIS** problems. The Province of Alberta in Canada as of June 6,2016 from the Edmonton Journal reads *“intrusive, embarrassing test dropped for Albertans in the developmental disability program”* So Albert dropped the use of the **SIS**, New Mexico Disability rights organization filed suit against the State Dept. of Health. A Federal District Court judge issued an injunction in favor of the plaintiffs in March 2015, order New Mexico to restore all services that

had been reduced due to improper use of the SIS for all persons on the DD waiver program. **So the SIS has some problems.**

**Virginia Legislature 2017** through the lobbying efforts of Jennifer G. Fidura Executive Director of Virginia Network of Private Providers, persuaded the legislature to form a work group to review, data from the previous year on the SIS including, "review the process, information considered, scoring, calculations used to assign individuals to their levels and reimbursements, review communication which informs individuals, families, providers, case managers and other appropriate parties about the SIS tool, the administration and the opportunities for review to ensure transparency; and review other information as deemed necessary by the workgroup. The department shall report on the results and recommendations of the workgroup to the General Assembly by October 1 of each year." from Fidura.

SB2187 would make the **SIS** the only tool for deterring disability services and payments for clients. That will result in unsatisfactory and inadequate evaluation and determinations of the needs for services for the disabled

clients. The SIS is not appropriate and not applicable to persons with ASD according to the AAIDD the publisher of the **SIS**. Some states have found the SIS requires supplementation with other evaluation tools. Other states and the Province of Alberta have rejected the SIS entirely after experiencing poor results from its use.

I do not feel that enough transparency, safe guards, information to all stake holders has been made available. Virginia names the company ( Ascend) that they employ to administer the **SIS to its folks**, Ascend has created handouts explaining the process to be given to all stake holders, and gives explanations about the **SIS** the process, the who, what, where, when, how, etc. plus what the results of the test will be used for by the state of VA in other words the outcomes of the process. Does everyone understand the payment rates and is there a printed schedule for providers so everyone is on the same page and do the payments meet the reality of providing client services? Why are we in North Dakota in such a hurry even after 10 years of study to not have developed, observed, communicated, and educated all stake holders after observing what other states are doing?



Mudding in the crop never works. Just as trying to solve a budget problem by getting the equipment stuck or ruined by not using good judgement and waiting for things to dry out and reevaluate using sound judgment would make more sense than just passing a bill to pass a bill! We can do better than this!

**This bill needs to be killed and further study needs to take place by the department of Human Services and DD Service Providers.**

Thank you all

Paula Storm

Dist 41

4901 Meadow Creek Dr S

Fargo North Dakota 58104

[wstorm4190@msn.com](mailto:wstorm4190@msn.com)

701-306-5674

# SIS<sup>®</sup>: Frequently Asked Questions

## WHO is Ascend and WHAT is Ascend's role?

Ascend Management Innovations (Ascend) is headquartered in Nashville, Tennessee. Ascend has national experience conducting special assessments for many different types of programs and services. Ascend is one of the only vendors in the country with expertise in the implementation of the statewide, standardized assessment, the Supports Intensity Scale<sup>®</sup> (SIS<sup>®</sup>). Ascend is designated by the Center for Medicaid and Medicare Services (CMS) as a Quality Improvement Organization-like (QIO-like) entity. A QIO-like entity is an organization that the federal government authorizes to conduct independent, quality-focused reviews and that has strong advocacy/consumer emphasis in all operations. You can learn more about Ascend at [www.ascendami.com](http://www.ascendami.com).

## WHAT is the SIS<sup>®</sup>?



The SIS<sup>®</sup> was published by the American Association of Intellectual and Developmental Disabilities (AAIDD) in 2004. It is designed to measure a person's support needs. While most other assessments identify tasks that a person can and can't do, **the SIS<sup>®</sup> measures the type and intensity of assistance that an individual needs to successfully complete tasks of everyday life like other same-aged adults in the community.** The SIS<sup>®</sup> measures activities across all areas of adult life, including: home living, community living, lifelong learning, employment, health and safety, social activities, and protection and advocacy. Activities are rated according to frequency, amount, and type of support in accordance with AAIDD rating key guidelines. The SIS<sup>®</sup> was designed to:

- Assess support needs of individuals ages 16 to 72.
- Determine the type and intensity of support needed.
- Monitor individual progress and evaluate outcomes over time.
- Focus on the individual's supports needs rather than on skill deficits.
- Provide validated knowledge about the individual to develop individualized, person-centered plans.
- Fill an important niche not covered by other measurement scales.

This SIS<sup>®</sup> assessment provides valuable information to all stakeholders. It is useful for individuals because it **gathers good information about each person's unique support needs** which can be very helpful in developing individualized, person-centered support plans. Assessment information can also be helpful to providers, counties, and the state for planning purposes, because the data gathered can help identify underserved groups or needs in particular areas as well as where resources should be focused.

## WHO can participate in the SIS<sup>®</sup>?

Participants, also referred to as *respondents*, must include at least two people who have known an individual being assessed for at least 3 months. Respondents can be the individual, family members, friends, direct support or other staff from residential or day service providers or Supports Coordinators (SCs). The respondent must be able to describe, in a very detailed way, the day-to-day supports the individual needs to successfully accomplish each task. For this reason, the respondent must have known the individual very well through **direct** experience. The SIS<sup>®</sup> meeting will be scheduled as one meeting with all respondents in attendance.

## SHOULD the individual participate in the SIS<sup>®</sup>?

Individuals are absolutely invited to participate. However, it is not required. The decision about whether or not the individual participates in the SIS<sup>®</sup> interview is entirely up to each individual, family and his/her support team according to what works best for them. In order for an individual to be a self-respondent as determined by AAIDD criteria, he or she must be able to accurately and reliably describe his or her support needs across a variety of everyday, adult activities.



## WHO will be conducting the interview?

---

Ascend's assessment teams include highly trained and qualified assessors. All of our assessors meet AAIDD training criteria and have at least 3 years of experience working with individuals who have intellectual or developmental disabilities (IDD). Our assessors are independent, impartial, and conflict free. What that means is that our assessors do not have a stake in the outcome of any one particular assessment. To ensure this, we do not allow an assessor to interview any individual with whom they have had a provider, professional, or personal relationship in the past 365 days.

## HOW will the information be used?

---

As our assessors complete each interview, they will fill out the SIS® interview form and will also take notes. It is important for you to know that all information that we learn from these interviews will be kept confidential. The assessment is one of the tools used to help in developing the individualized support plan (ISP). For this reason, it is ODP's expectation that SCs attend the SIS® meeting as an observer, even if they do not know the individual well enough to participate as a respondent. A copy of the finalized report will be available through your SC.

## WHY is a universal assessment being conducted?

---

A universal assessment is required by CMS, the federal agency that approves and helps with funding of waiver services. It also:

- Provides information to be used in the ISP planning process and a place to begin the conversation.
- Provides person-centered and specific information to facilitate service plan discussions.
- Focuses on level of support needed by a person, not deficits in skills.
- Advances planning for future service and capacity needs and a guide for future state and local planning.
- Assists as one of many useful tools to help in developing ISP. The ISP is developed by the planning team, using all available information, including the SIS®.

## WHEN will interviews begin?

---

Your SC will be able to provide you with information as to when you may expect a SIS® interview.

## HOW will I be contacted?

---

An Ascend representative will contact your SC to confirm basic information, identify respondents, and the interview locations. During our initial call, we will also ask if there are any special accommodations that should be taken into consideration during the interview. This would be a good time to let Ascend know of cultural preferences, speech/language or hearing difficulties or the assistance of a language interpreter, if needed.

## WHAT will happen on the day of the interview?

---

The assessor will explain how the interview works. During the interview, the assessor will ask you questions like:

"What type of support does Jane need to successfully get dressed each day?"

"How frequently does Jane need this type of support?"

"On a typical day when support is needed, how much time should be devoted?"

Your job is simply to answer these types of questions as well as you can. The assessor may ask extra questions to be sure that we clearly understand the individual's support needs and that they are captured in accordance with AAIDD scoring protocol. The interview can be expected to take 1.5 to 2 hours to complete.



## WHERE will interviews take place?

The assessment meeting should take place wherever the individual and other respondents choose. This can include (but is not limited to) the individual's home, his or her day service provider, or the home of a family member or friend. It would be best if the interview could take place in a room that is quiet, private, comfortable and appropriate to meet the individual's needs.

## HOW can I give Ascend and ODP feedback about my experiences?

At the end of the interview, our assessor will give respondents a satisfaction survey to complete. This survey is an important opportunity for individuals, family members and other participants to give us valuable feedback and help us ensure that interviews are conducted respectfully and that respondents have a good experience as information is shared. In addition, ODP has made available the Customer Care Line that can be reached at 888-565-9435.

## HOW will quality be ensured?

Quality is very important to us. Ascend uses several different methods to ensure that we are conducting respectful assessments that meet our highest quality standards.

First, all assessors must participate in a very thorough training conducted by an AAIDD approved SIS® trainer. The AAIDD trainers are experts in the SIS® tool and will teach assessors how to conduct and score assessments. Additional training related to IDD guidelines, standards and expectations is also provided through Ascend. Assessors must pass extensive training to ensure that they are skilled at conducting valid SIS® interviews.

Once trained, assessors are observed quarterly by an AAIDD trainer to ensure there has been no procedural drift in the administration of the assessment. In addition, every SIS® assessment is monitored for quality. Ascend has a full team of clinical reviewers whose job is to monitor the quality of each and every SIS® assessment as well as review each satisfaction survey and provide quality feedback.

## WHERE can I get more information?



If you have questions or concerns about Ascend or our assessment staff, contact us toll free at 1-877-431-1388. If you would like information about the SIS® instrument (how it was developed and what it measures), a good place to start is to look at the information posted on the SIS® website at [www.aaidd.org/sis](http://www.aaidd.org/sis). If you have questions about how the SIS® will be used in your state, please contact your SC.



# SIS®: Helpful Information for Respondents

## WHAT IS THE SIS® ASSESSMENT?

The Supports Intensity Scale® (SIS®) is an assessment tool developed by the American Association on Intellectual and Developmental Disabilities (AAIDD) that evaluates practical support requirements for adults with intellectual and developmental disabilities (IDD). It is administered in the form of an 8-page interview between the individual with IDD; any family, staff, supports coordinators, therapists, etc. who have an intimate knowledge of the individual's abilities in daily life; and a highly-trained human services professional. Many states use the results of the SIS® to determine necessary supports and services for the individual.

## WHAT MAKES THE SIS® DIFFERENT?

The SIS® is different than most other assessments, because it asks about the support a person needs "to be successful" at each activity listed.

Other assessments ask questions such as: "What can (or can't) this person do?" The SIS® asks: "What supports would this person need to successfully and fully participate in this activity just like a same-aged adult?" In other words, to do this task completely, in the way that other adults in the person's community without a disability would do the task, what supports would he or she need?

## HOW DOES THE SIS® RANK SUPPORTS NEEDED?

The SIS® asks respondents to rate the supports that an individual needs to lead a successful, fulfilling life. Respondents' answers are not limited to supports that are actually available; instead, respondents should think about any supports the individual would need to do each task successfully based on the SIS® definition.

We have found that respondents sometimes talk about the support a person wants or the support a person currently receives instead of the supports that would help a person be successful at the level of other same-aged adults in the person's community that do not have a disability. The SIS® encourages respondents to focus on success.

## SIS® SECTIONS 1 AND 2

### QUESTION THEMES

Sections 1 and 2 of the SIS® ask questions about the support needs in seven different areas of the person's life. Examples of each of those areas include the following:

1. **Home Living**—such as laundering clothes, tidying his or her home, and preparing meals.
2. **Community Living**—such as participating in leisure activities, visiting friends and family, or shopping and running errands.
3. **Lifelong Learning**—such as learning and applying skills like reading signs or solving problems, as well as supports needed to fully participate in traditional adult learning settings.
4. **Employment**—such as interacting with coworkers and supervisors and maintaining productivity and quality in a competitive employment setting.
5. **Health and Safety**—such as avoiding health and safety hazards, using emergency services, and maintaining physical and mental health.
6. **Social Activities**—such as successfully socializing and maintaining positive relationships with others at home and in their community.
7. **Protection and Advocacy**—such as practicing advocacy, making decisions, managing money, and being protected from exploitation.

### QUESTION TYPES

The SIS® asks 3 different kinds of questions about items in Sections 1 and 2 of the interview. For these activities, the SIS® interviewer will ask you to rate:

- 1 **Type of support that would help the individual accomplish the task like other same-aged adults in his or her community.**
  - If the person were to do this activity, what kind of support would be needed to help them be successful?
  - Sometimes more than one type of support is needed for an activity (for example, both verbal prompting and partial physical assistance). Indicate which type of support is the most dominant type of assistance that is needed to be successful.





# 2

## Frequency of supports needed.

- If the person were to do this activity regularly (over several months), how often would support be needed to help him or her be successful?
- The frequency scale measures how often the person would need support to do the activity successfully, not how frequently the person currently does the activity.

# 3

## Daily support time that should be provided to do the task successfully.

- Estimate the time needed to provide these supports across a TYPICAL 24-hour day. This is the time it takes to directly help the person during the activity.
- On days that any kind of support is given for this activity, how much time needs to be set aside to help the individual be successful?
- To estimate the total time on a given day, add up any support provided in the morning, evening, and throughout the night. We will use that total as our estimated support time.

## SIS® SECTION 3

### QUESTION THEMES

Section 3 of the SIS® asks questions about the person's exceptional medical and behavioral support needs. Medical supports are measured in areas of respiratory care, feeding assistance, skin care, and any other exceptional medical needs. The behavioral section measures any supports needed to prevent injuries to self or others as well as any exceptional supports related to sexual appropriateness and other behavioral support needs. Section 3 will ask if no supports, some supports, or extensive supports are needed in the measured areas.

### HELPFUL HINTS ABOUT RATINGS

#### Assessing Supports

- The person's support needs should be looked at holistically. Consider the following: their skill level, any assistive technology, their motivation, health, behavior, and safety needs,
- If the individual uses assistive technology, he or she should be rated with that technology in place.
- Support needs across all SIS® items should be completed based upon the individual's current functioning. Thus, a person who has extensive support needs to prevent behavioral disruption will require more supports for many items than another person without exceptional behavioral support needs.

#### Rating support needs for activities that the person does not do, has never done, or has no intention of doing

- The SIS® is a standardized assessment, and therefore all items must be completed, even if the person does not do, has never done, or has no intention of doing the activity. For example, the interviewer will ask about "lifelong learning and adult education courses." Even if

the individual expresses no desire to take classes, that activity must be rated as though the individual was going to fully participate. Similarly, interviewers will ask about supports that would be needed for a person to be successful in competitive employment, even if the individual is not interested in competitive employment.

- The reason the SIS® asks about every item is that the philosophy of the tool is that every person with an intellectual or developmental disability has a right to have their support needs measured for every type of activity. The SIS® is not asking about preferences; it is asking about support needs. The ISP is the process whereby the individual's preferences will be identified.

#### Rating support needs that vary

- The instructions call for rating the most dominant type of support that is needed. When someone's intensity of support needs seem to border both a lower and a higher rating or tend to fluctuate, the SIS® interviewer will help respondents determine the rating that is most appropriate.





# SIS<sup>®</sup> SCHEDULING PROCESS OVERVIEW

**1** **Ascend receives the name and other demographic information of the individual to be scheduled for a SIS<sup>®</sup> assessment.** This information is received through the Office of Developmental Programs (ODP) one of three ways: 1.) As a first round assessment for a person new to waiver; 2.) Through an urgent request for an assessment (before the person enters into waiver); or 3.) Upon the anniversary date, three years from the previous SIS<sup>®</sup> assessment

**2** **Ascend notifies the Support Coordinator (SC) that a SIS<sup>®</sup> needs to be scheduled.** Ascend will email the SC, prompting them to log on to Ascend's Scheduling Assistance Program<sup>™</sup> (ASAP<sup>™</sup>) on Ascend's website and enter needed information to begin the scheduling process. This information includes the respondents to contact to invite to the SIS<sup>®</sup>, including a legal guardian and any other family, as well the contact information for those respondents. In addition, the SC will need to provide a suggested location for the SIS<sup>®</sup>, identify any special needs or accommodations for the individual, and provide his or her own availability to attend the SIS<sup>®</sup>. Ascend will also ask that the SC call and introduce Ascend and the SIS<sup>®</sup> to any legal guardians and/or family members who are to be contacted if this is an initial SIS<sup>®</sup> assessment.

**3** **Ascend contacts the individual, legal guardian and/or family member(s).** Ascend will then call the individual, legal guardian and/or family members suggested by the SC. Ascend will ask if there are any other suggestions for who should participate in the interview, confirm if there are any accommodations needed (such as an interpreter), and verify their agreement with the suggested location of the SIS<sup>®</sup>. They will also discuss the suggested time and date(s) submitted by the SC and choose the most convenient for them. Ascend will explain what to expect during the interview, and can send an education packet if requested.

**4** **Ascend contacts the other respondents suggested by the SC and/or family.** Ascend will call and invite the other respondents who have been suggested to attend the interview, such as the Day Program and Residential Providers. Ascend will ask if there are any other suggestions for who should participate in the interview, and if there are any other accommodations needed. They will also discuss the suggested time and date(s) confirmed by the family and determine if these will meet their needs.

**5** **Ascend confirms the SIS<sup>®</sup> Interview with all respondents.** Ascend will call and/or email all respondents involved with the SIS<sup>®</sup> interview to confirm the final date, time and location of the SIS<sup>®</sup> assessment.

**6** **Ascend notifies the Ascend Assessor about the details of the SIS<sup>®</sup> assessment.** Ascend will notify the assessor of the date, time, and location of the SIS<sup>®</sup> assessment. The assessor will also be provided with the names and phone numbers of all respondents who are attending, in order to make confirmation calls to all respondents 5-7 business days before the assessment.

## WHO SHOULD PARTICIPATE?

At least two people who have known the individual for at least 3 months should participate in the interview. People who participate must be able to describe, in a very detailed way, the day-to-day supports the individual needs to be successful in current and potential situations. Potential respondents can be the individual,

parents, relatives, guardians, direct support staff, work supervisors, teachers, and any others who work or live with the person being evaluated. Although there may be more than two respondents, at least two persons meeting these criteria must be willing and able to be fully engaged, without interruptions, for the length of the interview.



Att. 9 SB2187  
3/15/17

HOUSE OF REPRESENTATIVES HUMAN SERVICE COMMITTEE

Wednesday, March 15, 2017

Legislative Testimony

Senate Bill No. 2187

My name is Matt Smith. I was born and raised near West Fargo. I live on my family's 45-acre farm just outside of the city. Right now we have 8 horses that I care for, plus 8 dogs and 9 cats. My parents manage the farm and I assist by getting up at 5am to do chores, which I have done for almost 30 years.

But my parents also wanted me to make my own living and have my own life, so I started working in Fargo in 2004. Right now I work at the Bowler, cleaning and taking care of the parking lot before the business opens. I make good money and have gotten to know the owners well. If I didn't have a job, I wouldn't have anything to do for most of the day. I wouldn't pay my bills and would lose my car. I also wouldn't meet anyone and would be home with my parents all day.

With the help of my job coaches I have been able to get my job done the right way. Sometimes I have to go back and redo areas if I need to. I have also worked at some hotels and Playmakers when it was open, and Bed Bath and Beyond. I also fill in when people are sick or on vacation.

My job coaches help me to talk with my boss in a way that I won't get in trouble. Sometimes I get easily upset, but it helps to have someone to talk to calm me down and help me talk through it. If I didn't have a job coach, I wouldn't get anything done. That's why we need job coaches.

I would like everyone to vote NO on SB 2187. I don't want this bill filed because I don't think it's fair to cut down services for job coaching at people's places of work. I know this isn't right to take people's work away. People want to make money and have a job like everyone else.

Thank you for letting me speak with you today.

2



A.H. 10  
SB 2187  
3-15-17

If you pass SENATE BILL NO. 2187 and enact the use of the SIS test, you will be in violation of the American's with Disabilities Act. The American's with Disabilities act was passed in 2009 to "... eliminate unnecessary segregation of persons with disabilities and to ensure that persons with disabilities receive services in the most integrated setting appropriate to their needs." (<https://www.ada.gov/olmstead/index.htm> Information and Technical Assistance on the American's with Disabilities Act.) The test that you want to use to determine the needs of people with a wide range of disabilities and mental illnesses dose the exact opposite of this. Since passing this bill would leave vulnerable citizens of the state of North Dakota, without the services that they need, to get and keep a job, or even have some level of independence.

All too often I have heard about "forgotten America" to be honest I am not entirely sure what that means to most people. But when you cut services for vulnerable people; you are forgetting us and denying us our civil rights. You are also forgetting our families, our friends, and the people who provide us with support and services.

On the surface I might seem completely normal to you, but I am on the autism spectrum, every day I deal with sensory issues. On most days I think that I tended to do alright. However I am afraid of loud noises and am unable to handle large amounts of sensory information. For the most part i don't tended to have problems around power tools, but only because I grew up around them, and have had time to become desensitized to most of them, with the notable exception of the hammer drill. I am telling you this because last year at West Acres Mall, where I work cleaning the truck courts, they were using hammer drills when they remodeled both the men's and women's bathrooms, in the Roger Maris Wing of the mall. Because it's my job to clean the truck courts I had to tough it out with no warning from the store about what they were doing, and it was made worse by the fact that for at least the first day or two I didn't have a job coach with me. The nose from the power tool was terrifying to me and also hurt my ears. I got to the point where I didn't want to clean that particular truck court at all, but I still had to because it was my job, thankfully I was able to get help from one of the job coaches on sight. But if I wasn't able to get that support I would have been alone over stimulated and at a very high risk for having a meltdown related to overstimulation well also being frightened. From what I can tell the test that you want to have me and other people with disabilities take does not account for this.

I want to keep my job and continue to work in a work in an environment where I can be mostly independent. However if I am not able to work with a job coach I would be either unemployed, or stuck working in a workshop, when I am capable of doing so much more. I also know that most of if not everyone on my crew at the mall would be facing the same situations and it isn't good for any of us. I have lost a job before because the State of North Dakota hasn't provided adequate funding for programs like Friendship that provide help and support for people with a wide range of disabilities. The people at Friendship see us as bing people who are worthy of being part of the work force.

The first time that I was unemployed I had to deal with issues relating to depression and was very angry, because I knew that what had happened to me wasn't my fault, and that the issues

that I had ended up having with a manager at Wall-Mart all could have been avoided if my job coach had been able to be with me for my whole four hour shift. After I went back to work I suffered from mild to severe anxiety and wasn't able to do my job effectively because I was constantly afraid that I would have to deal with that particular manager when I was alone. That made it very hard for me to do my job, I did this for as long as I could, until it finally became too much for me and I had to quit my job at Wall-Mart for good. I do strongly believe that if my job coach had been there to advocate for me the second that I started to have problems at work that I wouldn't have had to have quit my job.

People like me should not be seen as being a burden, we are human beings who are deserving of the same rights as anyone else.

Normally I enjoy walking in the mall, when I have time before work, however I have been suffering from so much stress and anxiety related to this bill and also dealing with depression because of it. So when I get to work early I feel emotionally worn out and too distressed to be alone in a public place. So I end up having to spend an hour or half an hour or less trying to calm down before work. Add to that the fact that the fact that I don't tend to get regular access to my job coach and the stress that I am under could end up creating a lot of problems for me that I see as being completely preventable. I also know that there are other people who are suffering in this way and it needs to stop.

I do believe that the people of the state of North Dakota can be leaders in providing services for our country's most vulnerable citizens. We can do this by helping people to get and keep jobs, and by helping people to be as independent as they can be. Doing this will create jobs and it will take a lot of stress off of people by allowing us and the people who serve us to keep our dignity.

Katie J. Storm

4901 Meadow Creek Drive  
Fargo North Dakota  
58104

Dust. 41



# What is SIS?

The Supports Intensity Scale (SIS) is a planning tool specifically designed to measure the level of practical supports required by a person with an intellectual disability (i.e., mental retardation) to lead normal, independent, and quality life in society. The Supports Intensity Scale comes with a *User's Manual* that explains how to administer, score, and interpret the scale as well as how to use the instrument to create individualized supports plans. A set of pre-printed 8-page interview form measures support needs of the respondent in medical, behavioral, and life activity areas. The SIS is meant to be administered by a qualified interviewer with feedback from one or more persons who know the respondent well.

The Supports Intensity Scale (SIS) is a planning tool specifically designed to measure the level of practical supports required by a person with an intellectual disability (i.e., mental retardation) to lead normal, independent, and quality life in society.

The Supports Intensity Scale may be a useful tool for planning teams interested in identifying support needs of people with Autism Spectrum Disorders (ASD). The same support needs assessment and planning process outlined in the *SIS User's Manual*, that is, using the SIS in conjunction with person-centered planning, is recommended. It is important to understand that the norm-referenced SIS Support Needs Index (i.e., the overall score) is based on a population of people with intellectual disabilities and related developmental disabilities. This population overlaps, but does not consume the population of persons with ASD. Please note that there are no separate norms for people with ASD. Also, for those people with autism whose intellectual functioning is higher and therefore whose social communication abilities are higher, SIS would not be as appropriate a tool to determine support needs.



att. 11  
SB 2187  
3-15-17

Sonda Hinsz  
(701) 730-3900  
Sonda.Hinsz@yahoo.com  
March 15, 2017

Good Afternoon, Chairperson Wiesz and Members of the House Representatives Committee. My name is Trevor Hinsz and I am here of behalf of my daughter Samantha Hinsz. Thank you for allowing me the opportunity to share my opposition of Senate Bill 2187 through this testimony.

We are writing this letter for our daughter (Samantha Hinsz) as we are her guardians. Samantha has Down Syndrome and is non verbal. Her communication is very limited, her safety skills are very limited and she is a very vulnerable individual.

Without job coaching and residential support our daughter would not be able to follow through with her job duties, activities of daily living, social interaction, etc... With job coaching she was able to get a job and stay at her job (that she loves) for the past couple of years. With residential supports she is able to have her own apartment (home) and is able to learn life skills, have a social life and she gets experiences like everyone else. She enjoys having all these things in her life.

Without her job and her job coach she wouldn't be able to support herself, she would rely more on assistance, rather than continue to work on her independence, the same as her residential support helps her to work on her independence and social interactions. Her job is very important to her as it also helps her maintain social interactions in the community.

Samantha is an individual that needs her space and a quiet place to call her own, which everyone deserves. Losing this support would be a serious step backwards. We feel our daughter would lose all progress that these supports have given her. The supports she receives help her learn to succeed and promotes healthy growth for her.

Job coaching and residential supports are a VITAL part for a person with a disability to maintain a job (job experiences) and daily living skills. It provides options for our daughter not to be totally reliant on state assistance.

We urge you to eliminate the new reimbursement system for DD and vote NO, especially for extended services.

Sincerely,

Sonda Hinsz & Trevor Hinsz

A.H. 12  
SB 2187  
3-15-17

HOUSE OF REPRESENTATIVES HUMAN SERVICE COMMITTEE

Wednesday, March 15, 2017

Legislative Testimony

Senate Bill No. 2187

Hello, my name is Jason Thorp. I live in Fargo, ND. I have residential services with Red River Human Services and job supports with CHI-Friendship. I am asking that you please vote "no" on Senate Bill 2187.

I don't want any changes in my job coaching. I've worked at my job for 15 years. I earn a good wage. I need this money to support my 13-year old daughter. My job helps me do that. Without my job coaches help in keeping me on track and talking with my manager, I know I wouldn't be where I am today.

Please don't change something that is working so well. I love my job and know that a change like this would make things harder on at my work. I don't want to risk losing my job, so please vote "no."

Thank you for letting me share my story today.

A.H. 13  
SB 2187  
3-15-17

HOUSE OF REPRESENTATIVES HUMAN SERVICE COMMITTEE

Wednesday, March 15, 2017

Legislative Testimony

Senate Bill No. 2187

Good afternoon, Chairperson Weisz and Members of the House of Representatives Committee on Human Services. My name is Suzanne Carroll, Employment Specialist and Chair of the Region V Transition Community of Practice Committee. Thank you for allowing me the opportunity to share with you my opposition of Senate Bill 2187 through this testimony.

As an employment specialist, I assist people in finding and maintaining employment in jobs of their choice. All of us who work in this field are passionate about our vocation. Employment providers have worked through many challenges over the years and have learned to operate on a shoe-string budget to make our programs work. Implementing the new proposed reimbursement system will wipe out everything we have worked for to ensure people are successful in jobs of their choice with employers in our communities.

The proposed payment system under SB 2187 was indefinitely suspended in 2016 due to numerous concerns. One of these many concerns relates to employment of people with disabilities, specifically under *Extended Services*. Extended Services is essentially job placement, training and coaching supports for people with disabilities directly at community employers. This new payment system is based on an assessment called a *SIS (Supports Intensity Scale)*. In the proposed ND system, the formula using the SIS to calculate job supports is based upon residential needs—so essentially a formula that has nothing to do with work is determining how many hours of job coaching/training a person can have.

Additionally, *the SIS Assessment* has been riddled with problems in other states, resulting in lawsuits and corresponding limitations in how it may be used. I would like to point out specific concerns with the area of employment below.

/



The following information is based upon numbers released by the ND Department of Human Services Universal Impact statement regarding the changes expected under this proposed system:

As I mentioned, a formula that was developed for residential supports and based on a non-employment SIS score is being utilized to calculate what a person qualifies for in terms of job coaching hours. It appears that NDACP chose this formula without regards to applicability and appropriateness for the work environment. Many of the agencies that stand to gain from the proposed reimbursement system do not provide any type of employment services (or have extremely small programs) and are ill-equipped to understand the impact in this area.

There is a significant difference in terms of program loss in the new category of "Individual Employment" (replacing *Extended Services*) versus every other category. Across all providers in the state, *Individual Employment* is at a loss of 32.8%! This is in comparison to the next biggest loss of 9.8% in a program called *Day Habilitation*, and approximately a 5% loss in residential programs. This is such a significant difference; it has to be explored before any changes are pursued.

It would appear that the proposed system is regressing in supporting community-based employment with these numbers. This has been deeply troubling to the Region V Transition Community of Practice Committee (Transition Committee), of which I currently serve as the Chair. This is an interdisciplinary group of parents, educators, service providers and other non-profit agencies who support transition age youth across the counties of Cass, Steele, Traill, Ransom, Sargent and Richland. Since the Workforce Innovation and Opportunity Act (WIOA) was passed in July 2014, stakeholders providing transition services have been preparing to be in alignment with the mandates of this federal program. One of the big changes in this bill is the requirement that graduating students with disability services have to be screened by Vocational Rehabilitation. If the old model was to prove work-readiness before being able to access employment services, the new model is essentially the reverse—people will have to show they cannot work before going into alternative day services.

If we are not accounting for the needs of employment supports, we will not be in alignment with WIOA and it could possibly violate *The Olmstead Act*. It also begs the question, what will people do when they are not working? These proposed numbers point to a lack of support for the most independent, community-based setting available to people vocationally—having their own jobs with employers of their choice. North Dakotans are known for a strong work ethic, and people with disabilities are no different. They want to work.

In discussions at our Region V Transition Committee regarding this proposed reimbursement process, the consensus has been that it should not be pursued in light of the many issues—not just the employment perspective which I have outlined, but the limiting of residential choices and options. One committee member shared a story about a family member who had staff that were “too positive” at a SIS meeting. They were trying to be encouraging and kind, and instead this family member lost vital supports. Alberta, Canada removed the SIS for this reason, they said it was a “dehumanizing” tool. Additionally, the SIS is only supposed to be a support tool, in fact, some states, such as New Mexico and Michigan have had to clarify the use of SIS assessments after lawsuits. Furthermore, in Michigan, supports and services cannot be denied, reduced or discontinued if a consumer and/or guardian refuses to cooperate with the assessment process.

Finally, I would like to share my personal experience with this proposed system. As employment providers, we came closer than anyone to implementing this new system. Although the new reimbursement system as a whole was put on hold in 2016, the ND Department of Human Services attempted to implement the employment changes outlined in the proposed system. These changes were set to take effect on January 1, 2017. Centers for Medicaid and Medicare Services (CMS) ended up denying this proposal in December, but not before hours and hours were spent trying to figure out how to make this system work for the people we support. I spent a lot of time communicating with confused state developmental disability (DD) program managers, who had been given conflicting information and lacked answers on how to address vital programming concerns. The proposed safeguard system of “Outliers” was not applicable to employment when we had to look at ways to salvage people’s job supports.

To give an example, some of the categories of included in this Outlier process are:

Inappropriate sexual behavior, significant property damage, physical aggression and criminal activity. Many people are going to be terminated long before they would start engaging in these behaviors. People can be terminated for swearing at work, yet this would not approach the level required to qualify for an Outlier adjustment. This again points to the proposed system not adequately considering employment needs.

ND is already facing budgeting constraints; why are we trying to re-invent the wheel while at the same time losing our world-class, highly regarded Developmental Disabilities programming? I think the intentions behind the proposed changes may have been good, and I know a lot of people have invested significant time in this process. However, it just doesn't work like it should. That's the bottom line. We have to reconvene, incorporate more than just one disputed assessment tool to determine services and get a better sampling of stakeholders, like employment services, at the table next time.

I strongly urge you to vote "Do Not Pass" on SB 2187. For your review, I have included testimonials from several people who receive job coaching supports as well as local businesses in the Fargo Moorhead area. Please feel free to contact me with further questions. Thank you for your time and consideration.





January 26, 2017

To whom it may concern:

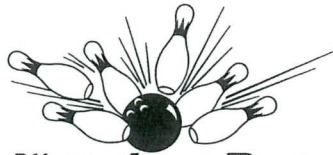
My name is Brandon Goebel and I'm the Managing Partner at Texas Roadhouse in Fargo, ND. I have been working with Texas Roadhouse for 6 years now, and I have been a restaurant manager for nearly 18 years now.

For the last 18 years I have been working with job coaches and supporting our team members with disabilities. In my years as a manager I would say I have worked with hundreds of different individuals in different programs in many different states and restaurants. I currently have 2 individuals that work for me that are an amazing asset to this team. I do rely on them, because they are here every day, on time and work as hard as they can their entire time. They are here learning and earning like everyone else and they need that assistance from the job coach to make that happen.

I would strongly urge you to vote no on SB 2187 due to the very negative impact you would have on my team members, my job coaches and my restaurant.

Sincerely

Brandon Goebel  
Texas Roadhouse  
4971 13<sup>th</sup> Avenue South  
Fargo, ND 58103



*West Acres Bowl*

3402 INTERSTATE BLVD.

FARGO, NORTH DAKOTA 58103

January 26, 2017

To Whom I May Concern:

I strongly urge you to vote no on SB 2187 due to the negative impact this will have on employment supports for people with disabilities.

I am Jamie McDonald the General Manager at West Acres Bowl. We are a small family owner business of less than 100 employees, some of whom use job coaching supports to help them be successful at work.

I believe that it is important to keep these services available to the workers who need them to help them keep up their personal self-esteem. It is a service that motivates them in many ways, improving their lifestyles and promoting a push towards independence. Many of these workers are highly talented and motivated individuals who are simply in need of some extra guidance. Please keep their needs in mind when casting your vote.

Sincerely,

A handwritten signature in cursive script that reads "J McDonald".

Jamie McDonald

West Acres Bowl

701.235.4437

6

# DeepBlue

SEAFOOD

January 26, 2017

To whom It May Concern,

I strongly urge you to vote no on SB 2187 due to the negative impact this will have on employment supports for people with disabilities.

I am Busola Mittleider with Off The Hook Seafood DBA Deep Blue Seafood Company. We have 7 employees, some of whom use job coaching supports to help them be successful at work.

An employee at my location has been able to be a great support to our team, with the aid of the job coaching support they receive. If SB 2187 passes this employee will not be able to contribute and find way to enable them to live and have some form of independence.

The job coach support services are great for the community, it gives people with disability a method to support themselves, to achieve personal life goals (pay bills, learn how to interact with others at work, ensure those with a disability are not been taken advantage of in a work environment etc.)

The job coach do an excellent job of facilitating between employees with disabilities and business owners to ensure both sides are working well together. They ensure employees they are supporting understands their job tasks, as well as assistant with the tasks as needed. As with an employee at my location each day is different as to what they need assistance which other employees are unable to assist.

Job coaches do an excellent job of providing those with disability the freedom to earn a living and provide for their selves, which in turn makes them part of the community. Everyone no matter your physical level, wants the opportunity to earn a living and live as independently as possible. If SB 2187 passes this will not be the case and those who currently have jobs may not be able to keep their jobs without assistance.

Sincerely,

Busola Mittleider  
4480 23<sup>rd</sup> Ave S  
Fargo ND 58104







Fargo Billiards & Gastropub  
3234 43<sup>rd</sup> Street South  
Fargo, North Dakota 58104

701-282-4168  
[www.fargobilliards.com](http://www.fargobilliards.com)

January 25<sup>th</sup>, 2017

To Whom It May Concern:

I strongly urge you to vote no on SB 2187 due to the negative impact this will have on employment supports for people with disabilities.

Fargo Billiards and Gastropub has 3 employees that currently use the services of a job coach. Job coaches are essential for these employees. In fact, one of our successful employees with a job coach, was unable to secure employment for thirty years prior to working here. She has worked here for over two years, now. Without the help of her coaching staff this would not have been possible.

Sincerely,

A handwritten signature in cursive script, appearing to read "A. Kaloustian", is written over a horizontal line.

Amanda Kaloustian  
Associate General Manager  
Fargo Billiards  
701-282-4168

A small, handwritten mark consisting of two overlapping loops, resembling a stylized "8" or a signature flourish, is located at the bottom center of the page.



2902 South University Drive • Fargo, ND 58103  
Telephone 701-232-3301  
Fax 701-237-5775  
E-Mail: [fraser@fraserltd.org](mailto:fraser@fraserltd.org)  
Website: [www.fraserltd.org](http://www.fraserltd.org)

Celebrating 120 Years of Service

January 26, 2017

To Whom It May Concern:

I strongly urge you to vote no on SB 2187 due to the negative impact this will have on employment supports for people with disabilities.

I am Ashley Murphy with Fraser Ltd. We have about 35 employees, some of whom use job coaching supports to help them be successful at work.

Working with children, we need to be sure the employees are able to communicate effectively with parents, follow all policies and procedures within the center as well as being able to know what to do in emergency situations that arise. With the job coaching supports, our staff in need are able to have assistance in learning how to be professional, and care for children the best ways possible. Some staff, needing these services, do get nervous around parents and the coaching staff are able to assist in how to communicate effectively with them. The coaching services also help the staff needing them on task so the other staff are able to stay focus on their jobs/ tasks at hand.

Through SB2187, we have been able to have employees with these services move forward and they have been able to work for us without job coaches on site which is the ultimate goal!

Sincerely,

Ashely Murphy  
Children's Services Coordinator

**ChamberChoice Not For Profit of the Year Award Recipient**



January 24, 2017

Dear Senators,

I am writing this letter to let you know how important it is for me to have a job and having my job coach at work. Please say no to SB 2187.

My services are very important to my way of life. Without having a job coach I wouldn't be able to go to work every day. I enjoy going to work every day. I like the people I work with. I make money to buy the things I need and the things I want. If I didn't have a job coach I know I couldn't do this. I really want to keep my job and I really like my services. Please don't take them away.

Sincerely,

Darlene Suppa

Darlene Suppa

3255 18<sup>th</sup> St. S. #7

Fargo, ND 58104



January 26, 2017

Dear Senators,

We are writing this letter for our daughter (Samantha Hinsz) as we are her guardians. Samantha has Down syndrome and does not communicate well.

Without job coaching our daughter would not be able to follow through with her job duties. With job coaching she was able to get a job and stay at her job (that she loves) for the past couple years.

Without her job and job coach she wouldn't be able to support herself and would rely more on assistance, rather than continue to work on her independence.

Her job socially is very important to her in order for her to maintain social relationships in and around the community.

Without her job coach she would not have a job.

Job coaching is a VITAL part for a person with a disability to maintain a job and experiences like everyone else. It provides options for our daughter not to be totally reliant on state assistance.

We urge you to eliminate the new reimbursement system for DD, especially for extended services.

Sincerely,

Sonda and Trevor Hinsz

(701)730-3900

//

January 26, 2017

Hello Senators,

I am Kelsey M. Schmaltz. I am writing this letter in regards to the job coach cut back that happens because of the new reimbursement system.

I work at Burlington Coat Factory in Fargo ND. The job coaching program helped me successfully get and keep this job for almost 3 years now. It's helped me learn how to act on the job and adapt to it so that it works for me and my employer.

Without the job coach, I don't think I would have the job I have now this long. With that being said I hope you consider on keeping the job coaching part of Friendship and also for everyone in else in ND. Please vote DO NOT PASS on SB 2187. Thank you.

Sincerely,  
Kelsey Schmaltz

4431 Calico Dr. S. #105  
Fargo, ND 58104

January 24, 2017

Dear Senators,

I heard about the possible changes in my services in SB 2187 and I am asking that my job coaching services don't change. I know with my diagnosis that I really need my job coaching for keeping a job. I've had my current job for over four years and that's because I have a job coach. If I didn't have my job, I wouldn't be able to pay my bills or do anything out in the community that is social or fun. Job coaching helps me stay employed. I've never had a job this long and I know it's because of my services.

So please don't change my services. They are very important to me and my way of life.

Sincerely,

A handwritten signature in cursive script that reads "Erin Mariner". The signature is written in dark ink and has a fluid, connected style.

Erin Mariner

3887 58<sup>th</sup> Court Street

Fargo, ND 58104



Dear Senators,

My reason for writing this letter is because I have read the SB 2187. The services I get are necessary for my work. I will not be able to pay my bills or get my groceries without the Job coaches. My Job and Job coaches are important to me and many others. Without the Job coaches where would we be? Find it in your heart to not take this away from us.

Sincerely,

Daniel Mohn.  
829 Kennedy Ct. N  
Fargo, ND 58102

Dear senators

I am writing this letter to let  
you know how important it is for  
me to have a job and having  
my job coach at work

please say vogo sb 2187

I enjoy having my job  
coach helping me with  
vacuuming.

I really want to keep  
their services.

Sincerely

Sean Smith

3125 N. Broadway

Agree V.B. 58102

15

January 25, 2017

Dear Senators,

I am writing this letter to let you know how important it is for me to have a job and having a job coach at work. Please say no to ~~to 313.2187~~.

I work as a dishwasher and janitorial in two restaurants. I have worked for over 4 yrs.

My job coach helps me with staying on task, making sure I complete my work, cleaning up after my work is finished. I need a job coach if I get frustrated and I need someone to talk to and my job coach can help calm me down. I like to go to football games, basketball, and Special Olympics sports so I like the money I make from my job.

I like having a job coach please don't take them away.

16 Danna Rae



January 25, 2017

Dear Senator,

My name is Todd Lueck. I work at the West Acres Food Court as an attendant. I have worked here for 5 years. I enjoy my job and the people I work with very much. I like to work as many hours as I can to make good money.

The job coach helps me stay on task, has taught me to know if the garbage is full enough to empty, taught me how to tie the garbage bags, taught me where the trays go and how to wash the tables. They remind me when I forget things like not touching my nose. If I didn't have a job coach I wouldn't have them to talk to and they wouldn't be here to make sure I'm doing what I'm supposed to do.

I don't want the state to cut job coaching time with me. I understand that this is based on home services and not on employment. This really isn't fair to me. Job coaches help me keep my job. Cutting job coaching time cuts my chances of being successful at my job.

Also, I live in an apartment in Fargo. I have staff from Friendship to help me stay safe and healthy. If I couldn't have my services, I wouldn't be able to live in Fargo and do the things that I like to do, like go to all of the NDSU football games. I am a good citizen. I give blood on a regular basis and I always try to do the right thing. Just because I need some support to do things doesn't mean I should be treated differently. Please vote Do Not Pass on SB 2187 so that I can stay in my job and apartment.

Sincerely,

Todd Lueck

Todd Lueck  
3420 42<sup>nd</sup> St S #314  
Fargo, ND 58104

January 26 2017

Dear Senators

I am writing this letter  
to tell you how important  
it is to have a job coach  
it won't work without them  
I wouldn't be able to work  
every day or pay bills. I still  
need my services please vote  
No On SB 21 87 -  
18 Darrell Acosta

January 26, 2017

Dear Senators,

I heard about the possible changes in my services in SB 2187 and I am asking that my job coaching services don't change. I have worked at my job for almost a year. Without a job coach I would not be able to maintain this job on my own. I work at a daycare caring for 1 to 2 year olds. My job coach helps me stay on task to make sure all the children are well cared for throughout the day. I change diapers, feed and play with children all with the help of my job coach. My job coach reminds me how to manage my time and lets me know if there is something that I can do to make sure children are as safe as possible.

Also, I have some health problems that my job coach has helped me work with my employer on so that I can do this job. I have never had a job for this long before. I am making good money and I can now pay my bills. I even saved up enough money to take a trip this fall. My employer depends on me and I am one of the most reliable employees at my job. None of this would have happened without the supports at my job. Please say no to SB 2187.

Sincerely,

Jessa Kirschenmann  
Jessa Kirschenmann

2922 12<sup>th</sup> st s

Fargo, ND 58103



January 26, 2017

Dear Senators

I Need A Job Coach To Support me at  
my job. I HAVE worked here for 7 years and  
without help it wouldnt be possible. Please  
Vote NO on sb 2187.

Sincerely

Barbara Goodwin

Dear Senators

and having my job coach at work.  
My services are very important, to  
my of life without having a job-  
coach & the people I work with & every  
day. I enjoy going to work every day  
my job coaching services

from

Cory

Hagon

1337 13 1/2

550. St Ave

35108

January 26, 2017

Dear Senators,

I found out today that my job coaching may be taken away by SB 2187. My job coaching is very important for me to have to be able to maintain having my job.

I have worked hard to find a job that I enjoy and am able to work during the day. I have worked for my employer for about 6 months. I am working several days a week cleaning restrooms, floors and pool tables. I also am able to do some food prep in the kitchen when needed.

My job coach helped me start my job by showing me how to do my job and making sure I knew my schedule and arriving on time. My coach also helps me talk to my boss and coworkers about any issues that come up throughout the day. My job coach has helped me get into a routine with my job that helps me complete my work in a timely manner.

I need a job coach when the restaurant gets very busy as I get very stressed out when there are a lot of people around. They help me stay on task and make sure I do not get distracted from what I'm supposed to be doing to complete my job.

I like having more income and being able to pay my own bills. I think things need to stay how they are for Extended Services hours. The restaurant business can be tough to work at and sometimes I need my job coach. I think the state needs to look at the numbers and figure out why this isn't making sense and fix it. There are people who need help at their jobs, not just me. We have to look at everyone. Please say No to SB 2187.

Sincerely,



Mary Fabela

2602 14<sup>th</sup> St. #4

Fargo, ND 58103



Teresa Brown  
2525 North Broadway #101  
Fargo, ND 58102

January 26, 2017

Dear Senators,

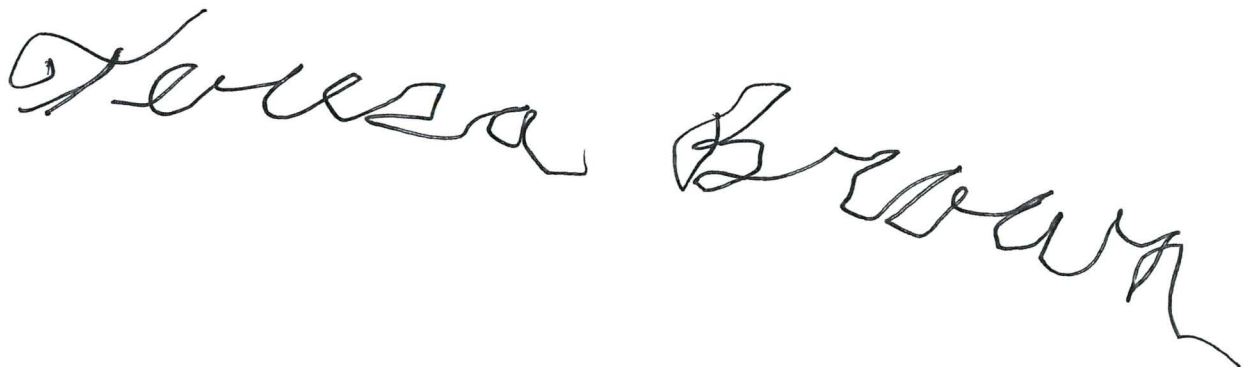
I am writing this letter to urge you to please vote "NO" on Senate Bill 2187. If passed the new system would unfairly calculate my job support needs by using an unclear formula that was meant for home-based services instead of relying on me, my team of professionals, and my employer to assess my needs.

I have worked at West Acres Mall for the last 14 years. I work 29 hours a week and make \$10.46 an hour. I have a job coach that has helped me be successful throughout the years. My job coach has helped me by training me in on all my job tasks when I started. My job coach continues to assist me by helping me talk to my boss when I have a problem or need time off. My job coach helps me deal with stressful situations that make me upset.

My job is important to me because I get to see and talk to people in the community every day. My job is important to me because I enjoy shopping and buying things for myself and others. Working makes me feel good about myself. Without my coach I may not still have this job that I love so much. I have friends and co-worker who are dealing with the same thing and feel like I do. I just can't afford to lose my coaching hours. Please don't make any changes until you have looked into this and figured out why employment services are going to be reduced under this new program.

Sincerely,

Teresa Brown

A handwritten signature in black ink that reads "Teresa Brown". The signature is written in a cursive, flowing style.

January 25 2017

Dear Senator,

I am asking that you do not  
do anything that changes  
my Job coaching.  
my Job Coach helps me do  
what I need to do at work.  
they help me keep my job  
since my mother died on  
Saturday July 26<sup>th</sup> 2014.  
I need my Job to help  
my Dad to pay the bills

thank you  
melody Bauer  
409 15 Ave. NW  
West Fargo, ND  
58078

January 25, 2017

Dear Senator,

I am writing this letter to urge you to vote NO on SB 2187. This new system unfairly calculates my job support needs by using an unclear formula that was meant for home-based services instead of relying on me, my team of professionals, and my employer to assess my needs.

I have worked with Friendship's job coaching for over a year. I work at West Acres in Fargo doing cleaning. Before that I worked at Menards in the lumberyard. Menards was too much to handle, even with job coaching, so I went to West Acres. I like everyone there and I do not want them to go away. They have helped me to learn things and helped me through issues. This is why I need them. I would be lost without these job coaching services.

I am asking that the state of ND keep services the way that they are. I am confused by what is going on because it makes no sense about how my job coaching hours are being figured out. I want the people who help me be successful at work to stay in my life. Thank you for your understanding.

Sincerely,



Jez Mittleider  
805 27<sup>th</sup> St. N  
Fargo, ND 58102



January 26, 2017

Paul O. White

4226 9<sup>th</sup> Ave Circle S. #305  
Fargo, ND 58103

Dear Senators,

I worked for Godfathers Pizza for 15 years. Recently they closed the business. I am now looking for a new job. At Godfathers, I washed dishes, re-filled the lunch buffet, cleaned off tables and vacuumed the restaurant. My job coach helped me to stay on task. I really liked my co-workers.

Now I'm looking for a new job. My job coach is helping me fill out applications, find job openings, use email to put in resumes, talk to employers and interview for jobs. If I didn't have my job coach to help me with this, I would not be able to get a new job.

The job coaches are good. They remind you to stay on task and teach you to work with customers the right way.

I want the state of ND to leave my job coaching the way it is so I can work. Please vote Do Not Pass on SB 2187.

Thank you for listening,

Paul White

*Paul White*

Dear ~~sen~~ senator

I will keep my job coach

I work hard a my job  
they are good to me

With out my job coach I

wouldnt be able to do my  
work

Please vote no on ~~the~~ bus  
~~for~~ 2187

Richard ~~Sen~~ Sen.

2726-18th South 1

Fargo nd

Jan 26 2017

To whom it may concern;

My experience with job coaching has benefited me in so many ways. They showed me how to be the best I can be. They helped me through the stressful moments, how to change diapers

proficiently. I gained skills to be independent and confident in myself.

They taught me to get into a routine and get things done in a timely matter. While job coaching taught me a lot and became more independent and confident. ~~I don't need~~ I determined

I had the necessary skills to not need one



1/25/17

Dear Senators -

Please don't sign SB 2187. I have been working at my job doing food preparation for 16 years. I get paid \$16.00 per hour and I love my job. I need my job coach to keep working. My work makes me happy. Please don't let any changes happen that could make me lose my job.

Sincerely -

Jean Moser

2525 N. Broadway #309  
Fargo, ND 58102

dear senators

Jan 26, 2017

I am writing to urge you not to drop or eliminate the Job Coach that I get from Friendship. I like my Job Coach and they good to me. And they also there to talk to when I need help or do not understand something. And my family loves the fact that I have 2 good Job Coaches that come out to my work and help me. I do not know where I would be in my life without my 2 Job Coaches. I have worked for Walmart for 6 years. I have a Dept manager that likes having her come out and help me in case there is any problems that I can not handle. I would be lost without my Job Coach. And when I have test to do on the computer my Job Coach comes out and helps me out with them. so I get them right. She also comes to my yearly meetings at my house.

So I did not have a Job Coach. I would have nobody to discuss my problems with. And if I want to get a new Job, my Job Coach is there to help me find a new new Job.

I really need a Job Coach. It gives

me somebody to talk with.  
When I have any problems my  
mom would say ask your Top  
Coach that is why there are there  
to help me.

my Top Coach also trains me on  
new things that I do not now  
to do.

Please Vote do not Pass on SB 2187  
Lisa Hoffer  
3343 Parkview Lane  
Fargo, ND 58103