

FISCAL NOTE
Requested by Legislative Council
04/23/2019

Amendment to: SB 2317

- 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.*

| | 2017-2019 Biennium | | 2019-2021 Biennium | | 2021-2023 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.*

| | 2017-2019 Biennium | 2019-2021 Biennium | 2021-2023 Biennium |
|------------------|--------------------|--------------------|--------------------|
| Counties | | | |
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| 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).*

SB2317 requires the Department to determine acceptability of construction/renovation projects of \$1,000,000 or less within 60 days of receipt of an application; and may waive state law or rule related to construction or licensure standards if it does not adversely impact health or safety.

- 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 Department will comply with the requirements within its normal operations resulting in no fiscal impact.

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: Brenda M Weisz

Agency: Department of Health

Telephone: 328-4542

Date Prepared: 04/24/2019

FISCAL NOTE
Requested by Legislative Council
03/21/2019

Amendment to: SB 2317

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| | General Fund | Other Funds | General Fund | Other Funds | General Fund | Other Funds |
| Revenues | | | | \$817,613 | | \$2,126,443 |
| Expenditures | | | \$817,615 | \$817,613 | \$2,126,444 | \$2,126,443 |
| Appropriations | | | \$817,615 | \$817,613 | \$2,126,444 | \$2,126,443 |

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SB 2317 requires the licensure of pediatric subacute care facilities as nursing facilities.

- 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 department has been notified by Anne Carlson Center that they plan to have twenty-two beds available in August 2021, so the 21-23 estimates have been updated. No changes have been made to the 19-21 estimates.

Section 3 of 2317 adds pediatric subacute care facility to the list of provider types that should be eligible for recognition of additional costs for providing services to medically fragile children. The Department estimates one facility to be licensed as pediatric subacute in the 19 – 21 biennium. This would result in a reduction in the Developmental Disabilities Medicaid grants and an increase in the Long-Term Care Continuum Medicaid grants. The Department estimated the facility to be licensed and operations as of January of 2020. The estimated impact to the Department is an increase in expenditures of \$1,635,228, of which \$817,615 is general fund, this accounts for a total decrease of \$7,640,314 in the Development Disabilities Medicaid grants and a total increase of \$9,275,542 in the Long-Term Care Continuum Medicaid grants. Both the decreasing and increasing estimates are based on a sixteen bed unit.

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For the 19-21 biennium the Department of Human Services would need appropriation increases to the Executive Budget Request in medical assistance grants of \$1,635,228 of which \$817,615 would be general fund.

For the 21-23 biennium the Department of Human Services would need appropriation authority of \$4,252,887 of which \$2,126,444 is general fund in medical assistance grants.

Name: Rhonda Obrigewitch

Agency: Human Services

Telephone: 328-4585

Date Prepared: 03/22/2019

FISCAL NOTE
Requested by Legislative Council
02/05/2019

Amendment to: SB 2317

- 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.*

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Name: Rhonda Obrigewitch

Agency: Human Services

Telephone: 328-4585

Date Prepared: 02/06/2019

FISCAL NOTE
Requested by Legislative Council
01/23/2019

Revised
 Bill/Resolution No.: SB 2317

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Name: Rhonda Obrigewitch

Agency: Human Services

Telephone: 328-4585

Date Prepared: 01/27/2019

FISCAL NOTE
Requested by Legislative Council
01/23/2019

Bill/Resolution No.: SB 2317

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Name: Rhonda Obrigewitch

Agency: Human Services

Telephone: 328-4585

Date Prepared: 01/27/2019

2019 SENATE HUMAN SERVICES

SB 2317

2019 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

SB 2317
1/28/2019
31559 (38:24)

☐ Subcommittee
☐ Conference Committee

| |
|---------------------------------------------|
| Committee Clerk: Justin Velez/ Meghan Pegel |
|---------------------------------------------|

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new subsection to section 23-16-01.1, a new section to chapter 23-16, and a new section to chapter 50-24.4 of the North Dakota Century Code, relating to long-term care bed capacity, licensure of pediatric subacute care facilities as nursing facilities and reimbursement of pediatric subacute care facilities; and to amend and reenact section 50-24.4-27 and subdivision a of subsection 24 of section 57-39.2-04 of the North Dakota Century Code, relating to licensure of pediatric subacute care facilities as nursing facilities.

Minutes:

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|---------------|
| 4 Attachments |
|---------------|

Madam Chair Lee opens the hearing on SB 2317.

Nicole Poolman, District 7 Senator, testifies in favor (see attachment #1)

(2:07) Senator Anderson: What's the advantage of having a special license class for this group?

Senator Poolman: The advantage would be that the level of care required for these children is so intense that the formula as it works under the new DD funding formula is just not working for them. It is a way to address the cost of the level of care that this specific subgroup needs.

Senator Anderson: On page 1 line 23, you've called everybody your age or above 21 a "geriatric person". Is that going to be okay with everyone?

Senator Poolman: Well, you're on your way.

Chair J. Lee: The current politically correct term is not "seniors" or "elderly" but "older adults".

(4:30) Tim Eissinger, President and CEO of the Anne Carlsen Center, testifies in favor (see attachment #2)

Senator K. Roers: What is the range of acuity that you have there?

Eissinger: There is a significant level of acuity. The 17 11 are currently on ventilators; most have trachs; we do a lot of G and J2 feedings; things like complex seizure disorders; some traumatic brain injury and related topics. I have testimony from our pedestrian and medical Director Dr. Myra Quanrud that actually helps illustrate some of the medical conditions of those we serve.

Senator Anderson: There is some effort here to increase the reimbursement for this class of people. Right now apparently the acuity doesn't fit and allow you higher reimbursement, but with this new classification, how do you see putting them in a separate class is going to increase their reimbursement necessarily?

Eissinger: One of the features that we're looking for in the models that we've seen from other states is in the regulatory response, you're able to categorize by levels of acuity. Most of the other providers provide 7 levels that can be empirically tested so that you actually have an appropriate cost for the level of treatment that is provided. In our experience with the DD payment system, the payment system as was designated was largely based on addressing the average across the individuals who were participating in the DD services system. As a result of that, if you're on either end of that bell-curve, there were some details relative to the competency of the individuals who were providing care. The existing formula only looked at times at the number of people that were necessary to support the DD individuals and services. Not only do you have to have the numbers of people but the medical competency, specialized facilities and specialized supplies related in order to complete the care. Those weren't factors that were adequately addressed in the new payment system.

(11) Tim Eissinger presented testimony for Dr. Myra Quanrud, Pediatrician and Medical Director for the Anne Carlsen Center, testifying in favor (see attachment #3)

Senator K. Roers: Is South Dakota one of the 17 states?

Eissinger: Correct.

Vice Chair O. Larsen: Is anyone in the facility looking at utilizing the medical marijuana card holding for that therapy?

Eissinger: It has been raised with our medical team. I wouldn't want to speak for Dr. Quanrud, but we are looking at all options that would enhance the viability. Seizure disorders are extremely severe, and all options are on the table in terms of helping those children.

Senator K. Roers: One of the things that we've addressed at my own facility is if a patient were to come in and have their medical marijuana card, one of the challenges is because it is still federally illegal, it is very difficult for providers to understand that if they are the ones administering that medication, is there any risk to them or the facility? What does that do to their Medicare eligibility for accepting that? That is one of the challenges you run into when you have medical professionals who especially are having to administer that, knowing that there can be a definite benefit but risk to them as well.

(19:25) Bruce Pritschet, DHS Director of the Division of Health Facilities, neutral party (see attachment #4)

(22:15) Teresa Larsen, Protection and Advocacy Project, neutral party

Larsen: At the top of page 2, there is language that talks about the Department adopting rules to licensed nursing facilities under this chapter. It says “the department shall license a pediatric subacute care facility as a type of nursing facility. A facility may choose whether to seek licensure as an intermediate care facility under this chapter or as a pediatric subacute care facility”. I talked briefly with Tim Essinger and Maggie Anderson. My concern about losing the tie to the intermediate care facility or what we call “ICF” is that that requires active treatment for individuals with disabilities. I’m not opposed to this bill, but I’m concerned about that loss of tie. I’m not sure what the standard of care would be in terms of working with individuals with developmental disabilities under our pediatric subacute care facility. Perhaps there could be something put into the rules to continue to tie centerative care to the ICF regulations. I’m not an expert on that, but I hate to see the loss of that tie to active treatment.

Senator Anderson: I would like to hear from the Department whether the efforts to adjust the reimbursement could be done within the current structure or whether we need to create this new class of facilities in order to do so.

(24:40) Chris Jones, Executive Director of DHS, neutral party

Jones: There’s probably some folklore associated with this as much as there is truth. 20-30 years ago when the arc lawsuit occurred and the DD model started rolling out across the state of ND, I think there was some financial difficulty at Anne Carlsen and there were some hasty decisions that were made in order to ensure that Anne Carlsen could continue to care for these individuals who needed care. The Center became part of the developmental disabilities program within DHS. As the DHS and the community providers continued to work based on a cost-base reimbursement model, it continued to be able to be adequately resourced to the point where they were able to continue to provide care. Remember also that this was 20-30 years ago. Over time the DD payment system came in and that system of supports is built based on people primarily who have developmental disabilities and not individuals who are medically fragile as well as have developmental disabilities. As Mr. Essinger said, there is a bell-curve that’s associated with it, and how do we best do a system that fits the majority of ND and not create all of these outliers? We used to have far more outliers than we do today. Medical technology has increased. A number of these children who 30 years ago likely would have perished or died, are now continuing to live and we have the medical technology to help them thrive and survive, but sometimes those costs become greater.

Senator Anderson: We could continue under the developmental disability system and make outliers for these individuals or we can create a system of this new licensing class that automatically pays higher for them. Is that how you see the difference here and what does the department think about it?

Jones: Absolutely. The other thing to keep in mind is Anne Carlsen also does provide service to those with developmental disabilities as well. To group all of this entire population as one

isn't really identifying the needs that are necessary to adequately reimburse for medically fragile versus someone who has developmental disabilities and sometimes both. Other states have this. It seems like over time we've tried to fit Anne Carlsen into the DD system for this one unit, Rivers Bend, and it's always kind of a workaround. As we understand the pediatric acuity that exists, should we really have a licensure that more appropriately licenses a medically facility versus an ICF?

Chair J. Lee: So if you're neutral, how do we do that? It doesn't seem like it entirely fits that unit anyway. We really want to work together with the Health department and DHS in trying to figure out how to appropriately define this.

Jones: I probably should have stood up in support. The DHS absolutely supports creating a licensure status and a payment model that more appropriately represents the individuals who are being served.

Chair J. Lee: I feel more comfortable now. It does seem to be a unique, special needs clientele. Have you looked at the amendments offered by Senator Poolman?

Jones: I thought it was going to be something far simpler than it is. I have seen the amendments, and we'll continue to work through those. Because this is within the nursing facility and the moratorium on beds, how is that best addressed? That is just one of the many items I think that the legislature will have to take up. As far as the department is concerned as it relates to the moratorium on beds, that is not something that exists in isolation from the current reimbursement model that does exist for skilled nursing facilities today. We don't suggest eliminating the moratorium within the current environment, but as it relates to this, this is a different section. If we can just stay focused on creating an appropriate licensure to care for kids in a pediatric subacute unit, it would be far simpler.

Senator Anderson: The amendments that Senator Poolman provided seem to solve most of the problems except for the moratorium issue?

Jones: I don't believe that the amendments talked about the moratorium.

Chair J. Lee: Please look them over. We all have a goal to make sure that we're appropriately serving these individuals in the best way. We need to act on this this week if possible.

(34:18) Tina Bay, DHS

Bay: It really comes down to who's providing this care. Our new system is putting it at a level of a direct service professional and Anne Carlsen is providing at a nurse level. We have outliers that we have created that process under the new reimbursement system, but that addresses the amount of hours that the client needs, not who is providing that service.

Chair J. Lee: In looking at the fiscal note, it says it's roughly \$1.5M both general funds and other funds. If this didn't happen, are we \$3M short in being able to provide services to individuals like this? This is a big number.

(35:40) Maggie Anderson, DHS

Anderson: This actually would not be in Tina's shop. The funding is actually in the long term care area and overseen by LeeAnn Thiel, the nursing home rate administrator area. If this wasn't funded and passed, we wouldn't be moving to this new payment mechanism. These costs are estimated based on a cost report that Anne Carlsen filed looking at some acuity adjustments and within our nursing home rate setting and how we do that, knowing that there may need to be some massaging to that as we go through this; it's the best estimate we had. These are based on January 2020, so this isn't even a full 24 months because of course the Health counsel would need the time to adopt rules.

Chair J. Lee: so that's why it's \$817,000 in the first biennium for the fiscal note?

Anderson: Correct. In the second biennium we'd estimate close to \$1.5M of general funds and \$1.5M in federal. These are additional funds that we're saying we need if this licensure happens to flow the money through.

Chair J. Lee: Anne Carlsen or any other subacute?

Anderson: Yes.

Chair J. Lee: So there isn't any money in another subsection in the DHS budget that would be moved over into this because these individuals are being served?

Anderson: Yes. If you look at section 2b of the fiscal note in the paragraph, we're actually decreasing \$7.6M from the DD area of the Medicaid grants and moving it into our long term care continuum Medicaid grants. We'd move the \$7.6M over, we need a total of \$9.2M, and the \$1.6M in the fiscal note makes up the difference.

Chair J. Lee: That makes me feel slightly better.

Chair J. Lee closes the hearing on SB 2317.

2019 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

SB 2317
1/30/2019
#31828 (5:59)

☐ Subcommittee
☐ Conference Committee

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|---------------------------------------------|
| Committee Clerk: Justin Velez/ Meghan Pegel |
|---------------------------------------------|

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new subsection to section 23-16-01.1, a new section to chapter 23-16, and a new section to chapter 50-24.4 of the North Dakota Century Code, relating to long-term care bed capacity, licensure of pediatric subacute care facilities as nursing facilities and reimbursement of pediatric subacute care facilities; and to amend and reenact section 50-24.4-27 and subdivision a of subsection 24 of section 57-39.2-04 of the North Dakota Century Code, relating to licensure of pediatric subacute care facilities as nursing facilities.

Minutes:

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| No Attachments |
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Chair J. Lee opens discussion on SB 2317.

Chair J. Lee: Subacute care is meant for patients who are too complex for typical residential care. What we are talking about with the children who are involved with that 17-bed unit at the Anne Carlsen center is we hope it isn't a permanent situation but it's definitely a long term situation for those children, so we can't do it that way, but I do appreciate Senator Roer's expertise in the fact that she gave us another option to consider.

Senator K. Roers: As I read this, I'm reading that the long term subacute for adult has huge needs too and that we don't have enough facilities to handle that patient population. So when they're no longer making progress towards recovery in Vibra, there's nowhere to send them. The nursing homes won't take the vent.

Chair J. Lee: No. the one on North Broadway is the only one in the state that takes a vent. An individual whom I know who has since passed away had Lou Gehrig's disease. His wife and caregivers were taking care of him at home for a very long time, but if she was going to get any respite herself, there was no place for her to go.

Senator K. Roers: The admissions coordinator at Vibra said the only places they have to go is one in Bismarck or two places in Minnesota.

Senator K. Roers: Senator Poolman and Bruce both provided the amendments that were needed to the current state of the bill, but I think the piece that we still have not tackled is the moratorium on beds.

Maggie Anderson, DHS

Anderson: Tim Essinger with the Anne Carlsen center, Bruce Pritschet with the Health department, myself, Leanne Theiel and medical services as well as Levi Andrist who is a lobbyist for the Anne Carlson center have all been communicating today. I think we have close to final amendments. One of the clarifications we need will actually impact the fiscal note because during the testimony, we heard about 17 beds and in the email that was sent this afternoon, they talked about asking for a moratorium exception for 22 beds. We are actively working on trying to get another Christmas tree version of the final amendments to you.

Chair J. Lee: Thank you. We all want the best care for these children.

Chair J. Lee ends discussion on SB 2317.

2019 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

SB 2317
2/4/2019
#32081 (14:08)

☐ Subcommittee
☐ Conference Committee

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| Committee Clerk: Justin Velez/ Meghan Pegel |
|---------------------------------------------|

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new subsection to section 23-16-01.1, a new section to chapter 23-16, and a new section to chapter 50-24.4 of the North Dakota Century Code, relating to long-term care bed capacity, licensure of pediatric subacute care facilities as nursing facilities and reimbursement of pediatric subacute care facilities; and to amend and reenact section 50-24.4-27 and subdivision a of subsection 24 of section 57-39.2-04 of the North Dakota Century Code, relating to licensure of pediatric subacute care facilities as nursing facilities.

Minutes:

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| 1 Attachment |
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Chair Larson begins discussion on SB 2317.

Tim Eissinger, CEO of the Anne Carlsen Center, provided attachment #1, amendment .03004.

Eissinger: (Please see attachment #1) We believe the bill as amended fits the expectations that Anne Carlsen would have for this level of care moving forward. The only thing I would introduce is ensuring that you use administrative rule for as much of the details as you can. The only thing that was not included as an amendment was commentary by Theresa Larson, protection and advocacy. Although she stated she was not concerned of the specific quality of care issues that Anne Carlsen would provide, she did note the concern that another provider who only address medical services would not adequately address the issues for developmentally appropriate services for those children. I was of the opinion that it could be accomplished effectively within administrative rule, but Theresa Larson had a recommendation. On page 2 following line 19 if we could add discussion relative to an item for and say "Rules applicable to a pediatric subacute care facility must provide for a consistent implementation of specialized training, treatment, health services and related care developmentally appropriate for this population".

Chair J. Lee: I had made not of her comments about that.

Vice Chair O. Larsen: I see in section 1 on page 2 there is a discussion on the 22 nursing beds. Is that additional or is that just enveloping what they have there?

Eissinger: My understanding is this would actually be the creation of 22 additional skilled nursing beds.

Chair J. Lee: which is complicated by the moratorium.

Eissinger: Correct. One of the stipulations is that those beds once created could not be sold, bartered or traded. That is a necessary protection. We really want to distinguish this level of care and not be seen as competitive in that arena. That is in the new draft.

Senator Hogan: Please go through rule 3.

Eissinger: The intent of that is unfortunately in the state of ND for medically complex children who reach age 21 and transition into adulthood, there tend not to be great options relative to their transition. When members of the Anne Carlsen team did some of their national research on how to best approach this, there were a number of providers who put an aging in place stipulation. They often put it in as a percentage of licensed beds. I think it's a circumstance for Anne Carlsen certainly where we don't want to have them spend their entire lives with us. We think we should be working aggressively from day one to look at appropriate transition resources and have them in the most stable environment possible as soon as we can get them there. We do have some specialized medical needs where other facilities are very reluctant to serve them. To have an aspect of that within this is important to us.

Chair J. Lee: Does this include the areas of amendment that were recommended by Mr. Pritschet when he was here?

Eissinger: To my understanding, all has been incorporated. Department of Health and DHS are in acceptance of the bill as currently drafted.

(8:50) Shelly Peterson, ND Long Term Care Association

Peterson: Tim and I met and talked about the moratorium and the implications. My assessment was we do have a very stringent moratorium for nursing facility beds; however, if the legislature wants to put in an exception in there, that is your call. We've had some babies in long term care and right now there's one residing in Bismarck. She's doing fantastic. She came in at 5 months and she is now 15 months old. She has grandpas and grandmas and caregivers and very complex health needs. The main reason she's there is because there is not a place at the Anne Carlsen school; there's not an open bed, so thank goodness we have the facility and she's thriving. But when she gets older, she might not appreciate all the grandpas and grandmas and may want other kids her age. We understand and see that it is a unique population with very special needs and support you to do whatever you feel you need to do.

Chair J. Lee: Mr. Eissinger, have you heard of any objections to your proposed amendment stated earlier?

Eissinger: I have not. The suggestions from the committee were also exceptionally invaluable to us just to broaden the horizon.

Senate Judiciary Committee

SB 2317

2/4/2019

Page 3

Chair J. Lee ends the discussion on SB 2317.

2019 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

SB 2317
2/4/2019
Job # 32118

☐ Subcommittee
☐ Conference Committee

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|-----------------------------------------|
| Committee Clerk Signature: Justin Velez |
|-----------------------------------------|

Explanation or reason for introduction of bill/resolution:

Relating to licensure of pediatric subacute care facilities as nursing facilities.

Minutes:

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| No Attachments |
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Madam Chair Lee opens the discussion on SB 2317 and goes over the new fiscal note provided to the committee.

(00:54) Senator Hogan: In terms of the effective date, when is it?

Senator Anderson: July 1st, with money.

Senator K. Roers: I remember in the bill we changed it to 22 beds but, here it says 16 beds. Is that what you have right now?

Madam Chair Lee: So that must be the change of the fiscal note because of the increase in beds.

Senator K. Roers: No, it's still off of 16 beds. It is probably due to an increased payment structure that they can reimburse for more.

(02:00) Leanne Theo Department of Human Services: The difference between the original fiscal note and the new one was the additional beds in the 2021-2023 biennium.

Senator Hogan: With the changes that we did, were there any other fiscal note changes any place through this?

Leanne Theo: No, there wasn't. The only thing I will note is the fiscal estimate was based on a January 2020 implementation date, based on when the Department of Health could get rules through.

Madam Chair Lee: Bruce Prechit says the medical board agrees on the bill.

(4:13) Tim Eissinger, CEO of the Anne Carlsen Center: Relative to the discussion about 16 versus 17 beds. Current operations have 17 beds available they are currently filled by 16 individuals and so if that has implications relative to the fiscal note, I would just flag that as a point of consideration.

Senator K. Roers: Do you know if the proposed amendments, does that include the section that Mr. Eissinger shared with us earlier today.

Madam Chair Lee: Yes, if you look at the amendments on page 1 and you look on page 2 after line 7, "insert number 3, rules applicable to the pediatric subacute care facility must allow for (inaudible)". We don't have four?

Senator K. Roers: That document is an exact match to the Christmas tree version but missing number four.

Madam Chair Lee: Yes, that is what I am seeing.

Senator Hogan: In terms of on page 2 of the amendment section 4 the definition of subacute care facilities, it still references the under 21 and when we allowed people over 21 is there an inconsistency in anyway? Could we take the age out?

Madam Chair Lee: How did we do that this morning, we had this discussion and thought we had it figured out.

(08:20) Madam Chair Lee and the Senate Human Services Intern has a discussion on what the verbatim language of the amendments was from the earlier discussion of SB 2317.

(09:48) Senator K. Roers: Can we just strike under 21 years of age. It is already saying if they are reimbursing a pediatric subacute under this chapter, let's just end with the word clients and take out the words under 21 years of age I think that would create less complication within the code.

Madam Chair Lee: Are we okay with that everybody?

Senator Hogan: I like that a lot.

Madam Chair Lee: Mr. Prechit any comments on that one?

Senator Hogan: I move to **ADOPT AMENDMENTS** of 19.0536.03004 with two corrections, under section 4 the elimination of under 21 years of age, and on the bill page 2 line 19 add the new section of the rules applicable.

Seconded by Sen. Roers

ROLL CALL VOTE TAKEN

6 YEA, 0 NAY, 0 ABSENT (Senator Larsen voted later outside of committee so vote is not on recording.)

MOTION CARRIES TO ADOPT AMENDMENTS AND CORRECTIONS

Senator K. Roers: I move a DO PASS, AS AMENDED, AND REREFER TO APPROPRIATIONS.

Seconded by Senator Hogan

ROLL CALL VOTE TAKEN

6 YEA, 0 NAY, 0 ABSENT (Senator Larsen voted later outside of committee so vote is not on recording.)

MOTION CARRIES DO PASS, AS AMENDED, REREFER TO APPROPRIATIONS

Senator K. Roers will carry SB 2317 to the floor.

Madam Chair Lee ends the discussion on SB 2317.

February 4, 2019

82
102

PROPOSED AMENDMENTS TO SENATE BILL NO. 2317

Page 1, line 1, after "new" insert "subsection to section 23-16-01.1, a new"

Page 1, line 1, after "23-16" insert ", and a new section to chapter 50-24.4"

Page 1, line 2, after "to" insert "long-term care bed capacity,"

Page 1, line 2, after the second "facilities" insert "and reimbursement of pediatric subacute care facilities"

Page 1, line 3, replace "sections 23-09.3-02, 23-09.3-10, 25-18-15, 50-06-06.4, and 50-06-38," with "section 50-24.4-27"

Page 1, replace lines 7 through 24 with:

"SECTION 1. A new subsection to section 23-16-01.1 of the North Dakota Century Code is created and enacted as follows:

Notwithstanding the prohibition on adding nursing facility beds under subsection 1, an additional twenty-two nursing facility beds are authorized for use as pediatric subacute care facility beds. Beds authorized under this subsection may not be sold, converted, or transferred."

Page 2, line 3, replace "**Subacute**" with "**Pediatric subacute**"

Page 2, line 4, replace "department" with "health council"

Page 2, after line 7, insert:

"3. The rules applicable to a pediatric subacute care facility must allow for aging in place for an individual over the age of twenty-one and for a pediatric subacute care facility to be located in a facility or structure that offers other appropriate levels of services."

4. Rules under this section must provide for a consistent implementation of specialized training, treatment, health services, and related care which are developmentally appropriate for the population."

Page 2, remove lines 8 through 30

Page 3, replace lines 1 and 2 with:

"SECTION 3. AMENDMENT. Section 50-24.4-27 of the North Dakota Century Code is amended and reenacted as follows:

50-24.4-27. Medicare certification.

~~All~~Except for pediatric subacute care facilities, all nursing facilities certified under the medical assistance program shall participate in Medicare part A and part B with respect to at least thirty percent of the beds in the facility unless, after submitting an application, Medicare certification is denied by the federal health care financing administration. The facility shall file on behalf of each patient or assist each patient in the filing of requests for any third-party benefits to which the patient may be entitled.

Charges for Medicare-covered services provided to residents who are simultaneously eligible for medical assistance and medicare must be billed to Medicare part A or part B before billing medical assistance. Medical assistance may be billed only for charges not reimbursed by Medicare.

2062

SECTION 4. A new section to chapter 50-24.4 of the North Dakota Century Code is created and enacted as follows:

Pediatric subacute care facilities.

If reimbursing a pediatric subacute care facility licensed under chapter 23-16, the department shall consider the unique level of care and the additional cost required to provide services to medically fragile clients."

Page 3, line 5, remove the overstrike over "skilled"

Page 3, line 5, after the second comma insert "nursing facility,"

Renumber accordingly

Date: 2/4/19
Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2317

Senate Human Services Committee

☐ Subcommittee

Amendment LC# or Description: 19.0536.03064 plus two additions (see below)

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. Hogan Seconded By Sen. K. Roers

| Senators | Yes | No | Senators | Yes | No |
|-------------------------|-----|----|------------------|-----|----|
| Sen. Judy Lee | X | | Sen. Kathy Hogan | X | |
| Sen. Oley Larsen | X | | | | |
| Sen. Howard C. Anderson | X | | | | |
| Sen. David Clemens | X | | | | |
| Sen. Kristin Roers | X | | | | |
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Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

page 4, Line 4, Strike "under 21 years of age"
page 2, Line 19, Add new subsection 3 on page 2, "The rules applicable to a pediatric subacute care facility must provide for a consistent implementation of specialized training, treatment, health services, and related care developmentally appropriate for this population."

Date: 2/4/19
Roll Call Vote #: 2

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO.**

Senate 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 Sen. K. Roers Seconded By Sen. Hogan

| Senators | Yes | No | Senators | Yes | No |
|-------------------------|-----|----|------------------|-----|----|
| Sen. Judy Lee | X | | Sen. Kathy Hogan | X | |
| Sen. Oley Larsen | X | | | | |
| Sen. Howard C. Anderson | X | | | | |
| Sen. David Clemens | X | | | | |
| Sen. Kristin Roers | X | | | | |
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Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. K. Roers

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

REPORT OF STANDING COMMITTEE

SB 2317: Human Services Committee (Sen. J. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2317 was placed on the Sixth order on the calendar.

Page 1, line 1, after "new" insert "subsection to section 23-16-01.1, a new"

Page 1, line 1, after "23-16" insert ", and a new section to chapter 50-24.4"

Page 1, line 2, after "to" insert "long-term care bed capacity,"

Page 1, line 2, after the second "facilities" insert "and reimbursement of pediatric subacute care facilities"

Page 1, line 3, replace "sections 23-09.3-02, 23-09.3-10, 25-18-15, 50-06-06.4, and 50-06-38," with "section 50-24.4-27"

Page 1, replace lines 7 through 24 with:

"SECTION 1. A new subsection to section 23-16-01.1 of the North Dakota Century Code is created and enacted as follows:

Notwithstanding the prohibition on adding nursing facility beds under subsection 1, an additional twenty-two nursing facility beds are authorized for use as pediatric subacute care facility beds. Beds authorized under this subsection may not be sold, converted, or transferred."

Page 2, line 3, replace "**Subacute**" with "**Pediatric subacute**"

Page 2, line 4, replace "department" with "health council"

Page 2, after line 7, insert:

- "3. The rules applicable to a pediatric subacute care facility must allow for aging in place for an individual over the age of twenty-one and for a pediatric subacute care facility to be located in a facility or structure that offers other appropriate levels of services."
4. Rules under this section must provide for a consistent implementation of specialized training, treatment, health services, and related care which are developmentally appropriate for the population."

Page 2, remove lines 8 through 30

Page 3, replace lines 1 and 2 with:

"SECTION 3. AMENDMENT. Section 50-24.4-27 of the North Dakota Century Code is amended and reenacted as follows:

50-24.4-27. Medicare certification.

AllExcept for pediatric subacute care facilities, all nursing facilities certified under the medical assistance program shall participate in Medicare part A and part B with respect to at least thirty percent of the beds in the facility unless, after submitting an application, Medicare certification is denied by the federal health care financing administration. The facility shall file on behalf of each patient or assist each patient in the filing of requests for any third-party benefits to which the patient may be entitled. Charges for Medicare-covered services provided to residents who are

simultaneously eligible for medical assistance and medicare must be billed to Medicare part A or part B before billing medical assistance. Medical assistance may be billed only for charges not reimbursed by Medicare.

SECTION 4. A new section to chapter 50-24.4 of the North Dakota Century Code is created and enacted as follows:

Pediatric subacute care facilities.

If reimbursing a pediatric subacute care facility licensed under chapter 23-16, the department shall consider the unique level of care and the additional cost required to provide services to medically fragile clients."

Page 3, line 5, remove the overstrike over "skilled"

Page 3, line 5, after the second comma insert "nursing facility."

Renumber accordingly

2019 SENATE APPROPRIATIONS

SB 2317

2019 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee Harvest Room, State Capitol

SB 2317
2/12/2019
Job # 32560 (11:10)

- ☐ Subcommittee
☐ Conference Committee

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|--------------------------------------------|
| Committee Clerk: Rose Laning/ Meghan Pegel |
|--------------------------------------------|

Explanation or reason for introduction of bill/resolution:

Relating to long-term care bed capacity, licensure of pediatric subacute care facilities as nursing facilities and reimbursement of pediatric subacute care facilities.

Minutes:

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| 2 Attachments |
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Legislative Council: Brady Larson
OMB: Stephanie Gullickson

Chairman Holmberg called the committee to order on SB 2317.

Senator Poolman, District 7, Bismarck & Lincoln, testifies in favor (see attachment #1)

Senator Mathern: The subcommittee has received an amendment regarding this dollar amount with a request that it be put into SB 2012.

Senator Poolman: The Anne Carlsen Center has always been reimbursed under the DD Division, and everything has been okay. When we implemented the new payment system under the DD Division, Anne Carlsen absorbed loses in our regular population, but with the medically complex population, there was no absorbing those costs. They started borrowing to the tune of \$220,000 a month to be able to take care of the kids in that unit. That particular payment system just doesn't work for that small subgroup; Anne Carlsen was losing a lot of money every month. The amendment that I have given to the subcommittee is an attempt to recoup some of those loses- that's a separate amendment. This bill is about going forward and creating a new licensure to be reimbursed differently. Yes, it has a fiscal note on it, but it's not necessarily a fiscal note that's reflective of "oh my gosh, we're spending so much more than we used to". It's probably more reflective of "well, this is probably what was close to being spent under the old system". Under the new system, it does look like it's drastically more. These are two separate issues: one is to try to get back what was lost and this bill is about how we deal with it going forward.

Senator Bekkedahl: On the bottom of the fiscal note, it says, "The Department will need to seek approval from the Centers from Medicare and Medicaid Services to secure federal funding". Does this category exist in other states now so it's a matter of replicating that? You don't see any difficulties in doing that?

Senator Poolman: Yes, that is something that has been done in other states. We modeled this legislation after other states and with Maggie's help.

(5:30) Tim Eissinger, CEO, Anne Carlsen Center, testifies in favor (see attachment #2)

Chairman Holmberg closed the hearing on SB 2317.

Senator Mathern: The amendment we have in 2012 is to do this reimbursement and is related to this bill, but for the past activity. This is directing our system to make it part of an ongoing responsibility in the future. The subcommittee has not yet acted on the proposal, but I have no question that we should do this. I support the funding that's been requested, but to make this system change I think is important so we don't get into problems in the future wherein a certain service falls out of a regular attention to all the citizens and all their needs.

Senator Mathern: Motions for a Do Pass.

Senator Bekkedahl: Seconds the Motion.

Chairman Holmberg: It's got a long path. At the end of the day, the House will have to balance this once they get it, but at least passing it means we support going in this direction.

A Roll Call Vote was taken: Yes: 14 No: 0 Absent: 0. Motion carries.

The bill will go back to Human Services and Senator K. Roers will carry.

Date: 2-12-19Roll Call Vote #: 1

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES**

BILL/RESOLUTION NO. 2317Senate Appropriations

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 Mathern Seconded By Bekkedahl

| Senators | Yes | No | Senators | Yes | No |
|-------------------|-----|----|-------------------|-----|----|
| Senator Holmberg | ✓ | | Senator Mathern | ✓ | |
| Senator Krebsbach | ✓ | | Senator Grabinger | ✓ | |
| Senator Wanzek | ✓ | | Senator Robinson | ✓ | |
| Senator Erbele | ✓ | | | | |
| Senator Poolman | ✓ | | | | |
| Senator Bekkedahl | ✓ | | | | |
| Senator G. Lee | ✓ | | | | |
| Senator Dever | ✓ | | | | |
| Senator Sorvaag | ✓ | | | | |
| Senator Oehlke | ✓ | | | | |
| Senator Hogue | ✓ | | | | |
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Total (Yes) 14 No 0Absent 0Floor Assignment Human Services K. Reers

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

REPORT OF STANDING COMMITTEE

SB 2317, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman)
recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed SB 2317 was placed on the Eleventh order on the calendar.

2019 HOUSE HUMAN SERVICES

SB 2317

2019 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee Fort Union Room, State Capitol

SB 2317
3/4/2019
33161

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Nicole Klamann

Explanation or reason for introduction of bill/resolution:

Relating to long term care bed capacity, licensure of pediatric subacute care facilities as nursing facilities and reimbursement of pediatric subacute care facilities; relating to licensure of pediatric subacute care facilities as nursing facilities.

Minutes:

3

Stephanie Nelson, Chief Operating Officer at Anne Carlsen Center: In support of SB 2317, see **attachment 1**.

This bill seeks to create a new licensing classification in ND, Sub-Acute Skilled Nursing. Establishing this would allow for rates to be adjusted to the medical acuity of developmentally disabled.
(0:03:41)

Tom Eide, Director of Field Services and Chief Financial Officer for Dept. of Human Services: In support see **attachment 2**. The department is onsite at Anne Carlsen Center working with them in attempt to determine an appropriate payment plan and system for medically complicated clients.
(0:06:06)

Chairman Weisz: How did you arrive at the numbers on the Fiscal note?

Tom Eide: The original fiscal note was based on past Anne Carlsen cost reports. So the numbers were an average of those reports. The consultants are currently onsite looking specifically at recommendations.

Rep. Karen Rohr: Is this in lieu of this pediatric subacute skilled nursing?

Tom Eide: No it is in concert with that. This could be used to help develop what rates should be assessed for a pediatric subacute unit. Also, to make the committee aware, there are three things this bill would accomplish; 1. Payment due for gap 2. Assess the current state plan while trying to come up with supplemental payment 3. Provide info for building that sub-acute unit.

Rep. Rohr: Is this a new concept or is it something other states have employed?
(0:07:23)

Tom Eide: There are other states that have it, I am not an expert on that. We are really exploring our options.

Chairman Weisz: Further Support? Seeing none, any Opposition? Seeing none, closed hearing.

Additional testimony

Senator Nicole Poolman, District 7: Introduced bill, in support. See **attachment 3**
(Missing Audio)

2019 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee Fort Union Room, State Capitol

SB 2317
3/20/2019
34064

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Nicole Klamann

By: Elaine Stromme

Explanation or reason for introduction of bill/resolution:

Relating to long term care bed capacity, licensure of pediatric subacute care facilities as nursing facilities and reimbursement of pediatric subacute care facilities; relating to licensure of pediatric subacute care facilities as nursing facilities.

Minutes:

Chairman Weisz: Opened Hearing on SB 2317

I have had discussions with the Department of Human Services; there was testimony that the issue was already recognized by the DHS, they are currently working with a consultant that does this whole DD prospective rate thing, they are working right now to see what should be proper reimbursement etc.

So I am going to ask the committee that we amend this bill strictly from the stand point, so we can get it in conference committee so that by then we will have hard numbers from the department, to know what should be done with this situation. Which is basically for the Ann Carlson Center. The thought was that we could eliminate section one, so they could go out and buy the beds like anyone else. The only reason to do that is to put it in conference committee. So Appropriations knows too.

Is that \$1.6 million a valid number, we don't know.

Rep. Schneider: If we did remove section one by amendment are there other provisions that you think need amending or would that be sufficient?

Chairman Weisz: I don't see where anything else has to be changed. Maybe we don't even need the bill. I want to keep the bill alive.

Rep. Schneider: I move to amend the SB 2317 by removing section one, and renumbering accordingly, and rereferring to appropriations.

Rep. Anderson: Seconded

Chairman Weisz: Any further discussion?

Voice vote was taken.

Voice vote carries

Rep. Rohr: On page 2, line 21, what is the definition of medically fragile? We have different levels of nursing care already, so where does this fit?

Maggie Anderson: Department of Human Services(DHS): When we prepared the fiscal note for this there was like 3 moving parts of funding in various places for Anne Carlson we expect this not to be in effect until January of 2020. The reason for that is twofold; first of all the Health Department, we need to adopt rules to actually license the facilities because it is new. The other thing is that the Department of Human Services would need to secure federal approval for a payment methodology for nursing facilities that serve children who are medically fragile, and in that process we would need to define that. So similar to our medical fragile children's waiver, where we use the Aragon rating scale, to determine the level of need that the child has because children have to meet level of care. Then within that level of care they have to have a certain level of need. We would need to work out what that level of need would be. So they will have to meet nursing home level of care, But then in addition to that we are going to have to say, ok in addition to meeting nursing home level of care are there other criteria that will be consistent to all children, that would define them as medically fragile. The DHS would have to adopt rules for that, and we would have to clearly define that to CMS as we secure the federal approval.

Rep. Schneider: I move a do pass as amended, rerefer to appropriations

Rep. Anderson: Second

Chairman Weisz: Any questions? Seeing none. The clerk will call the roll for a Do Pass as amend mended to SB 2317, and it will be rereferred to appropriations.

A roll call vote was taken: Yes 13 No 0 Absent 1

Vote was a Do Pass as amended on SB2317 and rereferred to Appropriations.

Rep Westlind will carry SB 2317

Meeting adjourned.

March 20, 2019

DA 3/20/19

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2317

Page 1, line 1, remove "a new subsection to section 23-16-01.1,"

Page 1, line 2, remove the first comma

Page 1, line 3, remove "long-term care bed capacity,"

Page 1, remove lines 8 through 13

Renumber accordingly

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2317**

House Human Services Committee

☐ Subcommittee

Amendment LC# or Description: 19.0536.04001

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 Representative Schneider Seconded By Representative Anderson

| Representatives | Yes | No | Representatives | Yes | No |
|-------------------------------|-----|----|--------------------|-----|----|
| Robin Weisz - Chairman | | | Gretchen Dobervich | | |
| Karen M. Rohr – Vice Chairman | | | Mary Schneider | | |
| Dick Anderson | | | | | |
| Chuck Damschen | | | | | |
| Bill Devlin | | | | | |
| Clayton Fegley | | | | | |
| Dwight Kiefert | | | | | |
| Todd Porter | | | | | |
| Matthew Ruby | | | | | |
| Bill Tveit | | | | | |
| Greg Westlind | | | | | |
| Kathy Skroch | | | | | |
| | | | | | |
| | | | | | |

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice Vote was taken and carried to adopt amendment, and rerefer to Appropriations for SB2317

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2317**

House Human Services Committee

☐ Subcommittee

Amendment LC# or Description: 19.0536.04001

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 Representative Schneider Seconded By Representative Anderson

| Representatives | Yes | No | Representatives | Yes | No |
|-------------------------------|-----|----|--------------------|-----|----|
| Robin Weisz - Chairman | X | | Gretchen Dobervich | X | |
| Karen M. Rohr – Vice Chairman | A | | Mary Schneider | X | |
| Dick Anderson | X | | | | |
| Chuck Damschen | X | | | | |
| Bill Devlin | X | | | | |
| Clayton Fegley | X | | | | |
| Dwight Kiefert | X | | | | |
| Todd Porter | X | | | | |
| Matthew Ruby | X | | | | |
| Bill Tveit | X | | | | |
| Greg Westlind | X | | | | |
| Kathy Skroch | X | | | | |
| | | | | | |
| | | | | | |

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Westlind

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

REPORT OF STANDING COMMITTEE

SB 2317, as engrossed: Human Services Committee (Rep. Weisz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2317 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "a new subsection to section 23-16-01.1,"

Page 1, line 2, remove the first comma

Page 1, line 3, remove "long-term care bed capacity,"

Page 1, remove lines 8 through 13

Renumber accordingly

2019 HOUSE APPROPRIATIONS

SB 2317

2019 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee Roughrider Room, State Capitol

SB 2317
3/27/2019
34271

- ☐ Subcommittee
☐ Conference Committee

| |
|---------------------------------|
| Committee Clerk: Risa Bergquist |
|---------------------------------|

Explanation or reason for introduction of bill/resolution:

Relating to licensure of pediatric subacute care facilities as nursing facilities and reimbursement of pediatric subacute care facilities; relating to licensure of pediatric subacute care facilities as nursing facilities.

Minutes:

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Chairman Delzer: Called the meeting to order for SB 2317, this is a bill that deals with the Anne Carlson Center.

Representative Weisz: What this bill does is add another category of long term care beds. The purpose is to take care of an issue that they are having at the Anne Carlsen Center having to do with reimbursement for the services they provide. We are hoping that you will send this through so we can get this into conference committee and we will have more information on what is needed in the Ann Carlsen Center.

Chairman Delzer: Is this supposed to be higher than medically fragile?

Representative Weisz: It's not a higher level of care it's just to define the payment for the services, what this bill is going to do is add 16 beds and give it a new category and then they would get a different pay category.

Chairman Delzer: Did they give you a time frame?

Representative Weisz: I understand that they will have that next week. Our hope is to keep this alive until we get that information.

Chairman Delzer: You are also moving this from DD to long term care or is this extra beds they are wanting to put on top of what they got?

Representative Weisz: The original bill just added 20 beds, we took that out so if this passed they would have to go out and purchase beds just like any other facility that wants to increase their capacity.

Chairman Delzer: What does that do to the Olmstead decision? DD is not part of Olmstead but long term care is. So we are increasing our pediatrics long term that are currently being done under DD.

Representative Weisz: In theory it would have no effect but in the big picture if you just look at numbers it could have an effect. How much do we spend in long term care and how much do we spend in home and community based services.

Chairman Delzer: This is another bill we are going to have to look at pretty hard along with the budget bill 2012.

Representative J. Nelson: I think there is an increase in the bed count for Anne Carlsen in our budget.

Chairman Delzer: Was there any discussion of setting up a new category for pediatric long term care?

Representative Weisz: There was some discussion but we didn't feel we had enough answers to say that's the right decision, it's very possible that the current system could do this.

Chairman Delzer: Where are these kids currently being housed? Why do they need 20 new beds?

Representative Weisz: The reason for this was to shift how they were paid.

Chairman Delzer: I thought all the kids where considered medical fragile already.

Representative Weisz: They are all getting payments under the DD system the question seems to be the DD system isn't addressing a certain subset of those that are in the center and they feel they are not being reimbursed properly.

Chairman Delzer: Any further discussion? Seeing none we will close this hearing.

2019 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee Roughrider Room, State Capitol

SB 2317
4/3/2019

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Risa Bergquist

Explanation or reason for introduction of bill/resolution:

Relating to licensure of pediatric subacute care facilities as nursing facilities and reimbursement of pediatric subacute care facilities; relating to licensure of pediatric subacute care facilities as nursing facilities.

Minutes:

Chairman Delzer: Called the meeting to order for SB 2317. This is the bill that deals with the Anne Carlsen School. They would switch some of the beds from DD to long term care. The issue needs to be dealt with in the DHS budget, probably be dealt with in conference there as well.

Representative J. Nelson: There are negotiations that are taking place with the Anne Carlsen center, I don't have a revised fiscal note for you but the fiscal note is going up. The estimate that I head was its going to be closer to 1.4 million but they haven't finished those negotiations.

Chairman Delzer: What about moving it from DD to long term care? Does that cause us problems with the Olmstead situation? With how much we spend on long term care compared to how much can be used.

Representative J. Nelson: We didn't spend a lot of time on that issue, we were more involved trying to figure out the costs of those additional beds. There's two pieces to this in our budget, there is a retro payment and then there is this to add some new beds.

Chairman Delzer: I don't think there are any amendments, Representative Weisz did ask that they get it into conference so they can start working on some of this stuff.

Representative J. Nelson: In conference the number can be reconciled.

Chairman Delzer: Any further discussion? What are your wishes?

Representative J. Nelson: I'll move a Do Pass

Representative Meier: Second

Chairman Delzer: I hope they look hard at this; I think a lot of the patents that are at the Anne Carlsen school are medically needy as well. I don't know what this does with the medical needy. Any further discussion on the motion before us? Seeing none we will call the roll.

A Roll Call vote was taken. Yea: 15 Nay: 2 Absent: 4

Representative Westlind will carry the bill.

Chairman Delzer: With that we will close this meeting for SB 2317

Date: 4/3/2019
Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2317**

House Appropriations 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 Representative J. Nelson Seconded By Representative Meier

| Representatives | Yes | No | Representatives | Yes | No |
|----------------------------|-----|----|---------------------------|-----|----|
| Chairman Delzer | | X | | | |
| Representative Kempenich | A | | | | |
| Representative Anderson | X | | Representative Schobinger | X | |
| Representative Beadle | X | | Representative Vigesaa | A | |
| Representative Bellew | | X | | | |
| Representative Brandenburg | A | | | | |
| Representative Howe | X | | Representative Boe | X | |
| Representative Kreidt | X | | Representative Holman | X | |
| Representative Martinson | X | | Representative Mock | X | |
| Representative Meier | X | | | | |
| Representative Monson | X | | | | |
| Representative Nathe | X | | | | |
| Representative J. Nelson | X | | | | |
| Representative Sanford | A | | | | |
| Representative Schatz | X | | | | |
| Representative Schmidt | X | | | | |
| | | | | | |

Total (Yes) 15 No 2

Absent 4

Floor Assignment Representative Westlind

Motion Carries

REPORT OF STANDING COMMITTEE

SB 2317, as engrossed and amended: Appropriations Committee (Rep. Delzer, Chairman) recommends **DO PASS** (15 YEAS, 2 NAYS, 4 ABSENT AND NOT VOTING). Engrossed SB 2317, as amended, was placed on the Fourteenth order on the calendar.

2019 CONFERENCE COMMITTEE

SB 2317

2019 SENATE STANDING COMMITTEE MINUTES

Human Services Committee Red River Room, State Capitol

SB 2317
4/22/2019
Job # 34890

☐ Subcommittee
☒ Conference Committee

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|-------------------------------|
| Committee Clerk: Justin Velez |
|-------------------------------|

Explanation or reason for introduction of bill/resolution:

Relating to licensure of pediatric subacute care facilities as nursing facilities.

Minutes:

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| Attachment #1 |
|---------------|

Madam Chair Lee opens the conference committee on SB 2317.

Madam Chair Lee: We are back to SB 2317 and we have had several days off because there was a lot of conversations going on among the stakeholders in this and I think I'm pleased to report that we are going to be able to come to some consensus here. It turns out, we apparently have a glitch in the amendment but we can fix that. What I would like to do is ask either Mr. Eissinger or Mr. Eide on what their conclusions are.

(1:16) Tim Eissinger, CEO of the Anne Carlsen Center: The pediatric subacute category, we believed made exceptional sense for Anne Carlsen up until a review by one of the consultants of the department, the Optimist Group. They generated a change in classification for intermediate care facility that in many ways, was more advantageous in terms of offering a continuum to the clients of Anne Carlsen and offering a specialization in medically complex care that provided flexibility in a better continuum. In review we have met on several occasions with representatives of the department to include; Maggie Anderson, Tom Eide, Tina Bay, and came to some significant compromise relative to the criteria for participation in the program as well as the rates. Based on those conversations, it is Anne Carlsen's opinion that SB 2317 would no longer be necessary and could be killed or amended as seen appropriate by the committee.

Madam Chair Lee: Any questions for Mr. Eissinger? If not, thank you.

(2:50) Tom Eide, Department of Human Services: We are glad to concur with Anne Carlsen on what this bill could do. We have worked hard on the payment system. We actually think that we have a way to add the enhanced funding that would be required to help facilitate the care of the clients that they serve and actually it will be a state plan amendment that will reach back to October of last year and provide the makeup funding for that as well as the ongoing continued funding going forward. To Tim's point, it really does allow for that

continuum of care to exist without interruption which may have existed under a subacute plan. We are glad to concur.

Madam Chair Lee: We talked about the fact that this may also provide additional options for the individuals who maybe are waiting for placement outside of the life skills and transition center as we move forward here because, with these two additional levels will that perhaps be able to translate into that are as well?

Tom Eide: The medically intense and medically involved clients, there are a few of those at LSTC (life skills and transition center) so, this would allow somebody like Anne Carlsen, more importantly the way the plan is designed, if other providers try to increase their levels of care they can participate with these additional enhancements as well. It could expand the availability of services across the state. I think that as we look at it, one of the challenges that we have is behavioral complexity and how can we use this pattern to potentially address that long term so that we don't end up with placements, not just to LSTC but really out of state as well. I think we have established really good work here to help set that basis up should we decide to pursue that further.

Senator Hogan: Do you think there is any value in us doing legislative intents to support this. I hear you saying that but we have spent a lot of time working on this. I think this is broad legislative intent. My question is, is there any value in saying that legislatively?

Tom Eide: I don't know. I think that is a curious thing, the department has fair leeway in the state plans and the state plan amendments. I don't know that there is value in the intent or not. It is always nice to have some intent behind some of these plan adjustments that we do because it gives us the authority to work through them or precede authority anyway.

(6:00) Maggie Anderson, Department of Human Services: When we file state plans amendments one of the funding questions we always have to ask is; how are the non-federal share monies appropriated. Generally, our comment is it is appropriated to the Department of Human Services in our (example) appropriation. Because the funding for this is in SB 2012, we would tell them that the funding has been appropriated to the Department of Human Services. Certainly, this conversation is intent in and of itself that we move forward, we have agreement between Anne Carlsen and the department as to how we are going to proceed. We wouldn't need it but certainly that is your purgative if you would like to memorialize it.

Senator Hogan: I just didn't know if it would be any benefit in your plan submission at all, thank you.

Madam Chair Lee: I'm just so pleased and thank all of you who have been a part of this discussion. It was better to allow the stakeholders to meet independently and come up with a solution that is perhaps going to be well accepted

Representative Weisz: (Please see **Attachment #1** for proposed amendments) At the time I had this amendment drafted I was still not sure what was going to overall happen to SB 2317 which of course is now, as we realize, we don't really need any of that language. A couple of issues came from various parties having to do with some issue with long term care, both from the Health Department and from other legislatures. What you see in front of you

has to do with waivers for construction or renovation. There are three different areas here that were addressed. One, would become an issue because of, for example, the Trinity situation up there where all the Health Departments time and resources are being spent on Trinity, nobody else can even get a minor remodeling project approved. This is causing some real issues in some cases where, some may even be losing grants because of it. If you look at number three, that deals with that issue. Secondly, the other section number four asks to do with; the Health Department came to me because there is an issue because of the rules, if a facility is trying to look at doing something innovative that may not exactly fit within current rules, they don't have any authority to give them that flexibility. This allows them to request a waiver relating to an innovative construction renovation or construction and renovation project if lack the compliance to not adversely affect health and safety. In particular, I believe all is true in their hospital project and they are looking at doing some unique medical pods. Evidentially, they don't quite fit and the Health Department has no flexibility to allow it. If we go to the last part, this applies only to basic care facilities because they are the only ones that don't have to meet federal requirements, they are strictly what the state requires. It also says "the department may waive all or a portion of the license standard if it determines the lack of compliance" and there again it came up to an issue where, in this case, they were going to add on to a practically new facility but based on the rules they were having to update the current facility even though it is four years old and met all the life safety standards at the time. They said they had no flexibility to waive that and so this would give the department the ability to do so. That is what the amendments are but the actual amendment does not remove the current language in SB 2317 which is what it would need to do. Whether we can do that here now or if we have to meet again I guess, it is up to the chairman. These amendments just the department flexibility and ensure that some of this stuff moves forward so that we are not increasing cost dramatically for these facilities.

Senator K. Roers: I sit on the Health Council and I don't know if it was our last meeting or two meetings ago, we had a pretty extensive conversation about the engineering department within the State Department of Health and their response turnaround time. A bunch of stuff that we threw out in that conversation was, is there a way for a small 60 day project that we can hire a consultant that can complete their review and the conversation that kept coming back was, they don't know the ins and outs, they aren't the one who have to be the ones who survey that facility continually, so we would hate for you to hire this consultant and have them give you the okay and now, two years later we come back and your call light system is out of compliance or whatever the infraction may be. I'm just curious what the downstream effects of this will be. I completely agree that these are things that need to happen and that this is an area that the department has had some struggles and needs some flexibility but, I also want to make sure that the health care facility doesn't end up being the one hurt on the back end.

Representative Weisz: This has been an ongoing problem. We changed the rules a long time ago because of the issue that you just brought up where, the facility is built and then the Health Department comes in and says they have tear all of this out and re-do it. That is why we came up with the pre-authorization that is giving us all these other problems. I think the language does give some flexibility, I also believe that next session we will have to take a broader and deeper look into this. This is a short-term fix to try and get us through next session to deal with some overriding issues right now but I think the whole system has to be looked at because this doesn't cure all of the underlying problems of how we deal with

licensing and who should be in charge. In many cases, we are paying for engineers which would be duplicative because the facility is also hiring architects and engineers to do the exact same thing. They did that because the Health Department comes in there and says you have to tear out all of this wiring because we decided that your lighting isn't quite what we have now decided it should be. That is still a longer term issue that is going to have to get addressed.

Madam Chair Lee: Waterford which is now Touchmark in Fargo, when it was new, the developer had put in a higher standard of a sprinkler system than what the life safety codes require. The fire chief in Fargo had just come through and said this is terrific. Life and safety folks came in and said they had to tear out the better than code stuff, rip out your ceilings, and put in the down to code stuff because, there is a little rigidity in the system in case no one has noticed. What happens if the engineer who is the initiate one in the Health Department now gets hit by a bus, surely some other engineer will have documents and all kinds of resources to help them figure out whether or not some of those codes can be met. It seems to me that yes, they should be able to contract and even though there might be certain things that are a part of the life safety code that are more easily recalled by the person who is experienced in this. Now of us are irreplaceable. I think they can contract with other engineers, they can use it in partnership with the persons who are heading that division and be able to make this work.

Senator K. Roers: I completely agree; I just want to make sure that we don't create a process that could have downstream effects.

Senator Hogan: Do you think it is worth doing an interim study because of the complexity of this issue and we haven't really done that in a while. I think you are right, in two years we are going to be looking at it and we need to be looking at it. Should we think about that?

Representative Weisz: I certainly don't have a problem with that. This says it's just a report.

Senator Hogan: If we think we are going to make major policy change next session, it is better for us to learn it during the interim so we can know what is going on.

Representative Weisz: I don't have a problem with that. It does need to be addressed because what we thought was fixing the problem, fixed the tail end but caused a lot more grief on the front end now.

Senator Hogan: Perhaps, we should at least put a shall consider studying this issue.

Representative Schneider: Leave in the report though, as a default.

Senator Hogan: We will keep it as a whole.

Madam Chair Lee: I asked Alex if she would check on whether or not she might be able to put something together for us and the amendment because she is very good at that. She has done some homework that will be helpful for us to know.

(19:01) Alexandra Carthew, Senate Human Services Intern: It would be a lot simpler to have legislative council create a revised .04005 version of this amendment that actually deletes the text that we want to delete and turn it into a hog-house amendment than it would be for me to manually revise it. If I am revising an LC amendment in Legend, requires a manual insertion or note for every line of text deleted. You can't regenerate the amendment and it would probably be anywhere between 50-150 notes between the marked up doc and the amendment instructions. From their end they should just be able to delete the text and regenerate it.

Madam Chair Lee: It helps to know what our process needs to be here. I understand what Senator K. Roers is saying about the process and we don't want to mess up things and I understand the possibility of a study. If we wanted to that we might even put it in the back on one of those others to review this whole thing. Some of that stuff is federal and some of it is state. let's just go through the additions that Rep. Weisz has mentioned. Do we have any concerns or anything further about the under a million dollars in 60 days?

Senator Hogan: This is really a request that the facility has made to us because of their frustration?

Madam Chair Lee: Yes.

Senator Hogan: I was trying to figure out which came from the department and which came from the facilities.

Representative Weisz: Yes, that one was a frustration especially since the Trinity project started. Nobody is getting any approval.

Senator Hogan: And four is a department of health one, right?

Representative Weisz: That is correct, the innovative is the one that they really wanted. They also asked for number one on the back page. They had met with the facility in question and the department said that they didn't have any flexibility to grant you the waiver but we would like to.

Senator Hogan: I'm just making sure I know the source of each.

Representative Wesiz: This is really part of the discussion with the department also.

Madam Chair Lee: Can you tell us what an example would be on page two? Is that in conjunction with number three in the previous page then?

Representative Weisz: Number one deals only with basic care because they don't have to follow the federal requirements. The state is the one that says these are the life safety codes. In this actual example, facility that is only four years old, we aren't talking a 1968 facility, met all his life and safety codes at that time, because they are going to attach the addition they are now saying that everything within the current facility has to now meet the newest codes. If it wasn't attached, it wouldn't be an issue. If they were building a separate building, then it would be fine but it is going to cost them huge bucks to go through the whole facility that is

already meeting the codes. That is strictly the point for number one. The department had mentioned that for example, Altru wanted to do something different I guess that they are calling a medical pod concept and they felt they couldn't approve it under the current rules and this would give the department some flexibility to look at it and determine that it still meets all the criteria and they can give them the approval.

Senator K. Roers: I just worry about, requesting a waiver of rule is that only a state law or rule because they are still going to have to meet the federal regulations and the State Department of Health is who goes in and enforces the federal regulation. That is the only part where it would be a challenge as a healthcare organization to figure out which rules can be bent and which ones can't.

Madam Chair Lee: What if we added the word state before law and rule, would that clarify that?

Representative Weisz: I guess that is fine with me. I don't think that they can waive any federal rules anyways.

Senator K. Roers: I think it will make it clarified to whoever is reading it that this only applies to state law and rule.

Representative Weisz: That would be fine.

Madam Chair Lee: Any other concerns about any of those three changes?

Representative Schneider: I couldn't find in century code for a definition of innovative construction. Will that be in discretion of the department or is it defined elsewhere such as administrative rules?

Representative Weisz: There is a section of code that talks about innovative projects, I don't know if it defines it there. We looked at that and just adopted similar language. I assume by innovative would be something that doesn't meet the strict letter. It is up to the Health Department to make sure that it does not affect health and safety. We just found that section already in the century code that I think it even may have had a time limit. There was a certain deal going on so they gave a five-year window that talks about innovative projects in century code so, we just kind of built off of that.

Madam Chair Lee: Do we need to stipulate that the department would be establishing rules so that there would be public hearings, with the administrative rules committee at least, on any rules that they would develop about what they would consider?

Representative Weisz: I don't know why we should because every time we pass the law they show up in administrative rules on us. If they feel it needs clarification, I don't think it would be necessary to say that they must.

Madam Chair Lee: Would you like to add a study? What we should be looking at is the Department of Health and the Health Council should be bringing a proposal. I would hope as a Health Council member you could encourage the department to bring forward some

recommendations for change and flexibility because all hospitals and skilled care facilities used to be long halls and a nurse's station at the end and hardly anything is built like that anymore and I think it is better that way but we need to keep the rules in line with what changes there are in the marketplace as well. If you think you could take that to the health council?

Senator K. Roers: I'm pretty sure I can handle that.

Madam Chair Lee: I believe you could.

Senator Hogan: I'm drafting possible language for a shall considering study. Legislative management shall consider studying the health facility construction and renovation licensing codes and procedures to identify issues and potential changes needed.

Representative Weisz: Maybe you should say processes?

Senator Hogan: Yes, issues and processes.

Madam Chair Lee: Why don't you talk about including input from the Department of Health and the Health Council.

Senator Hogan: Ok, and also the other group we may consider is we want the healthcare facilities. So, we would get the facilities, Health Council, and the Department of Health.

Madam Chair Lee: I'm just thinking about the Medical School back in the day, somebody was talking about that in the interim committee and the Medical School Advisory Council was asked if they would review the plans and they came back with a very convincing summary on the construction because they dug into it and really got into the expertise. We don't ever have the time to do that but they took the time to do that.

Senator Hogan: We could do the framework for the discussion and it might facilitate what you need as well as what we need for legislation in the future.

Madam Chair Lee: Can you read it to us again?

Senator Hogan: I knew you would ask me that. Legislative management shall consider studying the health care facilities construction and renovation licensing codes and procedures and look at issues and potential process changes with input from the Health Council, Department of Health, and facilities.

Madam Chair Lee: Instead of look at can we say making recommendation or something.

Senator Hogan: I think we will need to come back and look at another amendment with the changes. I think this has potential to be important. I think we deal with little issues all the time.

Madam Chair Lee: Let's talk about whether or not we would want to include the study portion in the bill so that Alex and Legislative Council is able to draft something pretty close to what

we would like to end up with. What do the other committee members thing about a study resolution?

Representative Weisz: I guess either way I am fine. I think the legislature is going to have to think about doing things different, if a study helps then maybe keep that in the forefront. Often times things get lost and we get busy and forget about it and don't remember it until it's too late. From that standpoint a study would keep that in the forefront.

Senator K. Roers: Even if the study isn't selected it may serve as an impetus and give a little structure to the Health Council and the Department of Health in the event that it wasn't selected.

Representative Rohr: I would be ok with it too except it should be a separate section.

Senator Hogan: Yes, of course.

Madam Chair Lee: Any other comments? Is there anything else?

Senator K. Roers: I just have one grammatical thing that I will work with our intern with.

Madam Chair Lee: We will be looking at the three additions that Representative Weisz brought to us and Alex can visit with Legislative Council about whether or not we should include the word state on subsection four of section one, should it say state law or rule. Also adding the study resolution.

Madam Chair Lee adjourns the conference committee on SB 2317.

2019 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

SB 2317
4/23/2019
Job # 34936

☐ Subcommittee
☒ Conference Committee

| |
|-------------------------------|
| Committee Clerk: Justin Velez |
|-------------------------------|

Explanation or reason for introduction of bill/resolution:

Relating to licensure of pediatric subacute care facilities as nursing facilities.

Minutes:

| |
|------------------|
| Attachments #1-2 |
|------------------|

Madam Chair Lee opens the conference committee on SB 2317. (Please see **Attachment #1** for proposed amendment and **Attachment #2** for Christmas tree bill with proposed amendment included.)

Madam Chair Lee: In looking at the amendments in the .04005 version. We now have a hog house as you can see but we are fortunately continuing to say healthcare facilities and licensure of nursing facilities so we are very germane. Moving on to having added the innovation waivers under 23-01-37.

Senator K. Roers: That header for 23-01-37, we have flagged it for Legislative Council but as I read it, then everything in one through five only applies to innovation waivers that you are defining what that whole section is about. I feel like it should say; survey program-health facilities construction, renovation projects, or innovation waivers.

Representative Weisz: I specifically mentioned that to LC and this is what they came back with.

Senator K. Roers: I just want to make sure that people don't think that now one, two, and five only apply to innovation waivers.

Representative Weisz: It is "or".

Senator K. Roers: But the "or" should be between projects and innovation.

Madam Chair Lee: I agree that grammatically it should be that.

(02:57-05:31) Madam Chair Lee goes over the Christmas tree bill (Attachment #2) with the committee.

Madam Chair Lee: Is there any questions about those three additions before we move on?

(05:50-06:33) Madam Chair Lee continues her overview on Attachment #2.

Madam Chair Lee: I am open to any discussion, comments, or corrections.

Representative Weisz: I guess I would move amendment .04005 where the **HOUSE WOULD RECEDE AND FURTHER AMEND**
Seconded by Senator K. Roers

Madam Chair Lee: Any further discussion by members of the committee? If not, please call the roll.

ROLL CALL VOTE TAKEN

SENATORS: 3 YEA, 0 NAY, 0 ABSENT
REPRESENTATIVES: 3 YEA, 0 NAY, 0 ABSENT

MOTION CARRIES, HOUSE RECEDE AND FURTHER AMEND .04005

Senator K. Roers and Representative Weisz will carry SB 2317 to the floor in their respective chambers.

Madam Chair Lee adjourns the conference committee on SB 2317.

JWF
4/23/19
LJD

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2317

That the House recede from its amendments as printed on page 1312 of the Senate Journal and page 1265 of the House Journal and that Engrossed Senate Bill No. 2317 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 23-01-37 and 23-09.3-04 of the North Dakota Century Code, relating to health care facilities and licensure of nursing facilities; to provide for a legislative management study; to provide for a report; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-01-37 of the North Dakota Century Code is amended and reenacted as follows:

23-01-37. Survey program - Health facilities construction or renovation projects - Innovation waivers.

1. The state department of health shall conduct a life safety survey process for all health facilities licensed by the division of health facilities of the state department of health during and at the conclusion of a construction, renovation, or construction and renovation project.
2. The department may charge a reasonable fee for the review of plans for construction, renovation, or construction and renovation projects performed under this section based on the size of the project. Revenues derived from the fees collected under this subsection must be deposited in the department's operating fund in the state treasury.
3. The state department of health shall make a determination on a construction, renovation, or construction and renovation project of no more than one million dollars within sixty days of receipt of a complete application.
4. The state department of health may approve a request for a waiver of a state law or rule relating to an innovative construction, renovation, or construction and renovation project if the lack of compliance does not adversely affect health or safety.
5. The department shall design and operate the program in a manner that will provide that the surveyor that performs a life safety survey under this section does not violate the federal requirements associated with Medicare-certified life safety surveys.

SECTION 2. AMENDMENT. Section 23-09.3-04 of the North Dakota Century Code is amended and reenacted as follows:

2/2

23-09.3-04. Department to establish standards - Licensing - Inspection - Survey - Prosecute violations.

1. The department shall establish standards for basic care facilities. The department shall inspect all places and grant annual licenses to basic care facilities as conform to the standards established and comply with the rules prescribed, as provided in this chapter. The department may waive all or a portion of a license standard if the department determines the lack of compliance does not adversely affect the health or safety of residents.
2. The department shall implement a survey process for basic care facilities which for purposes of the life safety portions of the survey, all surveys must be announced; which for purposes of the health portions of the survey, half of the surveys must be announced; and which for purposes of complaints related to health and life safety, all surveys must be unannounced. As part of the survey process, the department shall develop, in consultation with basic care facilities, and shall implement a two-tiered system of identifying areas of noncompliance with the health portions of the survey.
3. The department shall prosecute all violations of this chapter.

SECTION 3. LEGISLATIVE MANAGEMENT STUDY - HEALTH FACILITY CONSTRUCTION. During the 2019-20 interim, the legislative management shall consider studying the state department of health licensing process for health facility construction and renovation projects, including consideration of the appropriate role of the state department of health. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.

SECTION 4. REPORT TO LEGISLATIVE MANAGEMENT - HEALTH FACILITY CONSTRUCTION AND RENOVATION. Before July 1, 2020, the state department of health shall report to the legislative management on the implementation of sections 1 and 2 of this Act.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

Date: 4/23/19
Roll Call Vote #: 1

2019 SENATE CONFERENCE COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2317 as (re) engrossed

Senate "Enter committee name" Committee

- Action Taken ☐ SENATE accede to House Amendments
☐ SENATE accede to House Amendments and further amend
☐ HOUSE recede from House amendments
☒ HOUSE recede from House amendments and amend as follows

☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Rep. Weisz Seconded by: Sen. K. Roers

| Senators | | | | Yes | No | Representatives | | | | Yes | No |
|-------------------|--|--|--|-----|----|-----------------|--|--|--|-----|----|
| Sen. Lee | | | | X | | Rep. Weisz | | | | X | |
| Sen. K. Roers | | | | X | | Rep. Rohr | | | | X | |
| Sen. Hogan | | | | X | | Rep. Schneider | | | | X | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| Total Senate Vote | | | | 3 | | Total Rep. Vote | | | | 3 | |

Vote Count Yes: 6 No: 0 Absent: 0

Senate Carrier Sen. K. Roers House Carrier Rep. Weisz

LC Number 19.0536 . 04005 of amendment

LC Number . 06000 of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

Adding Innovation waivers for Health facilities construction or renovation projects.

Insert LC: 19.0536.04005
Senate Carrier: K. Roers
House Carrier: Weisz

REPORT OF CONFERENCE COMMITTEE

SB 2317, as engrossed: Your conference committee (Sens. J. Lee, K. Roers, Hogan and Reps. Weisz, Rohr, Schneider) recommends that the **HOUSE RECEDE** from the House amendments as printed on SJ page 1312, adopt amendments as follows, and place SB 2317 on the Seventh order:

That the House recede from its amendments as printed on page 1312 of the Senate Journal and page 1265 of the House Journal and that Engrossed Senate Bill No. 2317 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 23-01-37 and 23-09.3-04 of the North Dakota Century Code, relating to health care facilities and licensure of nursing facilities; to provide for a legislative management study; to provide for a report; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-01-37 of the North Dakota Century Code is amended and reenacted as follows:

23-01-37. Survey program - Health facilities construction or renovation projects - Innovation waivers.

1. The state department of health shall conduct a life safety survey process for all health facilities licensed by the division of health facilities of the state department of health during and at the conclusion of a construction, renovation, or construction and renovation project.
2. The department may charge a reasonable fee for the review of plans for construction, renovation, or construction and renovation projects performed under this section based on the size of the project. Revenues derived from the fees collected under this subsection must be deposited in the department's operating fund in the state treasury.
3. The state department of health shall make a determination on a construction, renovation, or construction and renovation project of no more than one million dollars within sixty days of receipt of a complete application.
4. The state department of health may approve a request for a waiver of a state law or rule relating to an innovative construction, renovation, or construction and renovation project if the lack of compliance does not adversely affect health or safety.
5. The department shall design and operate the program in a manner that will provide that the surveyor that performs a life safety survey under this section does not violate the federal requirements associated with Medicare-certified life safety surveys.

SECTION 2. AMENDMENT. Section 23-09.3-04 of the North Dakota Century Code is amended and reenacted as follows:

23-09.3-04. Department to establish standards - Licensing - Inspection - Survey - Prosecute violations.

1. The department shall establish standards for basic care facilities. The department shall inspect all places and grant annual licenses to basic care facilities as conform to the standards established and comply with the rules prescribed, as provided in this chapter. The department may

Insert LC: 19.0536.04005
Senate Carrier: K. Roers
House Carrier: Weisz

waive all or a portion of a license standard if the department determines the lack of compliance does not adversely affect the health or safety of residents.

2. The department shall implement a survey process for basic care facilities which for purposes of the life safety portions of the survey, all surveys must be announced; which for purposes of the health portions of the survey, half of the surveys must be announced; and which for purposes of complaints related to health and life safety, all surveys must be unannounced. As part of the survey process, the department shall develop, in consultation with basic care facilities, and shall implement a two-tiered system of identifying areas of noncompliance with the health portions of the survey.
3. The department shall prosecute all violations of this chapter.

SECTION 3. LEGISLATIVE MANAGEMENT STUDY - HEALTH FACILITY CONSTRUCTION. During the 2019-20 interim, the legislative management shall consider studying the state department of health licensing process for health facility construction and renovation projects, including consideration of the appropriate role of the state department of health. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.

SECTION 4. REPORT TO LEGISLATIVE MANAGEMENT - HEALTH FACILITY CONSTRUCTION AND RENOVATION. Before July 1, 2020, the state department of health shall report to the legislative management on the implementation of sections 1 and 2 of this Act.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

Engrossed SB 2317 was placed on the Seventh order of business on the calendar.

2019 TESTIMONY

SB 2317

Nicole Poolman

SB 2317 Testimony

Senate Human Services

Monday, January 28, 2019 10:45 am

Good morning, Chair Lee and members of the Human Services committee, my name is Nicole Poolman, state senator from District 7 representing Bismarck and Lincoln. I'm here to introduce SB 2317, a bill to create a new license for pediatric subacute nursing facilities in North Dakota.

The Anne Carlsen Center in Jamestown has been educating and caring for kids with disabilities since 1941. Over the years, the acuity of care required for a certain population at the center has dramatically increased, and as a result, the new funding formula under the DD division no longer seems to fit the model of care required for the medically fragile/complex children at the center. You will hear from the staff at the center about the needs of these children, and how reimbursing them under the Developmental Disabilities division is making less sense than it used to.

This bill is an attempt to create a new type of licensure specific to the medically complex unit. It would be licensed under the Department of Health, and the administration at Anne Carlsen has been working with both DHS and the Department of Health to make sure we propose this in a workable way.

Maggie Anderson has kindly offered her advice, so as a result, I already have amendments to propose, and I would hope that any suggestions offered by either department would be entertained by the committee going forward. We really want to do this right - anticipating any pitfalls or problems we may face not only in setting up the license, but also in ensuring the center would qualify for reimbursement under the new license. It is also important that the bill is not written specifically for Anne Carlsen. The idea is that any facility wanting to open a unit or facility for medically fragile children could apply for the same license.

I thank you in advance for the work you will put into this bill, and I respectfully ask for your support of SB 2317.

Introduced by

Senators Poolman, J. Lee, Wanzek

Representatives Devlin, Pollert, Satrom

1 A BILL for an Act to create and enact a new section to chapter 23-16 and a new section to
 2 chapter 50-24.4 of the North Dakota Century Code, relating to licensure of pediatric subacute
 3 care facilities as nursing facilities and reimbursement of pediatric subacute care facilities; and to
 4 amend and reenact sections 23-09.3-02, ~~23-09.3-10, 25-18-15, 50-06-06.4, and 50-06-38~~, and
 5 50-24.4-27 and subdivision a of subsection 24 of section 57-39.2-04 of the North Dakota
 6 Century Code, relating to licensure of pediatric subacute care facilities as nursing facilities.

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

8 **SECTION 1. AMENDMENT.** Section 23-09.3-02 of the North Dakota Century Code is
 9 amended and reenacted as follows:

10 **23-09.3-02. Residential areas - Nongeriatric persons.**

11 A nursing ~~home~~facility, intermediate care facility, basic care facility, or any combination of a
 12 nursing ~~home~~facility, intermediate care facility, or basic care facility may establish residential
 13 areas specifically for inhabitation by nongeriatric persons subject to any reasonable rules
 14 adopted by the department.

15 ~~**SECTION 2. AMENDMENT.** Section 23-09.3-10 of the North Dakota Century Code is~~
 16 ~~amended and reenacted as follows:~~

17 ~~**23-09.3-10. Rules on services to nongeriatric persons.**~~

18 ~~The department health council shall adopt rules under chapter 23-16 for patient and resident~~
 19 ~~care and quality care review which are not in conflict with any federal laws, and as are~~
 20 ~~necessary to ensure the appropriate medical, social, developmental, and psychological services~~
 21 ~~to nongeriatric persons residing in a nursing home facility, intermediate care facility, basic care~~
 22 ~~facility, or any combination of a nursing home facility, intermediate care facility, or basic care~~
 23 ~~facility. For purposes of patient and resident care for a nursing facility and an intermediate care~~

~~facility, nongeriatric means an individual under twenty one years of age; however, the rules may allow for aging in place for individuals over the age of twenty one.~~

SECTION 2. A new section to chapter 23-16 of the North Dakota Century Code is created and enacted as follows:

Nursing facility - Subacute care facility.

1. ~~The department~~ health council shall adopt rules to license nursing facilities under this chapter.

2. The department shall license a pediatric subacute care facility as a type of nursing facility. ~~Annually, a facility may choose whether to seek licensure as an intermediate care facility under chapter 25-16 or as a pediatric subacute care facility.~~

3. ~~Although for patient and resident care for a nursing facility, nongeriatric means an individual under twenty-one years of age, the rules applicable to a pediatric subacute care facility may allow for aging in place for an individual over the age of twenty-one.~~

~~**SECTION 3. AMENDMENT.** Section 25-18-15 of the North Dakota Century Code is amended and reenacted as follows:~~

~~**25-18-15. Payment for services to medically fragile children.**~~

~~The department may consider the unique level of care, the additional cost required to provide services to medically fragile clients under twenty one years of age, and the actual and reasonable cost of providing services to individuals with developmental disabilities when, intellectual, and acute medical conditions if reimbursing an intermediate care facility or pediatric subacute care facility for services to the individuals with intellectual disabilities.~~

~~**SECTION 5. AMENDMENT.** Section 50-06-06.4 of the North Dakota Century Code is amended and reenacted as follows:~~

~~**50-06-06.4. Comprehensive community residential program.**~~

~~It is the intent of the legislative assembly that the department of human services implement a comprehensive community residential program for children with developmental disabilities, intellectual, and acute medical conditions, including the use of pediatric subacute care facilities, intermediate care facilities, and other such foster home and group home resources as deemed appropriate.~~

~~**SECTION 6. AMENDMENT.** Section 50-06-38 of the North Dakota Century Code is amended and reenacted as follows:~~

1 ~~**50-06-38. Review and limitation.**~~

2 ~~Intermediate care facility and pediatric subacute care facility providers shall submit all~~
3 ~~facility construction or remodeling proposals to the department of human services prior to before~~
4 ~~enactment of a contract for the completion of the project. The department of human services~~
5 ~~shall review all intermediate care facility and pediatric subacute care facility construction or~~
6 ~~remodeling proposals and may limit allowable construction and remodeling costs to ensure the~~
7 ~~costs are reasonable and appropriate.~~

8 **SECTION 3. AMENDMENT.** Section 50-24.4-27 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **50-24.4-27. Medicare certification.**

11 ~~All~~ Except for pediatric subacute care facilities, all nursing facilities certified under the
12 medical assistance program shall participate in Medicare part A and part B with respect to at
13 least thirty percent of the beds in the facility unless, after submitting an application, Medicare
14 certification is denied by the federal health care financing administration. The facility shall file on
15 behalf of each patient or assist each patient in the filing of requests for any third-party benefits
16 to which the patient may be entitled. Charges for Medicare-covered services provided to
17 residents who are simultaneously eligible for medical assistance and medicare must be billed to
18 Medicare part A or part B before billing medical assistance. Medical assistance may be billed
19 only for charges not reimbursed by Medicare.

20 **SECTION 4.** A new section to chapter 50-24.4 of the North Dakota Century Code is created
21 and enacted as follows:

22 **Pediatric subacute care facilities.**

23 If reimbursing a pediatric subacute care facility, the department may consider the unique
24 level of care, the additional cost required to provide services to medically fragile clients under
25 twenty-one years of age, and the actual and reasonable cost of providing services to individuals
26 with developmental disabilities, intellectual conditions, and acute medical conditions.

27 **SECTION 5. AMENDMENT.** Subdivision a of subsection 24 of section 57-39.2-04 of the
28 North Dakota Century Code is amended and reenacted as follows:

- 29 a. "Eligible facility" means any hospital, skilled nursing facility, nursing facility,
30 intermediate care facility, or basic care facility licensed by the state department of

- 1 health, or any assisted living facility licensed by the department of human
- 2 services; and



SB 2317
1/28/19
#2 pg.1

SB 2317
Senate Human Services Committee
Monday, January 28, 2019

Good morning, Chairman Lee and members of the Senate Human Services Committee.

My name is Tim Eissinger, and I am President and CEO of the Anne Carlsen Center.

I am testifying today in support of SB2317.

The implementation of the new payment system for ICF's (Intermediate Care Facilities) in the State, having gone into effect in April 2018, fell short in adequately addressing the highly specialized needs of those medically complex individuals served by Anne Carlsen, nor did it adequately fund the care required for these very vulnerable and fragile individuals.

As it presently stands, the Anne Carlsen Center in Jamestown is licensed under the Development Disabilities Division of DHS as an Intermediate Care Facility, serving 54 clients. On the Center's Campus, we have a pediatric complex medical care unit known as River's Bend. The River's Bend Unit provides state-of-the-art residential care, medical services, therapy and supports the educational services for 17 individuals ranging in age from 6 months to 21 years of age. Although the typical age range served by the programming in River's Bend is 0-21 years old, some individuals beyond age 21 continue to reside at Anne Carlsen due to their medical complexity. There are limited options for young adults, with medical complexities at this high level of acuity, that offer residential

SB 2317
1/28/19
#2 pg. 2

medical services that are appropriate for their age when considering quality of life and community engagement/inclusiveness.

Anne Carlsen has several initiatives in progress to address the short-term needs of these individuals, however a long-term strategy is essential to ensure that there is long term financial and regulatory support specifically for this type of medical service provided.

We understand that this step is best accomplished through legislative action. In cooperation with the North Dakota Department of Human Services and the North Dakota Department of Health, SB2317 seeks to create a new licensing classification in North Dakota called Pediatric Sub-Acute Skilled Nursing. For Anne Carlsen's purposes, this category would apply only to the services provided on the Jamestown Campus for those children, adolescents and young adults receiving complex medical care services. It is the belief of the Anne Carlsen team that if our River's Bend program on the Jamestown Campus can be licensed as a Pediatric Sub-Acute Skilled Nursing Facility, we believe rates can be more easily and accurately adjusted to the level of care that is required for these individuals.

Anne Carlsen is an active member of the Pediatric Complex Care Association, a national trade association focused on medically complex care for children, and has been in contact with a number of national association providers from across the country, who have successfully defined this category of care in their states. We believe it means that we need not start from scratch; as we have a variety of models of care that can be reviewed

with the Department of Human Services and Department of Health for best fit for the medical needs of those served and what constitutes best fit into the North Dakota continuum of services.

Thank you for the opportunity to testify today, and I would be happy to address any questions you might have.

A handwritten signature in cursive script that reads "Tim Eissinger".

Tim Eissinger
Chief Executive Officer
Anne Carlsen Center
Email: tim.eissinger@annecenter.org
Work cell: 701-269-7355



SB 2317
~1/28/19
#3 pg.1

SB 2317
Senate Human Services Committee
Monday, January 28, 2019

Good morning, Chairman Lee and members of the Senate Human Services Committee.

I am Dr. Myra Quanrud, pediatrician and medical director for the Anne Carlsen Center in Jamestown, and I submit this testimony in support of SB2317. Currently, we provide 24- hour care for 17 medically complex children and young adults. Some of them were born extremely prematurely, some of them have genetic disorders, and some survived severe injuries. All of them are dependent on technology and continuous nursing care for survival.

The Anne Carlsen Center nearly always has a waiting list for placement in the medically complex unit. Those children usually wait in hospital intensive care units, sometimes for months, until a bed becomes available. Sanford Children's Hospital has had to wait patiently, as has the University of MN. This is neither quality nor cost-effective care for the children of our state.

Our medically complex unit serves children for periods of time ranging from months to years. While we always have a goal of transitioning the child back home, that goal may not always be achievable. Then our goal becomes giving the child as full a life as possible, while still providing for their medical needs.

Some of our Medically Complex Kids

Brady is a nearly 18-year old boy who has lived at ACC since the age of 9, when his cares became too complex to manage at home. He is ventilator dependent, has a severe seizure disorder, and some challenging behaviors (including taking himself off the ventilator, which is dangerous).

Brady had some emotional difficulties one winter, and his team thought he might enjoy a sled ride on a nice winter day. It truly takes a team to pull off a sled ride for a kid like Brady, but he loved it! Pictured below are his nurse, physical therapist, program coordinator, program specialist, and behavioral interventionist.



Yes, that's a ventilator going down a hill on a sled...

Michael has been at ACC since he was 6 months of age. He is now 22 years old. A blood clot destroyed his spinal cord at the level of C5 shortly before birth, leaving him quadriplegic and dependent on a ventilator. Michael requires full assistance for

all activities of daily living. He has episodes of seizure which can be difficult to control, and exposure to cow's milk can be fatal.

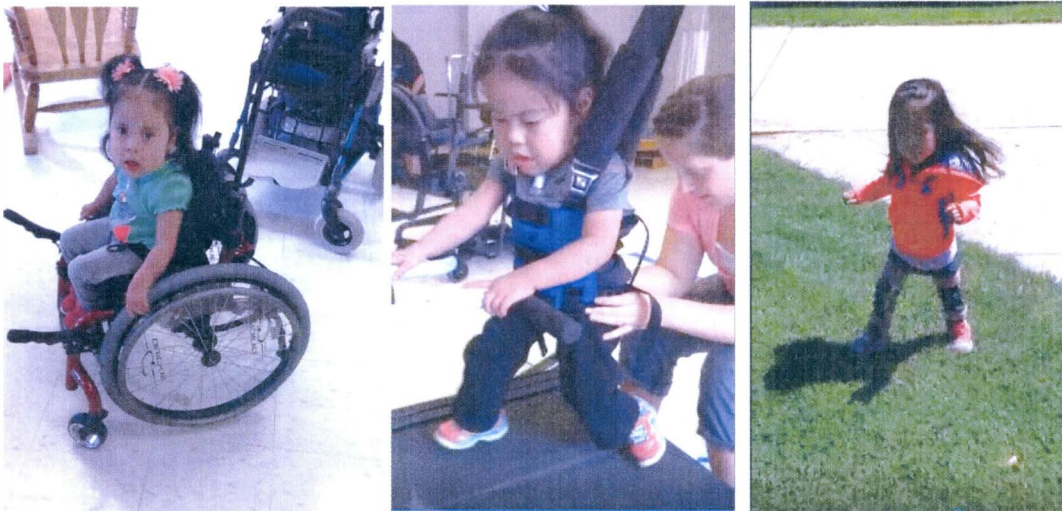
Michael has "aged out" of pediatric services, but is unable to transition to adult services, as there are no providers in ND able to provide an appropriate level of care for him. To the best of our knowledge, only one nursing home in the state takes patients on a ventilator, but Michael also needs to remain active in the community as is appropriate for a young man of 22.

Charlie is a nearly 6 -year old boy who has lived at ACC since the age of 2. He has intractable seizures and is ventilator dependent. He has frequent severe seizures and has a central line for permanent IV access to treat seizures when needed. He is on a ketogenic diet to help control his seizures as well. He has frequent pulmonary exacerbations and often requires adjustments to his respiratory treatments and ventilator settings.

Kyrie is now 19 months of age and came to ACC out of the NICU when he was 10 months old. He was born at 23 weeks gestation, and subsequently developed chronic lung disease of prematurity. He is working on weaning off the ventilator, and at the same time is working on developing normal baby skills like sitting and crawling. He is very proud that he has learned to wheel his wheelchair himself! When he is ready, Kyrie will be able to go home to live with his family.

SB 2317
1/28/19
#3 pg.4

Renee came to ACC from the U of M. She was born prematurely and had complications both from prematurity and from open heart surgery. She spent her whole life in the hospital before coming to ACC at the age of 14 months. In addition to being ventilator dependent, she was unable to sit or roll over, vocalize, or eat orally. During her stay at ACC she weaned off the ventilator and underwent several surgeries to reconstruct her airway and eventually remove her tracheostomy. Hip surgery improved her leg function, and she learned to walk. After a nearly 4 year stay, Renee was able to speak, eat orally, breathe without assistance of technology, and attend public school. Renee was finally able to go home!



Pediatric Sub-Acute Skilled Nursing is a new category of licensure for facilities in North Dakota, but the care isn't new. Anne Carlsen Center has been filling this need for over 30 years and is recognized as a center of excellence among our peers across the country. The category of Pediatric Sub-Acute Skilled Nursing is already being used in at least 17 states, with the result being an improvement in quality, and an overall improvement in cost.

SB 2317
~ / 28 / 19
#3 pg. 5

I thank you for the opportunity to testify today, and I apologize for not appearing in person. I would be happy to address any questions that you would see appropriate to send to me.

Respectfully,

Myra Quanrud, MD, FAAP
Medical Director
Anne Carlsen Center
701-252-3850
myra.quanrud@annecenter.org

Good morning Chairman Lee and members of the Senate Human Service Committee. My name is Bruce Pritschet, Director of the Division of Health Facilities within the Department of Health. I am here to provide information on Senate Bill 2317 related to the licensing of a pediatric subacute care nursing facility within North Dakota Century Code Section 23-16.

Senate Bill 2317 adds a new section to 23-16 to license pediatric subacute care facilities as nursing facilities under Section 3. We are not opposed to this amendment. The bill also refers to 23-09.3 which are basic care regulations and makes modifications to residential areas and services to non-geriatric persons in Sections 1 and 2. The amendments to the Basic Care code in Sections 1 and 2 are unnecessary and confusing when these changes could and should be part of Section 3 and refer to changes in 23-16 for nursing facilities.

Section 3 of SB 2317 also requires the Department of Health to adopt licensing rules for pediatric subacute care facilities as a type of nursing facility. Current administrative code rules for nursing facilities have established a framework for licensing nursing facilities and include building construction and compliance. Therefore, we believe there are existing mechanisms in place to address facility construction or remodeling proposals within existing licensing rules and would recommend revisions to 50-06-38 be deleted from the bill.

Section 6 of SB 2317 requires a pediatric subacute care facility to submit facility construction or remodeling proposals to the Department of Human Services for review. We believe this authority to review and approve construction should lie with the licensing entity, the Department of Health. Building compliance has historically been part of the licensing process in which the licensing entity determines the services are appropriately rendered in an environment complying with established standards.

This concludes my testimony and I would be glad to stand for questions.

SB 2317
2/4/19

Attachment #1 pg 1

19.0536.03004
Title.

Prepared by the Legislative Council staff for
Senator Poolman
February 1, 2019

PROPOSED AMENDMENTS TO SENATE BILL NO. 2317

Page 1, line 1, after "new" insert "subsection to section 23-16-01.1, a new"

Page 1, line 1, after "23-16" insert ", and a new section to chapter 50-24.4"

Page 1, line 2, after "to" insert "long-term care bed capacity,"

Page 1, line 2, after the second "facilities" insert "and reimbursement of pediatric subacute care facilities"

Page 1, line 3, replace "sections 23-09.3-02, 23-09.3-10, 25-18-15, 50-06-06.4, and 50-06-38," with "section 50-24.4-27"

Page 1, replace lines 7 through 24 with:

"SECTION 1. A new subsection to section 23-16-01.1 of the North Dakota Century Code is created and enacted as follows:

Notwithstanding the prohibition on adding nursing facility beds under subsection 1, an additional twenty-two nursing facility beds are authorized for use as pediatric subacute care facility beds. Beds authorized under this subsection may not be sold, converted, or transferred."

Page 2, line 3, replace "**Subacute**" with "**Pediatric subacute**"

Page 2, line 4, replace "department" with "health council"

Page 2, after line 7, insert:

"3. The rules applicable to a pediatric subacute care facility must allow for aging in place for an individual over the age of twenty-one and for a pediatric subacute care facility to be located in a facility or structure that offers other appropriate levels of services."

Page 2, remove lines 8 through 30

Page 3, replace lines 1 and 2 with:

"SECTION 3. AMENDMENT. Section 50-24.4-27 of the North Dakota Century Code is amended and reenacted as follows:

50-24.4-27. Medicare certification.

~~All~~Except for pediatric subacute care facilities, all nursing facilities certified under the medical assistance program shall participate in Medicare part A and part B with respect to at least thirty percent of the beds in the facility unless, after submitting an application, Medicare certification is denied by the federal health care financing administration. The facility shall file on behalf of each patient or assist each patient in the filing of requests for any third-party benefits to which the patient may be entitled. Charges for Medicare-covered services provided to residents who are simultaneously eligible for medical assistance and medicare must be billed to Medicare part A or part B

before billing medical assistance. Medical assistance may be billed only for charges not reimbursed by Medicare.

SECTION 4. A new section to chapter 50-24.4 of the North Dakota Century Code is created and enacted as follows:

Pediatric subacute care facilities.

If reimbursing a pediatric subacute care facility licensed under chapter 23-16, the department shall consider the unique level of care and the additional cost required to provide services to medically fragile clients under twenty-one years of age."

Page 3, line 5, remove the overstrike over "skilled"

Page 3, line 5, after the second comma insert "nursing facility."

Renumber accordingly

1 SB 2317
2-12-2019
pg 1

Nicole Poolman

SB 2317 Testimony

Senate Appropriations

Tuesday, February 11, 2019

Good morning, Chairman Holmberg and members of the Appropriations committee, my name is Nicole Poolman, state senator from District 7 representing Bismarck and Lincoln. I'm here to introduce SB 2317, a bill to create a new license for pediatric subacute nursing facilities in North Dakota.

The Anne Carlsen Center in Jamestown has been educating and caring for kids with disabilities since 1941. Over the years, the acuity of care required for a certain population at the center has dramatically increased, and as a result, the new funding formula under the DD division no longer seems to fit the model of care required for the medically fragile/complex children at the center. You will hear from the staff at the center about the needs of these children, and how reimbursing them under the Developmental Disabilities division is making less sense than it used to.

This bill is an attempt to create a new type of licensure specific to the medically complex unit. It would be licensed under the Department of Health, and the administration at Anne Carlsen has been working with both DHS and the Department of Health to make sure we propose this in a workable way.

I want to thank Maggie Anderson personally for the input she offered as we amended this bill. We really want to do this right - anticipating any pitfalls or problems we may face not only in setting up the license, but also in ensuring the center would qualify for reimbursement under the new license. It is also important that the bill is not written specifically for Anne Carlsen. The idea is that any facility wanting to open a unit or facility for medically fragile children could apply for the same license.

I thank you in advance for the work you will put into this bill, and I respectfully ask for your support of SB 2317.



#2 SB 2317
2-12-2019
pg 1

SB 2317
Senate Appropriations Committee
Tuesday, February 12th, 2019

Good morning, Chairman Holmberg and members of the Senate Appropriations Committee. For the record, my name is Tim Eissinger, and I am CEO of the Anne Carlsen Center. I am testifying today in support of funding for SB2317 as amended by the Senate Human Services Committee.

The Anne Carlsen Center in Jamestown is currently licensed under the Development Disabilities Division of DHS as an Intermediate Care Facility, serving 54 clients. On the Center's Campus, we have a pediatric complex medical care unit known as River's Bend. The River's Bend Unit provides state-of-the-art residential care, medical services, therapy and supports the educational programming for 17 individuals ranging in age from 6 months to 21 years of age. Although the typical age range served by the programming in River's Bend is 0-21 years old, some individuals beyond age 21 continue to reside at Anne Carlsen due to their medical complexity. It is critical for the development of these young people to provide developmentally appropriate therapies, educational programming and as much community engagement/inclusiveness as possible. The implementation of the new payment system for ICF's (Intermediate Care Facilities) in 2018, fell short of adequately addressing the highly specialized needs of those medically complex children and young adults served by Anne Carlsen.

#2 SB 2317
2-12-2019

AJ2

A long-term care and reimbursement strategy for North Dakota is essential to ensure that there are services and resources available to families who may have a need for this level of medical intensity. We all know of families who have faced the challenge of a premature birth and are willing to do whatever is necessary to give their newborn a fighting chance at life. Of a surprise diagnosis for a toddler with a life-threatening genetic disorder. And as we all are reminded of in North Dakota each winter, children are also just one slip on the ice or one careless driver away from a long-term rehab stay or traumatic brain injury. For children, services of this type are essential to address their medical needs, the ability to help keep their families intact and to keep hope alive for their futures.

In cooperation with the North Dakota Department of Human Services and the North Dakota Department of Health, SB2317 seeks to create a new licensing classification in North Dakota called Pediatric Sub-Acute Skilled Nursing. We support that the new category is a better alignment of services than that accomplished under the DD Division. Anne Carlsen fully supports this bill as critical to providing needed medical services for the families of North Dakota

Thank you for the opportunity to testify today, and I would be happy to address any questions you might have.

Tim Eissinger

Tim Eissinger
Chief Executive Officer
Anne Carlsen Center
Email: tim.eissinger@annecenter.org
Work cell: 701-269-7355



#1
SB 2317
3/4/19
pg. 1

SB 2317
House Human Services Committee
Monday, March 4, 2019

Good afternoon, Chairman Weisz and members of the House Human Services Committee. My name is Stephanie Nelson, and I serve in the role of Chief Operating Officer at the Anne Carlsen Center.

I am testifying today in support of SB2317.

At Anne Carlsen we serve many individuals with developmental or intellectual disabilities; however, I am here today to share information about a specific population of individuals with medical complexities for whom we provide residential medical services. While most individuals we serve within this group fall within a pediatric age range (infant through 21 years of age) some individuals beyond age 21 continue to reside at Anne Carlsen due to their medical complexities. It has been our experience that there are limited options for young adults, with medical complexities at this high level of acuity, that offer residential medical services that are appropriate for their age when considering quality of life and community engagement/inclusiveness.

#1
SB 2317
3/4/19
15.2

As it presently stands, the Anne Carlsen Center in Jamestown is licensed under the Development Disabilities Division of the DHS as an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID), serving 54 clients. On the Center's Campus, we have a pediatric complex medical care unit known as River's Bend. The River's Bend Unit provides state-of-the-art residential care, medical services, therapy and supports the educational services for 16 individuals; however, that census fluctuates based on need. This highly specialized care is provided under the direction of our Medical Director and pediatrician, Dr. Myra Quanrud along with two Nurse Practitioners, two Respiratory Therapists and a team of nurses. Our teams work closely with medical teams from major hospitals in the region (Fargo, Bismarck, Minneapolis/St. Paul) as we collaborate to provide a level of care for that allows for kids to be discharged from a sterile hospital setting to our River's Bend unit where we can work to address the multitude of medical and developmental needs each child presents.

The implementation of the new payment system for ICF's (Intermediate Care Facilities) in the State occurred in April 2018 and fell short in adequately addressing the highly specialized needs of this group of individuals requiring medically complex services nor did it adequately fund the care required for these very vulnerable and fragile individuals.

Anne Carlsen has several initiatives in progress to address the short-term needs of these individuals, however a long-term strategy is essential to ensure that there is on-going financial and regulatory support specifically for individuals requiring this level of care.

#2
SB 2317
3/4/19
pg. 3

We understand that this step is best accomplished through legislative action. In cooperation with the North Dakota Department of Human Services and the North Dakota Department of Health, SB2317 seeks to create a new licensing classification in North Dakota called Pediatric Sub-Acute Skilled Nursing. For Anne Carlsen's purposes, this category would apply only to the services provided on the Jamestown Campus for those children, adolescents and young adults receiving complex medical care services. It is the belief of the Anne Carlsen team that if our River's Bend unit on the Jamestown Campus were to be licensed as a Pediatric Sub-Acute Skilled Nursing Facility, rates could be more easily and accurately adjusted to the over-riding medical acuity of these individuals, while still supporting their developmental needs.

Thank you for the opportunity to testify today, and I would be happy to address any questions you may have.

Stephanie Nelson
Chief Operating Officer
Anne Carlsen Center
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Work cell: 701-320-8205

#2
SB 2317
3/4/19
Pg. 1

Testimony
Senate Bill 2317 - Department of Human Services
House Human Services Committee
Representative Robin Weisz, Chairman

March 4, 2019

Chairman Weisz and members of the House Human Services Committee, I am Tom Eide, Director of Field Services and Chief Financial Officer for the Department of Human Services. I appear to testify on Senate Bill 2317.

The department is in support of determining an appropriate payment plan and system for the medically complicated clients such as those at Anne Carlsen Center in Jamestown. To that end, we are currently working with a consulting group in an effort to define parameters for implementing payments. For your information, there are three current actions which address payments regarding this client group.

First, there is a \$900,000 payment included in SB 2012 which is intended to directly help Anne Carlsen Center offset unintended losses in payment after the implementation of the new DD payment system. Second, this bill proposes a new level of care for the identified client group. Third, Medicaid currently has an open state plan in which we are evaluating an option for a supplemental payment for these identified clients.

We have secured a consultant to review these clients and assess the level of care and potential payment levels and systems that should be utilized. They were recently on site with Anne Carlsen Center and provided some preliminary feedback. We do not yet have that formal report and will likely be asking for additional work to be performed. Their work will provide us more specific guidance on how to approach the payment plan and also how to best review determining an appropriate level of care for medically complicated clients. Our goal would be to have this work completed within a three-week window.

This concludes my testimony and I am happy to answer any questions. Thank you.

#3
SB 2317
3/4/19
PS.1

Nicole Poolman

SB 2317 Testimony

House Human Services

Monday, March 4, 2019; 3:30 pm

Good afternoon, Chairman Weisz and members of the Human Services committee, my name is Nicole Poolman, state senator from District 7 representing Bismarck and Lincoln. I'm here to introduce SB 2317, a bill to create a new license for pediatric subacute nursing facilities in North Dakota.

The Anne Carlsen Center in Jamestown has been educating and caring for kids with disabilities since 1941. Over the years, the acuity of care required for a certain population at the center has dramatically increased, and as a result, the new funding formula under the DD division no longer seems to fit the model of care required for the medically fragile/complex children at the center. You will hear from the staff at the center about the needs of these children, and how reimbursing them under the Developmental Disabilities division is making less sense than it used to.

This bill is an attempt to create a new type of licensure specific to the medically complex unit. It would be licensed under the Department of Health, and the administration at Anne Carlsen has been working with both DHS and the Department of Health to make sure we propose this in a workable way.

I want to thank Maggie Anderson personally for the input she offered as we amended this bill. We really want to do this right - anticipating any pitfalls or problems we may face not only in setting up the license, but also in ensuring the center would qualify for reimbursement under the new license. It is also important that the bill is not written specifically for Anne Carlsen. The idea is that any facility wanting to open a unit or facility for medically fragile children could apply for the same license.

I thank you for your time today, and I respectfully ask for your support of SB 2317.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2317

That the House recede from its amendments as printed on page 1312 of the Senate Journal and page 1265 of the House Journal and that Engrossed Senate Bill No. 2317 be amended as follows:

Page 1, line 4, remove the second "and"

Page 1, line 4, replace "section" with "sections 23-01-37, 23-09.3-04, and "

Page 1, line 6, after "of" insert "health facilities and licensure of"

Page 1, line 6, after the second "facilities" insert "; to provide for a report to legislative management; and to declare an emergency"

Page 1, after line 7, insert:

"SECTION 1. AMENDMENT. Section 23-01-37 of the North Dakota Century Code is amended and reenacted as follows:

23-01-37. Survey program - Health facilities construction or renovation projects - Innovation waivers.

1. The state department of health shall conduct a life safety survey process for all health facilities licensed by the division of health facilities of the state department of health during and at the conclusion of a construction, renovation, or construction and renovation project.
2. The department may charge a reasonable fee for the review of plans for construction, renovation, or construction and renovation projects performed under this section based on the size of the project. Revenues derived from the fees collected under this subsection must be deposited in the department's operating fund in the state treasury.
3. The state department of health shall make a determination on a construction, renovation, or construction and renovation project of no more than one million dollars within sixty days of receipt of a complete application.
4. The state department of health may approve a request for a waiver of a law or rule relating to an innovative construction, renovation, or construction and renovation project if the lack of compliance does not adversely affect health or safety.
5. The department shall design and operate the program in a manner that will provide that the surveyor that performs a life safety survey under this section does not violate the federal requirements associated with Medicare-certified life safety surveys.

SECTION 2. AMENDMENT. Section 23-09.3-04 of the North Dakota Century Code is amended and reenacted as follows:

SB 2317
4/22/19
#1 pg. 2

23-09.3-04. Department to establish standards - Licensing - Inspection - Survey - Prosecute violations.

1. The department shall establish standards for basic care facilities. The department shall inspect all places and grant annual licenses to basic care facilities as conform to the standards established and comply with the rules prescribed, as provided in this chapter. The department may waive all or a portion of a license standard if the department determines the lack of compliance does not adversely affect the health or safety of residents.
2. The department shall implement a survey process for basic care facilities which for purposes of the life safety portions of the survey, all surveys must be announced; which for purposes of the health portions of the survey, half of the surveys must be announced; and which for purposes of complaints related to health and life safety, all surveys must be unannounced. As part of the survey process, the department shall develop, in consultation with basic care facilities, and shall implement a two-tiered system of identifying areas of noncompliance with the health portions of the survey.
3. The department shall prosecute all violations of this chapter."

Page 2, after line 27, insert:

"SECTION 8. REPORT TO LEGISLATIVE MANAGEMENT - HEALTH FACILITY CONSTRUCTION AND RENOVATION. Before July 1, 2020, the state department of health shall report to the legislative management on the implementation of sections 1 and 2 of this Act.

SECTION 9. EMERGENCY. Sections 1 and 2 of this Act are declared to be an emergency measure."

Renumber accordingly

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2317

That the House recede from its amendments as printed on page 1312 of the Senate Journal and page 1265 of the House Journal and that Engrossed Senate Bill No. 2317 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 23-01-37 and 23-09.3-04 of the North Dakota Century Code, relating to health care facilities and licensure of nursing facilities; to provide for a legislative management study; to provide for a report; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-01-37 of the North Dakota Century Code is amended and reenacted as follows:

23-01-37. Survey program - Health facilities construction or renovation projects - Innovation waivers.

1. The state department of health shall conduct a life safety survey process for all health facilities licensed by the division of health facilities of the state department of health during and at the conclusion of a construction, renovation, or construction and renovation project.
2. The department may charge a reasonable fee for the review of plans for construction, renovation, or construction and renovation projects performed under this section based on the size of the project. Revenues derived from the fees collected under this subsection must be deposited in the department's operating fund in the state treasury.
3. The state department of health shall make a determination on a construction, renovation, or construction and renovation project of no more than one million dollars within sixty days of receipt of a complete application.
4. The state department of health may approve a request for a waiver of a state law or rule relating to an innovative construction, renovation, or construction and renovation project if the lack of compliance does not adversely affect health or safety.
5. The department shall design and operate the program in a manner that will provide that the surveyor that performs a life safety survey under this section does not violate the federal requirements associated with Medicare-certified life safety surveys.

SECTION 2. AMENDMENT. Section 23-09.3-04 of the North Dakota Century Code is amended and reenacted as follows:

23-09.3-04. Department to establish standards - Licensing - Inspection - Survey - Prosecute violations.

1. The department shall establish standards for basic care facilities. The department shall inspect all places and grant annual licenses to basic care facilities as conform to the standards established and comply with the rules prescribed, as provided in this chapter. The department may waive all or a portion of a license standard if the department determines the lack of compliance does not adversely affect the health or safety of residents.
2. The department shall implement a survey process for basic care facilities which for purposes of the life safety portions of the survey, all surveys must be announced; which for purposes of the health portions of the survey, half of the surveys must be announced; and which for purposes of complaints related to health and life safety, all surveys must be unannounced. As part of the survey process, the department shall develop, in consultation with basic care facilities, and shall implement a two-tiered system of identifying areas of noncompliance with the health portions of the survey.
3. The department shall prosecute all violations of this chapter.

SECTION 3. LEGISLATIVE MANAGEMENT STUDY - HEALTH FACILITY CONSTRUCTION. During the 2019-20 interim, the legislative management shall consider studying the state department of health licensing process for health facility construction and renovation projects, including consideration of the appropriate role of the state department of health. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.

SECTION 4. REPORT TO LEGISLATIVE MANAGEMENT - HEALTH FACILITY CONSTRUCTION AND RENOVATION. Before July 1, 2020, the state department of health shall report to the legislative management on the implementation of sections 1 and 2 of this Act.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

Sixty-sixth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2317

Introduced by

Senators Poolman, J. Lee, Wanzek

Representatives Devlin, Pollert, Satrom

1 A BILL ~~for an Act to create and enact a new subsection to section 23-16-01.1, a new section to~~
2 ~~chapter 23-16, and a new section to chapter 50-24.4 of the North Dakota Century Code, relating~~
3 ~~to long-term care bed capacity, licensure of pediatric subacute care facilities as nursing facilities~~
4 ~~and reimbursement of pediatric subacute care facilities; and to amend and reenact section~~
5 ~~50-24.4-27 and subdivision a of subsection 24 of section 57-39.2-04 of the North Dakota~~
6 ~~Century Code, relating to licensure of pediatric subacute care facilities as nursing facilities; for~~
7 an Act to amend and reenact sections 23-01-37 and 23-09.3-04 of the North Dakota Century
8 Code, relating to health care facilities and licensure of nursing facilities; to provide for a
9 legislative management study; to provide for a report; and to declare an emergency.

10 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

11 ~~SECTION 1. A new subsection to section 23-16-01.1 of the North Dakota Century Code is~~
12 ~~created and enacted as follows:~~

13 ~~Notwithstanding the prohibition on adding nursing facility beds under subsection 1, an~~
14 ~~additional twenty two nursing facility beds are authorized for use as pediatric subacute~~
15 ~~care facility beds. Beds authorized under this subsection may not be sold, converted,~~
16 ~~or transferred.~~

17 ~~SECTION 2. A new section to chapter 23-16 of the North Dakota Century Code is created~~
18 ~~and enacted as follows:~~

19 ~~Nursing facility Pediatric subacute care facility.~~

20 ~~1. The health council shall adopt rules to license nursing facilities under this chapter.~~

21 ~~2. The department shall license a pediatric subacute care facility as a type of nursing~~
22 ~~facility. A facility may choose whether to seek licensure as an intermediate care facility~~
23 ~~under chapter 25-16 or as a pediatric subacute care facility.~~

3. ~~The rules applicable to a pediatric subacute care facility must allow for aging in place for an individual over the age of twenty one and for a pediatric subacute care facility to be located in a facility or structure that offers other appropriate levels of services.~~

4. ~~Rules under this section must provide for consistent implementation of specialized training, treatment, health services, and related care which are developmentally appropriate for the population.~~

SECTION 3. AMENDMENT. Section 50-24.4-27 of the North Dakota Century Code is amended and reenacted as follows:

50-24.4-27. Medicare certification.

~~All~~ Except for pediatric subacute care facilities, all nursing facilities certified under the medical assistance program shall participate in Medicare part A and part B with respect to at least thirty percent of the beds in the facility unless, after submitting an application, Medicare certification is denied by the federal health care financing administration. The facility shall file on behalf of each patient or assist each patient in the filing of requests for any third party benefits to which the patient may be entitled. Charges for Medicare covered services provided to residents who are simultaneously eligible for medical assistance and Medicare must be billed to Medicare part A or part B before billing medical assistance. Medical assistance may be billed only for charges not reimbursed by Medicare.

SECTION 4. A new section to chapter 50-24.4 of the North Dakota Century Code is created and enacted as follows:

Pediatric subacute care facilities.

~~If~~ reimbursing a pediatric subacute care facility licensed under chapter 23-16, the department shall consider the unique level of care and the additional cost required to provide services to medically fragile clients.

SECTION 5. AMENDMENT. Subdivision a of subsection 24 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

a. ~~"Eligible facility" means any hospital, skilled nursing facility, nursing facility, intermediate care facility, or basic care facility licensed by the state department of health, or any assisted living facility licensed by the department of human services; and~~

SECTION 1. AMENDMENT. Section 23-01-37 of the North Dakota Century Code is amended and reenacted as follows:

23-01-37. Survey program - Health facilities construction or renovation projects - Innovation waivers.

1. The state department of health shall conduct a life safety survey process for all health facilities licensed by the division of health facilities of the state department of health during and at the conclusion of a construction, renovation, or construction and renovation project.
2. The department may charge a reasonable fee for the review of plans for construction, renovation, or construction and renovation projects performed under this section based on the size of the project. Revenues derived from the fees collected under this subsection must be deposited in the department's operating fund in the state treasury.
3. The state department of health shall make a determination on a construction, renovation, or construction and renovation project of no more than one million dollars within sixty days of receipt of a complete application.
4. The state department of health may approve a request for a waiver of a state law or rule relating to an innovative construction, renovation, or construction and renovation project if the lack of compliance does not adversely affect health or safety.
5. The department shall design and operate the program in a manner that will provide that the surveyor that performs a life safety survey under this section does not violate the federal requirements associated with Medicare-certified life safety surveys.

SECTION 2. AMENDMENT. Section 23-09.3-04 of the North Dakota Century Code is amended and reenacted as follows:

23-09.3-04. Department to establish standards - Licensing - Inspection - Survey - Prosecute violations.

1. The department shall establish standards for basic care facilities. The department shall inspect all places and grant annual licenses to basic care facilities as conform to the standards established and comply with the rules prescribed, as provided in this chapter. The department may waive all or a portion of a license standard if the department determines the lack of compliance does not adversely affect the health or safety of residents.

1 2. The department shall implement a survey process for basic care facilities which for
2 purposes of the life safety portions of the survey, all surveys must be announced;
3 which for purposes of the health portions of the survey, half of the surveys must be
4 announced; and which for purposes of complaints related to health and life safety, all
5 surveys must be unannounced. As part of the survey process, the department shall
6 develop, in consultation with basic care facilities, and shall implement a two-tiered
7 system of identifying areas of noncompliance with the health portions of the survey.

8 3. The department shall prosecute all violations of this chapter.

9 **SECTION 3. LEGISLATIVE MANAGEMENT STUDY - HEALTH FACILITY**

10 **CONSTRUCTION.** During the 2019-20 interim, the legislative management shall consider
11 studying the state department of health licensing process for health facility construction and
12 renovation projects, including consideration of the appropriate role of the state department of
13 health. The legislative management shall report its findings and recommendations, together with
14 any legislation required to implement the recommendations, to the sixty-seventh legislative
15 assembly.

16 **SECTION 4. REPORT TO LEGISLATIVE MANAGEMENT - HEALTH FACILITY**

17 **CONSTRUCTION AND RENOVATION.** Before July 1, 2020, the state department of health
18 shall report to the legislative management on the implementation of sections 1 and 2 of this Act.

19 **SECTION 5. EMERGENCY.** This Act is declared to be an emergency measure.