

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2403

2001 SENATE HUMAN SERVICES
SB 2403

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2403

Senate Human Services Committee

☐ Conference Committee

Hearing Date February 6, 2001

Tape Number	Side A	Side B	Meter #
2	X		22.9
2		X	3.3
February 7, 2001 3	X		30.1
Committee Clerk Signature <i>Barbara Kaladzhichuk</i>			

Minutes:

The hearing was opened on SB 2403.

SENATOR KILZER, sponsor, introduced the bill (Written testimony) SENATOR MATHERN:

Would dental care be reduced from what we have now? SENATOR KILZER: One procedure could save other procedures and problems.

SENATOR RANDY CHRISTMANN, cosponsor, supports bill.

SENATOR TIM MATHERN, cosponsor of the bill, supports bill. Is there enough money to pass this bill. I believe we would not be decreasing services.

MATTHEW SCHWARZ, parent, supports bill. (Written testimony)

DAVID BOECK, lawyer for Protection and Advocacy Project, supports bill. (Written testimony)

DAVID ZENTNER, Director of Medical Services, Dept. Human Services, opposes bill. (Written testimony) SENATOR LEE: This would only be unique situations - far fewer people covered.

How many? MR. ZENTNER: The estimates would maybe be 1/2 of 1%. Difficult to know how many adults would be eligible. SENATOR LEE: Have you had request for individuals and they have been denied? MR. ZENTNER: Only one case. SENATOR MATHERN: If there wasn't enough money, how do you make decision? Are you required to cut dental program. MR.

ZENTNER: There are certain optional services you provide to adults in case of financial shortfall. Cutting services is not the first option. SENATOR POLOVITZ: Do you have the ability to shift funds? MR. ZENTNER: Within the Medicaid program I have one main line to change. We can shift; I can go to the department to see if additional dollars are available.

JOE CICHY, lawyer representing ND Dental Assoc., opposes the bill. (Written testimony)

SENATOR KILZER: Will the DDS program be providing oral surgery? MR. CICHY: Yes, if the individual is enrolled. SENATOR MATHERN: Would you support the bill if the appropriation were available? MR. CICHY: I can't answer before I talk to the members.

SENATOR LEE: Would the CHIP program cover under the age for CHIP for something like this which is almost a disability or the Caring Foundation? MR. ZENTNER: The CHIP program uses dental services to process those claims. Orthodontics is not covered. The Dental is a minimal benefit. Oral surgery is covered under Medicaid. SENATOR LEE: It is oral surgery vs. Orthodontics.

DR. BRIAN JESPERSON, orthodontist, opposes bill. (Written testimony) Skeletal problems should be handled by specialists. SENATOR LEE: What if this is the result of an accident?

DR. JESPERSON: There is a need for an oral surgeon and orthodontics. SENATOR LEE: Our goal is to allow extraordinary and if you could help us, please do. DR. JESPERSON: We will do that.

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Senate Human Services Committee
Bill/Resolution Number SB 2403
Hearing Date February 6, 2001

MR. SCHWARTZ: This disability is a lifelong thing and it will be related to orthodontics all of their lives. There are rules in place to take care of this and have not been executed. Mr. Zentner can speak to that.

The hearing was closed on 2403.

February 7, 2001, Tape 3, Side A, Meter 30.1

Discussion was opened on SB 2403. SENATOR KILZER moved amendment to change orthodontics to ostiotomy, (It means to cut through bone). And orthodontic to follow.

SENATOR MATHERN seconded the motion. Roll call vote carried 6-0. SENATOR ERBELE moved DO PASS AS AMENDED. SENATOR POLOVITZ seconded the motion. Roll call vote carried 6-0. SENATOR KILZER will carry the bill.

FISCAL NOTE

Requested by Legislative Council

02/12/2001

Bill/Resolution No.:

Amendment to: SB 2403

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

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$20,039		\$20,930
Expenditures			\$8,641	\$20,039	\$9,026	\$20,930
Appropriations			\$8,641	\$20,039	\$9,026	\$20,930

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

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

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

This bill would require Medicaid to make available orthodontic services in conjunction with oral maxillofacial surgical services, if such services are likely to correct or mitigate a congenital or acquired deformity associated with a significant impairment in drinking, eating, or speaking. It is estimated that 4 individuals will obtain these services each year.

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.*

Additional revenues are Federal funds.

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.*

The medical assistance grant expenditures are for the cost of orthodontic services for adults. It is estimated that 4 individuals will qualify for the services each year.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

The adult orthodontic services required to be provided in this bill were not included in the Executive Budget. If this bill is passed the medical assistance grant appropriation will need to be increased \$28,680, of which \$8,641 are general funds.

Name:	Brenda M. Weisz	Agency:	Department of Human Services
Phone Number:	328-2397	Date Prepared:	02/14/2001

FISCAL NOTE
Requested by Legislative Council
01/30/2001

Bill/Resolution No.: SB 2403

Amendment to:

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

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$265,514		\$277,326
Expenditures			\$114,497	\$265,514	\$119,591	\$277,326
Appropriations			\$114,497	\$265,514	\$119,591	\$277,326

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

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

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

This bill would require the Department to make orthodontic services available to Medicaid recipients if the orthodontic service would mitigate a significant functional impairment in drinking, eating, or speaking. It is estimated that 53 adults will need this service each year.

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.*

Other funds would be obtained through Federal matching funds.

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.*

The Medical Assistance grant expenditures are for the cost of orthodontic services for adults. It is estimated that 53 adults will qualify for the service on a yearly basis.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Adult orthodontic services were not included in the 2001-2003 Executive Budget. If this bill is passed the Medical Assistance grant appropriation would need to be increased \$380,011, of which \$114,497 are general funds.

Name:	Brenda M. Weisz	Agency:	Department of Human Services
Phone Number:	328-2397	Date Prepared:	02/02/2001

Date: 2/7/01

Senate HUMAN SERVICES Committee

Motion Made By Sen Kilzer Seconded By Sen Mathews

[illegible]

Floor Assignment Am. Kaiser

See Kelly's amendments

Date: 2/7/01

Senate	HUMAN SERVICES	Committee
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Motion Made By Senator Erbe Seconded By Sen. Palovitz

[illegible]

Floor Assignment Sen Kilgus

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

REPORT OF STANDING COMMITTEE

SB 2403: Human Services Committee (Sen. 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 2403 was placed on the Sixth order on the calendar.

Page 1, line 2, after "necessary" insert "oral maxillofacial services and associated"

Page 1, line 7, replace "Orthodontic" with "Oral maxillofacial"

Page 1, line 8, after "make" insert "oral maxillofacial surgical services and" and after "services" insert "in conjunction with such surgical services"

Page 1, line 9, replace "orthodontic" with "such" and after "mitigate" insert "a congenital or acquired deformity associated with"

Page 1, line 10, after the second comma insert "swallowing,"

Renumber accordingly

2001 SENATE APPROPRIATIONS

SB 2403

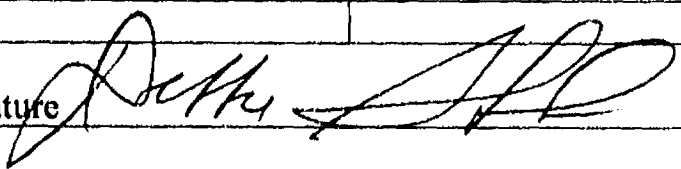
2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2304 2403

Senate Appropriations Committee

☐ Conference Committee

Hearing Date February 19, 2001

Tape Number	Side A	Side B	Meter #
1		X	35.4-51.1
2	X		0.0-3.8
Committee Clerk Signature 			

Minutes:

Senator Nething opened the hearing on SB 2304

Senator Ralph Kilzer, District 47, sponsor of the bill, stated he introduced this bill from a constituent whose daughters need orthodontic care which Human Services denied. This bill gives coverage to adults over the age of 21 with severe deformities of the mouth area and in need of surgical treatment. The bill is to cover four patients. The costs per patient for the biennium is \$9,000.00. The total funding is \$30,000 for this program. The engrossed bill changes the restrictions.

Senator Schobinger: Where in the engrossed bill did you up the restrictions?

Senator Kilzer: It was changed to treat patients with only severe problems added to lines 9 & 10 of the engrossed bill.

Senator Solberg: What you are doing here is amending Medicaid law or benefits to put one more ornament to the bill.

Senator Kilzer: Unclear with Federal Law, Human Services could provide without this bill.

Federal requirements open all orthodontics. That's why 53 patients were in first fiscal note.

Senator Thane: Is there a back log of people needing this type of surgery or is it just now?

Senator Kilzer: This is just an estimate for the biennium. Bases is a small back log. Four patients now per year and future biennium's there could be fewer patients.

Matt Schwarz, Bismarck, ND testified (testimony attached) in favor of the bill.

Senator Solberg: Are you aware of other cases besides your daughters in this situation?

Matt Schwarz: No I can't say I do. This is for serious problems affecting family and not just for braces. Orthodontics is very expensive with these type of cases and it will help drastically with this bill. Also mentioned his one daughter on life support cannot have this surgery because of her condition but could have braces.

David Zentner, Director Medical Services for the Department of Human Services, testified (testimony attached), and explained the federal law mandating to meet certain standards. Also the adequate number of Orthodontists is a concern with Medicaid.

Tape #2, Side A, meter 0.0

Senator Nething: Where you state change "shall" to "may", does this have a dollar impact?

David Zentner: It will not affect the fiscal note with this language.

Senator Thane: The coverage with the passage of this bill, mainly serious conditions. Does this open the door for more to ask for this service.

David Zentner: We were concerned with this initially but changed it to surgery. There are guidelines for the assistance and we are confident with the numbers or in the ballpark. Four patients per year and not 50-60 which was originally in the bill.

With no opposition, the hearing was closed. Tape #2, Side B., meter 3.8.

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Senate Appropriations Committee

Bill/Resolution Number SB 2403

Hearing Date February 19, 2001

2-20-01
February 2001 Full Committee (Tape 1, Side A, Meter No. 53.4-54.5)

Senator Nething reopened the hearing on SB2403.

Discussion on the bill. Senator Bowman moved a DO PASS, Senator Andrist seconded.

Discussion. Roll Call Vote: 14 yes' 0 no; 0 absent and not voting.

Floor assignment back to original committee carrier: Senator Kilzer.

Date: 2-26-01

Roll Call Vote #: _____

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB2403

Senate Appropriations Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken As passed

Motion Made By Sen. Burman Seconded By Sen. Andrist

Senators	Yes	No	Senators	Yes	No
Dave Nething, Chairman	✓				
Ken Solberg, Vice-Chairman	✓				
Randy A. Schobinger	✓				
Elroy N. Lindaas	✓				
Harvey Tallackson	✓				
Larry J. Robinson	✓				
Steven W. Tomac	✓				
Joel C. Heitkamp	✓				
Tony Grindberg	✓				
Russell T. Thane	✓				
Ed Kringstad	✓				
Ray Holmberg	✓				
Bill Bowman	✓				
John M. Andrist	✓				

Total Yes 14 No 0

Absent 0

Floor Assignment Sen. Kilger

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

REPORT OF STANDING COMMITTEE (410)
February 20, 2001 9:58 a.m.

Module No: SR-31-3962
Carrier: Kilzer
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2403, as engrossed: Appropriations Committee (Sen. Nething, Chairman)
recommends DO PASS (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed SB 2403 was placed on the Eleventh order on the calendar.

2001 HOUSE HUMAN SERVICES

SB 2403

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2403

House Human Services Committee

☐ Conference Committee

Hearing Date March 7, 2001

Tape Number	Side A	Side B	Meter #
Tape 1			0 to 2730
Committee Clerk Signature <i>Connie Easton</i>			

Minutes:

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

Chairman Price: Open hearing on SB 2403.

Senator Ralph Kilzer: Presented Bill. (See written testimony.) I appear before you today to support a bill that I sponsored at the request of a constituent who has family members with severe orthodontic problems associated with congenital and progressive neurological disorders. There are not very many of these adult patients in this state, however, they are in severe need of orthodontic care.

Rep. Dosch: What is it about the patient's condition that requires extra care?

Senator Kilzer: People who have severe deformities in the upper part of their mouth. It can either be congenital or it can be related to some form of neurological disorder. These people

have trouble speaking, and particularly the worst one in swallowing. We're talking about severe problems, we're not talking about cosmetic.

Rep. Weiler: This program is for people that are more than 21 years of age, and you say there are people who are born with this deformity and that there are programs now that take care of the younger?

Senator Kilzer: Children are covered for these severe problems.

Rep. Weiler: Up to what age?

Senator Kilzer: Twenty-first birthday.

Rep. Cleary: So in infants you're talking about people more with Muscular Dystrophy, or Multiple Sclerosis - more often than congenital?

Senator Kilzer: Yes it is. Unless it would be a progressive type of congenital deformity.

Mathew Schwarz: Parent, Bismarck, ND. (See written testimony.) Our daughters have Muscular Dystrophy. It is our understanding the federal Medicaid program provided for and suggests state Medicaid coverage for such orthodontics, including funds. This coverage is vital for people whose underlying disability and/or unfortunate accidents results in a need for this orthodontic service. Our family sincerely requests your support of this bill to guarantee orthodontic services for serious functional problems to our adult children. (Presented amendment to SB 2403.)

Rep. Niemeier: Did your family apply for Medicaid coverage under this provision 75-02?

Mathew Schwarz: Yes. We were told that it wasn't available. I think Mr. Zentner can address that a little bit better.

Rep. Niemeier: What was your recourse then in that case?

Mathew Schwarz: We have no recourse except our own resources. What we are concerned with is that this a life long condition. Our children are already adults - what happens when we're not around?

David Zentner: Director of Medical Services, Department of Human Services. (See written testimony.) While the department understands that limited orthodontic service for adults may be considered as a legitimate service that could be provided under the North Dakota Medicaid Program, the department notes that the cost to implement this service is not included in the Executive budget. I would like to comment on the rule we have in effect. The rule basically talks about how we will decide how we will pay for services. The state plan really dictates our agreement between the federal government and the state in how we're going to operate the program. That state plan indicates that we don't cover orthodontics. What we use the rule for is when we are applying it to those children who we have to cover under the EPSDT program. I don't see it as a conflict. The other issues is does the federal government encourage states to cover this kind of service? It certainly is an optional service, but each state has the right to decide on certain services like dental - how they are going to cover it and what the depth of coverage is going to be.

Rep. Porter: If we would change the word from "shall" to "may" on line 8, what criteria would be used to determine which adult individuals would get services and which ones wouldn't?

David Zentner: We would use the criteria that is outlined in here. We wouldn't change that. The only area that I'm concerned about is that I have the potential of somewhere between a \$4 and \$8 million dollars hole in my general fund request for the next biennium. If I have to make cuts, it would be somewhat ironic that I would have to continue to pay for orthodontic

services where I may have to cut out being able to pay for an examination or a filling for someone else. That is why I want the "may" language in there.

Rep. Porter: The way that I read this is to be associated with significant functional impairment of drinking, eating, swallowing, or speaking. I don't ever remember anyone not being able to eat because they had a cavity in their tooth, or not be able to swallow whole food because they didn't have their annual exam. How would the priority be given so that the significant functional impairment would be taken care of over the routine exam?

David Zentner: As policy makers you have to decide what is more important, whether providing services for three or four people or 42,000 people.

Rep. Porter: In the testimony from Mr. Schwarz, he talked about coming up to DHS and finding out that it wasn't a covered service and there wasn't any place else to go. I've heard other concerns of that in the past and I am wondering if there has ever been the talk of an appeals process. Who do they go to after they stop at your office? Has there ever been any discussion of an office of independent review to review the cases and give a neutral opinion rather than always the department's opinion on things?

David Zentner: There is an appeal process. Whenever we reduce or eliminate services, they certainly have the right to appeal through the Administrative Practices Act. In this case I would assume that recipient could have repealed that decision. The problem is that state plan does not provide for it, so if we were going to pay for it under current conditions, we couldn't use federal match for it. The bottom line right now is that we don't cover the service.

Rep. Sandvig: Has the treatment already begun for your daughter, Mr. Schwarz?

Mathew Schwarz: As long as some of the surgery part is handled through medical insurance that part of it is okay, but it is the other treatments we have paid out of pocket.

Rep. Sandvig: Since the treatment has already begun and they have had some dental work done, is the department able to go ahead and, if this approved, to go ahead and pick up - where would it start - would it start from when they first needed the services, or would it start from now on?

David Zentner: Because this is a state plan change, the state plan when submitted is effective the quarter that it is submitted. That wouldn't be a problem with approval in this case. We couldn't go retroactive.

Rep. Galvin: I still don't understand the exception in the subsection 2,c that Mr. Schwarz referred to "except for orthodontia necessary to correct serious and functional problems" - that apparently already is in the law. Why wouldn't that be sufficient to cover this?

David Zentner: The language of the bill further restricts the process. What we use now for children is a point process that provides points based on things like over bite, those kinds of conditions. If the points add up to 20, then we would likely go ahead and provide the service. If we use that same criteria for adults, you're not going to be looking at four or five a year. You're going to be looking at the 50 or 100 that we will probably have. So this further restricts how we will pay for adults orthodontia services. I suspect we could set up a different criteria within the process. This law actually limits the coverage to this very narrow group of individuals.

Rep. Dosch: Does the department entertain a type of cost sharing program, or is it allowed meaning that I pay a portion like a deductible out of pocket for the remaining balance?

David Zentner: The Medicaid program does permit some cost sharing, but it is very limited. We have a small CO-pay on dental services right now. The most we can charge for CO-pay depending on the cost for the services is \$4 or \$5. The cost sharing process is not one that saves the state a lot of money.

Rep. Sandvig: If this bill is approved, it isn't going to be a process where they have to have that prior authorization for the treatment?

David Zentner: We prior authorize all orthodontic work. I would assume that would continue because we have know that they met the criteria that we've established.

Rep. Sandvig: Would Mr. Steward's daughter be eligible if treatment has already begun?

David Zentner: We certainly would take that into consideration. If they met the criteria, we would assume we would be able to cover the services that have not been started yet.

Chairman Price: I think the concern was that if the treatment plan is already started, would you pick up in the middle for anything that qualified from there on?

David Zentner: I think we could probably do that.

Mathew Schwarz: I would like to address a question that one of the Representatives had with regards to what the process was for appeal. Our family went all the way up to Carol Olson, Director of Human Services. She reviewed it with her staff and came up with the conclusion that they couldn't cover it. We exhausted all of our appeal avenues that we could. The other comment with regards to co-pays - a lot of families that have needs like our family (these are adult children) are already paying the max on all the deductibles and all the co-pays - every year after year, after year.

Chairman Price: Close hearing on SB 2403.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2403 A

House Human Services Committee

☐ Conference Committee

Hearing Date March 14, 2001

Tape Number	Side A	Side B	Meter #
Tape 1	X		5280 to end
Tape 1		X	0 to 630
Committee Clerk Signature <i>Courne Easton</i>			

Minutes:

COMMITTEE WORK:

CHAIRMAN PRICE: Go to SB 2403. (Discussed amendment.)

REP. SANDVIG: The one concern I have about this the preexisting condition - not having prior authorization. I don't want this bill to pass and then the department go back and say we can't cover this because you were already getting treatment and it wasn't authorized. The way it is now they would have that option of doing that.

CHAIRMAN PRICE: I don't think that if somebody becomes eligible for Medicaid program they ever take a preexisting as a reason not to cover it.

REP. SANDVIG: I am most concerned about prior authorization. Mr. Zentner said they did require prior authorization. They could use that as an excuse not to cover this.

CHAIRMAN PRICE: In testimony Mr. Zentner said that if it was something they were going to cover, they wouldn't not cover it because it was already started treatment once they became eligible.

REP. KLEIN: Mr. Zentner's testimony on page 3 - if we could do this, then we would have to cut back on the basic services?

CHAIRMAN PRICE: If we don't change the word shall to may - they say let's say if there was an across the board cut to Medicaid services then this would be one that would not be subject to across the board cut. We're not ever run into that problem since I've been here.

REP. WEISZ: I interpreted his testimony that if they had to cut - I was under the impression everybody would get cut.

REP. CLEARY: It sounds like it would apply mostly to Muscular Dystrophy. I don't think it would cover that many patients, but I think it is necessary.

REP. NIEMEIER: I think that "in lieu of" is a good provision. I move that amendment "in lieu of".

REP. CLEARY: Second

CHAIRMAN PRICE: Discussion? All those in favor signify by saying Aye (13 Yes, 0 No, 1 Absent). The motion will included referral to Appropriations if needed. What would you like to do?

REP. NIEMEIER: I would move a Do Pass as amended.

REP. GALVIN: Second.

CHAIRMAN PRICE: Any other discussion?

REP. WEILER: I believe the price will even go down because the first year or two is catch up - there will be three, four, or five of these cases and then after that maybe not more than one.

Page 3

House Human Services Committee

Bill/Resolution Number SB 2403

Hearing Date March 14, 2001

VICE CHAIRMAN DEVLIN: The original state rules required this. It was one of the options under the federal Medicaid thing. The state just hasn't chosen it in their plan before.

CHAIRMAN PRICE: The clerk will call the roll on a **DO PASS as amended and rerefer to Appropriations if needed.**

13 YES 0 NO 1 ABSENT CARRIED BY REP. WEILER

18345.0201
Title.0300

Adopted by the Human Services Committee
March 14, 2001

VK
3/14/01

HOUSE AMENDMENTS TO SB 2403

HOUSE HS

3-16-01

Page 1, line 8, after "with" Insert ", or in lieu of,"

Renumber accordingly

Date: 3-14-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2403

House Human Services Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Move Amend "in lieu of"

Motion Made By Niemeier Seconded By Cleary

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

Total (Yes) 13 No 0

Absent 1

Floor Assignment _____

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

Date: 3-14-01
Roll Call Vote #: 2

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2403

House Human Services Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS as amended & referred to Appropriations if needed
Motion Made By Rep. Tieman Seconded By Rep. Galvin

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

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Weiler

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

REPORT OF STANDING COMMITTEE (410)
March 16, 2001 1:48 p.m.

Module No: HR-46-5888
Carrier: Weller
Insert LC: 18345.0201 Title: .0300

REPORT OF STANDING COMMITTEE

SB 2403, as engrossed and amended: Human Services Committee (Rep. Price, 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 2403, as amended, was placed on the Sixth order on the calendar.

Page 1, line 8, after "with" insert ", or in lieu of,"

Renumber accordingly

2001 HOUSE APPROPRIATIONS

SB 2403


2001 HOUSE STANDING COMMITTEE MINUTES

BILL RESOLUTION NO. SB2403

House Appropriations Committee

☐ Conference Committee

Hearing Date **March 27, 2001**

Tape Number	Side A	Side B	Meter #
1	X		80 1968
Committee Clerk Signature			

Minutes:

HOUSE APPROPRIATIONS COMMITTEE HEARING ON SB2403.

Rep. Timm: We will begin by opening the hearing on SB2403.

Sen. Kilzer: (Followed written testimony and then answered questions after his testimony)

Rep. Timm: Any questions of Sen. Kilzer?

Sen. Christmann: I certainly don't have any technical additions to what the previous speaker added because until the last couple of months I didn't utter the words maxillifacial, so I can't add anything in that regard, I did come down to present the personal aspect of this, but the parent of the girls that would probably qualify for some of this, is here and can give you the details much better than I could, he is a long time acquaintance and so that's how I ended up being on the bill, but if it's all right I would answer any questions if there are any, but I would prefer to turn it over to him and he can present the situation much better than I. Hopefully, our attempt, or I hope we have narrowed this down enough, because I don't think any of us want to see the Medicaid

program covering just braces for cosmetic purposes or anything like that. I think we have narrowed it down to a good proposal here, but if there are questions I will turn it over to Mr. Schwartz.

Rep. Timm: Any questions of Sen. Christmann?

Matthew C. Schwartz: (Followed written testimony and answered questions following his testimony)

Rep. Timm: Any questions for Mr. Schwartz from the committee?

Rep. Koppleman: I'm just curious, you talked about the discussion you had here with the folks here in Human Services and you point out the area and the rules that allows for this kind of thing, did you challenge their decision at all that they weren't going to provide coverage based upon those rules or didn't you carry it to that level?

Mr. Schwartz: Yes we did, we pursued it and we appealed it perhaps not formally, although as formally as we knew how all the way up to Carol Olson and she together with Mr. Zenter came to the conclusion that the practice was not to cover it and I think Mr. Zentner can explain a little more. Apparently the federal law does allow for it to be covered but the state plan that they submit to the federal government didn't have it included in the state plan or the waiver or whatever, and so they were going on that basis.

Rep. Timm: If we would pass this bill would your past expenses that you speak about in your testimony be covered then?

Mr. Schwartz: My understanding is that it would be only from here on forward, I need to tell you that the surgery part was covered by our medical insurance and Medicaid but its the part where we cross the threshold of the orthodontist doorway, those services are not covered and those we have had to stand for out of our own pocket.

Rep. Skarphol: Do your children have immediate needs, prior to August 1st?

Mr. Schwartz: My children have had needs with orthodontic services throughout their entire life and in fact our oldest daughter Stephanie just recently within the last month or so got out of the hospital because of a bowel obstruction and we don't know but this may be related to some of the nutrition and her way of eating, it obstructs in the upper intestine which is next to the stomach so there isn't much you can do.

Rep. Skarphol: The reason for my question is that if this bill were to pass as it is it would not become effective until August 1st, we do have a tool called the emergency clause that we could put on that would become effective immediately.

Mr. Schwartz: That would be very helpful, although what ever you chose to do I would be very appreciative.

Rep. Timm: The other medical costs that you have, there covered then? Are they covered by the Department of Human Services or are they covered by your Health Care Coverage?

Mr. Schwartz: Our family participates in a program that I think is very good. Our girls are on Medicaid but I also carry private insurance on our daughters because of their disability at birth and will continue as long as the premium is paid and they are covered under that as the primary provider and then Medicaid picks up whatever insurance doesn't pick up, and so if its related to a medical issues like surgery and so forth then our insurance picks up the majority of the costs and Medicaid picks up the balance. But when it comes to orthodontics that's not covered.

Rep. Timm: Any other questions of Mr. Schwartz? Any other testimony in support of SB2403?

Mr. David Zentner, Director of Medical Services for the Department of Human Services.

(Followed written testimony and answered questions after his testimony)

Rep. Timm: Are there any questions of Mr. Zentner? What your saying then is that if this bill goes into effect your going to cut services to some other segment of the population, is that what your saying?

Mr. Zentner: No, what I'm suggesting is that this will mandate it as it has a "Shall" in it, if we run into a problem say in this next biennium where for various reasons I don't have enough money to fund the entire program I would have to look for places to cut. One of those places I could look to cut would be the dental program for adults, what I'm suggesting is that this or the dentist services would not be subject to those cuts and I would have to make cuts elsewhere for other adult services.

Rep. Gulleason: Did you use up your entire allotment in the last biennium under these areas of spending?

Mr. Zentner: The current biennium for dental we are expending more than we had anticipated, but the bottom line is that for all services were look like were going to be within budget. On individual services its difficult to estimate exactly what your going to spend in a biennium, but I believe that we are \$400 - 500 thousand over on dental but because we have had savings in other areas we have been able to provide services.

Rep. Wald: Sen. Kilzer said in his first sentence, that this would apply to persons over 21 years if age. Does the bill reflect an age? I don't see it in the yellow first engrossed bill. Should reference be made to over 21?

Mr. Zentner: I don't think there is because the bottom line is that if we submit this to the state plan amendment, I don't think they would approve one that just dealt with people over 21. We would have to include all individuals who had this kind of need.

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House Appropriations Committee

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Rep. Timm: Any other questions? Any other testimony in support of SB2403? Any opposition to SB2403? If not we will close the hearing on SB2403.

House Appropriations Committee closed the hearing on SB2403.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2403

House Appropriations Committee

☐ Conference Committee

Hearing Date March 28, 2001

Tape Number	Side A	Side B	Meter #
03-28-01 tape #1	4530 - 5375		
Committee Clerk Signature	<i>Mike Hall</i>		

Minutes:

The committee was called to order, and opened committee work on SB 2403.

Rep. Skarphol: If we are going to do anything with this bill, I mentioned the emergency clause as a potential if we are going to solve any problems.

Chairman Timm: This bill will affect less than five people in the state.

Rep. Carlisle: Moves to amend to add an emergency clause. Seconded by Rep. Martinson.

Voice vote adopted the amendment.

(general committee discussion)

Rep. Kliniski: Moves DO PASS AS AMENDED. Seconded by Rep. Wald.

Vote on Do Pass as Amended : 18 yes, 2 no, 1 absent and not voting.

Rep. Warner is assigned to carry this bill to the floor.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2403

In addition to the amendments adopted by the House as printed on page 964 of the House Journal, Engrossed Senate Bill No. 2403 is amended as follows:

Page 1, line 3, after "program" insert "; and to declare an emergency"

Page 1, after line 11, insert:

"SECTION 2. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

Dept. 327 - Department of Human Services - House Action

This amendment adds an emergency clause.

Date: 3-28-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2403

House APPROPRIATIONS Committee

☐ Subcommittee on _____

or

☐ Conference Committee

Legislative Council Amendment Number

18345.0202

Action Taken

Motion to Amend

Motion Made By

Rep. Carlisle

Seconded
By

Rep. Martinson

Representatives	Yes	No	Representatives	Yes	No
Timm - Chairman					
Wald - Vice Chairman					
Rep - Aarsvold			Rep - Koppelman		
Rep - Boehm			Rep - Martinson		
Rep - Byerly			Rep - Monson		
Rep - Carlisle			Rep - Skarphol		
Rep - Delzer			Rep - Svedjan		
Rep - Glassheim			Rep - Thoreson		
Rep - Gulletson			Rep - Warner		
Rep - Huether			Rep - Wentz		
Rep - Kernpenich					
Rep - Kerzman					
Rep - Kliniske					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

add emergency clause

passed

Date: 3-28-01
Roll Call Vote #: 2

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2403

House APPROPRIATIONS Committee

☐ Subcommittee on _____

or

☐ Conference Committee

Legislative Council Amendment Number 18345.0202

Action Taken DO PASS AS Amended

Motion Made By Rep. Kliniske Seconded By Rep. Wald

Representatives	Yes	No	Representatives	Yes	No
Timm - Chairman	✓				
Wald - Vice Chairman	✓				
Rep - Aarsvold	✓		Rep - Koppelman	✓	
Rep - Boehm	✓		Rep - Martinson	✓	
Rep - Byerly		✓	Rep - Monson	✓	
Rep - Carlisle	✓		Rep - Skarphol	✓	
Rep - Delzer		✓	Rep - Svedjan		
Rep - Glassheim	✓		Rep - Thoreson	✓	
Rep - Guleson	✓		Rep - Warner	✓	
Rep - Huether	✓		Rep - Wentz	✓	
Rep - Kempenich	✓				
Rep - Kerzman	✓				
Rep - Kliniske	✓				

Total (Yes) 18 No 2

Absent 1

Floor Assignment Rep. Warner

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

for expenses of members of the board and the financing advisory group for review and assistance provided for the project."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2403, as engrossed: Appropriations Committee (Rep. Timm, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (18 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2403 was placed on the Sixth order on the calendar.

In addition to the amendments adopted by the House as printed on page 964 of the House Journal, Engrossed Senate Bill No. 2403 is amended as follows:

Page 1, line 3, after "program" insert "; and to declare an emergency"

Page 1, after line 11, insert:

"SECTION 2. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

Dept. 327 - Department of Human Services - House Action

This amendment adds an emergency clause.

REPORT OF STANDING COMMITTEE

SCR 4048: Government and Veterans Affairs Committee (Rep. M. Klein, Chairman) recommends DO PASS and BE PLACED ON THE CONSENT CALENDAR (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SCR 4048 was placed on the Tenth order on the calendar.

MOTION

REP. BELTER MOVED to suspend rule 508 to delay bills out of committee until the sixty first day, which motion prevailed.

MOTION

REP. MONSON MOVED that the absent member be excused, which motion prevailed.

MOTION

REP. MONSON MOVED that the House be on the Fifth, Twelfth, and Sixteenth orders of business and at the conclusion of those orders, the House stand adjourned until 12:30 p.m., Thursday, March 30, 2001, which motion prevailed.

The House stood adjourned pursuant to Representative Monson's motion.

MARK L. JOHNSON, Chief Clerk

2001 TESTIMONY

SB 2403

SENATE BILL 2403
REPRESENTATIVE JUDITH LEE, CHAIRWOMAN
SENATE HUMAN SERVICES COMMITTEE
FEBRUARY 6, 2001

GOOD MORNING, MADAME CHAIRMAN AND MEMBERS OF THE SENATE HUMAN SERVICES COMMITTEE. FOR THE RECORD, MY NAME IS RALPH KILZER, SENATOR FROM DISTRICT 47, WHICH IS THE NORTHWEST PART OF BISMARCK.

SENATE BILL 2403 IS SPONSORED AT THE REQUEST OF A CONSTITUENT. I AM HAPPY TO SPONSOR THE BILL, BECAUSE A FEW MEDICAID RECIPIENTS OVER THE AGE OF 21 ARE NOT RECEIVING THE SERVICE THAT IS REQUESTED AND NEEDED.

THE PROBLEM IS THAT SOME CHILDREN AND ADULTS HAVE A PROGRESSIVE DEFORMITY OF THE UPPER PART OF THE MOUTH, PARTICULARLY THE PALETTE AND ALSO, SOMETIMES, OTHER FACIAL BONES. THIS DEFORMITY, WHETHER IT BE CONGENITAL OR ACQUIRED, CAN INTERFERE WITH DRINKING, EATING, AND SPEAKING.

IN SOME CASES, THE TONGUE CANNOT REACH THE HIGH ARCH, AND THUS CAUSES A SEVERE PROBLEM. IN MY OPINION, IF CORRECTION IS AVAILABLE, THAT WOULD CONSTITUTE A MEDICAL NECESSITY.

cut here → FEDERAL REGULATIONS PREVENT STATES FROM REDUCING SERVICES BASED UPON DIAGNOSIS, TYPE OF ILLNESS, OR CONDITION. FEDERAL REGULATIONS STATE THAT LIMITATIONS CAN BE IMPLEMENTED BASED ON MEDICAL NECESSITY OR ON UTILIZATION CONTROL PROCEDURE. IN MY OPINION, MEDICAL NECESSITY IN THESE TYPE OF CASES IS NOT QUESTIONED, AND I DO NOT FEEL THAT THE SERVICE OF PERFORMING OSTEOTOMIES WOULD BE ABUSED. I KNOW THAT THAT PROBLEM OF ABUSE MIGHT BE CONSTRUED BY ALLOWING THE ORTHODONTIC CORRECTION OF MALOCCLUSION PROBLEMS. BUT I AM THINKING MAINLY OF DEFORMITIES THAT CAUSE A SIGNIFICANT FUNCTIONAL IMPAIRMENT, AS NOTED IN THE BILL.

CERTAINLY, IF THE CRITERIA WOULD BE SET BY THE DEPARTMENT OF HUMAN SERVICES, THE PROBLEM OF OVER-UTILIZATION COULD BE SET ASIDE BY THE ESTABLISHED CRITERIA.

**SENATE BILL 2403
REPRESENTATIVE JUDITH LEE, CHAIRWOMAN
SENATE HUMAN SERVICES COMMITTEE
FEBRUARY 6, 2001**

THIS IS A PROBLEM THAT CURRENTLY EXISTS, PARTICULARLY FOR RECIPIENTS OF MEDICAID OVER THE AGE OF 21. IF THERE ARE OTHER SOLUTIONS TO THIS PROBLEM, I WOULD BE GLAD TO HEAR ABOUT THEM.

HOW MANY PEOPLE ARE AFFECTED? ROUGH ESTIMATES ARE BETWEEN FIVE AND TEN PATIENTS WHO ARE BACKLOGGED. ONCE THESE PEOPLE ARE TREATED, THE ESTIMATE IS ONE OR TWO NEW PATIENTS PER YEAR.

I WOULD BE HAPPY TO ANSWER ANY QUESTIONS. THANK YOU FOR YOUR TIME.

SENATE BILL 2403
Human Services Committee

Testimony by Mathew C. Schwarz
February 6, 2001

Good Morning!

Madam Chair, Mr. Vice-chair, and Members of the Committee.

My name is Matt Schwarz. I live in Bismarck (District 47) with my wife Marcia, and two daughters, Stephanie, 26, and Jessica 22.

I am here to testify, as a parent, in support of Medicaid coverage for orthodontia after age 21.

Our daughters have Muscular Dystrophy and due to complications at birth ended up with mental retardation. Jessica is on life support. My wife, a Registered Nurse, has devoted her entire career to care for our two girls, giving up working out of the home. She now herself also uses a wheelchair as she also has the same disability.

Our daughters both graduated from Bismarck High School and are both working part time. Stephanie, who always wanted to work with children, loves her job at BECEP as a teacher's aide. Jessica daily looks forward to her job, formerly at Dakota Radiology (clinic), and, now at Bismarck State College, shredding paper. We are very proud of them. Nevertheless, due to many medical issues, it has not been an easy life for our family over the last 26 years. Both of them were required by the State to enroll in the Medicaid program at age 18 so funds could be leveraged from the federal government.

One of the problems associated with our daughters' underlying disease is severe deformation of the mouth, including high pallet, lack of space in the mouth, the tongue continually pushes teeth out of place.

At age 13, Stephanie had maxillo-facial surgery whereby a cross-section of her jaw was

removed and reattached with miscellaneous hardware. This improved her condition but **she continues to need followup treatment from an orthodontist for the rest of her life or her condition will reverse, deteriorate and cause considerably more serious problems related to her eating, drinking, and speaking.** There is a high probability her resulting general health would then also be at risk! She presently continues to receive speech therapy every week.

Jessica also needs the same surgical procedure as Stephanie. But because of her fragile medical condition, our doctors advised us the risk of surgery would be too great. As an option, various orthodontic treatments, although not as good as the surgery, would greatly improve Jessica's functional ability to eat, drink, and speak. This was not a problem when there was Medicaid coverage under age 21.

About 2-1/2 years ago Stephanie's knee gave out and she fell down the stairs. She knocked out her front teeth and fractured her upper jaw. In making a long story short, she had surgery, had her mouth wired together, and a team of three: a dentist, an oral surgeon, and an orthodontist, have come up with a treatment program for Stephanie, including orthodontic services. Our family had no idea that after age 21, the coverage for her orthodontics would discontinue. We were shocked when we were informed by Mr. Zentner (Medicaid Director, DHS) that there was absolutely no orthodontic coverage for anyone on Medicaid after age 21, no matter what the condition. In fact, it appears the DHS has the authority to cover these types of needs:

§ 75-02-02-08 Amount, duration and scope of medical assistance.....

- 2.c. Coverage may not be extended and payment may not be made for orthodontia prescribed for eligible recipients, except for orthodontia necessary to correct serious functional problems. Apparently, for whatever reason, the DHS has decided to ignore this provision of the Rules.

This creates a serious dilemma for our daughters. About two weeks ago Stephanie had her front teeth removed after a long attempt to save them failed. Infection had set in. We are presently faced with major orthodontic services. **This is not simply braces for straightening teeth, but treatment for major life functions including the ability to eat, drink, and speak!**

It is our understanding the federal Medicaid program provided for and suggests State Medicaid coverage for such orthodontics, including funds. **This coverage is vital for people on Medicaid whose underlying disability and/or an unfortunate accident results in a need for this orthodontic service.**

Please do not leave our adult daughters behind on the coverage they need as a result of their disability and/or unfortunate accident. The long term implications, including costs, if these orthodontic services are not provided put Stephanie and Jessica at risk.

WHO WILL TAKE CARE OF THESE NEEDS WHEN WE AS PARENTS ARE NO LONGER AVAILABLE FOR OUR ADULT CHILDREN???

Our family sincerely requests you support this bill to guarantee orthodontic services for serious functional problems to our adult children.

Thank you!

Fifty-seventh Legislative Assembly

Senate Human Services Committee

Senate Bill 2403

Hearing Scheduled: 11:00 a.m., Tuesday, February 6, 2001

Testimony of David Boeck, In Support of SB 2403

Chairman Lee and Committee Members:

Good morning. I am David Boeck, a State employee and lawyer for the Protection & Advocacy Project, which provides advocacy services for people with disabilities including people who may be affected by the passage of SB 2403.

This bill would direct the Department of Human Services to offer orthodontic services through the Medicaid program to adults who are eligible for Medicaid only when (1) that Medicaid recipient has a significant functional impairment in drinking, eating, or speaking and (2) the orthodontic services provided are reasonably likely to correct or mitigate that functional impairment. This would not authorize orthodontic services for cosmetic purposes.

The purpose of the Medicaid program in North Dakota is: "to provide medical care and services to persons whose income and resources are insufficient to meet such costs, and further to provide preventive, rehabilitative, and other services to help families and individuals to retain or

attain capability for independence or self-care." [N.D.C.C. § 50-24.1-01.]

Orthodontic care is consistent with this purpose when provided under the circumstances identified in the bill.

State law authorizes the Department of Human Services to operate the Medicaid program. [N.D.C.C. § 50-06-01.4 (8).] The Department of Human Services has adopted rules to implement the Medicaid program. [See N.D.A.C. chapters 75-02-02 and 75-02-02.1.]

The Department of Human Services' rules appear to authorize orthodontic care for adult Medicaid recipients. That is, under a rule entitled "Amount, duration, and scope of medical assistance" the Department of Human Services declares Medicaid payments may be made for "orthodontia necessary to correct serious functional problems." [N.D.A.C. § 75-02-02-08 (2)(c).] However, the Department of Human Services has submitted a Medicaid "state plan" to the federal government that does not include orthodontic services for adult Medicaid recipients and the Department of Human Services does not allow Medicaid payments for orthodontic services for adult Medicaid recipients.

SB 2403 does not define "reasonably likely to correct or mitigate" or "significant functional impairment." The Department of Human Services would adopt rules to define those terms.

When orthodontic care can correct a serious functional impairment, it may be the least expensive treatment over the long run and much better

Fifty-seventh
Legislative Assembly

than any other treatment in terms of patient care. That is, if orthodontic care is not available, complications may follow. The Medicaid program would likely provide payment for medical care necessitated by a complication. For example, if a Medicaid patient cannot eat, the patient will need nutrition through some extraordinary alternative means. This could be quite expensive to the Medicaid program if the patient lives very long on an extraordinary alternative means of nourishment. In these circumstances, orthodontic care may be the most cost effective treatment available and may reduce Medicaid program expenditures overall.

Please let me know if you would like me to draft a revision of any part of the draft bill. Thank you.

Attachment to Testimony of David Boeck

Excerpts from current North Dakota Medicaid Rules,
which have the force and effect of law:

N.D.A.C.

§ 75-02-02-08. Amount, duration, and scope of medical assistance.

2. The following limitations apply to medical and remedial care and services covered or provided under the medical assistance program:

c. Coverage may not be extended and payment may not be made for **orthodontia** prescribed for eligible recipients, **except for orthodontia necessary to correct serious functional problems.**

6.

a. Effective January 1, 1994, and for so long thereafter as the department may have in effect a waiver (issued pursuant to 42 U.S.C. 1396n(b)(1)) of requirements imposed pursuant to 42 U.S.C. chapter 7, subchapter XIX, no payment may be made, except as provided in this subsection, for otherwise covered services provided to otherwise eligible recipients:

e. **Payment may be made** for the following **medically necessary covered services** whether or not provided by, or upon referral from, a primary care physician:

(10) Dental services, **including orthodontic services only** upon referral from **early and periodic screening, diagnosis, and treatment;**

History: Amended effective September 1, 1978; September 2, 1980; February 1, 1981; November 1, 1983; May 1, 1986; November 1, 1986; November 1, 1987; January 1, 1991 July 1, 1993 January 1, 1994; January 1, 1996; July 1, 1996; January 1, 1997; May 1, 2000; amendments partially voided by the Administrative Rules Committee effective June 5, 2000.

General Authority: N.D.C.C. 50-24.1-04

Law Implemented: N.D.C.C. 50-24.1-04; 42 U.S.C. 1396n(b)(1); 42 C.F.R. 431.53, 42 C.F.R. 431.110, 42 C.F.R. 435.1009, 42 C.F.R. Part 440, 42 C.F.R. Part 441, subparts A, B, & D

**TESTIMONY BEFORE THE SENATE HUMAN SERVICES COMMITTEE
REGARDING SENATE BILL 2403
FEBRUARY 6, 2001**

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

The bill would require the Medicaid Program to provide orthodontic dental services to eligible adult Medicaid recipients.

Prior to April 1990, the North Dakota Medicaid Program did include orthodontia as a covered service. Services were primarily available to children. Approval was based on a Malocclusion index that measures the severity of orthodontic problems. Approval was limited to those cases that exceeded a specific point total. During this period, the Department received criticism for covering these services because of the cosmetic issues associated with orthodontics and the fact that many families with income in excess of the Medicaid limits were unable to afford these expensive services. At the same time, the Department was trying to increase access to routine dental services such as examinations, cleanings, X-rays and fillings.

Many states limit the types of dental services they provide to adults. Some only pay for emergency cares to deal with immediate recipient pain. Others pay for only limited basic routine dental care. North Dakota provides for a wide array of preventive and restorative services to our adult Medicaid population.

In addition, the Healthy Steps Program does not include an orthodontic benefit.

Based on the above issues, the Department, in April 1990, submitted a state plan amendment that eliminated orthodontic services for all recipients participating in

the Medicaid Program. Program emphasis and funding was then concentrated in providing basic preventive and restorative services to recipients of the program.

The federal government did approve the plan. However, they required us to continue to provide orthodontic services to children who receive Early, Periodic, Screening, Diagnosis and Treatment Services (EPSDT) through the Medicaid Program. Children go through a screening process that includes dental. If severe problems were noted, that met the above noted threshold, the federal government mandated that we provide orthodontic services to those children.

It has been difficult to retain an adequate number of orthodontists to provide needed services to our children. Many are reluctant to see Medicaid recipients because they have an adequate private pay base and must take a lower fee when seeing our recipients. Recently two orthodontists who were willing to take our recipients have indicated they will be reducing the number of children they will be treating in the future. This will create a very difficult access problem for children who require orthodontic services that must be covered by the program. The addition of orthodontic services for children who do not go through the EPSDT process and adults will make a difficult access problem worse. The Department believes it is prudent to use our limited resources to provide services to our children and therefore believe that our current policy regarding this service should not be changed.

The fiscal note for this bill was based on an estimate that one-half of one percent of adults between 21 and 45 would qualify for orthodontic services based on the criteria contained in the bill. We estimated that 53 individuals per year would receive services. The current fee for children is \$2,720, which is paid in a lump sum to the provider when treatment begins. Adult cases are generally more difficult and take more time. For that reason, we estimated a fee of about \$3,546 per case. The cost to provide orthodontic services would cost about \$380,011, of which \$114,497 are general funds.

We oppose this bill because the additional funds were not included in the Executive budget and the need to concentrate funding for basic dental services provided to recipients of the Medicaid Program.

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

The Department of Human Services through the state plan amendment make available orthodontic services for those patients over age 21 that have a deforming malocclusion secondary to a gross skeletal malrelationship or trauma that is compromising the health of the individual. A criterion index for case acceptance would be for those individuals with one or more of the following:

1. an overjet in excess of 12 mm.
2. an open-bite in excess of 5mm.
3. an under-bite in excess of 5mm.
4. an asymmetry in excess of 8mm.

February 6, 2001

Testimony before Senate Human Services Committee

Red River Room

Senator Judy Lee, Chairman

Senate Bill 2403

Chairman Judy Lee, members of the Senate Human Services Committee, my name is Joe Cichy and I represent the North Dakota Dental Association. It is with some difficulty that the North Dakota Dental Association appears here opposing Senate Bill 2403. While we believe that the intent and goal of the legislation is admirable, we also believe that the effect that it will have will, in the overall scheme of things, be negative. It is our understanding that this mandate is not funded. Presently medicaid is experiencing a deteriorating access problem, due to the declining workforce and limited fee reimbursement for adult medicaid patients. The Association believes that mandating orthodontic services to adults will magnify these problems by competing for limited medicaid dollars already being spent for children and emergency services for adults.

This Committee recommended due pass on the donated dental service bill. If the Association's information is correct concerning the situation that prompted the introduction of this bill, i.e. an adult patient with disabilities in need of orthodontic treatment, that is specifically the type of case that would qualify for the DDS program, if there were an orthodontist participating in the program. According to Dr. Larry Coffee, the administrator of the DDS program from Denver, it does not matter if the patient is eligible for medical assistance or even if the procedure is generally a covered procedure, if the patient has barriers to care, be it financial, physical, or otherwise, they are eligible to be treated under the DDS program. That program's eligibility is intended to be flexible and humanitarian. The DDS program could provide a mechanism for this patient to be treated.

Therefore, not because the Dental Association objects to the intent of the legislation, but because it believes that there would be a deleterious effect on the medicaid program in other areas the Association asked for the Committee to vote do not pass on this legislation.

SB 2403

SENATE BILL 2403

Appropriations Committee

Testimony by Mathew C. Schwarz

February 19, 2001

Good Morning!

Chairman Nething and Members of the Committee.

My name is Matt Schwarz. I live in Bismarck (District 47) with my wife Marcia, and two daughters, Stephanie, 26, and Jessica 22.

I am here to testify, as a parent, in support of Medicaid coverage for orthodontia after age 21.

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Our daughters both graduated from Bismarck High School and are both working part time. Stephanie, who always wanted to work with children, loves her job at BECEP as a teacher's aide. Jessica daily looks forward to her job, formerly at Dakota Radiology (clinic), and, now at Bismarck State College, shredding paper. We are very proud of them. Nevertheless, due to many medical issues, it has not been an easy life for our family over the last 26 years. Both of them were required by the State to enroll in the Medicaid program at age 18 so funds could be leveraged from the federal government.

One of the problems associated with our daughters' underlying disease is severe deformation of the mouth, including high pallet, lack of space in the mouth, the tongue continually pushes teeth out of place.

At age 13, Stephanie had maxillo-facial surgery whereby a cross-section of her jaw was removed and reattached with miscellaneous hardware. This improved her condition but **she continues to need followup treatment from an orthodontist for the rest of her life or her condition will reverse, deteriorate and cause considerably more serious problems related to her eating, drinking, and speaking.** There is a high probability her resulting general health would then also become at risk! She presently continues to receive speech therapy every week.

Jessica also needs the same surgical procedure as Stephanie. But because of her fragile medical condition, our doctors advised us the risk of surgery would be too great. As an option, various orthodontic treatments, although not as good as the surgery, would greatly improve Jessica's functional ability to eat, drink, and speak. This was not a problem when there was Medicaid coverage under age 21.

About 2-1/2 years ago Stephanie's knee gave out and she fell down the stairs. She knocked out her front teeth and fractured her upper jaw. Making a long story short, she had surgery, had her mouth wired together, and a team of three: a dentist, an oral surgeon, and an orthodontist, have come up with a treatment program for Stephanie, including orthodontic services. Our family had no idea that after age 21, the coverage for her orthodontics would discontinue. We were shocked when we were informed by Mr. Zentner (Medicaid Director, DHS) that there was absolutely no orthodontic coverage for anyone on Medicaid after age 21, no matter what the condition. In fact, it appears the DHS has the authority to cover these types of needs:

§ 75-02-02-08 Amount, duration and scope of medical assistance.....

2.c. Coverage may not be extended and payment may not be made for orthodontia prescribed for eligible recipients, except for orthodontia necessary to correct serious functional problems.

Apparently, for whatever reason, the DHS has decided to ignore this provision of the Rules.

This creates a serious dilemma for our daughters. About four weeks ago Stephanie had her front teeth removed after a long attempt to save them failed. Infection had set in.

We are presently faced with major orthodontic services. **This is not simply braces for straightening teeth, but for major life functions including the ability to eat, drink, and speak!**

It is our understanding the federal Medicaid program provided for and suggests State Medicaid coverage for such orthodontics, including funds. **This coverage is vital for people whose underlying disability and/or an unfortunate accident results in a need for this orthodontic service.**

Please do not leave our adult daughters behind on the coverage they need as a result of their disability and/or unfortunate accident. The long term implications, including costs, if these orthodontic services are not provided put Stephanie and Jessica at risk.

WHO WILL TAKE CARE OF THESE NEEDS WHEN WE AS PARENTS ARE NO LONGER AVAILABLE FOR OUR ADULT CHILDREN???

Our family sincerely requests you support this bill to guarantee orthodontic services for serious functional problems to our adult children.

Thank you!

**TESTIMONY BEFORE THE SENATE APPROPRIATIONS COMMITTEE
REGARDING SENATE BILL 2403
FEBRUARY 19, 2001**

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

The bill would require the Medicaid Program to provide orthodontic dental services to eligible adult Medicaid recipients.

Prior to April 1990, the North Dakota Medicaid Program did include orthodontia as a covered service. Services were available to children. Approval was based on a Malocclusion index that measures the severity of orthodontic problems. Approval was limited to those cases that exceeded a specific point total. During this period, the Department received criticism for covering these services because of the cosmetic issues associated with orthodontics and the fact that many families with income in excess of the Medicaid limits were unable to afford these expensive services. At the same time, the Department was trying to increase access to routine dental services such as examinations, cleanings, X-rays and fillings.

Many states limit the types of dental services they provide to adults. Some only pay for emergency cares to deal with immediate recipient pain. Others pay for only limited basic routine dental care. North Dakota provides for a wide array of preventive and restorative services to our adult Medicaid population.

In addition, the Healthy Steps Program does not include an orthodontic benefit.

Based on the above issues, the Department, in April 1990, submitted a state plan amendment that eliminated orthodontic services for all recipients participating in

the Medicaid Program. Program emphasis and funding was then concentrated in providing basic preventive and restorative services to recipients of the program.

The federal government did approve the plan. However, they required us to continue to provide orthodontic services to children who receive Early, Periodic, Screening, Diagnosis and Treatment Services (EPSDT) through the Medicaid Program. Children go through a screening process that includes dental. If severe problems were noted, that met the above noted threshold, the federal government mandated that we provide orthodontic services to those children.

It has been difficult to retain an adequate number of orthodontists to provide needed services to our children. Many are reluctant to see Medicaid recipients because they have an adequate private pay base and must take a lower fee when seeing our recipients. Recently two orthodontists who were willing to take our recipients have indicated they will be reducing the number of children they will be treating in the future. This will create a very difficult access problem for children who require orthodontic services that must be covered by the program. The addition of orthodontic services for children who do not go through the EPSDT process and adults will likely make a difficult access problem worse. The Department believes it is prudent to use our limited resources to provide services to our children and therefore believe that our current policy regarding this service should not be changed.

The Senate Human Services Committee did amend the bill in an attempt to limit the number of Medicaid recipients who could qualify for orthodontic services. In addition, we consulted with several orthodontists who provided the Department with additional guidelines that should limit the number of individuals who can qualify for this service. As a result, we lowered the original fiscal note from the original estimate of 53 cases per year to four cases per year. The current fee for children is \$2,720, which is paid in a lump sum to the provider when treatment begins. Adult cases are generally more difficult and take more time. For that

reason, we estimated a fee of about \$3,546 per case. Based on the new criteria we estimate the cost of the new service at \$28,680, of which \$8,641 are general funds.

If this bill passes we would suggest the committee change the word "shall" to "may" on line 8. If the Medicaid Program were required, because of fund shortages, to reduce services including dental services for adults, we would be obligated to provide orthodontic services while at the same time cutting basic services to adults such as dentures for the elderly.

While the Department understands that limited orthodontic service for adults may be considered as a legitimate service that could be provided under the North Dakota Medicaid Program, the Department supports Governor Hoeven's budget as submitted.

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

Good morning, my name is Brian Jespersen. I am an orthodontist in Bismarck and have been practicing for twenty years. I am a past president of the North Dakota Orthodontic Society and currently am president of the Midwest Society of Orthodontists which represents 1200 orthodontists in the Midwestern part of the United States.

I am speaking against Senate Bill #2403. This bill, which has admirable qualities in its intention to support the needs for orthodontic treatment of adult patients that qualify for Medicaid services, is certainly something that is not going to be a realistic service for the citizens of North Dakota.

As you may ~~or may not~~ know, in order to become qualified for orthodontic services, one has to be qualified with their local Social Service board and then referred to a Health Tracks screening nurse. This person does the best they can in evaluating the patient's degree of problem and then refers them to an orthodontic provider in their area only if there is a serious concern and the patient has a reasonable chance of being accepted under the guidelines for this program. The patient then needs to be seen for an evaluation in an orthodontic setting and finally referred to an office at the capitol for the final stamp of approval. A patient would have to be involved with at least four different individuals before approval. To consider offering services to a broader segment of the population would ~~also~~ involve all levels of this process.

We continue to have a dental access problem in the state in that there are not enough providers in my profession to see the patients for examinations and ultimately treat those that would qualify. There is a lack of funds for supporting all of the cases that could be approved annually. We feel as a state society that we are doing the best we can to adequately treat

adolescents and children that fall under the guidelines set by our State Social Service Program. I personally do not see the situation improving at all and, actually, I am very concerned that in the years to come if the reimbursement is not improved that we will lose providers for orthodontic services in North Dakota and may ultimately not be able to continue to provide for these patients. At the present time, we have twelve practicing orthodontists in North Dakota who all seem to be in agreement that, at best, the reimbursement for providing orthodontic services to Medicaid patients is a break-even venture. As healthcare providers involved in private practices, we are in a position where we have to seriously limit the number of patients that we can treat under this program.

In summary, I feel that I am speaking on behalf of the twelve orthodontists that are currently active in the North Dakota Society of Orthodontics. We are in opposition to the bill. At this time, I would be available to answer any questions. Thank you.

**HOUSE HUMAN SERVICES COMMITTEE
SENATE BILL 2403
SENATOR RALPH KILZER
MARCH 7, 2001**

MY NAME IS RALPH KILZER, A SENATOR FROM DISTRICT 47, IN NORTHWEST BISMARCK. I APPEAR BEFORE YOU TODAY TO ASK FOR YOUR SUPPORT FOR THE BILL THAT I HAVE INTRODUCED. SENATE BILL 2403 CONCERNS ORTHODONTIC CARE FOR PATIENTS WHO ARE IN THE MEDICAID PROGRAM, AND ARE MORE THAN 21 YEARS OF AGE.

THIS BILL WAS BROUGHT AT THE REQUEST OF A CONSTITUENT WHO HAS FAMILY MEMBERS WITH SEVERE ORTHODONTIC PROBLEMS ASSOCIATED WITH CONGENITAL AND PROGRESSIVE NEURALGIC DISORDERS. THERE ARE NOT VERY MANY OF THESE ADULT PATIENTS IN THIS STATE. HOWEVER, THEY ARE IN SEVERE NEED OF ORTHODONTIC CARE.

THE DEPARTMENT OF HUMAN SERVICES DOES NOT PROVIDE ORTHODONTIC CARE FOR ADULTS. IN THE ORIGINAL BILL, IT WAS ESTIMATED THAT THERE WOULD BE FIFTY-THREE PATIENTS WHO WOULD BE ELIGIBLE FOR ORTHODONTIC CARE, AT A COST OF ABOUT \$400,000.00 IN THE NEXT BIENNIUM. THE AMENDED FORM THAT IS BEFORE YOU TODAY STATES THAT ONLY THOSE PATIENTS WHO HAVE ASSOCIATED ORAL MAXILLOFACIAL SURGERY BECAUSE OF THEIR DEFORMITY WOULD BE ELIGIBLE. THIS LOWERED THE ESTIMATED NUMBER OF PATIENTS TO LESS THAN FIVE, AND A FISCAL NOTE OF ABOUT \$20,000.00, OF WHICH \$8600.00 WOULD BE GENERAL FUNDS, OVER THE NEXT BIENNIUM.

AFTER THE BACKLOG OF CASES COME UNDER TREATMENT, I WOULD ANTICIPATE THAT THE FUTURE NUMBER OF PATIENTS WOULD ONLY BE ONE OR TWO PER BIENNIUM.

I WOULD BE HAPPY TO ANSWER ANY QUESTIONS.

Matt Schwarz
Proposed Amendment

PROPOSED AMENDMENTS TO SENATE BILL 2403

A BILL for an Act to create and enact a new section to chapter 50-24.1 of the North Dakota Century Code, relating to the provision of medically necessary oral maxillofacial or orthodontic services through the Medicaid program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-24.1 of the North Dakota Century Code is created and enacted as follows:

Oral maxillofacial and orthodontic services - medical necessity. The department of human services shall make oral maxillofacial surgical services and orthodontic services in conjunction with, or in lieu of such surgical services, available through the Medicaid program to anyone who is a Medicaid recipient if oral maxillofacial or orthodontic services are reasonably likely to correct or mitigate a congenital or acquired deformity associated with a significant functional impairment in drinking, eating, speaking, or swallowing.

**TESTIMONY BEFORE THE HOUSE HUMAN SERVICES COMMITTEE
REGARDING SENATE BILL 2403
MARCH 7, 2001**

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

The bill would require the Medicaid Program to provide orthodontic dental services to eligible adult Medicaid recipients.

Prior to April 1990, the North Dakota Medicaid Program did include orthodontia as a covered service. Services were available to children. Approval was based on a Malocclusion index that measures the severity of orthodontic problems. Approval was limited to those cases that exceeded a specific point total. During this period, the Department received criticism for covering these services because of the cosmetic issues associated with orthodontics and the fact that many families with income in excess of the Medicaid limits were unable to afford these expensive services. At the same time, the Department was trying to increase access to routine dental services such as examinations, cleanings, X-rays and fillings.

Many states limit the types of dental services they provide to adults. Some only pay for emergency cares to deal with immediate recipient pain. Others pay for only limited basic routine dental care. North Dakota provides for a wide array of preventive and restorative services to our adult Medicaid population.

In addition, the Healthy Steps Program does not include an orthodontic benefit.

Based on the above issues, the Department, in April 1990, submitted a state plan amendment that eliminated orthodontic services for all recipients participating in

the Medicaid Program. Program emphasis and funding was then concentrated in providing basic preventive and restorative services to recipients of the program.

The federal government did approve the plan. However, they required us to continue to provide orthodontic services to children who receive Early, Periodic, Screening, Diagnosis and Treatment Services (EPSDT) through the Medicaid Program. Children go through a screening process that includes dental. If severe problems were noted, that met the above noted threshold, the federal government mandated that we provide orthodontic services to those children.

It has been difficult to retain an adequate number of orthodontists to provide needed services to our children. Many are reluctant to see Medicaid recipients because they have an adequate private pay base and must take a lower fee when seeing our recipients. Recently two orthodontists who were willing to take our recipients have indicated they will be reducing the number of children they will be treating in the future. This will create a very difficult access problem for children who require orthodontic services that must be covered by the program. The addition of orthodontic services for children who do not go through the EPSDT process and adults will likely make a difficult access problem worse. The Department believes it is prudent to use our limited resources to provide services to our children and therefore believe that our current policy regarding this service should not be changed.

The Senate did amend the bill in an attempt to limit the number of Medicaid recipients who could qualify for orthodontic services. In addition, we consulted with several orthodontists who provided the Department with additional guidelines that should limit the number of individuals who can qualify for this service. As a result, we lowered the original fiscal note from the original estimate of 53 cases per year to four cases per year. The current fee for children is \$2,720, which is paid in a lump sum to the provider when treatment begins. Adult cases are generally more difficult and take more time. For that reason, we estimated a

fee of about \$3,546 per case. Based on the new criteria we estimate the cost of the new service at \$28,680, of which \$8,641 are general funds.

If this bill passes we would suggest the committee change the word "shall" to "may" on line 8. If the Medicaid Program were required, because of fund shortages, to reduce services including dental services for adults, we would be obligated to provide orthodontic services while at the same time cutting basic services to adults such as dentures for the elderly.

While the Department understands that limited orthodontic service for adults may be considered as a legitimate service that could be provided under the North Dakota Medicaid Program, the Department notes that the cost to implement this service is not included in the Executive budget.

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

Testimony to House Appropriations Committee
Senate Bill 2403
Presented by Senator Ralph L. Kilzer
March 27, 2001

3/27/01
SB 2403

Senate Bill 2403 concerns orthodontic care for patients who are in the Medicaid Program and are over 21 years of age. In its original form, the Department of Human Services fiscal note estimated that 53 patients would be eligible for treatment, at a cost of nearly \$400,000.00 in the next biennium.

The bill before you has limited this to patients who have surgical correction of their maxillofacial area because of a deformity. Or in cases that cannot stand surgery, we use the term, in lieu of. It is estimated that less than 5 patients would be eligible for this very special surgery or treatment, and a fiscal note of around \$20,000.00, of which \$8,600.00 are general funds, would be a reasonably accurate figure.

There is a question of whether or not, under existing law, the patients who need this treatment would be eligible for it. The bill was brought by me at the request of a constituent, to make sure that patients who have deformities where the tongue does not match the roof of the mouth could be treated, and would be less likely to aspiration and other problems where the tongue cannot control the food and air as is needed in drinking, swallowing, and speaking.

If there are any questions, I would be glad to attempt to answer them for you.

3/27/01

TESTIMONY BEFORE THE HOUSE APPROPRIATIONS COMMITTEE
REGARDING SENATE BILL 2403

MARCH 27, 2001

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

The bill would require the Medicaid Program to provide orthodontic dental services to eligible adult Medicaid recipients.

Prior to April 1990, the North Dakota Medicaid Program did include orthodontia as a covered service. Services were available to children. Approval was based on a Malocclusion index that measures the severity of orthodontic problems. Approval was limited to those cases that exceeded a specific point total. During this period, the Department received criticism for covering these services because of the cosmetic issues associated with orthodontics and the fact that many families with income in excess of the Medicaid limits were unable to afford these expensive services. At the same time, the Department was trying to increase access to routine dental services such as examinations, cleanings, X-rays and fillings.

Many states limit the types of dental services they provide to adults. Some only pay for emergency cares to deal with immediate recipient pain. Others pay for only limited basic routine dental care. North Dakota provides for a wide array of preventive and restorative services to our adult Medicaid population.

In addition, the Healthy Steps Program does not include an orthodontic benefit.

Based on the above issues, the Department, in April 1990, submitted a state plan amendment that eliminated orthodontic services for all recipients participating in

the Medicaid Program. Program emphasis and funding was then concentrated in providing basic preventive and restorative services to recipients of the program.

The federal government did approve the plan. However, they required us to continue to provide orthodontic services to children who receive Early, Periodic, Screening, Diagnosis and Treatment Services (EPSDT) through the Medicaid Program. Children go through a screening process that includes dental. If severe problems were noted, that met the above noted threshold, the federal government mandated that we provide orthodontic services to those children.

It has been difficult to retain an adequate number of orthodontists to provide needed services to our children. Many are reluctant to see Medicaid recipients because they have an adequate private pay base and must take a lower fee when seeing our recipients. Recently two orthodontists who were willing to take our recipients have indicated they will be reducing the number of children they will be treating in the future. This will create a very difficult access problem for children who require orthodontic services that must be covered by the program. The addition of orthodontic services for children who do not go through the EPSDT process and adults will likely make a difficult access problem worse. The Department believes it is prudent to use our limited resources to provide services to eligible children.

The Senate did amend the bill in an attempt to limit the number of Medicaid recipients who could qualify for orthodontic services. In addition, we consulted with several orthodontists who provided the Department with additional guidelines that should limit the number of individuals who can qualify for this service. As a result, we lowered the original fiscal note from an estimate of 53 cases per year to four cases per year. The current fee for children is \$2,720, which is paid in a lump sum to the provider when treatment begins. Adult cases are generally more difficult and take more time. For that reason, we estimated a

fee of about \$3,546 per case. Based on the new criteria, we estimate the cost of the new service at \$28,680, of which \$8,641 are general funds.

If this bill passes, the Medicaid Program will be required to fund adult orthodontic services even though it is an optional service. If the Department would need to reduce covered services because of fund shortages, we would be obligated to provide orthodontic services while at the same time cutting basic services to adults such as dentures for the elderly.

While the Department understands that limited orthodontic service for adults may be considered as a legitimate service that could be provided under the North Dakota Medicaid Program, the Department notes that the cost to implement this service is not included in the Executive budget.

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