

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2192

2005 SENATE HUMAN SERVICES

SB 2192

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2192

Senate Human Services Committee

☐ Conference Committee

Hearing Date January 17, 2005

Tape Number	Side A	Side B	Meter #
1	x		1388-6250
1		x	00-0432
2	x		00-1840
Committee Clerk Signature <i>Valley, Minerva</i>			

Minutes:

Chairman Lee opened the hearing on SB 2192.

All members were present.

Senator Richard Brown is a sponsor of this bill to help the ambulance services get reimbursement once they've performed their job. There are times when the ambulance service does everything they need to do, but are not reimbursed.

**Sen. Dever:** Have we had some discussion on this issue in the past, where people are calling 911 instead of a taxi?

Sen. Brown wasn't sure.

**Representative Bill Devlin, District 23 from Finley, cosponsor of SB 2192.**

See written testimony (Attachment 1)

**Dean Lampe, Executive Director of the North Dakota Emergency medical Services (EMS) Association.**

See written testimony (Attachment 2)

**Sen. Warner:** If a doctor orders the transport, is that covered

**Lampe:** Yes

**Chairman Lee:** If it's not a medical person who order the transport, what happens?

**Lampe:** In those kind of situations, there are appeals processes. This is the first step in enacting legislation that will enable the ambulance service to get reimbursement after the transport has been completed.

**Chairman Lee:** If you have two parallel circumstances and one individual was on medical assistance and the other on Blue Cross Blue Shield, what would be the difference in the changes that you would get reimbursed? What I'm hearing you say is that the insurance companies would have an appeals process, if the claim was denied; but that there is not an appeals process if that person is on medical assistance. Isn't there a bill in the House that would call for an appeals process to be established?

**Lampe:** You're correct on both assumptions. There is a bill in the House which the EMS has helped produce. We feel that this particular situation goes beyond the appeals process, there would be no appeal at this point. The ambulance service had no control, they had to legally respond to 911 or the physician's direction and this particular case would be exempted from any appeal. In all cases, that bill should be paid.

**Chairman Lee:** Then there would be a higher standard of payment for medical assistance than under the Blues or private insurance. This bill would say you're to be repaid no matter what.

**Lampe:** That is correct.

**Sen. Dever:** Is this a big problem?

**Lampe:** It isn't a large percentage, but we felt that it's so blatantly unfair that it needed legislation to correct.

**Neutral testimony: Maggie Anderson, Assistant Director of Medical Services for the Department of Human Services**

See written testimony (Attachment 3)

**Chairman Lee:** You say you *can* bill for charges, do you bill for charges?

**Anderson:** We do not bill the recipient if its denied, we would bill the ambulance provider, and they in turn would bill the recipient.

**Lampe:** To help answer that question, in general, most of our ambulance services can recognize a medical emergency without involving a physician. In a case where they decide to do a transport, the Department won't see a bill from the ambulance company. The Department's statistics will only contain records where there is direct medical protocol..

**Chairman Lee:** Do the majority of ambulance companies bill patients if they are not reimbursed?

**Lampe:** Not sure.

**Sen. Lyson:** Should there be any reason the legislature shouldn't claim a federal match (last page of testimony)?

**Anderson:** We deny other services as not medically necessary. Our utilization process would be redirected (tape 1 side 1 meter 4240). There is an auditing concern.

**Sen. Lyson:** Is that because we don't have a proper protocol?

**Anderson:** Defining medical protocol would help, but it might be too broad. By implementing this, you're telling us to pay this without any utilization review.

**Chairman Lee:** Are there federal rules which have to be followed when reimbursements are taking place under medical assistance, so the policies that are in place in the state Department of Human Services would have to comply with the federal rules.

**Anderson:** We would have to make sure our definitions meshed with what the federal definitions for reimbursement were in order to claim federal dollars. We have not tried to compare the two definitions, because we have utilization review.

**Sen. Brown:** Is there a difference of opinion on what a medical necessity is?

**Anderson:** Apparently there is. We are reviewing on notes coming in. Common reasons to deny for example is a migraine. Other available transportation would be better.

**Sen. Brown:** If ambulance service is only transporting when they get an okay, then you deny, and this puts the ambulance service in a bad position. Is the ambulance protocol for transporting different than your utilization review people's

**Anderson:** We did not pull documentation on this, but I will. There might be a discrepancy in definition. We don't have a definition of proper medical protocol.

**Chairman Lee:** What process does Blue Cross have? Any different from your Department?

There was discussion that the ambulance companies are out on a limb because the term "medical necessity" is different. Also some concern about paying an ambulance company if they are owned by the county.

There is a fiscal note on this bill

**David Zentner,** gave his opinion on this bill. He said we need to balance the need for actual service. Utilization review is a second guess at times and puts the ambulance service in a bad situation sometimes. But with this bill, you're asking to pay blindly without any utilization

review. Should payors be required to pay without asking any questions. What is the intent of this bill?

Sen. Warner asked some medical questions not directly related to ambulance services.

(tape 1 side 2 meter 00-210)

Chairman Lee asked Mr. St. Augen from Blue Cross Blue Shield, North Dakota, about reimbursement to an ambulance service. Is there an appeals process and we're assuming BCBS doesn't pay every claim submitted for ambulance services? Mr. St. Augen said they will deny claims is not medically necessary, but the patient has the right to appeal. Our members sometimes have the means to pay the provider, but not those on medical assistance.

**Chairman Lee:** So the ambulance service gets stuck with the bill.

Chairman Lee adjourned the public hearing on SB 2192.

Chairman Lee opened general discussion on SB 2192--she was interested in the bill which requires an appeals process to be set up for medical assistance coverage (a House bill).

**Chairman Lee:** I'm not totally comfortable with having a higher standard of reimbursement for MA cases than it would be for privately insured individuals, even though a private insurance holder would be able to repay it.

**Sen. Lyson:** I agree, I don't like the way it's written. If they had the right to appeal it would be different. It would be difficult for ambulance companies to even get somebody to write up an appeal for them. I sympathize with the ambulance companies, but if you pay for everything right down the line, I'm not happy with that and its the way its written.

**Chairman Lee:** How about if we amended it to say something about the appeals process?

**Chip Thomas:** We have a bill that you may be interested in that deals with appeals discussions on the Senate side. This would capture workforce safety commercial carriers and the Department of Human Services, independent of the bill on the House side.

**Chairman Lee:** I would want to make sure they aren't slightly difference from one another and then have a race to see which one gets signed last.

**Thomas:** It would not be our intent to allow any of that to happen. We're looking for some kind of venue in which there are differences of opinions in terms of whether its a filed claim and/or coding mechanics or if there's a difference in medical judgment that would have an economic consequence; there'd be some mechanism in place that those disputes could use-on either side.

**Sen. Lyson:** When first responders get there, if they made contact with a doctor and the doctor said to transport, that should be paid, but I don't see that in this bill.

**Sen. Brown:** Isn't proper medical protocol enough?

**Sen. Lyson:** What is proper medical protocol? Didn't she (Maggie Anderson) say there isn't a definition for "proper medical protocol."

There was further discussion on this subject and the committee members saw the lack of fairness with ambulance reimbursement, "proper medical protocol, utilization review, and the fact that a better job could be done with this bill. Sen. Lyson would like to see it pass, but the wording wasn't good. Is the legislative intent being violated?

**Chairman Lee:** Would you be comfortable with an amendment that would discuss in some way having an appeals process for those bills that have been denied rather than going in and



establishing details on the medical protocol or do you want to have rules on the medical protocol?

**Sen. Lyson:** A lot of people volunteer their time in rural areas and don't have time to fill out pages of appeals.

**Chairman Lee:** If they're not willing to put some effort into an appeals process, then there's no point in having one, but I'm not comfortable in supporting a bill that gives blanket reimbursement either, because that opens another Pandora's box.

**Sen. Dever:** On page four of Mr. Lampe's testimony, reference chapter 23-27, the person with the ambulance service may refuse to transport assuming that the ambulance service has developed protocol that include under what circumstance they would refuse to transport.

**Sen. Warner:** The circumstance is they have had to talk to a doctor, that's the "under direct medical control"

Chairman Lee and Sen. Lyson said that wouldn't happen too often because of the liability. There was more discussion about transporting mechanisms (tape 2 side A 675-810).

Chairman Lee discussed her concern that utilization review would be bypassed if we gave blanket reimbursement for ambulance services to those on MA, even though those people wouldn't be able to pay anyway, but leaving UR out of the loop could mean trouble. More conversation about UR (tape 2 side A meter 950-1000)

**Chairman Lee:** I still have a difficult time with reimbursing MA people at a higher rate than private insurance people.

**Sen. Brown:** We do with prescriptions.

**Sen. Lyson:** The ambulance services in small communities with large elderly populations, have it the worst.

**Sen. Brown:** Todd Porter talked about this being an issue for his company.

**Sen. Dever:** Is the fiscal note based on current levels of denial?

Further discussion (tape 2 side A meter 1200-1600)

**Sen. Brown:** I'll volunteer to Todd Porter with our concerns. We don't want this to be revenue generator.

Chairman Lee concluded this discussion with saying we can wait to hear from Todd Porter. We need to figure out a way to fix this.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2192

Senate Human Services Committee

☐ Conference Committee

Hearing Date February 1, 2005

Tape Number	Side A	Side B	Meter #
x	x		1210-1410
Committee Clerk Signature <i>Cathy Kinnard</i>			

Minutes:

Chairman Lee opened discussion on SB 2192.

**Chairman Lee:** There is a bill in the House that calls for an appeals process for providers and Maggie Anderson talked about that last week--that they would have a process in place which people who were not the original committee be a part of the committee that would hear any appeals of providers about these sorts of things. Rep. Porter was comfortable with the idea that an appeals process be put in place recognizing that he wasn't crazy about a blank check for ambulance service providers even though we want them to be reimbursed appropriately.

**Senator Brown moved DO NOT PASS, seconded by Senator Dever**

**VOTE: 5 yeas, 0 nays, 0 absent Carrier Sen. Lyson**

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/12/2005

Bill/Resolution No.: SB 2192

**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.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>	\$0	\$0	\$0	\$14,323	\$0	\$14,377
<b>Expenditures</b>	\$0	\$0	\$7,747	\$14,323	\$8,360	\$14,377
<b>Appropriations</b>	\$0	\$0	\$7,747	\$14,323	\$8,360	\$14,377

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

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

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

This bill would amend and reenact section 50-24.4-16 of the NDCC relating to medical assistance reimbursement of ambulance services. The fiscal impact will be on the agency's regular appropriation.

**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.*

The department would receive Title XIX funds at the FMAP in effect during each federal fiscal year of the biennia; for 2005-07 revenue would equal \$14,323 and for 2007-09 revenue would equal \$14,377.

**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 effect of this bill for 2005-07 is to increase expenditures by \$22,070 in total; the increased expenditures would be funded by general funds of \$7,747 and federal title XIX funds of \$14,323. For 2007-09, total expenditures would increase to \$22,737 funded by general funds of \$8,360 and \$14,377 of federal title XIX funds.

**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 effect of this bill for 2005-07 is to increase appropriations by \$22,070 in total; the additional appropriation would be funded by general funds of \$7,747 and federal title XIX funds of \$14,323. For 2007-09, total appropriations required would be \$22,737 funded by general funds of \$8,360 and \$14,377 of federal title XIX funds.

<b>Name:</b>	Brenda Weisz	<b>Agency:</b>	Human Services
<b>Phone Number:</b>	328-2397	<b>Date Prepared:</b>	01/14/2005

Date: 2-1-05  
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2192

Senate Human Services Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Not Pass

Motion Made By Sen Brown Seconded By Sen Dever

Senators	Yes	No	Senators	Yes	No
Sen. Judy Lee - Chairman	✓		Sen. John Warner	✓	
Sen. Dick Dever - Vice Chairman	✓				
Sen. Richard Brown	✓				
Sen. Stanley Lyson	✓				

Total (Yes) 5 No 0

Absent 0

Floor Assignment Sen. Lyson

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

**REPORT OF STANDING COMMITTEE (410)**  
February 1, 2005 4:51 p.m.

**Module No: SR-21-1617**  
**Carrier: Lyson**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2192: Human Services Committee (Sen. J. Lee, Chairman) recommends DO NOT PASS (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2192 was placed on the Eleventh order on the calendar.**

**2005 TESTIMONY**

SB 2192

Good Morning Chairman Lee and members of the Senate Human Service Committee. It is a pleasure being here today.

For the record, I am Rep. Bill Devlin, District 23 from Finley. District 23 is a very rural district serving of Griggs and Nelson Counties along with parts of Benson, Eddy and Steele Counties.

I am here to offer my support and to urge a Do Pass recommendation from this committee on SB 2192.

My district is served almost entirely by volunteer ambulance squads. They are fully trained and meet all the qualifications required by the state. Most of these people take considerable continuing education and training up and beyond the requirements.

EMTs and other emergency personnel are often the difference between life and death for citizens across our state. At each and every call they make decisions based on the training they have been provided and serve our state exceedingly well.

However, many ambulance services struggle to keep their head above water as they are faced with increasing costs for training, equipment, vehicles, fuels and other costs. When they make a decision to transport a patient based on the proper medical protocols they are doing what their training tells them is the proper course of action for the well being of the patient.

The ambulance services in our state need to know when they follow all the proper protocols that their service will be reimbursed for making the run. That is all this bill does. It says if they follow all the proper procedures and protocols they will be reimbursed and not be second guessed by someone that never had to make that life and death decision in that situation and who has never seen the patient.

I urge you to give this bill a Do Pass recommendation and will be happy to answer any questions that you might have at this time.



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**59<sup>th</sup> North Dakota Legislative Assembly  
Senate Human Services Committee  
SB 2192, Reimbursement of Ambulance Services – Jan 17, 2005**

**North Dakota Emergency Medical Services Association**

Good morning, Chairperson Lee and members of the committee. My name is Dean Lampe, and I am the Executive Director of the North Dakota Emergency Medical Services (EMS) Association. Our association represents approximately 1600 individual EMS provider members throughout the state who primarily serve on North Dakota's 143 licensed ambulance services. On behalf of our membership, I am pleased to share with you this morning our thoughts concerning this bill and why we stand in support of this important legislation.

If enacted, this bill would provide reimbursement for pre-hospital emergency medical care (or, ambulance transports) when an ambulance service is dispatched by 9-1-1 and when there is "direct medical control" involved in the decision to transport the patient to a hospital. I have provided three citations for the committee's consideration. They are attached as page 4 of my testimony, and the first is Chapter 23-27-04. Subsection 2, "Standards for operators" found in NDCC dealing with Emergency Medical Services. This subsection allows for an ambulance service to refuse to transport an individual only if there is "direct medical control;" in other words, if the ambulance service actually involves a physician in the decision to transport or not to transport.

The second reference for the committee's consideration is in the center of page 4 of my testimony and that citation is contained in Administrative Rules, Title 75, dealing with Health and Human Services. In 75-02-02-03.2 Definitions, Sub-section 5, the term "Medical Emergency" is defined and sets out the "prudent layperson" standard as the threshold for an individual's personal determination of a medical emergency. Also, Sub-section 6 then defines "Medically Necessary," which I'll refer back to in a moment.

On this same page 4 of my testimony, Title 75 of HHS Rules goes on to establish the amount, duration, and scope of medical assistance; and, in 75-02-02-08, Sub-section 2 (h) limits covered services by not extending coverage for ambulance services which, in the department's determination, are not medically necessary.

With these background citations, I can explain the situation which SB 2192 is designed to remedy. This situation occurs when 9-1-1 dispatches an ambulance to a call. This dispatch is in response to a prudent layperson's determination of an emergency; and, it has also passed whatever screening protocols 9-1-1 may have exercised. When the ambulance crew reaches the scene, there may be a question as to whether or not the situation is, in fact, a "medical emergency" or if it is "medically necessary." At that point, if the ambulance service contacts the hospital to review the medical conditions and circumstances, and the hospital physician instructs the ambulance crew to transport the patient to the hospital, the ambulance service should be reimbursed for the transport. This is not what occurs now under the rules. The department, acting sometime later and from the written reports of the ambulance service and physician, should not be permitted to deny the claim based upon their finding that it was not "medically necessary."

It is our sincere opinion that the department's own rules are ambiguous and contradictory. The department, in its rules, establishes a "prudent layperson" threshold as the basis to involve emergency medical services. NDCC provides for "direct medical control" in deciding whether or not an ambulance service is to transport a patient.

When an ambulance service is dispatched by 9-1-1 to a scene, prompted by a prudent layperson's reasonable action (the 9-1-1 call), and when a physician later directs that ambulance to transport the patient to the hospital, the ambulance service should be reimbursed by the department for the transport. We feel reimbursement under these circumstances is fair and equitable because the service has been provided and costs have been incurred; doing otherwise is not fair and equitable.

Finally, in anticipation of a question which Madam Chair or Members may have in regard to why we have not pursued this matter in or used the Administrative Rules process to

address this ambiguity, I would like you to refer to the last page of my printed testimony. This citation is Chapter 50-24.1-15, titled "Prehospital emergency medical services." It is our strong belief that the legislature has set forth their intent to the department in NDCC with the words, "Medical assistance must include..." and it goes on to again reference "prudent layperson."

Thank you for allowing the EMS Association this opportunity and I would be happy to answer questions you may have.

## **Chapter 23-27 Emergency Medical Services**

23-27-04.2 An officer, employee, or agent of any prehospital emergency medical service may refuse to transport an individual for which transport is not medically necessary and may recommend an alternative course of action to that individual if the prehospital emergency medical service has developed protocols that include direct medical control to refuse transport of an individual.

\* \* \* \* \*

## **North Dakota Administrative Rules (Title 75 – Health and Human Services)**

### **75-02-02-03.2 Definitions**

5. "Medical Emergency" means a medical condition of recent onset and severity, including severe pain, that would lead a prudent layperson acting reasonably and possessing an average knowledge of health and medicine to believe that the absence of immediate medical attention could reasonably be expected to result in serious impairment to bodily function, serious dysfunction of any bodily organ or part, or would place the person's health, or with respect to a pregnant woman, the health of the woman or her unborn child, in serious jeopardy.

6. "Medically Necessary" includes only medial or remedial services or supplies required for treatment of illness, injury, diseased condition, or impairment; consistent with the patient's diagnosis or symptoms; appropriate according to generally accepted standards of medical practice; not provided only as a convenience to the patient or provider; not investigational, experimental, or unproven; clinically appropriate in terms of scope, duration, intensity, and site; and provided at the most appropriate level of service that is safe and effective.

\* \* \* \* \*

### **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:

- (h) Coverage may not be extended and payment may not be made for ambulance services that are not medically necessary, as determined by the department, and provided in response to a medical emergency.

#### **50-24.1-15. Prehospital emergency medical services.**

Medical assistance coverage must include prehospital emergency medical services benefits in the case of a medical condition that manifests itself by symptoms of sufficient severity which may include severe pain and which a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of medical attention to result in placing the person's health in jeopardy, serious impairment of a bodily function, or serious dysfunction of any body part.

**Source:** S.L. 1999, ch. 427, § 2.

**Effective Date:** This section became effective July 1, 1999.

**TESTIMONY BEFORE THE SENATE HUMAN SERVICES COMMITTEE****REGARDING SB 2192****JANUARY 17, 2005**

**Chairman Lee, members of the committee, I am Maggie Anderson, Assistant Director of Medical Services for the Department of Human Services. I appear before you to provide information on this bill.**

**The bill is designed to change existing statute by requiring Medical Services to provide reimbursement to ambulance service providers responding to calls that result in transport, even when it is determined that the recipient's medical condition was not of an emergent nature.**

**The 2001 Legislature passed House Bill 1282, which required Medical Services to make payment for calls to an ambulance provider that resulted in response and treatment, but not transport. The Department implemented this in August of 2001.**

**In addition, the Department does cover a Basic Life Support service code that involves non-emergency transport. This code is typically reserved for situations involving transporting a recipient from a hospital to a nursing home or for transporting a recipient in "end of life" situations to home, hospice or nursing facility. Other non-emergency transport is not covered.**

**See Attachment A**

**If the provisions of this bill are enacted, Medical Services would be required to pay for the "other" non-emergency transport. Because these services are currently denied as not being medically necessary, Medical Services would be obligated to cover the cost of the services with 100 percent general funds.**

In the present version of the Medical Services Administrative Code (75-02-02), there is no definition of proper medical protocol. If it is the intention of the Legislature to claim Federal Match and direct the Department to pay the non-emergent ambulance service, we can implement the necessary payment procedures. This would eliminate the non-emergent claims from any utilization review and the Federal Match payments may be subjected to audit.

Finally, Medicaid recipients can be billed for charges that are denied because the service was not medically necessary.

I would be happy to respond to any questions.

North Dakota Department of Human Services  
 Medical Services  
 Ambulance Codes and Fees

Attachment A

Service Code	Description of Service	Medicare Fee
	BLS is Basic Life Support	
A0428	BLS (non-emergency transport)	\$91.33
A0429	BLS (emergency transport)	\$95.73
A0425	BLS ground mileage	\$2.71 per mile
T2006	Ambulance - No Transport	\$80.00