

2009 SENATE HUMAN SERVICES

SB 2423

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2423

Senate Human Services Committee

Check here for Conference Committee

Hearing Date: 02/10/2009

Recorder Job Number: 9078, 9126

Committee Clerk Signature

Mary K. Moxson

Minutes:

Senator Lee Opened the hearing on SB 2423.

Senator Tom Fischer District #46. Introduced SB 2423. I introduced this bill as a result of a problem that cropped up with a private provider for developmental disabilities. It has to do with a 90% occupancy rule and the reimbursement process. Since this bill has been introduced there has been some collaboration between the provider and the department to improve things. I will allow the providers to give their perspectives.

Senator Heckaman District #23. Cosponsor of 2423. This bill is a result of an issue in my district and as Senator Fischer said, some of those issues have been resolved. But I do think that the state could still review the audit and reimbursement process for DD providers. Maybe there is a way to make this process easier. As long as there is resolution, I am happy but I would still appreciate some review of the issue.

Tom Newberger Director for the Red River Human Services Foundation. Spoke in support of 2423. See attachment #1.

Senator Lee Are their other struggling facilities with below 95% occupancy?

Newberger Yes. According to the rule there are two cases where the rule about occupancy levels is not enforced. As long as you fit those criteria you are ok, but if you do not you are forced into repayment which can be very difficult for some.

Senator Lee As I understand it, there is a history to this bill and it might be helpful if we knew why this happened.

Newberger Spoke about the case in the New Rockford area. Related to staff turnover, reduced occupancy and an inability to meet the two criterion. They will survive but they need help. There are several things that could happen to the facility if they cannot get help: a) the state could come in and have DD management take over b) another provider could take over which is unlikely in the New Rockford case due to their debt c) bank could assume their assets and the people would be displaced across the state.

Senator Lee Why is the 90% occupancy rule there in the first place?

Newberger From a historical perspective, at the beginning there were a lot of people coming in and out of the facilities. People did not want to take in challenging cases as the system was relatively new. The rule was used to stop the revolving door and force providers to take people with disabilities. The revolving door has stopped with the provider's increased experience and ability. The rule is now unnecessary in my opinion.

Senator Heckaman I heard that there was some audit difficulty in the past with the facilities, more than one audit coming due at the same time.

Newberger The department has been historically slow on their audits. This has been a cause for anxiety with the providers. We sat down with the providers and made several administrative rule changes. There have been some discussions and changes to help ease provider anxiety. I believe in time, that will get better but it needs some changes.

Senator Dever Can I assume that all providers across the state are non profits? I would imagine that with varying sizes of facilities would have different quotas to meet the 95% occupancy?

Newberger The majority of providers are non profit but there is one for profit operating out of Minot. In relation to your second question, you are absolutely correct. If you are a small facility and you are missing one person you could drop to 75% occupancy. The smaller the facility the greater the risk of running into this rule.

There was no opposition testimony given.

JoAnne Hoesel Director for the developmental disability program within DHS. Gave neutral testimony. I would like to explain some of what has been done to remedy the situation. One of the things I have had to do is learn the rate setting process which is very complicated. The DD system uses a retroactive rate setting process. Explained the rate setting process. There are a number of things that got this particular provider into trouble currently. I believe the thing that really has gotten them to this point is that they took out loans. We did look at the administrative rules, and we do think we have the latitude to work with this provider. Read a portion of the rules—section 75.04.05.09llc2. Discussed what the department has done to deal with the problem in New Rockford. A study has passed on the House side that does study the rate setting process for DD.

Senator Lee Do you know what the house bill is?

Newberger I think it's HB 1556.

Senator Lee I think it has been a long time since that rate setting process has been introduced.

Hoesel Most of what I am learning is that this system has a really interesting history; we are looking at moving forward within the rule making process.

Senator Lee I would hope that the stakeholders would move forward on this regardless of what happens with the study.

Senator Heckaman What is being done about the loan issues for facilities?

Hoesel The department has two options to look at. We have the historical issues that all came together in a perfect storm and they already paid back the department which we could then refund to them which would remove the never ending cycle of bills that are not available costs.

Senator Heckaman When we wrote to ask about that, it was denied. Do you know why? We did ask for loan forgiveness.

Hoesel I believe there is always a balance and the director of DHS does have the ability to make those decisions. I do think timing was an issue and there were some agency issues.

Senator Heckaman Will you continue to look at that then?

Hoesel Yes, because we have the past issue and current upcoming issues.

Senator Lee What will be different if 2423 passes or fails as to what the department does?

Hoesel The department intends to pursue these two options regardless. It would certainly formalize the legislature's intent.

Senator Lee The way this bill is stated/written, is there something in here that would make it more onerous than a study resolution?

Hoesel The way I would see it is that there is a group of individuals in the DHS that desires to partner with providers. We want to make this process work.

Senator Lee I think the expectations will almost be higher for you department if this bill does not pass.

Tom Newberger Provided additional testimony, see attachment #2. Explained the handout.

Senator Lee Closed the hearing on SB 2423

Job #9126

Senator Lee Opened the discussion on SB 2423

Senator Heckaman I am pleased that the department has stepped up to the plate but it was only after being pressured. If that's what it takes, we can do that every session without passing legislation. I am confident that the department would do what they said they would do.

Senator Lee I am happy to move this along.

Senator Heckaman And someone did mention the study which I had originally intended to push, but legislative council recommended I go this route. The problem with this 95% occupancy rule is that it is real penalizing to smaller facilities. This is affecting a lot of the DD providers in the state.

Senator Lee I couldn't agree more.

Senator Heckaman It is not that the New Rockford facility is not trying to do good things, but two audits in one year has been really hard on them. Explained the situation further.

Senator Lee And we are 3-4 years behind which causes debt to continue to accumulate and put facilities further behind.

Discussion about New Rockford staff situation

Senator Heckaman I move **Do Pass**.

Further discussion about New Rockford and retrospective pay

Senator Lee The department needs to do the study and then come back to us with a recommendation.

Senator Dever Should they then report back their findings to us?

Senator Heckaman I withdraw my motion.

Discussed amending the bill to require that the study findings be reported back to the 62nd legislative assembly with any recommendations for legislation or rule changes.

Senator Dever I move the amendment

Senator Heckaman Second

The Clerk called the role on the motion to move the amendment. **Yes: 5, No: 0, Absent: 1**

(Senator Marcellais).

Senator Heckaman I move **Do Pass as Amended.**

Senator Dever Second

The Clerk called the role on the motion to **Do Pass As Amended.** **Yes: 5, No: 0, Absent: 1.**

Senator Pomeroy will carry the bill.

Date: 2-10-09

Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2423

Senate Human Services Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Sen. Heckaman Seconded By Sen. _____

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee, Chairman			Senator Joan Heckaman		
Senator Robert Erbele, V.Chair			Senator Richard Marcellais		
Senator Dick Dever			Senator Jim Pomeroy		

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

w/ draw

JB
2-11-09

PROPOSED AMENDMENTS TO SENATE BILL NO. 2423

Page 1, line 3, after "disabilities" insert "; and to provide for a report to the legislative assembly"

Page 1, after line 10, insert:

"SECTION 2. REPORT TO LEGISLATIVE ASSEMBLY. The department of human services shall provide a report to the sixty-second legislative assembly which includes recommendations or proposed legislation relating to audits and reimbursements of private providers for individuals with developmental disabilities."

Renumber accordingly

Date: 2-10-09

Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2423

Senate Human Services Committee

Check here for Conference Committee

Legislative Council Amendment Number Report to legislative assembly

Action Taken Do Pass Do Not Pass Amended

Motion Made By Sen. Dever Seconded By Sen. Heckaman

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee, Chairman	✓		Senator Joan Heckaman	✓	
Senator Robert Erbele, V.Chair	✓		Senator Richard Marcellais		
Senator Dick Dever	✓		Senator Jim Pomeroy	✓	

Total (Yes) 5 No 0

Absent 1

Floor Assignment _____

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

Date: 2-10-09

Roll Call Vote #: 3

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2423

Senate Human Services Committee

Check here for Conference Committee

Legislative Council Amendment Number 91010.0101 Title .0200

Action Taken Do Pass Do Not Pass Amended

Motion Made By Sen. Heckaman Seconded By Sen. Dever

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee, Chairman	✓		Senator Joan Heckaman	✓	
Senator Robert Erbele, V.Chair	✓		Senator Richard Marcellais		
Senator Dick Dever	✓		Senator Jim Pomeroy	✓	

Total (Yes) 5 No 0

Absent 1

Floor Assignment Senator Pomeroy

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

REPORT OF STANDING COMMITTEE

SB 2423: Human Services Committee (Sen. J. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2423 was placed on the Sixth order on the calendar.

Page 1, line 3, after "disabilities" insert "; and to provide for a report to the legislative assembly"

Page 1, after line 10, insert:

"SECTION 2. REPORT TO LEGISLATIVE ASSEMBLY. The department of human services shall provide a report to the sixty-second legislative assembly which includes recommendations or proposed legislation relating to audits and reimbursements of private providers for individuals with developmental disabilities."

Renumber accordingly

2009 HOUSE HUMAN SERVICES

SB 2423

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2423

House Human Services Committee

Check here for Conference Committee

Hearing Date: March 23, 2009

Recorder Job Number: 11382

Committee Clerk Signature

Dicky Crabtree

Minutes:

Chairman Weisz opened the hearing on SB 2423.

Sen. Joan Heckaman from district 23 sponsored and introduced the bill: See

Testimony #1. I would like an amendment on this with a sunset clause.

Rep. Porter: Why wouldn't the study be a Legislative Council study rather than a department study? What they are looking at the procedures that are in the Century Code and things that were done based on a law suit that require policy changes in the future, why you wouldn't want it as a Legislative Council study so the legislature is involved from the start in interim with this area.

Sen. Heckaman: One of the reasons that the other sponsor and I put this on as a requirement is because council studies don't always get chosen. We think this is a real important issue. It is not only affected my disability providers in my area of the state, it is affecting others around the state. We are asking department just to come back with recommendations.

Rep. Porter: What's required on this they could do in a half a day.

Sen. Heckaman: I probably disagree with you on that. There needs to be some gathering of data from all the disability providers out there. I think there will be some research that will be needed on this rather than a half a day by (inaudible).

Jon Larson read testimony of Tom Newberger, Director for Red River Human Services Foundation, Fargo: See Testimony #2.

Rep. Conrad: What we are looking at here is financial viability by the provider right?

Jon Larson: I think it is a little broader than that. I think this bill's intent is to look at the reimbursement rules that caused the hardship that might have put this provider into financial jeopardy.

Rep. Conrad: Would you have a problem if we amended this and make that more clear?

Jon Larson: I believe what we would find most helpful is a full discussion with the department on the 95% rule (coughing, inaudible) to include with that an overview of the broader reimbursement system. So if were amended to say that it would be (inaudible).

Rep. Holman: Are there a lot of providers other than New Rockford who have been impacted and had to pay back money as a result of the 95% rule?

Jon Larson: I'm not aware of the number, but I do know they are not alone. Some providers have a negative fund balance which is a situation that is dire and then to have to pay the department on top of a negative fund balance is expensive.

Rep. Porter: In regards to New Rockford as a specific provider that is running into this situation, what is their total occupancy?

Jon Larson: I believe they have four group homes that would serve six to eight people in each one. The difficulties of occupancy is that sometimes occupancy is within the provider's control. Meaning that there is referrals suitable to fit into that particular facility. But, often times that process is difficult and could take some time. One of the difficulties is that occupancy isn't always within the provider's control.

Rep. Porter: As far as the placement process then, the providers can look at an individual and say no and then the state has to keep looking until they find a place for that individual to live?

Jon Larson: That is essentially correct. When a provider has an opening, they would make that opening known to the system. Referrals are made sometimes a tricky process to find the correct match. It is a sensitive issue sometimes in getting people with similar or conflicting needs into one group home.

NO OPPOSITION.

Chairman Weisz: Any questions from the department.

Rep. Porter: I would like to hear from the department how they would do this study.

Chairman Weisz: If you would come forward please.

JoAnn Hoesel from the DHS:

Rep. Porter: How would you as a department perform this review and this process that is being asked of you?

JoAnne Hoesel: The department has access to a number of national organizations. We would have access to technical assistance and that would be something I would be looking at accessing. This issue of 95% occupancy is (inaudible). In the last two years we have worked on another challenge in the DD system, this came along the way. We have had intentions of looking at it in terms of what is possible and what should we do? We need to watch for unintended consequences. And look at what the options and challenges are. Currently we are working with NDACS and (inaudible) a survey for all referrals that go statewide. If a program manager is not able to provide a provider in a current or local area then they go out to (inaudible). If they are unable to find a provider then they look at the developmental center. This survey will identify where are the barriers, what are things that keep us from placing individuals in (inaudible) agencies?

Rep. Porter: The whole picture and the movement is to still decentralize the population. By allowing the providers to pick and choose and inside of that population. Then changing the

95% mark is kind of the carrot to make them take the individuals and decentralize them, but maybe that is too high of a mark to hold them too. What is the (coughing, inaudible) currently out there to place individuals into community based in-home settings?

JoAnn Hoesel: The developmental center is currently at 124 and they want to get down to 67 by 2011. They have a long ways to go. That survey is actually what I see as the real key to identifying from a provider persepective, what are they going to identify as barriers for us to do that? Another bill and study that would possibly looking at is paying providers on an acuity basis.

Rep. Porter: So in the long run you think this language is enough to guide the department into pulling together the provider groups and doing a comprehensive look at the reimbursement system for our DD providers?

JoAnn Hoesel: Absolutely.

Rep. Potter: About the wording here it talks about the 95% rule, would you be looking at the blotter system? And also, acuity is that the same as paid for service?

JoAnn Hoesel: (Inaudible) would be a mechanism where it would be an (inaudible) service. The acuity is based on (inaudible). If focuses on a more (inaudible) the higher the reimbursement. We don't have a rate reimbursement process that is (inaudible) at this point.

Rep. Potter: Would you be looking at either the paid for service or acuity whichever one, I'm not fussy on that, and the broader system as well as the 95% rule?

JoAnn Hoesel: Based on how this is written, we would be looking at the general rate setting process and definitely the 95%. The extent that would be done would be based on the results. Look at current audit and look at what driven the payback process, the settlement between the initial rate and the final rate.

Rep. Potter: Even though it's not right in the rules?

JoAnn Hoesel: It says rate setting so.

Chairman Weisz closed the hearing on SB 2423.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2423

House Human Services Committee

Check here for Conference Committee

Hearing Date: March 23, 2009

Recorder Job Number: 11383 & 11384

Committee Clerk Signature

Wicky Crathee

Minutes:

Chairman Weisz: Take a look at 2423 as long as it is out here.

Rep. Porter: Motion Do Pass.

Rep. Conrad: Second.

Rep. Potter: Senator Heckaman said something about a sunset clause.

Chairman Weisz: (Everyone talking at once.) You have to report to the 62 legislator's assembly for that in affect.

Roll Call Vote: 13 yes, 0 no 0 absent.

MOTION CARRIED DO PASS.

BILL CARRIER: Rep. Holman.

Date: 3-23-09

Roll Call Vote #:

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2423

House HUMAN SERVICES Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Rep. PORTER Seconded By Rep. Conrad

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN ROBIN WEISZ	✓		REP. TOM CONKLIN	✓	
VICE-CHAIR VONNIE PIETSCH	✓		REP. KARI L CONRAD	✓	
REP. CHUCK DAMSCHEN	✓		REP. RICHARD HOLMAN	✓	
REP. ROBERT FRANTSVOG	✓		REP. ROBERT KILICHOWSKI	✓	
REP. CURT HOFSTAD	✓		REP. LOUISE POTTER	✓	
REP. MICHAEL R. NATHE	✓				
REP. TODD PORTER	✓				
REP. GERRY UGLEM	✓				

Total (Yes) 13 No 0

Absent 0

Bill Carrier Rep. Holman

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

Motion Carried DP

REPORT OF STANDING COMMITTEE (410)
March 23, 2009 12:36 p.m.

Module No: HR-52-5544
Carrier: Holman
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2423, as engrossed: Human Services Committee (Rep. Weisz, Chairman)
recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed SB 2423 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

SB 2423

#1

Senate Bill 2423
DD Provider Reimbursement
Testimony
February 10, 2009

Chair Lee and members of the Senate Human Services Committee. For the record, my name is Tom Newberger and I am the Director for Red River Human Services Foundation in Fargo, ND. I am here today to support SB 2423.

As an overview, this Bill is a life-vest to help a DD Provider in New Rockford that is drowning in a significant amount of debt. With this Bill, the provider has an increased opportunity to continue supporting people with disabilities. Without it, there is a significantly higher possibility that they will fail.

Now for the details: I was asked by Senators Fischer and Heckaman to look at this provider's financial condition and to give management recommendations to improve their financial position. This was accomplished by first looking at the provider's final audit settlements with the Department 2005, 2006 and 2007. I also reviewed their cost report for 2008, along with their independent audit reports, internal financial statements, tax returns and discussions with management. I shared an brief overview of these recommendations with the Senators.

One of those recommendations is the elimination of what we call in the industry the 95% occupancy rule for providers with a negative equity balance. This rule is found in NDAC 75-04-05.9-11. Attached to my testimony is a copy of this rule. This rule is implemented when a provider's occupancy for a year is below 95%. The rule has the effect of paying back the Department dollars that a provider has already spent on such items as wages, benefits, heat, lights and other costs. In other words, the Department pays the provider once, but the provider spends it twice – once on allowable expenses and one more time paying back the Department. This process can cause a financial burden on any provider, but when a provider is struggling with a negative equity balance, they are struggling for existence. This fact is substantiated by the Provider's independent auditors who expressed a qualified opinion on their most recent audit.

Page Two
SB 2423

In the case of the New Rockford DD Provider, their occupancy for 2008 was below 95%. They can expect to pay back the Department significant dollars to settle this rule in the future. However, the Department has expressed a willingness to look at the 95% rule with the intent on helping this and other Providers that are struggling. It is unclear, however if the rule can be interpreted to accomplish this goal.

I do not know the fiscal impact of this Bill, but I do know that it gives some light at the end of the tunnel for this provider. I believe they can continue to exist, but they will need help. This Bill is one of several pieces of the puzzle that must come together so people will continue to be served in their communities rather than being displaced across the state.

Thank you for the opportunity to testify and I'll be happy to answer any questions.

4. In residential facilities where rental assistance is available to individual clients or the facility, the rate for room costs chargeable to individual clients will be established by the governmental unit providing the subsidy.
5. In residential facilities where energy assistance program benefits are available to individual clients or the facility, room and board rates will be reduced to reflect the average annual dollar value of such benefits.
6. Income from client production must be applied to client wages and the cost of production. The department will not participate in the gains or losses associated with client production conducted pursuant to the applicable provision of 29 CFR 525.
7. The final rate established is payment of all allowable, reasonable, and actual costs for all elements necessary to the delivery of a basic service to eligible clients subject to limitations and cost offsets of this chapter.
8. No payments may be solicited or received by a provider from a client or any other individual to supplement the final rate of reimbursement.
9. The rate of reimbursement established must be no greater than the rate charged to a private payor for the same or similar service.
10. The department will determine interim and final rates of reimbursement for continuing contract providers based upon cost data from the:
 - a. Submission requirements of section 75-04-05-02; and
 - b. Field and desk audits.
11. Rates of continuing service providers, except for those identified in subdivision f of subsection 3 of section 75-04-05-10, will be based on the following:
 - a. Rates for continuing contract providers, who have had no increase in the number of clients the provider is licensed to serve, will be based upon ninety-five percent of the rated occupancy established by the department or actual occupancy, whichever is greater.
 - b. Rates for continuing service providers, who have an increase in the number of clients the provider is licensed to serve in an existing service, will be based upon:
 - (1) Subdivision a of subsection 11 of section 75-04-05-09 for the period until the increase takes effect; and

- (2) Ninety-five percent of the projected units of service for the remaining period of the fiscal year based upon an approved plan of integration or actual occupancy, whichever is greater.
- c. When establishing the final rates, the department may grant nonenforcement of subdivisions a and b of subsection 11 of section 75-04-05-09 when it determines the provider implemented cost containment measures consistent with the decrease in units, or when it determines that the failure to do so would have imposed a detriment to the well-being of its clients.
 - (1) Acceptable cost containment measures include a decrease in actual salary and fringe benefit costs from the approved salary and fringe benefit costs for the day service or group home proportionate to the decrease in units.
 - (2) Detriment to the well-being of clients includes a forced movement from one group home to another or obstructing the day service movement of a client in order to maintain the ninety-five percent rated occupancy requirement.

12. Adjustments and appeal procedures are as follows.

- a. Rate adjustments may be made to correct errors.
- b. A final adjustment will be made for those facilities that have terminated participation in the program.
- c. Any requests for reconsideration of the rate must be submitted in writing to the disability services division within ten days of the date of the final rate notification. The department may redetermine the rate on its own motion.
- d. A provider may appeal a decision within thirty days after mailing of the written notice of the decision on a request for reconsideration of the final rate.

History: Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; July 1, 1995; April 1, 1996; August 1, 1997; July 1, 2001; May 1, 2006.

General Authority: NDCC 25-01.2-19, 50-06-16

Law Implemented: NDCC 25-16-16, 50-24.1-01

75-04-05-10. Reimbursement. Reported allowable costs will be included in determining the interim and final rate. The method of finalizing the reimbursement rate per unit will be through the use of the retrospective ratesetting system.

1. Retrospective ratesetting requires that an interim rate be established prior to the year in which it will be effective. Providers are required to submit a statement of budgeted costs to the department no less than

(I) Facts:

Costs: \$ 1,000,000
 People 8 per home
 Units $\times 365$
2,920

#2

(II) 100% Occupancy

• Actual units = 2,920

① Rate Determination: $\$1,000,000 / 2920 = \underline{\$342.47/\text{day}}$

② Computation of Settlement:

Rate: \$342.47
 \times units: 2920
 $\approx \$1,000,000$

(III) 95% Occupancy:

• Actual units = 2,774 (95% \times 2920)

① Rate Determination: $\$1,000,000 / 2774 = \underline{\$360.49/\text{day}}$

② Computation of Settlement:

Rate: \$360.49
 \times units 2,920
 $\approx \$1,000,000$

(IV) 80% Occupancy:

• Actual units = 2,336 (80% \times 2,920)

① Rate Determination: $\$1,000,000 / 2,774 = \underline{\$360.49/\text{day}}$

② Computation of Settlement:

Rate: \$360.49
 \times units 2336
\$842,104

③ Costs = \$1,000,000 - Allowed Costs = \$842,104 = \$157,896 payback

SB 2423-Introduction

Chairman Weisz and members of the committee:

I am Joan Heckaman Senator from District 23 and I am here to introduce SB 2423.

This bill addresses some issues the developmental disability providers are experiencing in the state. This bill will have the Department of Human Services review the audit and reimbursement processes and also the 95% occupancy rule. The 95% occupancy rule came about with the ARC lawsuit. When the clients moved into local residential care, the providers were required to maintain an occupancy rate of at least 95%. This was done so providers weren't picking and choosing clients. Some clients have more challenging issues and this rule made sure that they were receiving services. Providers falling below 95% occupancy were penalized through the pay back provisions. Currently DD providers are paid retrospectively-meaning they get 105% of their projected budget. After their year is completed they pay back money for not meeting the 95% criteria and also for other provisions. Here is an example. If a program has 20 clients and 1 bed is not filled, that is the 95% threshold. If a program has 10 clients and 1 bed is not filled, they have not possibility of getting close to 95%-their occupancy would be 90%. So the number of beds in a program matters.

There is also a tremendous burden on the facilities when audits are not completed on a timely basis. My local DD provider received 2 audit pay backs in one year and that resulted in paybacks of over \$300,000 they owed back to the state. The audits were over 2 to 3 years behind. Meaning that if a provider is not following a certain rule, they won't

know about it until 3 years later, resulting in more paybacks to the state in subsequent years.

I have to tell you the difficulties my local DD provider experienced had to do with other factors as well. But untimely audits and the 95% occupancy rules was detrimental to their viability. Last summer when I discussed this issue with the person who audits DD providers, she reported that other facilities were facing the same issues.

So what has happened since this bill was introduced. The department has been helpful in stepping up in addressing the issues with my local provider. Another provider has been giving technical assistance. But I still believe this is a matter that needs immediate attention and should be an ongoing process because times, number of clients, and funds are changing.

All this bill does is ask for the department of Human Services to review current practices and see if they fit into the current delivery model.

The DD providers in this state support individuals in a dignified manner and provide important services to these individuals.

Thank you for the opportunity to introduce you to this bill. I would as for your favorable consideration on SB 2423.

#2

Senate Bill 2423
DD Provider Reimbursement
Testimony
March 23, 2009

Chair Weisz and members of the House Human Services Committee. For the record, my name is Tom Newberger and I am the Director for Red River Human Services Foundation in Fargo, ND. I am here today to support SB 2423.

As an overview, this Bill is a life-vest to help a DD Provider in New Rockford that is drowning in a significant amount of debt. With this Bill, the provider has an increased opportunity to continue supporting people with disabilities. Without it, there is a significantly higher possibility that they will fail.

Now for the details: I was asked by Senators Fischer and Heckaman to look at this provider's financial condition and to give management recommendations to improve their financial position. This was accomplished by first looking at the provider's final audit settlements with the Department 2005, 2006 and 2007. I also reviewed their cost report for 2008, along with their independent audit reports, internal financial statements, tax returns and discussions with management. I shared a brief overview of these recommendations with the Senators.

One of those recommendations is the elimination of what we call in the industry the 95% occupancy rule for providers with a negative equity balance. This rule is found in NDAC 75-04-05.09-11. Attached to my testimony is a copy of this rule. This rule is implemented when a provider's occupancy for a year is below 95%. The rule has the effect of paying back the Department dollars that a provider has already spent on such items as wages, benefits, heat, lights and other costs. In other words, the Department pays the provider once, but the provider spends it twice – once on allowable expenses and one more time paying back the Department. This process can cause a financial burden on any provider, but when a provider is struggling with a negative equity balance, they are struggling for existence. This fact is substantiated by the Provider's independent auditors who expressed a qualified opinion on their most recent audit.

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In the case of the New Rockford DD Provider, their occupancy for 2008 was below 95%. They can expect to pay back the Department significant dollars to settle this rule in the future. However, the Department has expressed a willingness to look at the 95% rule with the intent on helping this and other Providers that are struggling.

I do not know the fiscal impact of this Bill, but I do know that it gives some light at the end of the tunnel for this provider. I believe they can continue to exist, but they will need help. This Bill is one of several pieces of the puzzle that must come together so people will continue to be served in their communities rather than being displaced across the state.

Thank you for the opportunity to testify and I'll be happy to answer any questions.