

**2013 SENATE HUMAN SERVICES**

**SB 2081**

# 2013 SENATE STANDING COMMITTEE MINUTES

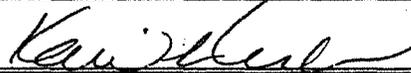
Senate Human Services Committee  
Red River Room, State Capitol

SB 2081  
1/14/2013

Recording Job Number: 17163

Conference Committee

Committee Clerk Signature:



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

Relating to medical assistance for gestational carriers.

## Minutes:

You may make reference to "attached testimony."

**Chairman Lee** opens the hearing on SB 2081.

**Maggie Anderson**, Director of the Medical Services Division for the Department of Human Services (Department), is first up to introduce bill and testify in support of SB 2081.

See attached testimony #1.

Floor is opened for questions from the committee.

The committee and Ms. Anderson go on to discuss different scenarios and the cost associated with each one. These circumstances include both family's (the family requesting the baby and the gestational carrier) Medicaid eligibility process, and the impact of the bill on unintended pregnancies vs. gestational carriers/surrogates.

No further questions for Ms. Anderson and no further testimony in favor of SB 2081.

**Christopher T. Dodson**, Executive Director, of the North Dakota Catholic Conference, is first up to testify in opposition of SB 2081.

See attached testimony #2.

Floor is opened for questions from the committee.

**Senator Anderson** asks Mr. Dodson if he thinks that passing this bill by giving prior notice to both sides involved with contributes to discouraging surrogacy, which is one of the goals of his testimony.

**Mr. Dodson** explains that discouraging surrogacy is something the Conference supports but never at the expense of the basic rights for the healthcare and life needs of the unborn child since this indicates that the pregnant mother may not get the care she needs.

**Chairman Lee** voices her assumption that the insurance of intended parents, especially if the gametes are from those two people, will still not cover the cost of gestational carrier. She then proceeds to asks Dan, who is observing the hearing, if Blue Cross Blue Shield covers the prenatal care for a gestational carrier if intended parents were also the biological parents. Dan states that he does not know but Chairman Lee asks if he can find out and let her know.

**Senator Dever** asks Mr. Dodson that if an agreement is void, can the parents decide to back out after the birth of the child.

**Mr. Dodson** states that the parents can back out and proceeds to site an example.

No further questions from the committee for Mr. Dodson.

**Renee Stromme** from the North Dakota Women's Network steps up to the podium stating that she is not in full opposition but feels amendments could be relevant. She feels the intent is valid, but there needs to be a safety net or backup plan in place so low income women are not taken advantage of in the process.

No questions for Ms. Stromme and no further testimony on bill.

**Chairman Lee** closes the hearing on SB 2081.

**Chairman Lee** follows by asking everyone to brainstorm to try to come up with clever amendment that would ensure that the necessary care is provided without encouraging Medicaid to be used as the primary provider of prenatal care for surrogacy/gestational carriers.

# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee  
Red River Room, State Capitol

SB 2081

1/14/13

Recording Job Number: 17180

Conference Committee

Committee Clerk Signature:



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

Relating to medical assistance for gestational carriers.

## Minutes:

You may make reference to "attached testimony."

Committee discussion on SB 2081.

Committee agrees with intent of bill but wonders if there is a better way of saying it.

**Chairman Lee** states that this is a complicated issue and wants to give the parties the opportunity to brainstorm, as she previously requested, as well as have a discussion with Courtney Koebele. She also asks the law intern to check with the Health Department for information on births as a result of surrogacy and gestational carriers.

The committee agrees that they don't know how they feel about the bill and don't know how to solve the problem.

**Senator Anderson** suggests inputting language stating "the Department could legally recover the cost from those intended parents" so it's known upfront.

**Chairman Lee** asks the law intern to speak with Julie Leer from the Department of Human Services (cc. Maggie Anderson) to check on the potential for an amendment.

The discussion is closed with no action taken.

# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee  
Red River Room, State Capitol

SB 2081  
1/21/13

Recording Job Number: 17466

Conference Committee

Committee Clerk Signature:



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

Relating to medical assistance for gestational carriers.

## Minutes:

You may make reference to "attached testimony."

Committee discussion #2 on SB 2081.

Committee reviews the two proposed amendments from the Department of Human Services. See attachments #3 and #4.

**Senator Anderson** moves to adopt the shorter of the two amendments (attachment #3).

**Senator Dever** seconds.

Roll call vote: 5-0, motion to adopt amendment passes.

**Senator Dever** moves Do Pass as Amended.

**Senator Larsen** seconds.

Roll call vote: 5-0, Do Pass as Amended.

**Senator Larsen** carries Bill to the floor.

January 21, 2013

  
1-22-13

PROPOSED AMENDMENTS TO SENATE BILL NO. 2081

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 14-18, relating to payment of pregnancy-related services for a surrogate or gestational carrier.

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

**SECTION 1.** A new section to chapter 14-18 of the North Dakota Century Code is created and enacted as follows:

**Responsibility of intended parents for pregnancy-related costs.**

The costs of pregnancy-related services, including labor and delivery services, incurred by a surrogate or gestational carrier as defined by section 14-18-01 are the responsibility of the intended parents."

Renumber accordingly

Date: 1/21/13  
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2081

Senate Human Services Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.8107.01001

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Sen. Anderson Seconded By Sen. Dever

Senators	Yes	No	Senator	Yes	No
Chairman Judy Lee	✓		Senator Tyler Axness	✓	
Vice Chairman Oley Larsen	✓				
Senator Dick Dever	✓				
Senator Howard Anderson, Jr.	✓				

Total (Yes) 5 No 0

Absent 0

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

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

Date: 1/21/13  
Roll Call Vote #: 2

2013 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2081

Senate Human Services Committee

Check here for Conference Committee

Legislative Council Amendment Number 13. 8107. 01001

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Sen. Dever Seconded By Sen. Larsen

Senators	Yes	No	Senator	Yes	No
Chairman Judy Lee	✓		Senator Tyler Axness	✓	
Vice Chairman Oley Larsen	✓				
Senator Dick Dever	✓				
Senator Howard Anderson, Jr.	✓				

Total (Yes) 5 No 0

Absent 0

Floor Assignment Sen. Larsen

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

**REPORT OF STANDING COMMITTEE**

**SB 2081: Human Services Committee (Sen. J. Lee, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2081 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 14-18, relating to payment of pregnancy-related services for a surrogate or gestational carrier.

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

**SECTION 1.** A new section to chapter 14-18 of the North Dakota Century Code is created and enacted as follows:

**Responsibility of intended parents for pregnancy-related costs.**

The costs of pregnancy-related services, including labor and delivery services, incurred by a surrogate or gestational carrier as defined by section 14-18-01 are the responsibility of the intended parents."

Renumber accordingly

**2013 HOUSE HUMAN SERVICES**

**SB 2081**

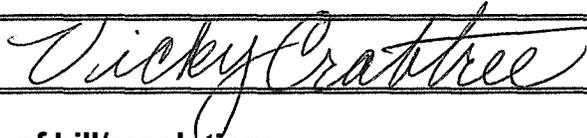
# 2013 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee  
Fort Union Room, State Capitol

SB 2081  
March 6, 2013  
Job # 19523

Conference Committee

Committee Clerk Signature



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

Relating to payment of pregnancy related services for a surrogate or gestational carrier.

## Minutes:

See Testimony #1

Chairman Weisz opened the hearing on SB 2081.

Maggie Anderson: From the DHS testified in support of the bill. (See Testimony #1)

2:03

Rep. Laning: Who would pay if the surrogate mother refused to do an abortion requested by the biological parents?

Maggie Anderson: It would depend if she was a gestational carrier or surrogate mother. There are agreements and some are enforceable and some are not. Those cases would have to be reviewed. When the department brought the bill forward with our language we were indicated that if we learned of this, Medicaid would not pay for the coverage. The Senate felt there needed to be protections for Mom and the baby in that we would still pay for the coverage, but it would become a third party liability. If we learn of a third party coverage we try to cost avoid. There are times we do pay the cost and do pay and chase.

Chairman Weisz: You are saying you would pay for this.

Maggie Anderson: We would have an agreement in place where the intended parents would pay and in the absence of them doing that we would pay and turn it into a third party liability for us to go after.

Rep. Porter: Wouldn't we as a state be putting ourselves into a better position by defining that the contract between the two parties have to include the payment of services?

Maggie Anderson: The surrogate agreements are void and gestational carrier agreements are enforceable. We would have to review the sections of code in order to address that situation.

Rep. Mooney: How many women are we talking about?

Maggie Anderson: No we do not. We had a couple of instances in the past biennium when they were seeking fertility treatments they were encouraged to apply for Medicaid and that is what initiated bringing this bill forward.

Rep. Fehr: How do you enforce something like this? How do you know they are a surrogate?

Maggie Anderson: People tend to raise it as a question. We find out by things that aren't reported like an income source, other third party coverage or assets.

**NO OPPOSITION**

Chairman Weisz closed the hearing on SB 2081.

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee  
Fort Union Room, State Capitol

SB 2081  
March 6, 2013  
Job #19527

Conference Committee

Committee Clerk Signature

*Vicky Crabtree*

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

Relating to payment of pregnancy related services for surrogate or gestational carrier.

**Minutes:**

Chairman Weisz took up SB 2081.

Rep. Fehr: I motion a Do Pass on SB 2081.

Rep. Anderson: Second.

ROLL CALL VOTE: 13 y 0 n 0 absent

**MOTION CARRIED**

Bill Carrier: Rep. Anderson

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/23/2013**

Amendment to: SB 2081

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

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

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

SB 2081 is creating a new section to North Dakota Century Code chapter 14-18, relating to payment of pregnancy-related services for a surrogate or gestational carrier. The bill indicates the costs of these pregnancy services are not a Medicaid cost but the responsibility of the intended parents.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

SB 2081 has minimal fiscal impact and cannot be determined.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

**Name:** Linda Mertz

**Agency:** Dept of Human Services

**Telephone:** 701-328-4016

**Date Prepared:** 01/24/2013

Date: 3-6-13  
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2081

House Human Services Committee

Check here for Conference Committee

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

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Rep. Gehr Seconded By Rep. Anderson

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN WEISZ	✓	✓	REP. MOONEY	✓	✓
VICE-CHAIRMAN HOFSTAD	✓	✓	REP. MUSCHA	✓	✓
REP. ANDERSON	✓	✓	REP. OVERSEN	✓	✓
REP. DAMSCHEN	✓	✓			
REP. FEHR	✓	✓			
REP. KIEFERT	✓	✓			
REP. LANING	✓	✓			
REP. LOOYSEN	✓	✓			
REP. PORTER	✓	✓			
REP. SILBERNAGEL	✓	✓			

Total (Yes) 13 No 0

Absent 0

Floor Assignment Rep. Anderson

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

**REPORT OF STANDING COMMITTEE**

**SB 2081, as engrossed: Human Services Committee (Rep. Weisz, Chairman)**  
recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).  
Engrossed SB 2081 was placed on the Fourteenth order on the calendar.

**2013 TESTIMONY**

**SB 2081**

**Testimony**  
**Senate Bill 2081 – Department of Human Services**  
**Senate Human Services Committee**  
**Senator Judy Lee, Chairman**  
**January 14, 2013**

Chairman Lee, members of the Senate Human Services Committee, I am Maggie Anderson, Director of the Medical Services Division for the Department of Human Services (Department). I am here in support of Senate Bill 2081, which was introduced at the request of the Department of Human Services.

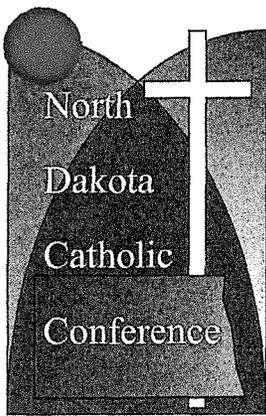
The Department initiated this bill after learning of a couple of instances where women who became pregnant for the purpose of bearing a child for another person or couple were applying for Medicaid to cover the cost of the pregnancy and delivery. The Department contacted the Centers for Medicare and Medicaid Services and we were told that we would need a state law to prohibit this from occurring.

Senate Bill 2081 would prohibit the Department from making payment under the medical assistance chapter for pregnancy-related services provided to a woman who becomes pregnant for the purpose of bearing a child for another person or couple.

Medicaid funding is critical to low-income and disabled individuals eligible to receive health care services paid by the program. The Department believes the pregnancy-related costs of a woman who agrees to become pregnant to bear a child for another person or couple are the responsibility of the intended parents and should not be the responsibility of a program that is designed to meet health needs of low-income and disabled individuals.

The Department requests your favorable consideration of Senate Bill 2081.

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



*Representing the Diocese of Fargo  
and the Diocese of Bismarck*

Christopher T. Dodson  
Executive Director and  
General Counsel

**To:** Senate Human Services Committee  
**From:** Christopher T. Dodson, Executive Director  
**Subject:** SB 2081 Medical Assistance for Gestational Carriers  
**Date:** January 14, 2013

The North Dakota Catholic Conference opposes Senate Bill 2081.

The Catholic Church opposes surrogacy agreements as contrary to the dignity of the human person and human procreation. Moreover, we fear that the commercialization of surrogacy denigrates the dignity of women, especially those who are poor.

For those reasons we support efforts to discourage surrogacy and its abuse. As with all policies, however, those efforts cannot contravene the basic rights and dignity of human persons, especially the poorest among us. We have always opposed policies that discriminate against pregnant women and their unborn children solely because of the circumstances that led to the pregnancy. Senate Bill 2081 is such a policy.

The purpose of providing medical assistance for pregnancy-related services to lower-income women is two-fold: to provide needed care to the mother **and** to ensure that the unborn child receives basic medical care during the gestational period. We may not like the reasons the woman became pregnant, but so long as she is pregnant and economically in need, she and her unborn child deserve the same access to government assistance as any other woman and unborn child with the same financial need.

There seems to be an assumption behind the bill that gestational carriers will receive remuneration after the child is born. Surrogacy agreements, however, are unenforceable in North Dakota. (N.D.C.C. sec. 14-18-05.)<sup>1</sup> The surrogate mother might not ever be paid and there is no certainty that the intended parents will eventually adopt the child. Moreover, some surrogates act for altruistic reasons, especially for family members.

In other words, with regards to Medicaid eligibility, the gestational carrier and the unborn child stand in the same position as any other woman and unborn child with the same financial needs. The state cannot presume to know, and should not therefore consider, the future economic prospects of the woman and, as with all other potential recipients, should not discriminate against the woman and child because of the circumstances of the conception.

While we appreciate the desire to prevent abuse of the Medicaid system, it cannot be based on conjecture or come at the expense of the unborn child who is not responsible for the circumstances of his or her conception. We urge a **Do Not Pass** recommendation on Senate Bill 2081.

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<sup>1</sup> North Dakota Century Code section 14-18-05 states:

Any agreement in which a woman agrees to become a surrogate or to relinquish that woman's rights and duties as parent of a child conceived through assisted conception is void. The surrogate, however, is the mother of a resulting child and the surrogate's husband, if a party to the agreement, is the father of the child. If the surrogate's husband is not a party to the agreement or the surrogate is unmarried, paternity of the child is governed by chapter 14-20.

North Dakota law makes an exception to the presumption of parentage in cases where the surrogate is implanted with an embryo that was conceived through the gametes of both intended parents, but any other aspects of the agreement are still unenforceable.

SB2084

**NDLA, Intern 02 - Myles, Bethany**

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**From:** Lee, Judy E.  
**Sent:** Tuesday, January 15, 2013 10:38 AM  
**To:** NDLA, Intern 02 - Myles, Bethany  
**Subject:** Fwd: Fw:

Judy Lee  
1822 Brentwood Court  
West Fargo, ND 58078  
Phone: 701-282-6512  
e-mail: [jlee@nd.gov](mailto:jlee@nd.gov)

Begin forwarded message:

**From:** Dan Ulmer <[Dan.Ulmer@bcbsnd.com](mailto:Dan.Ulmer@bcbsnd.com)>  
**Date:** January 15, 2013, 8:13:54 AM CST  
**To:** "[jlee@nd.gov](mailto:jlee@nd.gov)" <[jlee@nd.gov](mailto:jlee@nd.gov)>  
**Subject:** Fw:

Here u go

----- Original Message -----

**From:** Jane Nephew  
**Sent:** Tuesday, January 15, 2013 07:25 AM  
**To:** Dan Ulmer; Pam Gulleeson; Bob Stroup; Suzanne Michelson; Dale Shook  
**Subject:** RE:

Here is how the exclusion is written:

"No benefits are available for: Donor eggs, including any donor treatment and retrieval costs, donor sperm, cryopreservation or storage of unfertilized sperm or eggs, Surrogate pregnancy and delivery, Gestational Carrier pregnancy and delivery, and preimplantation genetic diagnosis testing.

For the purpose of this exclusion the following definitions apply:

Gestational Carrier - an adult woman who enters into an agreement to have a fertilized egg, gamete, zygote or embryo implanted in her and bear the resulting child for intended parents, where the embryo is conceived by using the egg and sperm of the intended parents.

Surrogate- an adult woman who enters into an agreement to bear a child conceived through assisted conception for intended parents."

Let me know if you need anything further.

Jane Nephew, RN  
Director, Health Network Innovation

13.8107.01xxx

PROPOSED AMENDMENT TO SENATE BILL NO. 2081 #1

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 14-08, relating to payment of pregnancy-related services for a surrogate or gestational carrier.

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

**Section 1.** A new section to chapter 14-08 of the North Dakota Century Code is created and enacted as follows:

Responsibility of intended parents for pregnancy-related costs. The cost of pregnancy-related services, including labor and delivery services, incurred by a surrogate or a gestational carrier as defined by section 14-08-01 are the responsibility of the intended parents.

Renumber accordingly

PROPOSED AMENDMENT TO SENATE BILL NO. 2081 #2

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 14-08, relating to payment of pregnancy-related services for a surrogate or gestational carrier.

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

**Section 1.** A new section to chapter 14-08 of the North Dakota Century Code is created and enacted as follows:

**Responsibility of intended parents for pregnancy-related costs.** The cost of pregnancy-related services, including labor and delivery services, incurred by a surrogate or a gestational carrier as defined by section 14-08-01 are the responsibility of the intended parents and may not be covered by the department of human services under chapter 50-24.1.

Renumber accordingly

#1

**Testimony**  
**Engrossed Senate Bill 2081 – Department of Human Services**  
**House Human Services Committee**  
**Representative Weisz, Chairman**  
**March 6, 2013**

Chairman Weisz, members of the House Human Services Committee, I am Maggie Anderson, Director of the Medical Services Division for the Department of Human Services (Department). I am here in support of Engrossed Senate Bill 2081, which was introduced at the request of the Department of Human Services.

The Department initiated this bill after learning of a couple of instances where women who became pregnant for the purpose of bearing a child for another person, or couple, were applying for Medicaid to cover the cost of the pregnancy and delivery. Senate Bill 2081, as introduced, would have prohibited the Department from making payment under the medical assistance chapter, for pregnancy-related services provided to a woman who becomes pregnant for the purpose of bearing a child for another person or couple.

The Senate adopted amendments that ensure that health care coverage is provided to the surrogate mother or gestational carrier by clarifying

that coverage for pregnancy-related services, including labor and delivery, is the responsibility of the intended parents.

Medicaid funding is critical for payment of medically necessary health care services for low-income and disabled individuals. The Department believes the pregnancy-related costs of a woman who agrees to become pregnant to bear a child for another person, or couple, are the responsibility of the intended parents and should not be the responsibility of a program that is designed to meet health needs of low-income and disabled individuals.

The Department requests your favorable consideration of Engrossed Senate Bill 2081.

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