

FISCAL NOTE
Requested by Legislative Council
03/25/2015

Amendment to: SB 2050

- 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.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$(6,600)		\$(7,200)
Expenditures			\$40,200	\$(6,600)	\$40,800	\$(7,200)
Appropriations			\$40,200	\$(6,600)	\$40,800	\$(7,200)

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

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties		\$600	\$0
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).*

SB2050 would preclude the department from requiring specific individuals to apply for Medicaid before receiving services from SPED, and as amended, would also not allow a claim to be filed against an estate to recover payments made on behalf of Medicaid expansion enrollees.

- 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.*

Section 1 precludes the Department from requiring an individual to apply for Medicaid before being eligible for services under the SPED program if they meet the exemption of this section. The Department estimates there are potentially 10 individuals that would meet the requirements and utilize the exemptions. If these individuals were allowed to receive personal care services through the SPED program, it is estimated that General fund expenditures would increase by \$40,200 and Other funds would decrease by \$(6,600), of which \$(7,200) is a decrease in Federal funds and \$600 is an increase in County funds for the 15-17 biennium.

The above fiscal impact was calculated assuming the State will take responsibility for the County's share of SPED effective January 1, 2016. If the Counties continue to be responsible for 5% of the SPED program the County share would increase to \$2,400 for the 15-17 biennium.

Section 2: The department may not file a claim against an estate to recover payments made on behalf of a recipient who was eligible for Medicaid under section 50-24.1-37 [Medicaid Expansion] and who received coverage through a private carrier. The department is unable to determine the fiscal impact of this section.

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 loss of revenue is the result of precluding the department from requiring individuals to apply for Medicaid before receiving services through the SPED Program. It is estimated that the department will receive (\$7,200) less Federal funds and \$600 more County funds for a net decrease of (\$6,600) in the 15-17 biennium and (\$7,200) less Federal funds in the 17-19 biennium.

- 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.*

Section 1 would allow individuals to receive services from SPED without first having to apply for Medicaid, which provides for a federal match, thus increasing medical assistance grant General Fund expenditures by \$40,200 and decreasing other funds by (\$6,600) of which (\$7,200) would be a Federal fund decrease combined with a \$600 County fund increase for the 15-17 biennium. A \$40,800 General Fund increase and a (\$7,200) decrease in Federal Funds for the 17-19 biennium are expected.

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

Section 1 would allow individuals to receive services from SPED without first having to apply for Medicaid, which provides for a federal match, thus increasing medical assistance grant General Fund appropriation by \$40,200 and decreasing other funds appropriation by (\$6,600) of which (\$7,200) would be a Federal fund decrease combined with a \$600 County fund increase for the 15-17 biennium. A \$40,800 General Fund appropriation increase and a (\$7,200) decrease in Federal Funds appropriation for the 17-19 biennium are expected.

Name: Debra McDermott

Agency: Department of Human Services

Telephone: 701 328-3695

Date Prepared: 03/27/2015

FISCAL NOTE
Requested by Legislative Council
02/19/2015

Amendment to: SB 2050

- 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.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$(6,600)		\$(7,200)
Expenditures			\$40,200	\$(6,600)	\$40,800	\$(7,200)
Appropriations			\$40,200	\$(6,600)	\$40,800	\$(7,200)

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

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties		\$600	\$0
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).*

SB2050 would preclude the department from requiring individuals whose monthly services cost are between the income level of Medicaid and the lowest level of the fee schedule of Service Payments for the Elderly and Disabled (SPED) to apply for Medicaid before receiving services.

- 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.*

Section 1 precludes the Department from requiring an individual to apply for Medicaid before being eligible for services under the SPED program if they meet the exemption of this section. The Department estimates there are potentially 10 individuals that would meet the requirements and utilize the exemptions. If these individuals were allowed to receive personal care services through the SPED program, it is estimated that General fund expenditures would increase by \$40,200 and Other funds would decrease by (\$6,600), of which (\$7,200) is a decrease in Federal funds and \$600 is an increase in County funds for the 15-17 biennium.

The above fiscal impact was calculated assuming the State will take responsibility for the County's share of SPED effective January 1, 2016. If the Counties continue to be responsible for 5% of the SPED program the County share would increase to \$2,400 for the 15-17 biennium.

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 loss of revenue is the result of precluding the department from requiring individuals to apply for Medicaid before receiving services through the SPED Program. It is estimated that the department will receive (\$7,200) less Federal funds and \$600 more County funds for a net decrease of (\$6,600) in the 15-17 biennium and (\$7,200) less Federal funds in the 17-19 biennium.

- 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.*

Section 1 would allow individuals to receive services from SPED without first having to apply for Medicaid, which provides for a federal match, thus increasing medical assistance grant General Fund expenditures by \$40,200 and decreasing other funds by (\$6,600) of which (\$7,200) would be a Federal fund decrease combined with a \$600 County fund increase for the 15-17 biennium. A \$40,800 General Fund increase and a (\$7,200) decrease in Federal Funds for the 17-19 biennium are expected.

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

Section 1 would allow individuals to receive services from SPED without first having to apply for Medicaid, which provides for a federal match, thus increasing medical assistance grant General Fund expenditures by \$40,200 and decreasing other funds by (\$6,600) of which (\$7,200) would be a Federal fund decrease combined with a \$600 County fund increase for the 15-17 biennium. A \$40,800 General Fund increase and a (\$7,200) decrease in Federal Funds for the 17-19 biennium are expected.

Name: Debra McDermott

Agency: Department of Human Services

Telephone: 701 328-3695

Date Prepared: 02/20/2015

FISCAL NOTE
Requested by Legislative Council
12/29/2014

Bill/Resolution No.: SB 2050

- 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.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$(1,060,938)		\$(1,176,336)
Expenditures			\$1,060,938	\$(1,060,938)	\$1,176,336	\$(1,176,336)
Appropriations			\$1,060,938	\$(1,060,938)	\$1,176,336	\$(1,176,336)

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

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties		\$26,658	\$0
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).*

SB2050 would preclude the department from requiring an individual to apply for Medicaid before being eligible for services under the Service Payments for the Elderly and Disabled (SPED) program.

- 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.*

Section 1 precludes the Department from requiring an individual to apply for Medicaid before being eligible for services under the SPED program. The Department estimates there are 65 individuals that are receiving personal care through Medicaid and are below the SPED cap. If these individuals were allowed to receive personal care services through the SPED program, it is estimated that general fund expenditures would increase by \$1,060,938 and other funds would decrease (\$1,060,938) of which (\$1,087,596) would be a Federal fund decrease combined with a \$26,658 County fund increase for the 15-17 biennium. There would be a \$1,176,336 General Fund increase and a \$(1,176,336) decrease in Federal funds for the 17-19 biennium. The additional general fund and county fund need is the result of losing the Federal Medicaid Match. It should be noted the estimate only includes current recipients and does not account for growth of individuals who would now accept the services of SPED but who previously may have chosen not to receive services in order to avoid the recipient liability or the estate recovery procedures allowed under Medicaid.

The above fiscal impact was calculated assuming the State will take responsibility for the County's share of SPED effective January 1, 2016. If the Counties continue to be responsible for 5% of the SPED program the County share would increase to \$108,756 for the 15-17 biennium and \$117,634 for the 17-19 biennium.

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 loss of revenue is the result of precluding the department from requiring individuals to apply for Medicaid before receiving services through the SPED Program. This removes the ability to maximize the use of Federal funds before using General Fund dollars and it is estimated that the department will receive (\$1,087,596) less Federal funds and

\$26,658 more County funds for a net decrease of (\$1,060,938) in the 15-17 biennium and (\$1,176,336) less Federal funds in the 17-19 biennium.

- 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.*

Section 1 would allow individuals to receive services from SPED without first having to apply for Medicaid, which provides for a federal match. Thus increasing General Fund expenditures by \$1,060,938 and decreasing other funds by (\$1,060,938) of which (\$1,087,596) would be a Federal fund decrease combined with a \$26,658 County fund increase for the 15-17 biennium. A \$1,176,336 General Fund increase and a (\$1,176,336) decrease in Federal Funds for the 17-19 biennium are expected.

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

The Department of Human Services will need a Federal funding switch of \$1,087,596 of which \$1,060,938 would be General Fund and \$26,244 would be County funds for the 15-17 biennium and a Federal funding switch of \$1,176,336 of which all would be General Fund for the 17-19 biennium.

Name: Debra McDermott

Agency: Department of Human Services

Telephone: 701 328-3695

Date Prepared: 01/05/2015

2015 SENATE HUMAN SERVICES

SB 2050

2015 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

SB 2050

1/7/2015

21729

Subcommittee

Conference Committee

Donald Mueller



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new section to chapter 50-06.2 of the North Dakota Century Code, relating to eligibility for service payments for elderly and disabled (SPED).

Minutes:

Attach #1: Doug Wegh Testimony
Attach #2: Sliding Fee Schedule for SPED

Alex Cronquist, representing Legislative Management, neither for nor against. Bill came out of the Interim Human Services Committee, recommended by Legislative Management. Department of Human Services may not require an individual to apply for services under the Medical Assistance Program as a condition to apply for the service payments for elderly and disabled program (SPED). Currently, in order to be eligible for SPED, an individual would have to apply for Medical Assistance and would be responsible for co-payments (recipient liability).

Chairman Judy Lee - There was previously different eligibility for the SPED program and because of a shortage of funds in prior years, this was curtailed.

Speaking in favor of 2050.

Testimony Doug Wegh, County Social Service Director and Home and Community Based Care Services (HCBS) case manager. Reference Attachment #1 - Testimony of Mr. Wegh.

Chairman Judy Lee - I've always had a concern about recipient liability, and the challenge for the individual.

Mr. Wegh - The scenario is a frequent and common situation for our cases.

V. Chairman Oley Larsen - It's really not a funding issue but paperwork where the client falls between the cracks where if you change into Medicaid, you are not allowed to have it, but the funding is still there if you need to meet those needs. Is this correct?

Mr. Wegh - That is correct.

Chairman Judy Lee - The costs end up being a state cost because 95% is covered rather than Medicaid reimbursement.

Testimony opposed.
No one opposed.

Neutral Perspective

Karen Tescher - Department of Human Services Representative

Chairman Judy Lee: What kind of fiscal impact are we looking at? If we made this change, how many individuals might be affected by the change?

Ms. Tescher: In 04/2014 interim committee, fiscal impact was identified and they have recently been updated. Currently, there are 11 individuals on Medicaid that would exceed the SPED service cap, which is \$3269.00, so it would be to their benefit to remain on Medicaid in order to receive the personal care they require. Estimate 65 individuals only receiving personal care through Medicaid that are below the SPED cap. If they were allowed to receive their personal services through the SPED program, it is estimated to cost \$1,060,938 for biennium 2015-17.

Senator Howard Anderson, Jr. - If a person was just Medicaid eligible, those same income requirements and spenddown would be required of that individual?

Ms. Tescher: They would still have to go to the eligibility for Medicaid. Recipient liability could differ according to their specific situation based on applying for Medicaid. When looking at those 65 individuals, 30 were paying less than \$100 per month, 7 were paying over \$500 per month. Of the total, they were paying \$340,000 in recipient liability in that biennium.

Senator Howard Anderson, Jr. - With this change, we would be treating these SPED individuals better than those who apply for Medicaid because they wouldn't have to meet Recipient liability. Is that correct?

Tescher: That is correct, as they would not have that recipient liability. In SPED, there is a sliding fee scale, so depending on their income, which can be up to \$50,000, they may still have to apply some of their money for their care.

Chairman Judy Lee - Remind us why we had to apply for Medicaid first?

Maggie Anderson, Executive for Department of Human Services - in 2003, the decision was made to offer state personal care through the Medicaid state plan, and it was pulled from the medicaid waivers, and the decision was that persons needed to apply for Medicaid first and then SPED as it had been a funding stream through the Medicaid program. We have heard those concerns that Mr. Wegh expressed through the years.

Chairman Judy Lee - Is this different from before, or different from before?

Maggie Anderson - It's not the same or different as things have changed. In 2003, when the billed passed, which was really tied to the bill for disabilities coverage, personal care

was pulled out of the waiver and placed into the state plan. At that time, this provision was made part of that where individuals who needed personal care checked to see if they were Medicaid eligible first before SPED funding stream. We are not going back to where it was before, it is just a different direction after 12 years of experience has shown some people have been impacted.

Chairman Judy Lee - At the time, we discussed the number of people who were going to be impacted. The reason it was done previously was the shortfall of funds in the past. Part of that discussion was the number of people who were going to fall out of the program. I that your recollection?

Ms. Maggie Anderson - that is correct

Doug Wegh - that is correct, the example was the one in Morton County did indeed fall off the table and the same with the scenario in the testimony. We do not know how many have been impacted.

V. Chairman Oley Larsen - The case manager is reviewing the case, is it a hard number - the case manager is following the case and they know their hardship is not going to work. So are they forced to say you must apply for Medicaid?

Mr. Wegh - That is correct. Anytime they fall below that where they become potentially eligible for Medicaid, they then have to apply. Before they didn't have to pay but now because of recipient liability, they now have to pay so this seems unfair. We are penalizing those people who that are becoming our poor.

Ms. Maggie Anderson - Pointing out that on a number of the fiscal notes, anything that has to do with SPED or county funded programs, as in the fiscal note. 95% general funds, 5% county funds. In the Governor's Budget Recommendation, transfer some of the county costs, SPED being one of those, to the state general fund versus county.

Chairman Judy Lee - the whole purpose of SPED was to assist people remaining in their home and help them stay out of the nursing home because it was Medicaid reimbursable.

Maggie Anderson - yes, that is correct, to help the client in their home with those support services so they didn't slip and fall and other services.

Closed Hearing.

Committee Discussion

Fiscal note: \$1,060,938 financial impact

Senator Warner - it does seem problematic that we are penalizing people when they become even more impoverished.

V. Chairman Oley Larsen - What is the number of people impacted?

Chairman Judy Lee - 65 people impacted, 11 on medical assistance that exceed the service cap.

Senator Dever - Eligibility for SPED is also based on income, correct?

Mr. Wegh - There are two sliding fee schedules. (1) \$0-\$24,999, and (2) \$25,000-\$50,000.

Senator Warner - I'm assuming this is not an entitlement, but an appropriated number for SPED. If there comes a time when there is an allotment, how is the allotment determined? First in, or most needy?

Mr. Wegh - At the beginning, we had one fee scale. When money became tight, there were then two fee scale. The lower one has bigger numbers.

Senator Warner - Should the appropriation run short in the biennium, how do you determine who should get the service or not.

Mr. Wegh - That has happened previously. We had to look to curb at what we had. Our caseloads have not been that high since that time.

V. Chairman Oley Larsen - Geographically, where are these 63 folks at, and are the fee schedules different geographically?

Mr. Wegh - Determine that a client is eligible for services, then it depends if it is an agency service (\$6.79 every 15 minutes) or an individual (over \$4 per 15 minutes) who does the review. Some parts of the state have these services, while other areas do not have those.

Chairman Judy Lee - it would be the same across the state, all dependent on the individual need.

Senator Dever - it would be helpful to have the income sliding fee information before voting.

ATTACHMENT #2 - Mr. Wegh provided copy of sliding fee scale (\$0-\$24,000), rate scale, costs

Chairman Judy Lee - How many are being served by SPED at this time?

Ms. Tescher - DHS will provide that information to the committee.

Chairman Judy Lee - Do you anticipate that there will be more if this changes goes in.

Ms. Tescher - not sure if they do not want services, so it is an unknown how many more may be on SPED.

Mr. Wegh - Statistics on SPED counts, do this every 6 months. Mr. Riser in Dakota Central has that information. About 1,260 SPED clients in a month.

V. Chairman Oley Larsen - Is it seamless for someone who goes into the nursing home and then back home, or do they have to wait a week or two before they get services again?

Mr. Wegh - that depends on the facility and the discharge plan when they leave. It should be seamless, but in hospitals sometimes those discharge plans are inadequate.

V. Chairman Oley Larsen - the case worker who is assigned, while they are in the hospital, are they involved?

Mr. Wegh: under policy, the worker closes the case after 30 days. Client can also choose the case manager. Usually, it is the same case manager when they return.

Senator Dever - Rates are established by the state, share is by the county right now. Do you see any change to the services if this transfers to the state?

Mr. Wegh - no change in services, as long as program policy remains. HCBS case managers are very passionate. Mr. Wegh very supportive of that bill.

Chairman Judy Lee - very enthusiastic of cost moving to the state and services provided by the county.

Chairman Judy Lee - I would assume a number of these are one or two person households. Is there an age limit?

Ms. Tescher - if you met the other criteria, then yes.

Senator Dever - If covered under Medicaid, then recipient liability, so 100% covered minus recipient liability. If SPED, then sliding fee, it is based on the ability to pay, so there is still money coming back from the recipient based on their income?

Mr. Wegh - There can be an expense also based on the sliding fee schedule, depending on income. They do have some responsibilities based on their income in that as well - could have.

Motion: Senator Warner made motion to "do pass" recommendation with re-referral to appropriations, 2nd by Senator Axness.

Vote: 6 Yeas, 0 Nays, no absent

Carrier: Senator Axness.

Date: 01/07/ 2015
Roll Call Vote #: 1

**2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES**
BILL/RESOLUTION NO. SB2050

Senate Human Services Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Sen Warner Seconded By Sen Axness

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee (Chairman)	✓		Senator Tyler Axness	✓	
Senator Oley Larson (V-Chair)	✓		Senator John M. Warner	✓	
Senator Howard C. Anderson, Jr.	✓				
Senator Dick Dever	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Axness

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

REPORT OF STANDING COMMITTEE

SB 2050: Human Services Committee (Sen. J. Lee, Chairman) recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2050 was rereferred to the **Appropriations Committee**.

2015 SENATE APPROPRIATIONS

SB 2050

2015 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee Harvest Room, State Capitol

SB 2050
1/26/2015
Job # 22480

- Subcommittee
 Conference Committee

Committee Clerk Signature

Yamousox for Rose Laning

Explanation or reason for introduction of bill/resolution:

Relating to eligibility for service payments for elderly and disabled.

Minutes:

Attachment 1 - 2

Legislative Council - Alex Cronquist
OMB - Becky Deichert

Co-Chairman Bowman called the committee to order on SB 2050.

Alex Cronquist, Legislative Council: Explained that he was not testifying either for or against SB 2050. This bill was recommended by the interim Human Services Committee and then forwarded by legislative management. It creates and enacts a new section which would be titled Service Payments for Elderly and Disabled Program Eligibility. It would state that a state agency, in this case the Department of Human Services, may not require an individual to apply for services under the state's Medical Assistance Program as a condition of being eligible to apply for services under the Services Payment for Elderly and Disabled Program.

Penny Woodward, HCBS Case Manager, Morton County Social Services: Presented testimony from Doug Wegh, County Social Service Director and HCBS case manager for Grant and Hettinger Counties, who was unable to attend - Attachment 1. She presented her testimony - Attachment 2.

Senator Mathern: You keep using the word policy - is this possible to be changed within the department and county offices without a law change.

Penny: It's administrative code.

Senator Mathern: Is this bill just appropriation and not policy change?

Penny: I'm at a loss for technicality.

Alex Cronquist: There is no appropriation in this bill. It would be put in Century Code that they have to change administrative code. It would have a fiscal impact. An appropriation would have to be added.

Senator Bowman: Do we have any idea what it would be?

Alex Cronquist: (09:35) \$1,060,938 - That amount was determined by the department of Human Services taking into account the Governor's recommendation that the state take over the county portion. If the state doesn't do that, it would only be \$952,182.

Senator Carlisle: Why would we need a code change? They have a \$3.5M budget. Why do we need to put into code?

Maggie Anderson, Department of Human Services, explained that the history on this goes back to 2003 with the Workers with Disabilities Program that the legislature authorized. As part of that whole package we took personal care services out of Medicaid waivers and created a personal care state plan amendment. At that time the legislative intent was that people apply for Medicaid and use Medicaid before we look at SPED as a funding stream. The reason behind that was the federal match. In 2003 our FMAP was larger. This is not a bill brought to you by the department. It was something our county partners brought forward and said there was a gap. In order to implement what's being requested in SB 2050 we believe we need legislative intent to tell us to reverse what you wanted us to do in 2003 and we need a million dollars to support the cost.

Senator G. Lee: Why would the fiscal note be higher if the state did it instead of the county?

Maggie responded that what Alex referred to was the piece that's included in the department's appropriation that the state would take over part of the County Social Service costs. SB 2206 is the policy piece of that. SB 2050 involves SPED. Currently SPED is 95% general funds and 5% county funds. The 5% is the difference between the million and 942 that Alex mentioned.

Senator Mathern: No matter the intent of the legislature in 2003, would this be a positive change? In the long term, be better to have this in place?

Maggie: This money is not in the governor's budget, so department is neutral. There's been discussion on the expenditures and the human side of it.

(14:44) **Senator Robinson:** In terms of considering the safety of clients and the long term impact on the budget, sometimes it takes money to save money.

Maggie Anderson: I was just starting with the department in 2003 when those decisions were made. I certainly am aware of them and implemented the programs. We've heard from the counties the concerns. Not all concerns are the equivalent of someone falling in a bathtub. Some are more financial. That's certainly an example that's not good for the long term care continuum. First, the expense to the system and second the individuals choice of where they want to reside.

Senator Robinson: It gets back to home and community based services and we keep people from institutionalization.

Maggie: There was intent in 2003, if changed, we're fine with that.

Senator Kilzer: If a person can receive services free, they'll go for that. How much is the recipient liability?

Maggie: SPED has a sliding fee scale depending on income. Medicaid has recipient liability or spend down also dependent on income. (18:00) The medically needy program within Medicaid is an optional eligibility category. \$827/month is the level - anything above that they have for income they have to spend down in order to qualify for Medicaid to pay the first dollar.

Senator Mathern: Is there a negative consequence to some people like an unintended consequence. If we change this, would some people who would have applied for Medicaid and no longer now apply actually be losing something in the process.

Maggie: Some of those people may also have been receiving other Medicaid services or in the case of someone who might have Medicare as their primary they would lose that cost sharing. If they choose not to apply and lose that, that's where our county staff would look at those specific cases and say what recipient liability is.

Senator Mathern: Is it possible that we should change this somewhat to give the county some flexibility? Could we save some in fiscal and help families by being more clear that our policy is to give the counties the ability to work it out with the clients?

Maggie: Certainly, that's an option. Not sure how to write administrative rules around that. If 100% of the discretion goes to the counties, then county workers would all have different options.

Senator Bowman: In Home and Community based care program do they assist people who need to take a bath? If they can and the person fell and got hurt - what's to stop that from happening no matter what program? Accidents happen. Within home and community based care, can they give baths already?

Maggie: Yes, with the personal care services there is a line we can work up to without crossing that line of practicing something that a nurse would need to do. It's full continuum of assisting individuals in their home. It depends on the functional needs of the individual. That's why we assist with bars, shower chairs, hand held showers. That's also why we have some minimum competencies for our qualified service providers.

Senator Kilzer: Going back to 2003 when these were set up I don't think there was any intention of taking people out of Medicaid and putting them into this program if they were otherwise eligible.

Maggie clarified that SPED and Expanded SPED weren't started in 2003. At that time, when we implemented the Workers with Disabilities and took personal care services out of the Medicaid waivers, the legislature didn't want to lose federal match for those services. That's when the policy direction financing of the services was put into place.

Senator Mathern: How widespread is this problem? You're in Morton County - how many cases where this is a barrier?

Penny: This is a profound illustration. Not every situation where someone decides they can't afford this do they have such a catastrophic ending. However, I don't think you would find a case manager in the state who hasn't had someone who has refused a bath and personal care because they can't afford that extra \$100-\$200 a month. There are people with profound needs who you'd be surprised aren't in nursing homes but are on Medicaid. Those needs far exceed what we do with SPED. They have entry level needs - bath, heavy housework, laundry. As we work with them and their needs increase, we can access programs that will better serve those people. We're talking in this bill about those people who live on the edge - a risky slippery slope where we're doing preventative care. Trying to avoid situations rather than responding to those situations.

Senator Bowman closed the hearing on SB 2050.

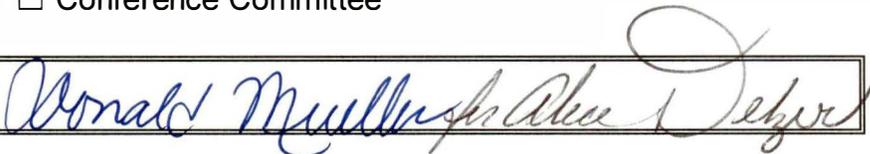
2015 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee
Harvest Room, State Capitol

SB 2050
2/3/2015
Job # 23079

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A Subcommittee hearing for DHS- Service Payment for the elderly and disabled (SPED)

Minutes:

Testimony # 1 -2

Chairman Kilzer called the subcommittee hearing to order on Tuesday, February 03, 2015 at 11:00 am in the Senate Conference Room. Let the record show all members present: Senator Kilzer, Senator Erbele and Senator Mathern. Lori Laschkewitsch, OMB and Michael Johnson, Legislative Council, were also present.

Chairman Kilzer: SB 2050 comes from the Department of Human Services as a result of the Human Services interim committee. Funding for SB 2050 is not in the Executive Budget. There were no comments from Department of Human Services in the hearing before the Appropriations committee. Senator Kilzer indicated there was no fiscal note, but Legislative Council provided a copy of the fiscal note. The intent of this bill is to allow people who are eligible for Medicaid and according to present law, they are to apply for this first, and if not eligible, then go to the SPED services. Chairman Kilzer asked if the incentive has been around for a long time, because SPED has been around for awhile. Is it more advantageous for a client to be on SPED because they pay less?

Karen Tescher, Assistant Director of the Long Term Care Continuum in Medical Services for the Department of Human Services, stated that in 2003, personal care was removed from the waiver and was put in the Medicaid state plan. The intent at that time was to use federal funds rather than all state funds. In order to implement this bill, we need legislative intent. The interim committee determined that 65 people will be affected that are only getting personal care in Medicaid. If they would have been allowed to stay on SPED rather than moved to the Medicaid state plan, it would be a total cost to the state of \$1,000,000. These are individuals who have a varying amount of recipient liability being they were told to the Medicaid because they were financially eligible for Medicaid. The policy states that if you are eligible for Medicaid, then you come off of SPED and go to Medicaid in order to get the federal match. Of those 65 people, some had recipient liability that they weren't responsible for in the SPED program. There is a sliding fee scale that was redone in 2009. So they may have \$0 that they have to pay in SPED, or depending on their income which

can go up to \$50,000, they would have an amount that they would have to put forth towards their care based on the sliding fee scale.

Senator Kilzer: do you know if the sliding fee schedule has been changed over the last few years? Has it become more advantageous for clients to be on SPED rather than Medicaid?

Ms. Tescher: In 2009, the SPED fee schedule was readjusted. It was more advantageous, so there were more people who paid \$0 towards their care than there was previous to the schedule adjustment. In Medicaid, the medically needy income level changes every year. For example, for a single household today, it is \$807 plus a \$20 disregard, so it is \$827. This is reviewed and changed annually, where the fee schedule is only changed during the legislative session and it has stayed steady.

Senator Kilzer: asked for confirmation that 65 people could be affected if SB 2050 passes.

Ms. Tescher: Correct. There is also an amendment that would potentially take that number down. April data continues to identify 65 people. It doesn't include anybody who decided not to get care from either SPED or Medicaid because they did not want to pay their recipient liability.

Senator Kilzer asked if there would be more people on SPED if SB 2050 passes.

Ms. Tescher indicated this is possible. Many of them would not have to pay anything or it would be a small amount based on the sliding fee schedule versus of a higher recipient liability on Medicaid.

Senator Kilzer restated that with the recipient liability that is in effect today, it would pull them out and they are not even coming forward.

Ms. Tescher stated that could be occurring today.

Senator Erbele asked if recipient liability is based on a percentage of income. **Ms. Tescher** answered yes. **Senator Erbele** continued. What would be a high number for someone.

Ms. Tescher indicated that when they looked at the 65 individuals that would be affected, this was broke down into three categories: (1) 48 of the 65 individuals would pay less than \$250 of recipient liability, every month; (2) 14 would pay less than \$1,000 but more than \$250. (3) 3 would be paying more than \$1,000 recipient liability. Recipient liability has to be paid by the individual before receiving any Medicaid services.

Senator Erbele asked what kind of income would the individual have to be responsible for \$1,000 a month in recipient liability.

Ms. Tescher deferred. She is not skilled as an eligibility worker. It coincides with their income.

Senator Erbele continued that whatever they have to pay, they have some funds so they can pay. Is it a hardship, or is it that they just don't want to spend it?

Ms. Tescher answered what they have been told at various stakeholder meetings is the poorest of the poor, that may end up paying some recipient liability when moving to Medicaid, the case managers indicated this could be a hardship, as these folks may only have a certain level of income if they are a one-person household and now on the medically needy level of \$827 per month. If they end up paying the recipient liability, it is out of their \$827 per month, which leaves them that much less that they may need in a month.

Senator Kilzer reviewed the prior testimony by Doug Weigh and Penny Woodrugs, who presented scenarios and complications.

Senator Mathern stated that an additional wrinkle is the counting of assets is different in SPED than in Medicaid. This impacts particularly farmers who may have assets that are not liquid. If these people are moved to Medicaid, it is a more difficult time.

Senator Kilzer asked for clarification for people moving to Medicaid.

Senator Mathern answered that when we require an application to Medicaid saying we can't cover them for SPED because they are eligible for Medicaid, that is what is meant by moving to Medicaid. The recipient liability kicks in earlier in relation to the assets, and then some of the people may decide not to receive care or unable to pay for the care. This eventually results in higher price care.

Ms. Tescher stated that the Department of Human Services position is that they want to provide the information to the legislature, and will administer whatever is determined. They testified Neutral on SB 2050.

Senator Mathern indicated that he had talked to Maggie Anderson (DHS) and Mr. Weigh, and he suggested that an amendment needed crafting that addresses the most pressing needs. We could essentially keep the SPED and Medicaid program the same.

Senator Kilzer asked Senator Mathern to elaborate on making them equal. Are you stating that the asset and income test would be the same for SPED as they are for Medicaid?

Senator Mathern answered that at one point, he suggested that amendment that the asset test would be the same. From this, however, there would be a number of SPED individuals who would probably not take advantage of the program or could not afford to be on the program because their assets are not liquid, so county social services would be opposed to that as it would drop people from SPED. Next, he suggested an amendment that gives the county social services and Department of Human Services a window of making an exception in specific cases to permit continued use of SPED funding and not move them to the Medicaid program. This would reduce the fiscal note closer to \$100,000,

and would probably address the most pressing needs around the state. The Department of Human Services is preparing a proposed amendment.

Senator Kilzer asked who would be responsible for paying the additional eligibility determination costs.

Senator Mathern answered that the determination is already completed with the county social services. The county would make the request for an exception to the state, the state would make a decision and then the additional costs would be to the state in a general fund dollar increase of about \$100,000 instead of \$1,000,000.

Senator Kilzer asked if the \$100,000 would take care of the eligibility determination and the increased benefits.

Senator Mathern affirmed yes, and it would assist the most extreme cases around the state.

Senator Kilzer asked when the amendments will be prepared, and if there was more information needed.

Ms. Tescher indicated that she has the information that will be included in the amendment, even though it is not formally ready.

Senator Kilzer stated he would like to review the amendment before next meeting. He requested that Ms. Tescher provide more detail of the differences of the sliding fee schedule from SPED compared to Medicaid.

Ms. Tescher distributed the SPED Program Sliding Fee Schedule (Attach #1) and deferred to Ms. Nancy Nikolas-Maier.

Ms. Nancy Nikolas-Maier, a home and community based services program administrator with the Department of Human Services, reviewed the SPED Program Sliding Fee Schedule #1. This is for people who have assets between \$0 and \$24,999. Under the SPED program, you cannot have more than \$50,000 in assets. So if your assets fall within those ranges, you would be classified as being in schedule #1. Next, we look at your income after certain disregards. If you have between \$0 and \$1,038 of income and a family of one, you would have no payment to the cost of your care. She clarified that the chart shows the income ranges, family size, and percent. So if someone is getting \$200 worth of care, they would pay 10% of every month based on the family size and income range, or they would pay \$0 if they were between the \$0 and \$1,038 of income and family size of one.

Senator Kilzer asked about a scenario where they would pay 10%.

Ms. Maier answered you first look at the family size, then look at income, and then that determines the percentage that you would pay towards that care.

Senator Kilzer asked for a comparison chart for Medicaid.

Ms. Maier stated the medically need income level, the \$807 plus \$20 disregard, is what an individual would keep every month in order to pay their bills. Medicaid has a way of looking at income as well, so they would look at income less any income disregards, and then would let you keep the \$827 and whatever is left over is the recipient liability. For example, if an individual has \$1,038 of income, and they were able to keep \$827 of this, they would have a recipient liability of \$211.

Senator Kilzer asked if they would have to use all of the \$211 before Medicaid picks up the remaining costs.

Ms. Maier stated that is correct.

Senator Kilzer responded to the impact to the individual. **Senator Mathern** agreed, and that is why the interim committee brought SB 2050 to the legislature. The interim committee sees that this is keeping some individuals out of in-home care, and eventually can lead to Long Term Care.

Senator Kilzer stated that both Medicaid and SPED have a sliding fee schedule. This doesn't sound like a sliding schedule, but a threshold in which the recipient is totally responsible.

(26:20)

Ms. Tescher responded that recipient liability in Medicaid, it is what the individual has to pay for their care with the idea that Medicaid has a much broader spectrum of services available. SPED provides the care in the home. When moving to Medicaid, they are responsible for the recipient liability that they wouldn't be paying in SPED. For some individuals, once they are on Medicaid, because of their existing or deteriorating health issues, they need additional services that Medicaid provides that are not available with SPED.

Senator Kilzer indicated that we should provide incentives to direct the patient in need of services to get the necessary services and not everything.

Closed Subcommittee Work

Senator Mathern submitted Proposed Amendment # 15.0186-01001 after the hearing was closed. Testimony Attached # 2.

2015 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee
Harvest Room, State Capitol

SB 2050
2/6/2015
Job # 23379

Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A Subcommittee hearing for DHS- Service Payment for the Elderly and Disabled (SPED)

Minutes:

Testimony 1 & 2

Senator Kilzer called the subcommittee to order on Friday, February 06, 2015, at 9:00 am in the Harvest Room in regards to SB 2050. Present: Senator Kilzer, Senator Erbele and Senator Mathern. Michael Johnson, Legislative Council, and Lori Laschkewitsch, OMB, were also present.

Senator Kilzer gave opening comments regarding this bill and others dealing with DHS. He commented we need to individually go through the four sources: the governor's budget, the OARs, the amendments and the orphan bills. We will finish hearing the mother bill 2012, by the end of the week. It is our duty to prioritize all the way from the top to the most un-needed bill we have before us. If we don't do that then we have not done our charge.(2.53)

Senator Mathern presented Amendment # 15.0186.01001, Attachment # 1. This fits right in with your opening comments. This bill would make it possible for people to stay on SPED. He then explained the amendment and asked the subcommittee to adopt this amendment.(5.49)

Senator Kilzer: On the fiscal note reducing it from \$1.1M to \$100,000, what services are changed or what eligibility is changed?

Senator Mathern: This would permit the extension of personal care services just in specific cases where a county worker would make a request because they believe using the regular process would put an elderly person in the situation where they would not take a service because it would cost them under the Medicaid program for their first part of payment. I think this would actually get to personal services which are essentially things like baths and that kind of care and it would permit that person to get that service without applying the rules of Medicaid. I imagine the Department would be working with the county offices in

trying to make sure that exception request is standard around the state and would keep the program to that cost level. (7.41)

Senator Kilzer: If this were adopted, would that sentence that's in present law that If they are eligible for Medicaid, they have to stay on Medicaid, would that sentence stay in or would that be removed?

Senator Mathern: It would stay in but it would have an exception process. The exception process would be as outlined in the amendment.

Senator Erbele: Would it be possible to put this in an area that's outlined in subsection A into real live numbers? To see the gap?

Maggie Anderson, Director of DHS: Nancy Meyer has some charts so we can show exactly what this means in terms of numbers. With the amendment ,we've calculated the fiscal estimate for the biennium to be \$48,000.

Nancy Nicolas Meyer Home & Community Based Services Program Administrator with DHS: Just to give you an example, I believe you already have the SPED service fee chart, Schedule 1, the other one is medically needy income levels for Medicaid Testimony Attached # 2. So we can use the example that their assets are such that they would qualify for Medicaid and they are a household of one but their income is the second thing that we would look at. She continued to explain the charts. (11.43)

Senator Kilzer: Do you anticipate if we would accept this amendment, of course Medicaid has a broader array of services. What would happen if a patient went on SPED and then they get older and need more services, are they able to move over to Medicaid and go off of SPED.

Ms. Meyer: Currently if someone's on SPED and they have a need now for Medicaid we'll serve them until their Medicaid eligibility is complete. We'll keep them on the SPED program until Medicaid eligibility becomes effective and then we move them over to the new program.

Senator Kilzer: Do you foresee any other problems for the future?

Ms. Meyer: I think the only problem is the unknown. How many people are there who did not want to switch over to Medicaid and would now want to access the SPED service. The fiscal note was developed for up to 10 people, so I think that's the unknown.

Senator Kilzer: Any questions? The hearing was closed on SB 2050.

2015 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee Harvest Room, State Capitol

SB 2050
2/17/2015
Job # 24024

- Subcommittee
 Conference Committee

Committee Clerk Signature	
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Explanation or reason for introduction of bill/resolution:

A Subcommittee hearing for DHS (SPED)

Minutes:

"Click to enter attachment information."

Senator Kilzer called the subcommittee to order on Tuesday, February 17, 2015 at 6:30 pm in the Harvest Room.

Present: Senator Kilzer, Senator Erbele and Senator Mathern.
Michael Johnson, Legislative Council
Tammy Dolan, OMB

Senator Kilzer -- We want to talk about the orphan bills. They are numbered, starting with 2041 and the highest number that I have is 2321. They have all been heard by the appropriations committee and by the sub-committee. If there is any particular order, if not, we will start with 2050. I have asked each member to prioritize these bills. We need a two to one vote to give a recommendation to the whole appropriations committee.

Senator Mathern -- I suppose the 2050 shows that there's another 3rd option and that is amending. This bill 2050 came out from the interim committee with over \$1M of general fund revenue required. I have an amendment that brings the fiscal note down to \$48,000, The amendment #15.0186.01001 and essentially this takes the interim committee recommendation and applies it only to a very small number of cases based on a system that the department would put in place with the counties. Testimony Attached # 1. Moved the amendment 2nd by Senator Erbele.

Senator Kilzer -- What do you mean by case by case? Obviously there has to be some cut-off because they are choosing winners and losers

Senator Mathern -- I understand county directors have worked with the department on this, and in the amendment, under A, B & C, there are certain conditions that would be met, and the department has worked that out and it is asking for an exception. The rule right now is they are required to apply for Medicaid, and this would create an exception provision and the staff of the counties and department assure me that this is workable and it would cost

around \$48,000. I notice Maggie is here too, if we wanted to get confirmation of that dollar amount.

Senator Kilzer -- Did you talk with Maggie about this, in detail?

Senator Mathern -- And the county director that I talked with most about was Doug Way.

Maggie Anderson, DHS -- I'll speak specifically to the bill as it would function with Senator Mathern's amendment. What would happen is the county case manager, when an individual comes in to apply for services, they would still look to see if they qualify for Medicaid, and then they would also look at the SPED sliding fee schedule. And, if the difference of that is within the range that is set up in the amendment, then the individual could remain on the SPED program with the sliding fee schedule, instead of going to Medicaid and paying their recipient liability. It's saying, if the services that you need are going to be less than what your recipient liability would be; and so it incentivizes people to receive services. The fiscal estimate is about \$48,000 for the biennium and we looked at current cases, as well as assumed that there were people out there who had just not received services and we took that into account as well. It's a very small number of people compared to the original bill.

Senator Kilzer -- How much federal funds, in Medicaid, would we lose, because that was part of the original fiscal note and they each were over a million dollars?

Maggie Anderson -- That would be based upon the way the original bill was written. That was written that anybody who came in and needed SPED services that they had to apply for Medicaid first. This was going to say they didn't have to apply for Medicaid. That was the original bill. Now this new bill is setting up a very small window of who this would apply to. If we are saying the total costs of this is \$48,000, that's all general funds because SPED now with SB2206 would be 100% general funds. There is no longer that 5% county share. We would be losing about half of that in federal dollars, so about \$24,000.

Senator Kilzer -- How about future bienniums because this spread between Medicaid and SPED is probably going to grow in the coming biennium?

Maggie Anderson -- The SPED sliding fee schedule is actually something that the department and the governor executive recommendation in the 2009 session, you allowed us to rebase that July 1, 2009. That would be legislatively controlled. The medically needy income level for Medicaid is set at 83% of poverty so that fluctuates every year. Sometimes it could up, depending upon where they set that level of poverty. Some years it hasn't changed at all because on a national level the economy hasn't done as well as North Dakota so that poverty level wasn't fluctuating as much. Because you are tying those two things together, let's just say that SPED sliding fee scale doesn't change for 3 or 4 years because it's not legislatively changed and the medically needy income level goes up a little bit, there's a little bit of built-in inflation. It actually may come where the county directors come back and ask us to readdress the sliding fee schedule because those two items could get too close. It does make sense to tie it to those two fee schedules and the difference between that from a programmatic standpoint it is logical.

Senator Kilzer -- We have two votes to adopt the amendment. How would you like to do this? The amendment is on it. Would you like to vote on the bill now?

The amendment is adopted. Call the roll. I still express my disappointment with this bill and I will be voting against it because it certainly was not the intention of the original authors of SPED to have this come and I am disappointed that it has come to this and I think the correction that should have been was to continue to have people who are on Medicaid continue receiving Medicaid and it will mean, and does mean, loss of income to the state. I would prefer a hog house amendment to correct the situation rather than just throwing money at it.

The vote was done. Senator Erbele yes, Senator Mathern yes. Senator Kilzer no. carried.

2015 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee
Harvest Room, State Capitol

SB 2050
2/18/2015
Job # 24095

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act for DHS regarding service payments for the elderly and disabled. (Do Pass as Amended)

Minutes:

Attachment # 1

Chairman Holmberg called the committee to order on Wednesday, February 18, 2015 in regards to SB 2050. All committee members were present. Michael Johnson, Legislative Council and Lori Laschkewitsch, OMB were also present.

Senator Mathern: introduced amendment # 15.0186.01001, Attachment #1. and explained the amendments. He moved the amendments. 2nd by Senator Erbele.

Chairman Holmberg; called for a voice vote on the amendment. It carried. Now can we have a motion on the bill?

Senator Mathern moved a Do Pass as Amended. 2nd by Senator Heckaman.

Chairman Holmberg: call the roll on a Do Pass as Amended on SB 2050.

A Roll Call vote was taken. Yea: 13; Nay: 0; Absent:0.

Senator Mathern will carry the bill.

The hearing was closed on SB 2050.

TD
2/18/15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2050

Page 1, after line 6, insert:

"1."

Page 1, line 7, remove "the state's"

Page 1, line 8, replace "medical assistance program" with "chapter 50-24.1"

Page 1, line 9, after "program" insert: ":

- a. If the individual's estimated monthly home and community-based services benefits, excluding the cost of case management, are between the income level established in section 50-24.1-02.6 and the lowest level of the fee schedule for services under this chapter; or
- b. If the individual is receiving a service that is not available under chapter 50-24.1.
2. The home and community-based services case manager shall notify the state agency upon use of an exception authorized under subsection 1"

Renumber accordingly

Date: 2-17-15
Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2050

Senate Appropriations Committee

Subcommittee

Amendment LC# or Description: 15-0186. 01001

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Refer to Appropriations
 Place on Consent Calendar
- Other Actions: Reconsider _____

Motion Made By M Seconded By _____

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg			Senator Heckaman		
Senator Bowman			Senator Mathern		
Senator Krebsbach			Senator O'Connell		
Senator Carlisle			Senator Robinson		
Senator Sorvaag					
Senator G. Lee					
Senator Kilzer					
Senator Erbele					
Senator Wanzek					

Adopted

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Date: 2-17-15
 Roll Call Vote #: 2

**2015 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2050**

Senate Appropriations Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By _____ Seconded By _____

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg			Senator Heckaman		
Senator Bowman			Senator Mathern	✓	
Senator Krebsbach			Senator O'Connell		
Senator Carlisle			Senator Robinson		
Senator Sorvaag					
Senator G. Lee		✓			
Senator Kilzer					
Senator Erbele	✓				
Senator Wanzek					

Total (Yes) 2 No 1

Absent _____

Floor Assignment _____

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

Date: 2-18-15
Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2050

Senate Appropriations Committee

Subcommittee

Amendment LC# or Description: 15,0186,01001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Mathern Seconded By Erbele

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg			Senator Heckaman		
Senator Bowman			Senator Mathern		
Senator Krebsbach			Senator O'Connell		
Senator Carlisle			Senator Robinson		
Senator Sorvaag					
Senator G. Lee					
Senator Kilzer					
Senator Erbele					
Senator Wanzek					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

*voice vote
Carried*

Date: 2-18-15
 Roll Call Vote #: 2

**2015 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2050**

Senate Appropriations Committee

Subcommittee

Amendment LC# or Description: _____

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Mathern Seconded By Heckaman

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg	✓		Senator Heckaman	✓	
Senator Bowman	✓		Senator Mathern	✓	
Senator Krebsbach	✓		Senator O'Connell	✓	
Senator Carlisle	✓		Senator Robinson	✓	
Senator Sorvaag	✓				
Senator G. Lee	✓				
Senator Kilzer	✓				
Senator Erbele	✓				
Senator Wanzek	✓				

Total (Yes) 13 No 0

Absent 0

Floor Assignment Mathern

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

REPORT OF STANDING COMMITTEE

SB 2050: Appropriations Committee (Sen. Holmberg, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2050 was placed on the Sixth order on the calendar.

Page 1, after line 6, insert:

"1."

Page 1, line 7, remove "the state's"

Page 1, line 8, replace "medical assistance program" with "chapter 50-24.1"

Page 1, line 9, after "program" insert: ":

- a. If the individual's estimated monthly home and community-based services benefits, excluding the cost of case management, are between the income level established in section 50-24.1-02.6 and the lowest level of the fee schedule for services under this chapter:
or
 - b. If the individual is receiving a service that is not available under chapter 50-24.1.
2. The home and community-based services case manager shall notify the state agency upon use of an exception authorized under subsection 1"

Renumber accordingly

2015 HOUSE HUMAN SERVICES

SB 2050

2015 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

SB 2050
3/16/2015
24961(starts at :01-12:04)

- Subcommittee
 Conference Committee

Amanda Muscha

Explanation or reason for introduction of bill/resolution:

Relating to eligibility for service payments for elderly and disabled.

Minutes:

Testimony #1

(Starts at :01-12:04)

Chairman Weisz opened the hearing on SB 2050

Alex Cronquist: From Legislative Management provided information on the bill. This bill came out of the interim human services committee. Section one creates a new section to chapter 50-06.2 of the ND century code to help service payments for elderly and disable program eligibility. Subsection 1 states the DHS may not require an individual to apply for services under chapter 50-24.1 which relates to Medicaid. As a condition of being eligible to apply for services under this fed program if the individual meets one of two criteria- first if the person is estimated a monthly home and community way service benefits excluding the cost of case management right between the income level established in section 50-24.1-02.6 and the lowest level of the P schedule for services under or second if the individual is receiving a service that is not eligible under chapter 50-24.1. Subsection 2 requires the home and community based services case manager to notify DHS upon the use of an exception authorized under this subsection. The fiscal note for the bill is 40,200 from the general fund, 600 from the counties, and a reduction of 7200 in federal funds.

Doug Wegh: Director of Grant County Social Services testified in support of the bill. (See Testimony #1)

Chairman Weisz: Based on your example- because she now qualifies for Medicaid, she was still able to use the speds homemaker, but she had to shift down and it had to recipient liability for the personnel care option where currently she wasn't paying anything.

Wegh: She just doesn't have the money and so she drops that and often times those are the ones that fall into a nursing home or something similar.

Rep. Rich Becker: The last line on page 1- why is she having to apply for Medicaid or her services will have to be terminated?

Wegh: 3rd page where it says the manual chapter, the policies procedure 525 and I want to change the plans from eligible to federal funds so that they must utilize them. Right now they have to apply. It is a state policy.

Representative Becker: Is that a federal law?

Wegh: A state policy.

Rep. Rich Becker: Is that a recent change?

Wegh: A policy since Sept. 1, 2003

NO OPPOSITION

Chairman Weisz closed the hearing on SB 2050.

2015 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

SB 2050
3/17/2015
Job # 24961 (starting at 12:05)

- Subcommittee
 Conference Committee

Committee Clerk Signature



Minutes:

(Meeting in A.M.)
(Starting at 12:05)

Chairman Weisz took up SB 2050.

Chairman Weisz: Last session legislature passed Medicaid expansion. When we passes it, it never came up in testimony and the department didn't think it was going to be an issue so they didn't bring it up, but there was a little thing called estate recovery that has raised its head. The department assumed it would be exempt from the estate recovery rules we have with longer term care. When you die your assets are available to payoff what Medicaid has paid, and that is why you have your estate planning with long-term care. That also applies to the Medicaid expansion. The premiums that the state pay for anyone on Medicaid expansion is subject to estate recovery, because of the way the ASA act is written you don't have a choice of going on the subsidizes insurance exchange if you qualify for the expansion. I have an amendment the department prepared for me and it would go in section 50-24 and that is why I suggested the bill. It would mean to say that the Medicaid expansion isn't subject to estate recovery. It is a quirk that you don't really have an option if you qualify for the expansion. It was never intended but because if the way certain laws are the estate recovery also applies to the Medicaid expansion.

Representative Becker: I like what you are proposing

Representative Fehr: Does the amendment you are proposing remove the estate recovery?

Chairman Weisz: The amendment will make Medicaid expansion not subject to estate recovery for Medicaid purposes. It doesn't take it away for anything else. It would only be relative to the premiums that the state is paying for the individual that is in the Medicaid expansion program.

Representative Porter: How many dollars worth of assets could that individual have and qualify?

Chairman Weisz: It is the same asset that is exempt from Medicaid up to your house I believe? There are some but basically your house is excluded and some are either 105 or 132 thousand on the total asset. Then of course in the rural and ag community you can have people that own a quarter of land and it becomes an issue of 'ok I don't have the cash in my income but now I have to find a 1500 monthly policy, pay 100% or my kids are now going to be dealt with the state coming in and wiping out all the premiums paid'

Representative Porter: There is a limit though. If you go over the number, there is an asset test inside of there. We haven't waived the asset test.

Chairman Weisz: No, well but there is no asset test for qualifying for the expansion.

Representative Porter: I am wondering about the recovery side. Is there an asset test or could you hold 10 quarters of land than make too many? Have you found a loophole to allow the state to subsidize you but you're holding 4 or 5 hundred thousand dollars worth of assets.

Chairman Weisz: This would be so you could own that land if you weren't getting income off them to put you over the limit you would qualify for the expansion and this would exempt that from coming back against those 10 quarters- correct. You wouldn't be subject to any asset.

Representative Porter: But you could also be in a situation where you had 3 or 4 quarters and you did get rental income, you were below the income levels, you go the subsidize product, you were holding 4 quarters that you're sneaking in on a program and then not paying full price for the program.

Chairman Weisz: That is correct. The other side is that they would, if they had a little more income, then they could get it subsidized maybe 90% and not worry about any recovery now that their income has dropped then it could be the same thing only there is nothing on the exchange. If you don't want to deal with that on your estate and recovery, then it was like ok now you have to go out and pay more than you did before the exchange kicked in.

Representative Porter: What is the income difference before you qualify?

Chairman Weisz: The expansion is 100 to 138. If you are less than 100 you are in regular Medicaid. If you are over that you can go into the exchange. You can also get in the exchange if you are under as well.

Representative Porter: It is an interest conundrum based on the fact that you potentially have a millionaire that is on Medicaid expansion and the state is paying for it.

Chairman Weisz: That is what occurs under the exchange too. You can have a multi-millionaire if the income low enough. Someone got put on the expansion who didn't want to. Either you have to pay even more than you have to or you have to deal with the estate recovery thing. Appropriation assumed that when we did the expansion there wasn't meant to be estate recovery. -- I'll have Maggie come down and explain again.

Representative Becker: What are the other funds?

Chairman Weisz: There is the decrease in federal funding and that is why it shows a negative on that side- because SPED is 100% general fund. If they are on Medicaid that is roughly 50/50, so if we do this the feds will (stops). The feds decrease \$7200 and the county picks up part of the cost for SPED and that increased by \$600 and then you have a net of \$6600.

Chairman Weisz adjourned the meeting on SB 2050.

2015 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

SB 2050
3/17/2015
Job #25022

- Subcommittee
 Conference Committee

Amanda Muscha

Minutes:

Handout #1

Chairman Weisz: Let's take up 2050. I will hand out the amendments, but we won't take it up. I'll see if we can get Maggie or Eric in here to explain tomorrow. (See Handout #1) It is specific, it says it has to be coverage through a private carrier.

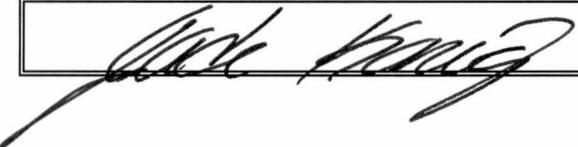
Chairman Weisz: We will leave that one for now.

2015 HOUSE STANDING COMMITTEE MINUTES

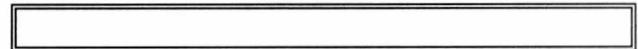
Human Services Committee
Fort Union Room, State Capitol

SB 2050
3/18/2015
25080

- Subcommittee
 Conference Committee



Minutes:



Chairman Weisz: Asked Maggie Anderson to talk about estates on SB 2050.

Maggie Anderson ~ Director of DHS: There have been a couple of questions about Medicaid estate recovery and its applicability to the Medicaid expansion population over the interim and as people started to enroll with medical expansion and the federal market place came about. I will just give you an overview of what we currently do with estate collections and what we were doing prior to January 1, 2014 of the Medicaid population and how that applies. Our statute currently requires recovery from estates from people who have passed way and have been receiving Medicaid. That would be for individuals on or after October 1st of 1993 were age 55 and older. Before that time it was individuals 65 and older and effective November 1, 2010 you approved changes in the 2009 and session for people who are considered permanently institutionalize. Then you have the Medicaid expansion that comes along and you will have people who will fall into that group. Primarily the group that is 55 and older. Right now we would under current law be required to seek estate collections for those individuals and with the Medicaid expansion population for the most part we are paying premiums for that group to have coverage through the Sanford health plan. Why would this population be different and some things you consider? With the Medicaid expansion group unlike the traditional Medicaid group there is no asset test. The federal rules do not allow us to ask about assets for modified adjusted gross income. The estate collections because of the individual mandate and because of the advanced premium tax credits are provided through the federal market place for individuals who qualify create an interesting little cycle. People maybe dis incentivized for apply for coverage because if they fall in that group 0-138 and they are eligible for Medicaid they have to take Medicaid. Because there is an individual mandate if they don't take Medicaid now they are going to be penalized. If they take the advanced premium tax credit, there are no estate collections for those advanced previous tax credits through the market place. This estate collection would be the actual cost but it is the premium. We also have the medically frail group that is part of the Medicaid expansion. SO even though the majority of the people on Medicaid expansion we are paying that premium, they are getting their health care coverage through Sanford health plan, there are people who are considered Medically frail they can say that and they go through this whole process and if they are medically frail

they come back to the state plan and they could access then long term care insurance, services through the basic cares program.

Chairman Weisz: This is all federal?

M. Anderson: The first three years are federal correct.

Chairman Weisz: Is there a rational for the age 55 - 65?

M. Anderson: That's just federal.

Rep. Oversen: The amendment offered those individuals age 55 - 65 who would have now qualified for Medicaid under expansion, you can no longer recover from their estate, that's what this amendment does?

M. Anderson: Yes to that unless those under a private carrier. If they came back to the state plan for the medically frail and they were getting nursing home or any of those then I would say those would be recoverable.

Rep. Porter: Is there a point where the person would go into a nursing home be 65 and qualify then for Medicaid but then they are off expansion and on Medicaid then all of their assets would then come back under the collection process at that point?

M. Anderson: If someone became first eligible for Medicaid through expansion but then eventually ended up in a nursing facility they would come back under Medicaid state plan old traditional services not the expansion and those would be recoverable.

Rep. Porter: Medically frail isn't a separate plan it is just regular Medicaid under the state plan so at some point they could qualify for that and then their assets would then be instantly recoverable for those expenses under just the Medicaid portion or does everything pool then out of this?

M. Anderson: Because we talk about 5024.1-37 that would be specific to the expansion and so the premiums paid to the private carrier.

Chairman Weisz: A normal Medicaid family but in that case say one of those was 55 or older they become subject to estate recovery, correct?

Tim Austin ~ From the Dept. of Human Services: If they are on what we refer to as traditional Medicaid once they enter into long term support services that is recoverable and that is subject to the asset test as well when you make that switch.

Rep. Porter: In the case that the three year plan if the federal subsidy goes away and we have to look at this and say now there is no federal subsidy we are going to run this just as a Medicaid expansion to our traditional Medicaid plan. Then everyone would roll into our traditional plan and would be instantly in a recoverable situation?

M. Anderson: Those over 55.

Chairman Weisz: What do you want to do with this committee? I just brought it forward because of some of the concerns.

Rep. Porter: This one is difficult at best because there is a component in here that I completely understand where you are one or two percent away and then there is the other component that is just poking me in the back of the head that the person could be sitting on a million dollars' worth of assets and taking full advantage of the system by not having any income of those assets. There is a lot of push and pull in my brain right now on who am I actually trying to help and is that person just trying to get around the current law and protect assets by not having an income back.

Chairman Weisz: Let's finish this next week.

Hearing Closed

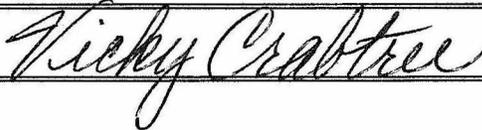
2015 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

SB 2050
3/24/2015
Job #25352

- Subcommittee
 Conference Committee

Committee Clerk Signature



Minutes:

Handout 1

Chairman Weisz: Let's take up SB 2050. There was a suggested amendment that added the estate recovery on the Medicaid expansion. If you are age 55 to 65 you are subject to recovery. This would eliminate that. (Handout #1)

Rep. Fehr: Would there be an amendment? Would this be instead of?

Chairman Weisz: This would be in addition to the 2050.

Rep. Oversen: I move the amendment.

Rep. Mooney: Second.

Rep. Porter: I am going to vote no on the amendment. I think it is the wrong policy for the state. Being asset rich and cash poor is not a reason to avoid paying for what you should be paying for.

ROLL CALL VOTE: 7 y 6 n 0 absent

MOTION CARRIED on the amendment.

Rep. Oversen: I move a Do Pass as amended on SB 2050.

Rep. Mooney: Second.

ROLL CALL VOTE: 7 y 6 n 0 absent

Bill Carrier: Rep. Mooney

82
3/24/15

March 24, 2015

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2050

Page 1, line 2, after "disabled" insert ";and to amend and reenact subsection 2 of section 50-24.1-07 of the North Dakota Century Code, relating to claims against an estate"

Page 1, after line 16, insert:

"SECTION 2. AMENDMENT. Subsection 2 of section 50-24.1-07 of the North Dakota Century Code is amended and reenacted as follows:

2. a. A claim may not be required to be paid nor may interest begin to accrue during the lifetime of the decedent's surviving spouse, if any, nor while there is a surviving child who is under the age of twenty-one years or is blind or permanently and totally disabled, but no timely filed claim may be disallowed because of the provisions of this section.
- b. The department may not file a claim against an estate to recover payments made on behalf of a recipient who was eligible for medicaid under section 50-24.1-37 and who received coverage through a private carrier."

Renumber accordingly

Date: 3-24-15
 Roll Call Vote #: 1

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2050**

House Human Services Committee

Subcommittee

Amendment LC# or Description: 15.0126.02001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Oversen Seconded By Rep. Mooney

Representatives	Yes	No	Representatives	Yes	No
Chairman Weisz	✓		Rep. Mooney	✓	
Vice-Chair Hofstad		✓	Rep. Muscha	✓	
Rep. Bert Anderson		✓	Rep. Oversen	✓	
Rep. Dick Anderson		✓			
Rep. Rich S. Becker		✓			
Rep. Damschen	✓				
Rep. Fehr	✓				
Rep. Kiefert	✓				
Rep. Porter		✓			
Rep. Seibel		✓			

Total (Yes) 7 No 6

Absent 0

Floor Assignment _____

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

Date: 3-24-15
 Roll Call Vote #: 2

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2050**

House Human Services Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Oversen Seconded By Rep. Mooney

Representatives	Yes	No	Representatives	Yes	No
Chairman Weisz	✓		Rep. Mooney	✓	
Vice-Chair Hofstad		✓	Rep. Muscha	✓	
Rep. Bert Anderson		✓	Rep. Oversen	✓	
Rep. Dick Anderson		✓			
Rep. Rich S. Becker		✓			
Rep. Damschen	✓				
Rep. Fehr	✓				
Rep. Kiefert	✓				
Rep. Porter		✓			
Rep. Seibel		✓			

Total (Yes) 7 No 6

Absent _____

Floor Assignment Rep. Mooney

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

REPORT OF STANDING COMMITTEE

SB 2050, as engrossed: Human Services Committee (Rep. Weisz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2050 was placed on the Sixth order on the calendar.

Page 1, line 2, after "disabled" insert ";and to amend and reenact subsection 2 of section 50-24.1-07 of the North Dakota Century Code, relating to claims against an estate"

Page 1, after line 16, insert:

"SECTION 2. AMENDMENT. Subsection 2 of section 50-24.1-07 of the North Dakota Century Code is amended and reenacted as follows:

2. a. A claim may not be required to be paid nor may interest begin to accrue during the lifetime of the decedent's surviving spouse, if any, nor while there is a surviving child who is under the age of twenty-one years or is blind or permanently and totally disabled, but no timely filed claim may be disallowed because of the provisions of this section.
- b. The department may not file a claim against an estate to recover payments made on behalf of a recipient who was eligible for medicaid under section 50-24.1-37 and who received coverage through a private carrier."

Renumber accordingly

2015 CONFERENCE COMMITTEE

SB 2050

2015 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

SB 2050
4/7/2015
25856

Subcommittee
 Conference Committee

Committee Clerk Signature

Ronald Mueller

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new section to chapter 50-06.2 of the North Dakota Century Code, relating to eligibility for service payments for elderly and disabled (SPED).

Minutes:

Attach #1: Considerations for Estate Recovery for the Medicaid Expansion

The following conference committee members were present for SB 2367 on April 7, 2015, 9:30 a.m.

Senator Lee, Senator Dever, Senator Axness
Representative Fehr, Representative Weisz, Representative Muscha

Chairman Judy Lee asked a member of the House to explain what the amendment from the House.

Representative Weisz indicated the amendment came about, when we passed Medicaid Expansion, we probably didn't have too much of a discussion, because there was an assumption that there wasn't going to be an estate recovery having to do with someone on expansion. After we left, the Department of Human Services found out based on our law that we have to implement estate recovery on the premiums for anyone between the age 55 and 65 on Medicaid Expansion. There were constituents who had concerns because in some cases they were dropped off of their current insurance because they cancelled it; they thought they would go on the exchange, but couldn't because they actually qualified for Medicaid expansion. The only options are to be on expansion and be subject to estate recovery, or go back to the open market where the premium was 30% or more higher than what they currently had before they cancelled. It's not fair to put them in a box and say if you make slightly more income, you are not subject to any estate recovery and you get it 90% subsidized, or if you are 52 years old, there is no estate recovery. That is the reason for the amendment to address that issue. We could agree or disagree whether we should have done Medicaid expansion, but we did it, so that should not be part of the discussion. Since we did it, he thinks we should be consistent and fair to everybody.

Chairman Judy Lee indicated that we've had this discussion before. Was it a unanimous vote on the House side? Did all three of you support the amendment.

Representative Muscha indicated the vote was 7-6.

Chairman Judy Lee asked if we needed clarification on anything.

Senator Axness indicated that Maggie Anderson (DHS) was in the room and had a handout that may provide additional information.

(4:25)

Maggie Anderson, Executive Director of Department of Human Services, provided a one-page fact-sheet for considerations for estate recovery. She reviewed the highlights of the document (attach #1).

(7:35)

Representative Weisz in paragraph 4, you talk about costs ranging from \$300 per person to \$1,700 per person. So if you were to implement estate recovery, are you going to have to determine what that individual's monthly premium is, or what number do you use if you have to proceed with an estate recovery?

Maggie Anderson (DHS) indicated that we use their actual amount we incurred for that person. Just like the traditional population, we know exactly what we've paid for the person over the course of their eligibility, and we pull those actual claims. Our computer system would track all of that information and be able to provide that information to Tim. If he had to pursue that estate collection, he would know from the point that the person turned 55 until they died, this is what we paid for her and then we go after that. So it would be the actual amount.

Senator Dever asked if the fiscal note applies to section 1, section 2, or both.

Maggie Anderson (DHS) indicated the fiscal note is about this SPED change of the bill, section 1, and not with the amendment. We weren't able to calculate an impact for the estate collections. We are into this one year, and we really haven't had people who have fallen into this category where we could do an estimate.

Representative Fehr commented when you said it is the amount that the Department of Human Services is paid, when someone has been on the expansion for five years, is it five years worth of premium that we are talking about - accumulated aggregate amount.

Maggie Anderson (DHS) answered yes, if that individual is over the age of 55 as we have been paying those premiums. Let's say they came on Medicaid expansion at the age of 53, and we paid 2 years of premiums before they turned 55, those would be excluded, and then at the point they turned 55 until date of death, let's say age 59, then it would be those 4 years worth of premiums. It would be the entirety of those. Just like now, if someone is on traditional Medicaid, and somebody is permanently institutionalized at the age of 35, they are in some type of accident and disabled and need to go into an institutional setting and they are considered permanently institutionalized at that point, and then they die at the

age of 72, it is the entire amount that we would look at for estate collections. They would need to have some assets for us to recover from. But we would look at that total amount.

Representative Fehr stated we would look at - what does that mean. He is assuming there is some determination where the person has, for example, \$5,000 in assets, or no assets, or \$1,000,000 in assets. Could you describe that a little?

Maggie Anderson (DHS) indicated that the first thing they would do is, they have flags in their computer system that identifies people over the age of 55 or those that are permanently institutionalized because we have to keep that claims data. So other claims data we wouldn't keep for a lifetime. But there is certain data that we have to for estate collections that we have to keep longer. So first we would pull that data. We would know what the universe is. Tim works with the counties and the various legal entities to establish whether there are assets that exist that we can try to recover from. Sometimes there are none. Sometimes we may have \$100,000 of expenses that we've paid and they have \$2,000 of assets that we will still recover.

Representative Fehr asked do you have any idea in terms of this population how many might have assets that you will actually recover versus how many you are going to spend time looking at and there really isn't anything there - they are Medicaid clients, so you would know something about income levels, but perhaps not assets.

Maggie Anderson (DHS) stated they do not, because within the modified adjusted gross income requirements of the Affordable Care Act, we aren't even able to ask about assets. So there are questions that we can ask about eligibility because everything they wanted us to be simple streamline, so whether people were going to the marketplace or to Medicaid, we could test them using the same methodology. So assets are one of those questions we are not able to ask about. So we have no way to speculate that people have lots of assets or no assets. But it is not an eligibility component. Now if someone is on Medicaid expansion, and then their health deteriorates, and they need nursing facility level of care, they've now crossed that line, and we would bring them back through and we would test them as eligible under the traditional Medicaid rules. And then if their assets were greater, we would make them spenddown prior to becoming eligible for traditional Long Term Care Medicaid.

Chairman Judy Lee asked for recess for several minutes while the Senator's met in the hallway.

(Recording time return 16:19)

Chairman Judy Lee indicated that we've talked about this before. It is not a new subject, and we recognize there are feelings on both sides of legislators in both houses. In chatting with her colleagues, this is almost like a donut hole to us. If we find that it is a totally out-of-hand number compared to what the Department of Human Services estimates, which would be unusual because she believes they have a good handle on things, the legislature meets again in two years and it can always be adjusted. She talked for the colleagues on the committee that they would accede to the House amendments.

Senator Dever indicated that we are early in Medicaid expansion and that it expires in 2017, so we will be making considerations at that time.

Senator Dever moved that the Senate accede to the House Amendments on SB 2050. The motion was seconded by **Senator Axness**.

Discussion

Representative Weisz commented that it did come out of committee unanimous. There was some thought that you may have some millionaires after but would be over income - land to the kids and not charging rents, so that they could somehow fit under the expansion and be multi-millionaires, but the odds of that happening are very slim. Frankly, we can all do that now with nursing home care, if you have a good financial planner, you do your 5 year look back, you can have millions of assets and Medicaid is going to pay for your care. That is where the opposition came from.

Chairman Judy Lee agreed that there is a strong point there. If we get so tight about it that we are going to eliminate every abuser, and she doesn't think there are that many abusers, we are going to hurt somebody who is maybe is in a far less strong financial position by being too harsh. As Senator Dever indicated, there will be discussion about this in the next legislative session.

Roll Call Vote

Senators: 3 Yes, 0 No, 0 Absent.

Representatives: 3 Yes, 0 No, 0 Absent.

Motion passes.

Senator Axness will carry SB 2050 to the Senate floor.

Representative Fehr will carry SB 2050 to the House floor.

REPORT OF CONFERENCE COMMITTEE

SB 2050, as engrossed: Your conference committee (Sens. J. Lee, Dever, Axness and Reps. Fehr, Weisz, Muscha) recommends that the **SENATE ACCEDE** to the House amendments as printed on SJ pages 993-994 and place SB 2050 on the Seventh order.

Engrossed SB 2050 was placed on the Seventh order of business on the calendar.

2015 TESTIMONY

SB 2050

SB2050
Attachment 1
01/07/2015 9:18
Doug ~~Wegh~~ Wegh
J# 21727

Senate Human Services Committee

Wednesday, January 7th, 2015

Senate Bill 2050

Chairman Lee and members of the Senate Human Services Committee, my name is Doug Wegh. I am the County Social Service Director and HCBS case manager for Grant and Hettinger Counties. I have worked for County government with in home care programs since the fall of 1980, first under block grant funding and later under the current Home and Community Based Services funding.

State policy for the Service Payments for the Elderly and Disabled (SPED) currently requires that anyone who is receiving SPED and has potential eligibility for Medicaid must apply and receive services under Medicaid. In theory, this is good for the state, as it brings in federal reimbursement. The SPED program is 95% State Funded and 5% County Funded. Medicaid, on the other hand is 50% federally funded and 50% State funded. So, from a fiscal standpoint, this saves the state money. From an elderly or disabled client perspective, it may not be so fiscally sound.

When an elderly or disabled individual applies for Medicaid, income and assets are verified and reviewed by an eligibility worker. For a one person household, Medicaid allows countable assets up to \$3000 and burial funds up to \$6,000 for a total of \$9,000. If the applicant's assets fit within the guidelines, income is then looked at. Medicaid has established Medically Needy income levels. This determines the amount of income medically needy households can keep in order to meet their monthly maintenance needs (monthly expenses like food, clothing, heat, lights, shelter costs, telephone, etc.) The current level for a one person household is \$807 and for two persons it is \$1,088. For elderly and disabled individuals there is a \$20 disregard, which is also added in and moves the amounts to \$827 and \$1,108. Any net income above that amount is considered to be Client Share (formerly called Recipient Liability) that must be applied toward monthly medical expenses. This household may be subject to Estate Recovery.

For illustration purposes, I would like to use the following scenario. An elderly client, who will be referred to as Mary, has a net income of \$1,000 per month and she has \$12,000 in countable assets for the HCBS program. Because of the effects of aging and health issues, Mary moves very slowly, is unstable on her feet and has difficulty raising her arms above her head. She requires assistance with bathing (Personal Care), as well as needing help around the house for things such as vacuuming, scrubbing her floors, help with laundry, etc. (homemaker service). She receives Personal Care (bathing) two times per week for a total of 6 units or 1 ½ hours and she receives homemaker services for a total of 6 units or 1 ½ hours. As her income for a household of one is below \$1,038, she has no fee for the Personal Care or for the homemaker services. During the month of June, Mary's area of the state is hit with an unusual amount of moisture and her roof begins to leak; the shingles are old and the carpenter tells her that she needs a new roof. The cost of the roof is \$3,500. Mary has her roof fixed and the HCBS case manager returns to do her reassessment, learning that her assets have now dropped and she has the potential eligibility for Medicaid. (Basically she is below the \$9,000 for a household of one.) Her case manager tells her that she has to apply for Medicaid or her services will have to be terminated. She needs the services and so she applies for Medicaid. The eligibility worker determines that she is eligible for Medicaid with a recipient liability of \$173 per month. Mary's case plan is then changed for personal care from SPED to a Medicaid program called Medicaid State Plan Personal Care. As she did not meet the criteria for Medicaid Waiver, her homemaker needs continue with the SPED program with zero client responsibility. She had been receiving 6 units of Personal Care per week (4.3 weeks in a month) or 26 units per month (\$6.79-Agency unit rate) for a total monthly cost of \$176.54. Mary is now responsible for \$173 and Medicaid pays \$3.54. Mary determines that she cannot afford this every month. She decides that she will continue with the homemaking duties under the SPED Program and discontinue all of the Personal care. She continues to be unstable, but she knows that her household budget can't afford \$173 every month and so she risks a potential fall which is one of the major causes of injury or death in elderly.

Attach 1
pg 3

As a Case manager, I'm asking that the Home and Community Based Service Policies and Procedures manual on funding sources: 525-05-20 be changed from "Clients who are eligible for federally funded services and programs must utilize the services available under those resources" to "Clients who are eligible for federally funded services and programs must utilize the services available under those resources unless it is detrimental to their financial situation and if that is the case, then be allowed to access other Home and Community Funding sources."

Thank you for your time. I am willing to answer any questions.

SB2050

Attach
01/07/2015
Job 21727
Wegh

Schedule 1

For Assets \$0 - \$24,999

SPED Program Sliding Fee Schedule

Effective July 1, 2009

Family Size	100% Discount or No Fee	90% Discount or 10%	80% Discount or 20%	70% Discount or 30%	60% Discount or 40%	50% Discount or 50%	40% Discount or 60%	30% Discount or 50%	20% Discount or 80%	10% Discount or 90%	0% Discount or 100%
1	0-1038	1039-1131	1132-1224	1225-1316	1317-1408	1409-1499	1500-1593	1594-1685	1686-1777	1778-1869	1870 +
2	0-1395	1396-1516	1517-1636	1637-1757	1758-1876	1877-1997	1998-2118	2119-2238	2239-2359	2360-2480	2481 +
3	0-1753	1754-1902	1903-2051	2052-2200	2201-2349	2350-2498	2499-2647	2648-2796	2797-2945	2946-3094	3095 +
4	0-2110	2111-2288	2289-2465	2466-2642	2643-2819	2820-2997	2998-3175	3176-3352	3353-3529	3530-3706	3707 +
5	0-2468	2469-2674	2675-2879	2880-3084	3085-3290	3291-3496	3497-3701	3702-3907	3908-4113	4114-4319	4320 +
6	0-2825	2826-3060	3061-3293	3294-3528	3529-3762	3763-3997	3998-4230	4231-4465	4466-4698	4699-4933	4934 +
7	0-2891	2892-3131	3132-3370	3371-3610	3611-3849	3850-4089	4090-4328	4329-4567	4568-4807	4808-5046	5047 +
8	0-2960	2961-3204	3205-3450	3451-3694	3695-3940	3941-4184	4185-4428	4429-4673	4674-4918	4919-5162	5163 +
9	0-3026	3027-3275	3276-3525	3526-3776	3777-4026	4027-4277	4278-4527	4528-4778	4779-5028	5029-5277	5278 +
10	0-3093	3094-3348	3349-3604	3605-3859	3860-4114	4115-4370	4371-4625	4626-4880	4881-5135	5136-5391	5392 +
11	0-3160	3161-3422	3423-3682	3683-3942	3943-4203	4204-4464	4465-4725	4726-4985	4986-5245	5246-5507	5508 +
12	0-3227	3228-3492	3493-3759	3760-4025	4026-4291	4292-4558	4559-4824	4825-5090	5091-5357	5358-5622	5623 +

Attch 2
Pg 2

DD	MW/SPED EXSPED	Medicaid St Plan	SERVICE	UNIT	MAX DOLLAR AMOUNT	SERVICE MONTHLY MAXIMUM
00096	00012		Respite Care	15 min		\$1,039.00
	00013		Respite Care, Institutional	Daily	Swing bed rate	\$1,039.00
00050	00010		Homemaker Service	15 min	\$6.79 Agency \$4.94 Ind	\$346.00
	00020		Chore - Snow Removal	Per job	\$26.28	
	00021		Chore -Labor	15 min	\$6.79 Agency \$4.94 Ind	
	00023		Installation ERS	1 time	at cost	
	00045		Emergency Response System (ERS)	1 month	at cost	
	00017		Case Management - Assessment	Month	\$223.89	
	00015		Case Management - Other	Month	\$114.77	
T2024			Tech Dependent Case Management - Assessment	Month	\$318.50	T.D. Waiver only
T2022			Tech Dependent Case Management - Other	Month	\$122.04	T.D. Waiver only
00014			Higher Level Case Management - Other	Month	\$122.04	HCBS Waiver Only
00016			Higher Level Case Management - Assessment	Month	\$318.50	HCBS Waiver Only
00057	00026		Adult Family Foster Care	Daily	\$87.35	HCBS Waiver Only
	00001		Family Home Care	Daily	\$43.70	SPED & EXSPED Only
	00030		Personal Care Service -SPED	Daily	\$75.12	SPED only
	00040		Personal Care Service- SPED	15 min	\$6.79 Agency \$4.94 Ind	SPED only
	00043		Personal Care - Assisted Living - SPED	Daily	\$75.12	SPED only
		T1019	Personal Care Service- MSP	15 min	\$6.79 Agency \$4.94 Ind	MSP-PC Only
		T1020	Personal Care Service - MSP	Daily	\$82.49	MSP-PC Only
	00031		Environmental Modification	Per job		
	00032		Specialized Equipment	Per item		
00055	00041		Adult Day Care	1/2 day		
00042			Residential Service	Daily		HCBS Waiver Only
	00018		Non-Medical Transportation (out of town)	Passenger Mile	\$0.56	
	00019		Non-Medical Transportation (Carrier-bus, taxi)	at cost		
	00028		Non-Medical Transportation (local-round trip)	Flat rate/Round Trip	\$12.16	
	00039		Non-Medical Transportation (Escort)	15 min	\$3.27	
00068			Supported Employment	15 min	\$6.79 Agency \$4.94 Ind	HCBS Waiver Only
00076			Transitional Living	Unit	\$6.79 Agency \$4.94 Ind	HCBS Waiver Only
T1000			Nurse Management	15 min	\$15.10 Agency \$11.98 Ind	T.D. Waiver only
S5125			Attendant Care	15 min	\$6.79 Agency \$4.94 Ind	T.D. Waiver only
	S5170		Home Delivered Meals	1 meal	\$8.37	
	00005		Nurse Education Care	15 min	\$15.10 Agency \$11.98 Ind	HCBS Waiver & SPED Only
	S5115		Extended Personal Care	15 min	\$6.79 Agency \$4.94 Ind	HCBS Waiver & SPED Only
S5136			Family Personal Care	Daily	\$71.19	HCBS Waiver Only

Monthly Maximum per month -- HCBS Highest NH Rate, SPED and ExSPED \$3367, Board & Room \$682, (7/1/14), PC/Med St Plan (Capped by Units)

SB 2050
1-26-15
#1

Senate Appropriations Committee

Monday, January 26th, 2015

Senate Bill 2050

Chairman Holmberg and members of the Senate Appropriations Committee, my name is Doug Wegh. I am the County Social Service Director and HCBS case manager for Grant and Hettinger Counties. I have worked for County government with in home care programs since the fall of 1980, first under block grant funding and later under the current Home and Community Based Services funding.

State policy for the Service Payments for the Elderly and Disabled (SPED) currently requires that anyone who is receiving SPED and has potential eligibility for Medicaid must apply and receive services under Medicaid. In theory, this is good for the state, as it brings in federal reimbursement. The SPED program is 95% State Funded and 5% County Funded. Medicaid, on the other hand is 50% federally funded and 50% State funded. So, from a fiscal standpoint, this saves the state money. From an elderly or disabled client perspective, it may not be so fiscally sound.

When an elderly or disabled individual applies for Medicaid, income and assets are verified and reviewed by an eligibility worker. For a one person household, Medicaid allows countable assets up to \$3000 and burial funds up to \$6,000 for a total of \$9,000. If the applicant's assets fit within the guidelines, income is then looked at. Medicaid has established Medically Needy income levels. This determines the amount of income medically needy households can keep in order to meet their monthly maintenance needs (monthly expenses like food, clothing, heat, lights, shelter costs, telephone, etc.) The current level for a one person household is \$807 and for two persons it is \$1,088. For elderly and disabled individuals there is a \$20 disregard, which is also added in and moves the amounts to \$827 and \$1,108. Any net income above that amount is considered to be Client Share (formerly called Recipient Liability) that must be applied toward monthly medical expenses. This household may be subject to Estate Recovery.

For illustration purposes, I would like to use the following scenario. An elderly client, who will be referred to as Mary, has a net income of \$1,000 per month and she has \$12,000 in countable assets for the HCBS program. Because of the effects of aging and health issues, Mary moves very slowly, is unstable on her feet and has difficulty raising her arms above her head. She requires assistance with bathing (Personal Care), as well as needing help around the house for things such as vacuuming, scrubbing her floors, help with laundry, etc. (homemaker service). She receives Personal Care (bathing) two times per week for a total of 6 units or 1 ½ hours and she receives homemaker services for a total of 6 units or 1 ½ hours. As her income for a household of one is below \$1,038, she has no fee for the Personal Care or for the homemaker services. During the month of June, Mary's area of the state is hit with an unusual amount of moisture and her roof begins to leak; the shingles are old and the carpenter tells her that she needs a new roof. The cost of the roof is \$3,500. Mary has her roof fixed and the HCBS case manager returns to do her reassessment, learning that her assets have now dropped and she has the potential eligibility for Medicaid. (Basically she is below the \$9,000 for a household of one.) Her case manager tells her that she has to apply for Medicaid or her services will have to be terminated. She

needs the services and so she applies for Medicaid. The eligibility worker determines that she is eligible for Medicaid with a recipient liability of \$173 per month. Mary's case plan is then changed for personal care from SPED to a Medicaid program called Medicaid State Plan Personal Care. As she did not meet the criteria for Medicaid Waiver, her homemaker needs continue with the SPED program with zero client responsibility. She had been receiving 6 units of Personal Care per week (4.3 weeks in a month) or 26 units per month (\$6.79-Agency unit rate) for a total monthly cost of \$176.54. Mary is now responsible for \$173 and Medicaid pays \$3.54. Mary determines that she cannot afford this every month. She decides that she will continue with the homemaking duties under the SPED Program and discontinue all of the Personal care. She continues to be unstable, but she knows that her household budget can't afford \$173 every month and so she risks a potential fall which is one of the major causes of injury or death in elderly.

Mary, in my example, was told that she had to apply for Medicaid, not because the costs for her services were excessive, as some may be, but because her resources fell into the Medicaid level. The majority of seasoned HCBS case managers can speak from their experiences of a client like Mary. Many just need help with a bath (personal care) once or twice per week. Many are just like Mary, and once told, tell those case managers that they will take a sponge bath or they will try to find someone else to help them with a bath. Case managers just know who they have found because they can smell urine on our Mary during the next visit, as Mary still needs SPED to help with her vacuuming. If Mary would have accepted services, she would have very likely had to give up other things (something in the areas of food, clothing, or shelter.) Mary wasn't moving to a more costly higher level of care, she just wanted a bath. As an administrator, I realize that there will be additional costs, but I have to ask for our Mary's.

As a Case manager, I'm asking that the Home and Community Based Service Policies and Procedures manual on funding sources: 525-05-20 be changed from "Clients who are eligible for federally funded services and programs must utilize the services available under those resources" to "Clients who are eligible for federally funded services and programs must utilize the services available under those resources unless it is detrimental to their financial situation and if that is the case, then be allowed to access other Home and Community Funding sources."

Thank you for your time. I am willing to answer any questions.

Senate Appropriations Committee

Monday, January 26, 2015

Senate Bill 2050

As a follow up to Doug Wegh's testimony, I am Penny Woodward, HCBS Case Manager for Morton County Social Services. I want you to know a real "Mary's" story.

In July 2013, I admitted "Jane" to HCBS services. She had been a resident of Williston but her apartment was being bought out and renters were being moved elsewhere. She had a stroke in the course of this process and moved to Mandan following a hospital and rehab stay. She required help with housework, laundry and bathing. Because her income was \$1,016 and her assets were \$495 (Medicaid eligible), she was required to apply for Medicaid in order to receive help with a bath. Her Client Share (Recipient Liability) would have been \$189 whereas she would have received a bath under SPED for no fee. She did not believe she could afford \$189/mo for a bath and decided she would "be careful" or have her daughter help when she could.

In November, 2014, Jane fell in the tub. She is now a permanent resident of a local nursing facility with the average cost in ND of approximately \$7,300 per month.

I don't believe the State or Jane benefitted from this policy. And as Doug stated in his testimony, there are case managers all over the state with such real stories.

Thank you for your time. I am willing to answer any questions I can or find the answers you need.

SB 2050

1-26-15

#2

2.1

Subcommittee
2-3-15
SB 2050

Schedule 1
For Assets \$0 - \$24,999
SPED Program Sliding Fee Schedule
Effective July 1, 2009

Family Size	100% Discount or No Fee	90% Discount or 10%	80% Discount or 20%	70% Discount or 30%	60% Discount or 40%	50% Discount or 50%	40% Discount or 60%	30% Discount or 70%	20% Discount or 80%	10% Discount or 90%	0% Discount or 100%
1	0-1038	1039-1131	1132-1224	1225-1316	1317-1408	1409-1499	1500-1593	1594-1685	1686-1777	1778-1869	1870 +
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4	0-2110	2111-2288	2289-2465	2466-2642	2643-2819	2820-2997	2998-3175	3176-3352	3353-3529	3530-3706	3707 +
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12	0-3227	3228-3492	3493-3759	3760-4025	4026-4291	4292-4558	4559-4824	4825-5090	5091-5357	5358-5622	5623 +

Page 1

Subcommittee
2-3-15
J# 23079
#1
SB 2050

February 3, 2015

SB2050
2
Subcommittee
2-3-15
J# 23079

PROPOSED AMENDMENTS TO SENATE BILL NO. 2050

Page 1, after line 6, insert:

"1."

Page 1, line 7, remove "the state's"

Page 1, line 8, replace "medical assistance program" with "chapter 50-24.1"

Page 1, line 9, after "program" insert: ";

- a. If the individual's estimated monthly home and community-based services benefits, excluding the cost of case management, are between the income level established in section 50-24.1-02.6 and the lowest level of the fee schedule for services under this chapter; or
- b. If the individual is receiving a service that is not available under chapter 50-24.1.
2. The home and community-based services case manager shall notify the state agency upon use of an exception authorized under subsection 1"

Renumber accordingly

February 3, 2015

#1
Sub
2-6-15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2050

Page 1, after line 6, insert:

"1."

Page 1, line 7, remove "the state's"

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2. The home and community-based services case manager shall notify the state agency upon use of an exception authorized under subsection 1"

Renumber accordingly

1.1

North Dakota Department of Human Services

NON-ACA MEDICAID INCOME ELIGIBILITY LEVELS Effective January 1, 2015

Family Size	SSI Effective 01-01-2015	Medically Needy 83% of Poverty	QMB 100% of Poverty	SLMB 120% of Poverty	QI-1 135% of Poverty	Children with Disabilities & Women's Way 200% of Poverty	Workers with Disabilities 225% of Poverty
1	\$ 733	\$807	\$973	\$1,167	\$1,313	\$1,945	\$2,188
2	\$1,100	\$1,088	\$1,311	\$1,573	\$1,770	\$2,622	\$2,949
3		\$1,369	\$1,649	\$1,979	\$2,226	\$3,298	\$3,711
4		\$1,650	\$1,988	\$2,385	\$2,683	\$3,975	\$4,472
5		\$1,930	\$2,326	\$2,791	\$3,140	\$4,652	\$5,233
6		\$2,211	\$2,664	\$3,197	\$3,597	\$5,328	\$5,994
7		\$2,492	\$3,003	\$3,603	\$4,053	\$6,005	\$6,756
8		\$2,773	\$3,341	\$4,009	\$4,510	\$6,682	\$7,517
9		\$3,054	\$3,679	\$4,415	\$4,967	\$7,358	\$8,278
10		\$3,335	\$4,018	\$4,821	\$5,424	\$8,035	\$9,039
+1		\$281	\$338	\$406	\$457	\$677	\$761

Spousal Impoverishment Levels			
Community Spouse Minimum Asset Allowance (Effective 01/01/15)	Community Spouse Maximum Asset Allowance (Effective 01/01/15)	Community Spouse Income Level (Effective 01/01/03)	Income Level for each Additional Individual (Effective 07-01-14)
\$23,844	\$119,220	\$2,267	\$655

Average Cost of Nursing Care	
Average Monthly Cost of Care (Effective 01/01/15)	Average Daily Cost of Care (Effective 01/01/15)
\$7,595	\$249.70

Notes:

- Nursing Home personal needs allowance increased from \$50 to \$65 effective with the benefit month of October 2013.
- ICF/ID and Basic Care personal needs allowance increased from \$85 to \$100 effective with the benefit month October 2013.

2.1

Sub 2
1050
2-6-15

February 3, 2015

#1
Subcomm
SB 2050
2-17-15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2050

Page 1, after line 6, insert:

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 - b. If the individual is receiving a service that is not available under chapter 50-24.1.
2. The home and community-based services case manager shall notify the state agency upon use of an exception authorized under subsection 1"

Renumber accordingly

February 3, 2015

#1
2-18-15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2050

Page 1, after line 6, insert:

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- b. If the individual is receiving a service that is not available under chapter 50-24.1.
2. The home and community-based services case manager shall notify the state agency upon use of an exception authorized under subsection 1"

Renumber accordingly

/

SB 2050
3.16.2015

#1

House Human Services Committee

Monday, March 16th, 2015

1.1

Senate Bill 2050

Chairman Weisz and members of the House Human Services Committee, my name is Doug Wegh. I am the County Social Service Director and an HCBS case manager for Grant and Hettinger Counties. I have worked for County government with in home care programs since the fall of 1980, first under block grant funding and later under the current Home and Community Based Services funding.

State policy for the Service Payments for the Elderly and Disabled (SPED) currently requires that anyone who is receiving SPED and has potential eligibility for Medicaid must apply and receive services under Medicaid. In theory, this is good for the state, as it brings in federal reimbursement. The SPED program is 95% State Funded and 5% County Funded. Medicaid, on the other hand is 50% federally funded and 50% State funded. So, from a fiscal standpoint, this saves the state money. From an elderly or disabled client perspective, it may not be so fiscally sound.

When an elderly or disabled individual applies for Medicaid, income and assets are verified and reviewed by an eligibility worker. For a one person household, Medicaid allows countable assets up to \$3000 and burial funds up to \$6,000 for a total of \$9,000. If the applicant's assets fit within the guidelines, income is then looked at. Medicaid has established Medically Needy income levels. This determines the amount of income medically needy households can keep in order to meet their monthly maintenance needs (monthly expenses like food, clothing, heat, lights, shelter costs, telephone, etc.) The current level for a one person household is \$807 and for two persons it is \$1,088. For elderly and disabled individuals there is a \$20 disregard, which is also added in and moves the amounts to \$827 and \$1,108. Any net income above that amount is considered to be Client Share (formerly called Recipient Liability) that must be applied toward monthly medical expenses. This household may be subject to Estate Recovery.

For illustration purposes, I would like to use the following scenario. An elderly client, who will be referred to as Mary, has a net income of \$1,000 per month and she has \$12,000 in countable assets for the HCBS program. Because of the effects of aging and health issues, Mary moves very slowly, is unstable on her feet and has difficulty raising her arms above her head. She requires assistance with bathing (Personal Care), as well as needing help around the house for things such as vacuuming, scrubbing her floors, help with laundry, etc. (homemaker service). She receives Personal Care (bathing) two times per week for a total of 6 units or 1 ½ hours and she receives homemaker services for a total of 6 units or 1 ½ hours. As her income for a household of one is below \$1,038, she has no fee for the Personal Care or for the homemaker services. During the month of June, Mary's area of the state is hit with an unusual amount of moisture and her roof begins to leak; the shingles are old and the carpenter tells her that she needs a new roof. The cost of the roof is \$3,500. Mary has her roof fixed and the HCBS case manager returns to do her reassessment, learning that her assets have now dropped and she has the potential eligibility for Medicaid. (Basically she is below the \$9,000 for a household of one.) Her case manager tells her that she has to apply for Medicaid or her services will have to be terminated. She

needs the services and so she applies for Medicaid. The eligibility worker determines that she is eligible for Medicaid with a recipient liability of \$173 per month. Mary's case plan is then changed for personal care from SPED to a Medicaid program called Medicaid State Plan Personal Care. As she did not meet the criteria for Medicaid Waiver, her homemaker needs continue with the SPED program with zero client responsibility. She had been receiving 6 units of Personal Care per week (4.3 weeks in a month) or 26 units per month (\$6.79-Agency unit rate) for a total monthly cost of \$176.54. Mary is now responsible for \$173 and Medicaid pays \$3.54. Mary determines that she cannot afford this every month. She decides that she will continue with the homemaking duties under the SPED Program and discontinue all of the Personal care. She continues to be unstable, but she knows that her household budget can't afford \$173 every month and so she risks a potential fall which is one of the major causes of injury or death in elderly.

As a Case manager, I'm asking that the Home and Community Based Service Policies and Procedures manual on funding sources: 525-05-20 be changed from "Clients who are eligible for federally funded services and programs must utilize the services available under those resources" to "Clients who are eligible for federally funded services and programs must utilize the services available under those resources unless the individual's estimated monthly home and community-based services benefits, excluding the cost of case management, are between the medically needy income level and the lowest level of the fee schedule for services under this chapter and if that is the case, the case manager shall notify the state agency of an exception." This exception would allow Mary, in my example, to continue to receive personal care services under SPED and not be subject to the huge Client Share.

Thank you for your time. I am willing to answer any questions.

SB 2050
3-17-15

#1

50-24.1-07. Recovery from estate of medical assistance recipient.

1. On the death of any recipient of medical assistance who was a resident of a nursing facility, intermediate care facility for individuals with intellectual disabilities, or other medical institution and with respect to whom the department of human services determined that resident reasonably was not expected to be discharged from the medical institution and to return home, or who was fifty-five years of age or older when the recipient received the assistance, and on the death of the spouse of the deceased recipient, the total amount of medical assistance paid on behalf of the recipient following the institutionalization of the recipient who cannot reasonably be expected to be discharged from the medical institution, or following the recipient's fifty-fifth birthday, as the case may be, must be allowed as a preferred claim against the decedent's estate after payment, in the following order, of:
 - a. Recipient liability expense applicable to the month of death for nursing home or basic care services;
 - b. Funeral expenses not in excess of three thousand dollars;
 - c. Expenses of the last illness, other than those incurred by medical assistance;
 - d. Expenses of administering the estate, including attorney's fees approved by the court;
 - e. Claims made under chapter 50-01;
 - f. Claims made under chapter 50-24.5;
 - g. Claims made under chapter 50-06.3 and on behalf of the state hospital; and
 - h. Claims made under subsection 4.
2.
 - a. A claim may not be required to be paid nor may interest begin to accrue during the lifetime of the decedent's surviving spouse, if any, nor while there is a surviving child who is under the age of twenty-one years or is blind or permanently and totally disabled, but no timely filed claim may be disallowed because of the provisions of this section.
 - b. The department may not file a claim against an estate to recover payments made on behalf of a recipient who was eligible for medicaid under section 50-24.1-37 and who received coverage through a private carrier.
3. Every personal representative, upon the granting of letters of administration or testamentary shall forward to the department of human services a copy of the petition or application commencing probate, heirship proceedings, or joint tenancy tax clearance proceedings in the respective district court, together with a list of the names of the legatees, devisees, surviving joint tenants, and heirs at law of the estate. Unless a properly filed claim of the department of human services is paid in full, the personal representative shall provide to the department a statement of assets and disbursements in the estate.

March 24, 2015

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2050

Page 1, after line 16, insert:

"SECTION 2. AMENDMENT. Subsection 2 of section 50-24.1-07 of the North Dakota Century Code is amended and reenacted as follows:

2.

- a. A claim may not be required to be paid nor may interest begin to accrue during the lifetime of the decedent's surviving spouse, if any, nor while there is a surviving child who is under the age of twenty-one years or is blind or permanently and totally disabled, but no timely filed claim may be disallowed because of the provisions of this section.
- b. The department may not file a claim against an estate to recover payments made on behalf of a recipient who was eligible for medicaid under section 50-24.1-37 and who received coverage through a private carrier. "

Renumber accordingly

Maggie Anderson

SB 2050
04/07/15
Attach #1
J# 25856

Considerations for Estate Recovery for the Medicaid Expansion population:

Medicaid estate recovery applies to individuals who are eligible for Medicaid, including Medicaid Expansion and are permanently institutionalized or over the age of 55 years.

Individuals eligible for Medicaid Expansion do not have to report assets as a component of their eligibility. Due to federal rules, the Department is prohibited from asking about assets for people who apply for coverage under the Medicaid Expansion. People could have significant assets and have low income (about \$16,000 for a household of one) and still be eligible for Medicaid Expansion.

The Affordable Care Act includes an individual mandate for health care coverage. If people do not apply for Medicaid Expansion or the Advance Premium Tax Credits through the Federal Marketplace, they may not be able to afford to purchase coverage on their own. Individuals who qualify for Medicaid Expansion and who are permanently institutionalized or over the age of 55 years are subject to estate recovery for the Medicaid Expenditures paid on their behalf. Individuals who receive the Advance Premium Tax Credits through the Federal Marketplace are not subject to estate recovery.

Individuals eligible for the Medicaid Expansion have coverage through the Sanford Health Plan as the Department contracts with the Sanford Health Plan for coverage. The monthly premium for the Medicaid Expansion population (as of January 1, 2015) ranges from around \$300 per person per month to around \$1,700 per person per month, depending on age and gender cohort. Estate recovery for Individuals who are eligible for Traditional Medicaid are for the actual costs of services (nursing home care, physician visit, dental visit, etc.) Therefore, individuals who qualify for Medicaid Expansion have a premium paid on their behalf, but they may not incur any health care costs or may incur costs that would equal the premium paid. There may also be people who incur health care costs above the amount of the premium.

The Department is estimating the cost of Medicaid Expansion to be over \$540 million for the 2015-2017 biennium. The Medicaid Expansion affords 100% federal match for the first three calendar years (2014, 2015, and 2016.) Starting January 1, 2017, the State is responsible for 5% of the cost of the Medicaid Expansion. The general fund needed in 2015-2017 for this 5% for 7 months of premiums is \$8.2 million. (The federal match drops to 94% in 2018, 93% in 2019, and 90% for 2020 and beyond.) The state funding needed to support the Medicaid Expansion will increase in future biennia.

Coverage under the Medicaid Expansion started January 1, 2014. Since its inception, approximately 46% of the enrollees were ages 19-35, 17% were ages 36-44, and 36% were ages 45-64. As of February 1, 2015 there were 16,316 individuals enrolled in the North Dakota Medicaid Expansion. There has been steady growth since January 2014 and the Department expects to reach the 20,500 enrollees they estimated in 2013.

To date, there is little experience with the application of estate recovery for this population; however, with an expected enrollment of 20,500 and anticipated premium increases, the amount of state general fund commitment for future biennia will increase.

Each person over the age of 55 who is determined to be eligible for the Medicaid Expansion is notified that Medicaid expenditures made on their behalf, are subject to Medicaid estate recovery.

For State Fiscal Year 2013, the North Dakota Department of Human Services collected \$3.2 million for estate recovery with the Traditional Medicaid program. The funds recovered are used to cover Medicaid program expenses and the federal share is returned to the federal government.