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ROLL NUMBER

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2377

2007 SENATE HUMAN SERVICES

SB 2377

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2377

Senate Human Services Committee

Check here for Conference Committee

Hearing Date: 2-07-07

Recorder Job Number: 3019, 3068

Committee Clerk Signature

Mary K. Mouson

Minutes:

Senator J. Lee, Chairman, opened the hearing on SB 2377 relating to obstetrical services provided by laypeople; relating to duties of professionals attending births; and to provide a penalty.

Vice Chairman Senator Erbele recognized Senator J. Lee.

Senator J. Lee introduced SB 2377. The reason for this being introduced is a concern, shared by many, about untrained people who are putting themselves out to be midwives. This doesn't mean that somebody can't choose to make a home birth delivery but it does mean that people who call themselves midwives need to be trained professionally.

Senator Erbele asked for any questions. There were none.

Bruce Levi (ND Medical Association) stated that NDMA is the professional membership organization for physicians, residents, and medical students in ND. NDMA supports SB 2377.

See attached testimony in favor of SB 2377 with a proposed amendment. (Attachment #1)

Senator Warner asked if midwifery is a stand alone practice in ND.

Mr. Levi answered that there are categories of individuals that are nurse midwives. He said there would be others who could talk about qualifications and participation better than he

could. What they are looking at are those individuals who do not have the education of the nurse midwife or otherwise licensed under the medical practice act or the nurses practice act. Senator Warner asked if there are any midwives in the state who have hospital privileges. Mr. Levi said there are about 6-7 nurse midwives in ND but he wasn't sure what, specifically, the privileges were.

Senator J. Lee responded that there is a nurse midwife who is attached to the Women's Clinic at Dakota Clinic in Fargo.

Dr. Ocejo (Pediatrician and Neonatologist) See attached testimony #2 in support of SB 2377. Additionally, he offered information that approximately 15% of first time mothers end up having to have a C-section. He addressed different types of situations that would require medical care. There is nothing worse than a surprise when a baby is thought to be normal and it is born and is not. He said he is not against the concept of home deliveries. It is a natural process, but it is knowing which mothers can deliver at home and which mothers cannot.

Duane Houdek (ND Board of Medical Examiners) explained that the board licenses and regulates the practice of medicine. His intention was just to support the amendment that was offered by the medical association. He added one point that there only exists within the physician practice act and the nurse practice act the ability to stop the practice of medicine or the practice of nursing by those who are not licensed to do so. The great benefit of this bill is that it clarifies exactly what it is they are talking about in this instance.

Senator Dever asked if we have any practice provisions for midwifery.

Mr. Houdek said there would be others better able to address that.

Senator Dever asked if this only applied to business relationships.

Mr. Houdek replied that was his understanding. There would be an exception for a family member who was not operating as a business. One other exception would be a Good Samaritan.

Wanda Rose (Vice President, ND Nurses Association) testified in support of SB 2377.

(Attachment #3)

Senator Dever asked if a certified nurse midwife is a RN with a specialty.

Ms. Rose said they are master prepared and then they participate in specialized education for nurse midwife and they take a certifying exam to determine their competency.

Senator Warner asked if those are stand alone practices and only make referrals to doctors if they believe they are necessary.

Ms. Rose couldn't answer in detail. She did say that five in ND practice within a clinic setting.

(Meter 19:30)

Dr. Connie Kalanek (Executive Director of the ND Board of Nursing) testified in support of SB 2377 and the proposed amendment. She spoke to some of the questions that were asked earlier. The NDBON licenses and registers approximately 17,000 nurses and unlicensed assisted persons in the state. The board has currently licensed seven certified nurse midwives. Five practice in ND, one in MT, and one in MN. (Meter 20:50) They all practice with collaborative physicians. None of them do home deliveries. Their scopes of practice are very clear. (Meter 21:25)

Senator J. Lee asked, if one of the patients of one of the current nurse midwives wished to deliver at home, would it be possible.

Dr. Kalanek replied said there are two things that go into play here. First, the scope of practice is approved by the board of nursing and none of the individuals are approved to do home births. She didn't think it would be approved through the clinic or hospital either. (Meter 22:00)

There was no neutral testimony.

Senator J. Lee asked for testimony in opposition to SB 2377.

Becky Olsen testified on behalf of herself. (Attachment #4) She also responded to comments by Dr. Ocejo dealing with ultrasounds and vitamin k injections. (Meter 28:30)

Senator Heckaman asked Ms. Olsen how she handled the liability issue with the midwife.

Was there a contract?

Ms. Olsen said she didn't necessarily know if she was covered for liability.

Senator Warner asked about the cost of midwifery.

Ms. Olsen said that the cost for her midwife was not based on income or anything. An actual fee wasn't charged for the birth. It was whatever they could pay, typically, about \$1500. Her prenatal visits were on the average \$50/hr.

Senator J. Lee asked if there was any insurance reimbursement for the care she received.

Ms. Olsen replied there was not.

Senator J. Lee asked what kind of training the midwife had who assisted her.

Ms. Olsen replied that the lay midwife who assisted her trained with other experienced midwives.

Senator J. Lee asked if she knew if her midwife had any medical training.

Ms. Olsen said, no, she wasn't licensed in any way.

Senator Dever asked Ms. Olsen how she heard about this hearing.

Ms. Olsen said her midwife called her.

John V. Emtor (citizen) testified in opposition to SB 2377 because he felt it takes away a person's freedom.

Dr. Blaine Olsen testified on behalf of himself in opposition to SB 2377. His wife Becky testified earlier and he wanted to add to her testimony. He said they had interviewed people

who had only home births as well as others who had both hospital and home births. No one told them they wouldn't do a home birth again. They sat down with the midwives and were impressed with their thoroughness and their knowledge and, when the process was all said and done, with their skills and their extreme caring. He wasn't speaking against the medical community. (Meter 29:57) They did see doctors who told them that if they alternated prenatal appointments with them and the midwife and no risks were seen throughout the process, there was no reason they couldn't have their children at home.

His reason for speaking is to just have the right and freedom of choice. He didn't feel it was right to make this illegal. He said he was more for the lay midwives to do simpler training or do continuing education hours.

Senator J. Lee said that when he talks about continuing education, continuing means they are educated in the first place.

Mr. Olsen said the nurses that are certified to do it aren't doing it. Those people could do it, if they were granted permission to do it. He gave examples of nurses who wanted to become midwives through a hospital setting and were turned down. (Meter 44:45)

Senator J. Lee talked about the safety of home births in rural areas without medical backup. She stated that this is less of an issue of home births than the training of those attending the births. A discussion on training continued. (Meter 46:20)

Cathy Karges testified on her own behalf in opposition to SB 2377. (Attachment #5 includes The Mehl Study)

Senator Warner referred to the study she read from and asked if the training was medical.

Ms. Karges said no. The defense is that, if someone wants to become a midwife and has to go to nurses training and then midwife training just to be a midwife, there should be a clause for just midwife training. They don't have to have the whole nurses training. She requested

that if this should pass, an amendment should be made to provide midwife training that would be legal in ND and they can do home births without being outlawed.

(Meter 59:55) The discussion continued on a midwife not having a medical background.

Berniece Thomas testified on behalf of herself in opposition to SB 2377. She emphasized that no one chooses a home birth the day before or the month before. Everyone she has been in contact with gives serious consideration to and prayer and study before deciding to do it.

The women who choose to do home birth are not normally in the high risk category.

She personally had 3 hospital births and 4 home births. She chose the home births because the hospital births were not pleasant.

Senator J. Lee stated her concern about this is that unanticipated things can take place during delivery for which there are no signs during a normal pregnancy. The right of the child needs to be considered, as well. The issue is health and safety. (Meter 68:46)

Senator Dever gave an example of a hospital birth with complications and asked how to insure the safety of the infant when there might be complications when not in a hospital environment.

Ms. Thomas didn't know the answer but said those that have home births take every consideration, have back up plans, and pray.

There was discussion on how many midwives are in ND. Since they are not licensed, there is no way of knowing.

Lisa Geiger, a mother of ten children and a registered nurse, testified in opposition to SB 2377.

She had her last four children at home. Part of her decision to have home births was working in the hospital and seeing some of the unnatural things that did occur. She emphasized that she is not opposed to hospital births. She wants the option to make the choice. She gave

personal examples of problems she had with hospital births and that those problems didn't occur with her home births. She addressed benefits of home births and said that women like

her want home births for different reasons such as religious, philosophical, and economic reason.

Senator Dever said she mentioned that they should be trained and asked if there should be some kind of training required for midwives.

Ms. Geiger said she can't believe someone would have a midwife who hadn't done some of her own training. She said she wasn't referring to a formal process. (Meter 82:47)

Karen Hanson (Bismarck) spoke in opposition to SB 2377. (Meter 83:59) She made some observations that she felt hadn't been discussed. She said it is a danger to think that every area of our life has to be regulated to the point where nobody has a choice.

Senator J. Lee asked if the board of medical examiners and the board of nursing should slack off on some of the requirements for education because not every nurse and not every doctor practices in every area. (Meter 88:59)

Ms. Geiger said she sees that as what they are marketing themselves as, a trained professional within that institution that the medical insurances cover.

Senator J. Lee said she was talking about the training not the insurance. She continued to address the topic of a broad based education and her concerns that the people providing these services have the kind of training to make sure that the mom and the baby are going to have the best possible outcome. (Meter 89:42)

Ms. Geiger asked how you know you are getting quality involvement even if it is in the medical community. (Meter 95:10)

Senator Erbele asked about the tools of the trade. What does the midwife bring to the birthing room?

Ms. Geiger responded that they very well prepared.

Senator J. Lee asked how the blood and urine testing is done in the home.

Ms. Geiger said the midwife she had pretty detailed dip sticks.

Conrad Suechting (Bismarck) testified in opposition to SB 2377. He and his wife are the parents of five, two were home births. He wanted to address two points. First, he feels this bill, as it is currently worded, is the law of intended consequences. (Meter 101:45)

Secondly, he addressed education and training. This country was founded and survived for many decades under an apprenticeship approach. These midwife assistants are not untrained people. They don't hold themselves out to be professionals in the sense of a registered nurse. (Meter 104:00)

Senator J. Lee asked if a pregnant woman signs a waiver of liability so, if something does go wrong, she doesn't sue the midwife.

Mr. Suechting replied that most home births are done by those people who are willing to take personal responsibility.

Senator Warner said he wasn't clear about the distinction between scope of practice and palliative care. He asked Dr. Kalanek what constitutes scope of practice where it is clearly medical and what is palliative care which is comfort and support care.

Dr. Kalanek (Meter 108:00) said the nurses use those techniques to assist the physicians in birthing the children. The physicians are always available for the actual delivery. If there are any complications, of course, they are available for immediate contact.

(Meter 109:15) There was a discussion on a stand alone midwife practice for a licensed nurse midwife. Certified nurse midwives are licensed independently by the board of nursing. The board at this point probably would not approve a practice that would be providing home births. There are free standing birthing centers that are connected so there are always emergency services available.

The hearing on SB 2377 was closed.

Job #3068

Senator J. Lee reconvened the Senate Human Services Committee and opened SB 2377 for discussion. She reported that she did request information from Joy Wilson at NCSL and she received a couple of links for information about credentialing and state law regulations for the committee to look at. (Attachment #6)

Senator Heckaman said there are some things she liked about the testimony. Maybe there is some way they can do more with education or certification.

(Meter 1:45) There was discussion about how the midwives felt about education. No midwives testified so their feelings were not known. They also talked about the way a midwife is located by a family who wants a home birth.

Senator J. Lee said they are actually practicing medicine without a license because they are doing lab work, administering oxygen, doing stitches, using various devices and equipment involved with the evaluations.

(Meter 4:40) The committee discussed scope of practice and tools of the trade.

(Meter 6:15) This bill came about after triplets were born at home with a midwife assisting. They didn't know it was going to be a multiple birth. Two of the babies were healthier than one would have anticipated in that situation, but the third one was not. They called 911 and it was the EMT that kept the child alive until they got to the hospital. It was the medical professional's point of view that the person attending this birth was not medically astute.

The committee discussed where midwives get their supplies.

Birth certificates were discussed. Who signs them?

Senator J. Lee noted to the committee that this was the first time in 20 years that all of the professional organizations that were at the hearing all testified on the same side of the bill.

Senator Dever said there was reference that there was already means within both the nurse practice acts and doctor practice acts on this issue set forth by the medical profession of stopping this. He said it would be interesting to see what in this bill would fill in gaps between the other two acts.

Senator Dever asked how an experience would be different if it was done in a hospital with a nurse midwife verses at home with a midwife or different between a nurse midwife and a doctor.

There was some discussion and examples given.

Senator Dever said he would feel more comfortable voting on this if they had a better definition of the problem.

Senator J. Lee asked who they would like to come in to answer questions.

Senator Dever wondered if information goes through vital statistics. Somebody has to sign the birth certificate and register the birth with the state. Is there reporting done on the outcomes of those?

Senator Heckaman said she would like to turn this around and do something positive in this area instead of penalizing people who can't bring it forward like another state.

Senator Erbele said the whole medical community would fight that. The issue always does come back the point they made about the natural process verses or in conjunction with personal responsibility and personal choice.

The committee discussed having Bruce Levi, medical association, Connie Kalanek, board of nursing, and Duane Houdek, board of medical examiners, to help them answer question.

The committee was interested in looking at how other states do this and maybe doing a study resolution.

There was a question about why the prenatal visits were billed but the obstetrical service wasn't. Discussion followed. Are they able to bill for it? Some people would be paying double if they were having regular every other prenatal visits with a physician. Insurance would cover the physician if they had insurance. They have to pay out of pocket for the midwife.

The committee agreed that the practice of what is happening is not going to change so they might as well figure out a way to make it better to help them.

Senator J. Lee closed the discussion on SB 2377.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2377

Senate Human Services Committee

Check here for Conference Committee

Hearing Date: 2-13-07

Recorder Job Number: 3444

Committee Clerk Signature

Mary K. Monson

Minutes:

Senator J. Lee, Chairman, opened for discussion SB 2377 dealing with lay midwives.

She reported that she had an amendment drafted to convert this to a study. (Attachment #7)

She said that they had to address the fact that home births are an option some people want to have.

She asked Mr. Peske if he would share a few comments with the committee.

Mr. Peske (ND Medical Association) at the invitation of Chairman J. Lee visited with the Hospital Association, the Board of Medical Examiners, Board of Nursing, and the Nurses Association, to discuss this. The issue of a study resolution was acceptable to all parties (Meter 2:45).

(Meter 4:00) He talked about different options if no conclusion is reached after sending it to the House.

They had concerns like the committee did. They've heard that these uncertified people bring all sorts of equipment to the home. Newborns need vitamin K and they don't know if that is happening. There is a statute in law requiring an ointment be applied to the eyes of newborns.

Those are things that aren't being addressed right now.

Senator Heckaman asked what the main reason was that certified nurse midwives in the hospitals aren't allowed to go into the homes.

Mr. Peske didn't have an answer.

Senator J. Lee said one recommendation about the amendment was to put "must study".

This would bring it back to a conference committee.

Senator Warner moved the amendment as changed to say "shall study".

Senator Heckaman seconded the motion.

Roll call vote 6-0-0. Amendment accepted.

Senator Dever moved a Do Pass as amended on SB 2377.

Senator Heckaman seconded the motion.

Roll call vote 6-0-0. Motion carried. Carrier is Senator Heckaman.

70855.0101
Title.

Prepared by the Legislative Council staff for
Senator J. Lee
February 12, 2007

PROPOSED AMENDMENTS TO SENATE BILL NO. 2377

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative council study of the provision of obstetrical services by laypeople.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY - OBSTETRICAL SERVICES BY LAYPEOPLE. The legislative council shall consider studying, during the 2007-08 interim, the law relating to the provision of obstetrical services by laypeople, including whether current law regulating the practice of medicine and the practice of nursing adequately addresses the obstetrical services provided by lay midwives."

Renumber accordingly

Date: 2-13-07

Roll Call Vote #: 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2377

Senate HUMAN SERVICES Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken amendment to include "shall study"

Motion Made By Sen. Warner Seconded By Sen. Heckaman

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

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

Date: 2-13-07

Roll Call Vote #: 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2377

Senate HUMAN SERVICES Committee

Check here for Conference Committee

Legislative Council Amendment Number 70855.0102 Title .0200

Action Taken Do Pass as amended.

Motion Made By Sen. Hever Seconded By Sen. Heckaman

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

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Heckaman

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

REPORT OF STANDING COMMITTEE

SB 2377: Human Services Committee (Sen. J. Lee, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2377 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative council study of the provision of obstetrical services by laypeople.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY - OBSTETRICAL SERVICES BY LAYPEOPLE. The legislative council shall study, during the 2007-08 interim, the law relating to the provision of obstetrical services by laypeople, including whether current law regulating the practice of medicine and the practice of nursing adequately addresses the obstetrical services provided by lay midwives."

Renumber accordingly

2007 HOUSE HUMAN SERVICES

SB 2377

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2377

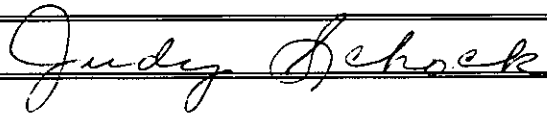
House Human Services Committee

Check here for Conference Committee

Hearing Date: March 12, 2007

Recorder Job Number: 4859

Committee Clerk Signature



Minutes:

Rep. Price: *We will call the meeting to order and the clerk will take the roll. Everyone is present. We will open the hearing on SB 2377.*

Sen. Joan Heckaman: *District 23, New Rockford. I was a co sponsor of the original bill 2377.*

My intent of co sponsor was to help with education and regulation and service in our state.

When this bill came to our committee I found out I could not support it as is. Because it also referred to the penalty phase. In our committee we heard testimony relating to the work of midwives in our state. In our rural areas I believe we do have a place. Our women in our district are anywhere from 40-50 miles from hospital services. I still believe this will continue being an important part of our state. I think that anything we do to assist midwives with continuing their education is important to me. So as a result we changed this bill into a study. I believe that gathering information to help midwives would be very helpful and impact them very well. I ask for your support with this study.

Sen. Karen Krebsbach: *I come today before you as the sponsor of the bill that you are in the process of hearing. I know this bill caused great controversy among a lot of people. The bill has changed drastically since when it was introduced to the Senate side. I do support the study that you have before you out of concern for public safety. I have heard conversation for*

those who oppose the original bill and perhaps some will still oppose this study. I do believe that any time you can have a review of the situation, it's very important that it be done. I think that much has been said about this bill. It was introduced because of the great concern which you will hear about. That is the reason you have it before you. I have heard from some people that they are surprised and amazed that we did not pass some type of registration for midwives. I'm just here to tell you that I support the study. I think it will bring to light what is necessary to address the situation at hand. With that I thank you.

Bruce Levi: North Dakota Medical Association. Testimony attached.

Becky Olsen: Testimony attached.

Rep. Weisz: If I understand correctly, you want the study to be regulated or not?

Becky Olsen: A lot of us have questions on the intent of this study given the facts that the bill was written the way it was originally. We are unsure about the biased situations like who is selected. There is a lot of uncertainty there. From what I've heard previously it sounds like something that we would all be hopeful for. There are some unanswered questions. If someone could be chosen that knows something about midwifery, I think a lot of us would feel a lot more at ease.

Rep. Price: I received an email early on in the process. She recommended that we look at the Minnesota law. Her comment that was if safety was your concern, to create a law that requires midwives to have passed the North American registry of midwife exams. Because it would then be a certified midwife. Are you familiar with the law?

Becky Olsen: As far as I know being certified involves a process of taking a test, passing it, and be certified. Beyond that I'm not too aware of as far as if there is any regulation included with the certification.

Rep. Price: Do you have any idea how many practicing midwives we have in the state? Do they have a foundation, a support group, etc?

Becky Olsen: No. As far as I know, I know of 1. I did have 2 midwives for my first birth. One of them moved away. Other than that I just know of one. There are some in Minnesota that come to ND and do births.

Rep. Conrad: You're not opposed to some kind of registry or regulation, are you?

Becky Olsen: No. I'm not opposed to that at all. I think it would be a good thing for ND.

Mark Dagley: Testimony attached.

Lisa Geiger: *I am a mother of 10 children, six of which I had at hospitals and the last four which I had at home with a lay midwife. Or just my husband and children because the midwife couldn't make it. I'm also a registered nurse. I have seen both sides very vividly. When I was in nursing I had been exposed to home birth, always with a negative. I understand the biased or fear that we have of home birth. As a professional I was very skeptical myself. After I had done some research I was going to do a home birth. I talked to my OB and he very much discouraged me from it because I have bleeding tendencies after my births. With my 7th child I had a wonderful experience. As we talk about the study, the way it is conducted and the input that it has gotten will affect the study dramatically. To have seen both sides of this, I see that the focus of the hospital birth is a medical focus. The focus of the home birth is that it is more of a natural process. When I went to college, in my nurses training, that was the first thing we were taught. Birth is a natural process. However, for me and my experiences personally, as well as what I have seen, it is treated as more of a medical process. When I went in, I was induced for three of my pregnancies only because my doctor said that the babies are going to get too big and he didn't want me to have any problems. You feel pressured because you want for your baby and yourself. He says that I have bleeding tendencies. I just think it's really*

