

2009 SENATE HUMAN SERVICES

SB 2334

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2334

Senate Human Services Committee

Check here for Conference Committee

Hearing Date: 01/26/2009

Recorder Job Number: 7768

Committee Clerk Signature

Mary K. Monson

Minutes:

Senator Lee Opened the hearing on SB 2334.

Senator Christmann Representative from district #33. I signed on to this bill. It seems important. If there is a better way to word it, I am open to that. I want to make sure that these unique situations are taken care of appropriately.

Maggie Anderson Director of Medical Services in the DHS. This bill would require Medicaid to enroll families to provide out of state transportation services for medically necessary appointments. Currently the administrative code that we adopted after the 2003 session indicates that we do not enroll parents, spouses, friends, or family members of the recipient as providers of transportation. We put an exemption into the state Medicaid plan for transportation from a family member when all other options have been exhausted. We believe that the reason that this bill is being introduced can be managed within the current administrative code and the exception that is allowed for by the Medicaid state plan. The bill as it is written goes beyond what we understood as its intended purpose, and that would be that all families would be able to enroll. When we prepared the fiscal impact, we estimate that based on the number of services that we are currently paying for out of state there are about 904 people going out of state that we are currently not paying for transportation. When we look at what we would need

to pay for mileage and meals, it would cost around 2.5 million dollars to implement this plan, 928,000 of that would be state general funds. This would be opening it up to allow and reimburse all families.

Senator Lee So currently, you can consider reimbursement on a case by case basis if other options are exhausted.

Senator Pomeroy What percentage on the case by case do you actually fund?

Maggie Anderson We have had very few requests for that; it is a very low number.

Senator Lee Would people need to leave to see a specialist not available in ND, things like that?

Maggie Anderson We only approve out of state services if those services are not available in ND. We approve all requests for services through our department.

Matthew C. Schwarz Parent. Spoke in support of SB 2334. See attachment # 1.

There was no opposition or neutral testimony.

Senator Lee closed the hearing on SB 2334.

Senator Lee Asked Maggie Anderson where the committee needed to go at this point to clarify the issues raised in SB 2334

Maggie Anderson We feel we do not need to change the bill. We will visit with our legal staff to make sure that everything is ok with Administrative Rules and in the best interest of all involved.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2334

Senate Human Services Committee

Check here for Conference Committee

Hearing Date: 01/27/2009

Recorder Job Number: 7917

Committee Clerk Signature

Mary K Monson

Minutes:

Senator Lee Opened the discussion on SB 2334

Maggie Anderson DHS. Provided information as requested by Senator Lee on the federal regulations that relate to the transportation benefit within the Medicaid program. See attachment #2. Our state regulations follow the federal regulations. There is also information from the ND administrative code regarding the role of parents, families etc. in transportation and reimbursement. This is an area where a limitation was placed but the state did build in the exception when all other options are exhausted. We understand that the main reason this bill was introduced was to ensure that family members in specific situations are able to enroll as Medicaid transportation providers to transport Medicaid eligible family members to medically necessary out of state appointments. This can be accommodated with the existing exception noted in the state plan. While DHS would be willing to clarify the language, we do not see a reason to change the existing policy.

Senator Lee We want to make sure that those who need access have it but there is a concern that the way the bill is written would open the reimbursement to anyone.

Maggie Anderson The way the bill is written, we wouldn't need to exhaust all other options.

The Medicaid program while it does talk about sharing transportation, also discusses in the

state Medicaid manual about how we are to look for free and alternative transportation sources. The way the bill is written that would basically be gone. That is why we attached the fiscal note.

Senator Heckaman What is the time line for the department to approve a reimbursement?

Maggie Anderson All out of state service requests have to come first because we may or may not approve those services. We require that all requests come in no later than two weeks in advance. At that point we work with the county to coordinate the transportation services.

Senator Dever My understanding is that in the case of Jennifer Schwarz she is 30 years old and thus emancipated by age yet her parents continue to take responsibility for her. Does that have any bearing on this consideration?

Maggie Anderson I will not talk about specific cases but if you go back to the sheet I gave you we try and cover all instances and nuances of families-regardless of age.

Senator Heckaman Does this bill meet your needs? (Directed at Matt Schwarz)

Matt Schwarz Since I brought this bill up there has been substantial interest from other families and this will take care of our issue. The cost is just very high to travel and we heard some people were being reimbursed while others were not.

Senator Lee I think what we need to do in light of how the legislation has changed since 2003 and the availability of funds is keep an eye on how this is working. I would not be comfortable opening this bill wide open the way it is currently written. Senator Kilzer would have removed the bill if he could have after learning more about the cost involved, so I feel he would be comfortable with us not passing the bill.

Senator Dever Moved **Do Not Pass** on SB 2334.

Senator Heckaman Second.

Clerk called the role on the resolution to **Do Not Pass**. **Yes: 6, No: 0, Absent: 0.**

Senator Dever will carry the bill.

FISCAL NOTE
Requested by Legislative Council
01/21/2009

Bill/Resolution No.: SB 2334

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

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$1,580,657		\$1,682,382
Expenditures			\$927,527	\$1,580,657	\$987,218	\$1,682,382
Appropriations			\$927,527	\$1,580,657	\$987,218	\$1,682,382

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

This Bill requires the department to reimburse a family member for reasonable medical expenses for out-of-state transportation to a medical assistance beneficiary. Reasonable medical expenses include mileage, lodging and meal rates.

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 of this Bill allows the department to reimburse a family member for reasonable expenses for out-of-state transportation to a medical assistance beneficiary. The number of potential recipients used in this fiscal note was 904 per year. The fiscal note reflects the cost of the reimbursements.

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 additional revenue reflected in the fiscal note is for the additional Medicaid funding the Department will be able to access for these payments.

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

The expenditures reflect the cost of the reimbursement amounts.

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

The fiscal effect of this Bill is not included in the department's budget. Therefore, the department's appropriation would need to be increased by \$2,508,184 of total funds, of which \$927,527 would be general fund.

Name:	Debra A. McDermott	Agency:	Human Services
Phone Number:	328-3695	Date Prepared:	01/27/2009

Date: 1-27-09

Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2334

Senate Human Services Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

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

Motion Made By Sen. Dever Seconded By Sen. Heckaman

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

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Dever

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

REPORT OF STANDING COMMITTEE

SB 2334: Human Services Committee (Sen. J. Lee, Chairman) recommends DO NOT PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2334 was placed on the Eleventh order on the calendar.

2009 TESTIMONY

SB 2334

SENATE BILL 2334
Human Services Committee

Testimony by Mathew C. Schwarz
January 26, 2009

Good afternoon Madam Chair Lee and Members of the Committee.

My name is Matt Schwarz. I came here as a parent to speak in support of Senate Bill 2334. I now understand, it has been discovered the State Medicaid Plan has a policy error which is in violation of federal law. I also understand an effort is underway to have SB 2334 withdrawn with the understanding corrections to the State Plan will be made. I request, that ONLY until such time there is issuance ready administrative code for the State Plan, for distribution, that rectifies the policy error this bill, in part, attempted to correct, should SB 2334 be withdrawn.

This issue directly impacts our family.

My wife Marcia and our daughter Jessica have Myotonic Muscular Dystrophy. Jessica is 30 years of age, lives in our home because of her intense medical needs. She is on life support, including a ventilator while asleep or ill, and gets family support services from a private human service provider. She goes out into the community and generally does well but needs close monitoring and line-of-sight supervision for her medical needs 24/7. As parents we find we need to be closely involved with our daughter's health care needs.

Jessica receives medical services at the University of Minnesota - Fairview on occasion. Getting these out-of-state services approved under the State Medicaid system is an undertaking by itself. Nevertheless, having prevailed on that issue, we found as a parent we no longer were approved as a provider for transportation since about 2004, if my memory is correct. Ironically, it appears providers, other than parents, could receive reimbursement for such transportation services. This created an extreme problem for us. Jessica because of her needs involving chronic respiratory failure would most likely need

to be transported by an RN or by ambulance. This option is not satisfactory to us because, unless the caregivers are familiar with Jessica's unique needs, she is still at risk. This is based on our past experience.

Initially, when I asked why reimbursement was no longer available for parents, I was told by DHS federal Medicaid rules do not allow it. Upon further questioning of DHS I was told it was not a requirement in the federal part of the law but part of the changes made to the State Plan in response to the legislature's requirement to cut the state budget. Because I felt strongly this provision was not in Jessica's best interests, especially in the future when we may not be available, was not in the state's fiscal best interests, and was, in my view, morally wrong, I requested SB 2334 be introduced.

In conclusion, I understand now there is an effort underway to correct this problem. As stated above, I urge the Committee to obtain clear evidence the transportation problems will be solved as a condition to withdrawal of SB 2334.

This concludes my written testimony. I will be happy to answer any questions you may have.

1-27-09

#2

North Dakota Department of Human Services
2009 SB 2334

Federal Regulations

TITLE 42 - PUBLIC HEALTH

CHAPTER IV - CENTERS FOR MEDICARE & MEDICAID SERVICES, DEPARTMENT OF HEALTH AND HUMAN SERVICES

SUBCHAPTER C - MEDICAL ASSISTANCE PROGRAMS

PART 431 - STATE ORGANIZATION AND GENERAL ADMINISTRATION

subpart b - GENERAL ADMINISTRATIVE REQUIREMENTS

431.53 - Assurance of transportation.

A State plan must (a) Specify that the Medicaid agency will ensure necessary transportation for recipients to and from providers; and (b) Describe the methods that the agency will use to meet this requirement.

(Sec. 1902(a)(4) of the Act)

North Dakota Administrative Code

75-02-02-13.1 c. The cost of travel provided by a parent, spouse, or any other member of the recipient's medical assistance unit may be allowed as an expense of necessary medical or remedial care for recipient liability purposes. No parent, spouse, friend, household member, or family member of the recipient may be paid as an enrolled provider for transportation for that recipient.

North Dakota Medicaid State Plan

(Attachment 3.1D, Page 3)

K. Payment to parents, spouses, friends, household members or family members of the recipient will only be allowed if all other transportation options have been exhausted.

DHS Interpretation:

The Federal regulations provide the requirement that the state Medicaid agency assure transportation. The North Dakota Administrative Code sets forth limitations on the provision of the transportation.

The North Dakota State Medicaid Plan allows for an exception to the Administrative Rule, for those situations where other potential sources of transportation have been exhausted.

The main reason SB 2334 was introduced was to ensure family members in specific situations are able to enroll as Medicaid transportation providers to transport Medicaid-eligible family members to medically necessary out of state medical appointments. This can be accommodated within the existing exception noted in the State Plan. While DHS may consider a change to the Administrative Code to provide additional clarity, the Department does not believe the Administrative Code needs to be changed to allow the Department to make exceptions required within the Medicaid state plan.