

FISCAL NOTE
Requested by Legislative Council
12/19/2014

Bill/Resolution No.: SB 2082

- 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						
Expenditures						
Appropriations						

- 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			
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).*

SB2082 establishes asset requirements for the basic care assistance program, for individuals eligible under Medicaid Expansion, consistent with those used for the Medicaid Aged, Blind, and Disabled populations.

- 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.*

SB2082 has no fiscal impact.

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

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*
- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*
- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: Debra A. McDermott

Agency: Human Services

Telephone: 328-3695

Date Prepared: 01/02/2015

2015 SENATE HUMAN SERVICES

SB 2082

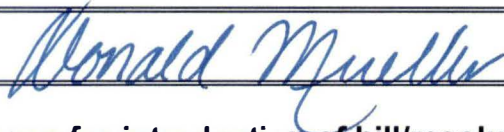
2015 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

SB 2082
1/12/2015
Job #21807

- Subcommittee
 Conference Committee

Donald Mueller



Explanation or reason for introduction of bill/resolution:

Relating to eligibility for basic care assistance; and to declare an emergency.

Minutes:

Attach #1: Testimony of Carol Cartledge, Department of Human Services
Attach #2: Fact Sheet on Long Term Care Partnership Program

Chairman Judy Lee noted that there is a Fiscal Note but no fiscal impact.

Acronym Definitions: LTC = Long Term Care

Acronym Definitions: ACA = Affordable Care Act

In support of SB 2082

Ms. Carol Cartledge, Director of Economic Assistance Policy Division for the Department of Human Services, testified IN FAVOR of SB 2082. (reference attachment #1). Testimony ended 3:32

Chairman Judy Lee asked if they are putting long term care and basic care asset test in sync with each other, and we are not in trouble with ACA medical frail rules.

Ms. Cartledge - that is correct, for the asset test.

Senator Warner asked does having the foresight to getting Long Term Care insurance, does that impact the asset test? Are you able to retain greater amount of assets?

Ms. Cartledge responded that under the basic care provisions, it follows the Medicaid rule. If it is allowed under Medicaid, it is allowed under basic care.

Chairman Judy Lee asked how does that apply to Long Term Care insurance.

Ms. Maggie Anderson, Department of Human Services Director responded, with legislation that was passed, we recognize Long Term Care insurance what is called the partnership policy (Reference Attachment #2), so they have to meet the requirements of that partnership policy. There is inflation protections, but it is a dollar-for-dollar protection of

the assets. If I bought Long Term Care insurance before the partnership policy, then I don't have those protections, I would have to go back through the underwriting process.

No other testimony given IN FAVOR of SB 2082.

Opposed

No testimony opposed to SB 2082.

Neutral

No testimony in neutral SB 2082.

Chairman Judy Lee invited Norbert Mayer to comment.

Norbert Mayer, ND Association of Insurance and Financial Advisors, if you purchased a qualified Long Term Care insurance plan you can protect assets dollar-for-dollar. There had to be an inflation protector on the policy. There was a minimum amount of insurance. Any plan purchased before that legislation was passed, would not qualify for the dollar-for-dollar asset protection. Previously, the federal government passed some regulations that we had a better policy enforced in North Dakota that protected all of a person's assets. With the federal statute, North Dakota was no longer in compliance, so we actually lost ground. Some of the older policies would then have provided the better protection.

Senator Dever stated that one of the provisions that the policy has to cover the husband and wife?

Mr. Mayer answered not sure of all of the rules. It also gives you a North Dakota tax credit of \$250 which is more appealing to younger people to purchase Long Term Care insurance, which was part of the intent. 2007 was when the legislation was completed.

V. Chairman Oley Larsen stated that he does Long Term Care insurance policies, indicating that the asset protection can be \$450,000 to protect your assets. It is under underwriting, where one person may qualify for the Long Term Care insurance and a second individual may not, so it can be changed and crossed back and forth; one person may use it first, etc. Very fluid and flexible. Can also buy hours so they can use those for in-home care or facilities care. Application on the computer that takes about 2 or 3 hours to complete to ensure good coverage.

No further comments by committee.

Motion by V. Chairman Oley Larsen to "Do Pass" SB 2082.

Seconded by Senator Dever

No further discussion.

Roll Call Votes: 6 Yes, 0 No, 0 absent.

Motion passes 6-0.

V. Chairman Oley Larsen will carry SB 2082.

**2015 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2082**

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 Larson Seconded By Dever

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 Larson

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

REPORT OF STANDING COMMITTEE

SB 2082: Human Services Committee (Sen. J. Lee, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2082 was placed on the
Eleventh order on the calendar.

2015 HOUSE HUMAN SERVICES

SB 2082

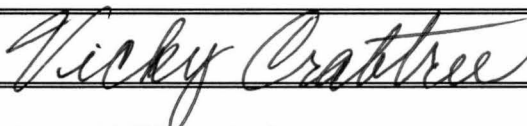
2015 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

SB 2082
2/18/2015
Job #24048

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to eligibility for basic care assistance and declare an emergency.

Minutes:

Testimony 1

Chairman Weisz opened the hearing on SB 2082.

Carol Cartledge: Director of Economic Assistance for DHS testified in support of the bill.
(See Testimony #1)

2:26

Chairman Weisz: I'm unclear just because of the fact that medically frail seems to fit our basic care language, why does that require a change?

Cartledge: Prior to the Affordable Care Act individuals had to be made Medicaid eligible. Therefore, an acid test requirement was never added into the basic care rules because they always met under the Medicaid provisions. Under the ACA if someone is determined medically frail there isn't an acid test for those individuals. So we can apply acid tests for all individuals who apply for basic care, the rule change is being requested.

Chairman Weisz: You are saying currently there wasn't an acid test?

Cartledge: Not in rules for basic care because it was always applied in Medicaid.

NO OPPOSITION

Chairman Weisz closed the hearing on SB 2082.

Chairman Weisz took up 2082.

Rep. Oversen: I Move a Do Pass on SB 2082.

Rep. Fehr: Second.

House Human Services Committee

SB 2082

February 18, 2015

Page 2

ROLL CALL VOTE: 13 y 0 n 0 absent

MOTION CARRIED

Bill Carrier: Rep. B. Anderson

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

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2082**

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. Fehr

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) 13 No 0

Absent 0

Floor Assignment Rep. B. Anderson

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

REPORT OF STANDING COMMITTEE

SB 2082: Human Services Committee (Rep. Weisz, Chairman) recommends DO PASS
(13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2082 was placed on the
Fourteenth order on the calendar.

2015 TESTIMONY

SB 2082

Attach #1
SB2082 01/12/15
J#21807

Testimony
Senate Bill 2082 – Department of Human Services
Senate Human Services Committee
Senator Lee, Chairman
January 12, 2015

Chairman Lee, members of the Senate Human Services Committee, I am Carol Cartledge, Director of the Economic Assistance Policy Division, for the Department of Human Services (Department). I am here today to support Senate Bill 2082, which was introduced at the request of the Department.

The Department is requesting an amendment to North Dakota Century Code Section 50-24.5-01, relating to definitions for the Basic Care Assistance Program (BCAP). The proposed changes on page 2, lines 3 through 6 are necessary to address an unintended consequence of the Affordable Care Act (ACA).

BCAP assists qualified individuals with the cost of room and board in a licensed basic care facility. The program is funded with general funds. To be eligible, an individual must be at least 18 years of age and blind or disabled, or over 65 years of age; eligible for and receiving Medicaid. Additionally, a functional assessment must show the individual is not severely impaired in activities of daily living of toileting, transferring to or from a bed or chair, or eating, and:

- Has health, welfare, or safety needs, including a need for supervision or in need of a structured environment; or
- Is impaired in three of the following four instrumental activities of daily living: preparing meals, doing housework, taking medicine, and doing laundry.

Under the final rules for the ACA published on July 15, 2013, an individual may qualify for the Medicaid Adult Expansion Group under the "medically frail" provision. Individuals eligible as "medically frail" must meet requirements similar to the functional assessment requirements under BCAP; however Medicaid eligibility for individuals that qualify under the Adult Expansion Group is not based on an asset test. BCAP eligibility uses an asset test.

The changes proposed would revert BCAP eligibility to the criteria used prior to the ACA and would require individuals applying for Basic Care Assistance to pass an asset test. The proposed language conditions an individual's eligibility on having been subject to the asset test used to determine an individual's eligibility for Medicaid for long term care.

This concludes my testimony and I would be happy to answer any questions.



SB2082
Attachment #2
J# 21807
01/12/15

Fact Sheet

June 2008

600 E Boulevard Avenue, Bismarck, ND 58505-0250

www.nd.gov/dhs

Long-Term Care Partnership Program

Under the Long-Term Care Partnership Program, individuals who purchase long-term care insurance policies that meet certain requirements specified by the Deficit Reduction Act of 2005 ("Partnership Policies") can apply for Medicaid under special rules for determining financial eligibility and Medicaid estate recovery. These special rules generally allow the individual to protect assets equal to the insurance benefits received from a Partnership Policy. These assets will not be taken into account when determining financial eligibility for Medicaid and will not subsequently be subject to Medicaid estate recovery.

Asset Protection:

Long-term care insurance is an important tool that helps individuals prepare for future long-term care needs. Partnership Policies provide an added level of protection by allowing individuals to protect additional assets if assistance under Medicaid is ever needed.

The asset protection applies to all insurance benefits received from a Partnership Policy, regardless of whether the insurance benefits are for long-term care costs that would not be covered by Medicaid (i.e. benefits paid for assisted living). The asset protection equals the amount of insurance benefits that have been received to date, or are due but not yet paid from a Partnership Policy, even if additional insurance benefits may be received in the future from the Policy. The asset protection does not include any refund of premium payments made because of the termination of a Partnership Policy (due to cancellation or death) since such payments do not represent insurance benefits.

Medicaid Estate Recovery:

Assets protected by a Partnership Policy are also protected from Medicaid estate recovery unless benefits were received through fraud or an overpayment is due. The protected assets are subject to other non-Medicaid claims against the estate, including other state or county claims.

Application of Other Medicaid Provisions:

Eligibility for benefits under Medicaid is subject to all other eligibility provisions, such as the disqualifying transfer provision and home equity limitation. For instance, the individual can qualify for Medicaid while retaining assets, but if the assets are given away without receipt of adequate compensation, this may be considered a "disqualifying transfer," and the individual may be ineligible for coverage of long-term care costs.

OVER →

Partnership Policies:

To be considered a Partnership Policy, the long-term care insurance policy must satisfy all of the following requirements:

- The policy must be a qualified long-term care insurance contract and meet specific consumer protection and IRS requirements. The majority of long-term care policies legally sold in North Dakota already meet this requirement.
- The policy must be issued on or after January 1, 2007. A policy issued prior to January 1, 2007 is treated as newly issued and eligible for Partnership Policy status only if it is reissued or exchanged on or after January 1, 2007. The addition of a rider, endorsement, or change in the schedule page to policies issued prior to January 1, 2007 may be treated as an exchange for the purpose of meeting the Long-Term Care Partnership Program requirements.
- The insured individual must have been a North Dakota resident when coverage first became effective under the policy.
- The policy must include the proper inflation protection.
 - If an individual was under age 61 on the date of purchase, the policy must provide compound annual inflation protection. There is no set minimum percentage level. Compound inflation protection must continue on the policy and may only end when the policy doubles, or when the insured individual reaches age 76, whichever occurs first;
 - If an individual was age 61 through 75 on the date of purchase, the policy must provide some inflation protection. There is no set minimum. Inflation protection, which can include simple interest inflation protection, must continue on the policy and may only end when the policy doubles, or when the insured individual reaches age 76, whichever occurs first; and
 - If an individual was age 76 or older as of the date of purchase, no inflation protection is required.

Partnership Policies issued in North Dakota will be identified by a notice to the policy holder that certifies it as a Partnership Policy at the time the policy is issued. The notice will be issued if the policy meets all of the qualifying criteria, including the inflation protection requirements. Because policies may be changed after they are issued, when an individual applies for Medicaid, the individual will need to obtain and provide a current notice from the Partnership Policy indicating whether it continues to meet the Partnership Policy requirements, and if so, to identify the amount of benefits paid while meeting those requirements.

Reciprocity:

The North Dakota Long-Term Care Partnership Program will provide reciprocity with respect to long-term care insurance policies covered under other state long-term care insurance partnerships. This will allow individuals who purchase a Partnership Policy in one state to move to another state with a Long-Term Care Partnership Program without losing the asset protection. This protection will only be available between states that offer reciprocity.

For Information about Medicaid and the Long-Term Care Partnership Program contact the N. D. Department of Human Services' Medical Services Division at 701-328-2110 or 701-328-1830, or 1-800-755-2604. **For insurance information,** contact the North Dakota Insurance Department at 1-800-247-0560.

#1

Testimony
Senate Bill 2082 – Department of Human Services
House Human Services Committee
Representative Weisz, Chairman
February 18 2015

Chairman Weisz, members of the House Human Services Committee, I am Carol Cartledge, Director of the Economic Assistance Policy Division, for the Department of Human Services (Department). I am here today to support Senate Bill 2082, which was introduced at the request of the Department.

Through Senate Bill 2082, the Department is requesting an amendment to North Dakota Century Code Section 50-24.5-01, relating to definitions for the Basic Care Assistance Program (BCAP). The proposed changes on page 2, lines 3 through 6 are necessary to address an unintended consequence of the Affordable Care Act (ACA).

BCAP assists qualified individuals with the cost of room and board in a licensed basic care facility. The program is funded with general funds. To be eligible, an individual must be at least 18 years of age and blind or disabled, or over 65 years of age; and eligible for and receiving Medicaid. Additionally, a functional assessment must show the individual is not severely impaired in activities of daily living or toileting, transferring to or from a bed or chair, or eating, and:

- Has health, welfare, or safety needs, including a need for supervision or in need of a structured environment; or
- Is impaired in three of the following four instrumental activities of daily living: preparing meals, doing housework, taking medicine, and doing laundry.

Under the final rules for the ACA published on July 15, 2013, an individual may qualify for the Medicaid Adult Expansion Group under the "medically frail" provision. Individuals eligible as "medically frail" must meet requirements similar to the functional assessment requirements under BCAP; however Medicaid eligibility for individuals that qualify under the Adult Expansion Group is not based on an asset test. BCAP eligibility uses an asset test.

The changes proposed would revert BCAP eligibility to the criteria used prior to the ACA and would require individuals applying for Basic Care Assistance to pass an asset test. The proposed language conditions an individual's eligibility on having been subject to the asset test used to determine an individual's eligibility for Medicaid for long term care.

This concludes my testimony and I would be happy to answer any questions.
