

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1351

2007 HOUSE HUMAN SERVICES

HB 1351

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1351

House Human Services Committee

Check here for Conference Committee

Hearing Date: January 23, 2007

Recorder Job Number: 1725

Committee Clerk Signature

Judy Schock

Minutes:

Chairman Price: Opening the hearing on HB 1351.

Representative Gary Kreidt, District 33: I do have amendments see attached. This bill came about in the last couple of years when something happened that historically has not happened before in regards to individuals that are on medical services, and nursing facilities, with their recipient liability. This bill would make the nursing facility to be first for payment.

Shelly Peterson, President of the ND Long Term Care Association: See attached testimony along with purposed amendments. Some people are very good at paying their recipient liability on time. Once the account is frozen you can't access that money at all. It could be a couple months. Generally in this situation we try to have the families pay up front on time.

Melissa Hauer, attorney with the Department of Human Services: I am here to provide you with some information. They are allowed to have money for funeral expenses.

Chairman Price: Anyone else to testifying for HB 1351? If not we close the hearing on HB 1361.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1351

House Human Services Committee

Check here for Conference Committee

Hearing Date: January 23, 2007

Recorder Job Number: 1726

Committee Clerk Signature

Judy Schock

Minutes:

Chairman Price: Committee take out HB 1351.

Representative Kaldor moves the amendments. **Representative Hofstad** seconds the motion with 9 yeas 0 nays and 3 absent.

The committee discusses the announced and unannounced visits, and the stats on them.. **Representative Porter** moves a do pass as amended **Representative Uglem** seconds the motion. 10 yeas. 0 nays and 2 absent. **Representative Kaldor** to carry to the floor.

FISCAL NOTE
 Requested by Legislative Council
 01/16/2007

Bill/Resolution No.: HB 1351

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.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

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 would amend and reenact section 50-24.1-07 of the North Dakota Century Code relating to claims against medical assistance recipients' estates.

This bill as written has no fiscal impact.

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.*

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

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

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

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

Name:	Debra A. McDermott	Agency:	Dept of Human Services
Phone Number:	328-3695	Date Prepared:	01/17/2007

70555.0101
Title.0200

Prepared by the Legislative Council staff for
Representative Kreidt
January 22, 2007

VR
1/24/07

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1351

Page 1, line 14, remove the overstrike over "~~Expenses~~" and remove "Hospital, nursing facility, basic care facility, and other medical"

Page 1, line 15, remove "expenses" and after "illness" insert ", other than those incurred by medical assistance"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1351: Human Services Committee (Rep. Price, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (10 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1351 was placed on the Sixth order on the calendar.

Page 1, line 14, remove the overstrike over "~~Expenses~~" and remove "Hospital, nursing facility, basic care facility, and other medical"

Page 1, line 15, remove "expenses" and after "illness" insert ", other than those incurred by medical assistance"

Renumber accordingly

2007 SENATE HUMAN SERVICES

HB 1351

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1351

Senate Human Services Committee

Check here for Conference Committee

Hearing Date: 3-19-07

Recorder Job Number: 5260

Committee Clerk Signature

Mary K Monson

Minutes:

Chairman Senator J. Lee opened the hearing on HB 1351 relating to claims against medical assistance recipients' estates.

Shelly Peterson (President, ND LTC Association) testified in support of HB 1351. See attachment #1.

Senator J. Lee asked what amendments were made on the House side.

Ms. Peterson said the amendments were just to clarify that basic care nursing facilities could get paid. The way the legislation was originally drafted didn't clearly identify that as the solution.

Senator Warner asked if the listed exemptions were hierarchical.

Ms. Peterson said that was her understanding.

Blaine Nordwall (Director of Economic Assistance Policy, DHS) testified in a neutral manner on HB 1351. (Attachment #2 included an amendment.)

Senator Warner asked if there was any liability with the federal government audit to repay money for any reason related to non compliance.

Mr. Nordwall thought it was highly unlikely. (Meter 10:00)

With no further testimony, the hearing on HB 1351 was closed.

Senator Warner moved to accept the proposed amendment by Mr. Nordwall.

The motion was seconded by Senator Erbele.

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

Senator Warner moved a Do Pass on HB 1351 as amended.

Senator Erbele seconded the motion.

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

JB
3-19-07

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1351

Page 1, line 7, after "was" insert "a resident of a nursing facility, intermediate care facility for the mentally retarded, 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"

Page 1, line 10, after "following" insert "the determination that the recipient cannot reasonably be expected to be discharged from the medical institution, or" and after "birthday" insert ", as the case may be,"

Renumber accordingly

Date: 3-19-07

Roll Call Vote #: 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1351

Senate HUMAN SERVICES Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Amendments

Motion Made By Sen. Warner Seconded By Sen. Erbele

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee, Chairman	✓		Senator Joan Heckaman	✓	
Senator Robert Erbele, V. Chair 2	✓		Senator Jim Pomeroy	✓	
Senator Dick Dever	✓		Senator John M. Warner 1	✓	

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

Date: 3-19-07

Roll Call Vote #: 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1351

Senate HUMAN SERVICES Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Sen. Warner Seconded By Sen. Erbele

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee, Chairman	✓		Senator Joan Heckaman	✓	
Senator Robert Erbele, V. Chair 2	✓		Senator Jim Pomeroy	✓	
Senator Dick Dever	✓		Senator John M. Warner 1	✓	

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Warner

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

REPORT OF STANDING COMMITTEE

HB 1351, as engrossed: 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). Engrossed HB 1351 was placed on the Sixth order on the calendar.

Page 1, line 7, after "was" insert "a resident of a nursing facility, intermediate care facility for the mentally retarded, 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"

Page 1, line 10, after "following" insert "the determination that the recipient cannot reasonably be expected to be discharged from the medical institution, or" and after "birthday" insert ", as the case may be."

Renumber accordingly

2007 TESTIMONY

HB 1351

Testimony on HB 1351
House Human Services Committee
January 23, 2007

Chairman Price and members of the House Human Services Committee, thank you for the opportunity to testify in support of HB 1351. My name is Shelly Peterson, I'm President of the North Dakota Long Term Care Association. On behalf of our basic care and nursing facility members, we urge your passage of HB 1351.

The purpose of HB 1351 is to allow health care providers to get paid when they have delivered care and services to a Medicaid recipient. For the most part when individuals are Medicaid qualified, Medicaid pays for medical care and services. There is an exception when Medicaid refuses to pay the bill, even though services were delivered. It is that exception process that is addressed and remedied in HB 1351.

For anyone age 55 years of age and older on Medicaid, there is always a recipient liability, the amount an individual pays toward his care and services. The Medicaid recipient pays this amount monthly and Medicaid assists in paying the remainder of the medical bills. If a Medicaid recipient dies while in our care, and they have not yet paid for their portion of the bill, the account is frozen and the facility is never paid. This occurs most often when a resident happens to die at the beginning of the month and the family/resident have not yet paid the bill. Possibly they die on the 7th of the month and normally they paid the bill on the 10th. Even though the facility provided care and services for the seven days at the beginning of the month, they don't get paid.

Most often families want to pay the bill, but Medicaid prevents them from doing so and freezes the account. Under current law there is a priority listing of preferred claims and the facility that cared for them in their final days is not on that priority listing. The preferred claims against the decedents estate, in order of priority are:

1. Funeral expenses not in excess of \$3,000.
2. Expenses of last illness.
3. Expenses of administer of the estate, including attorney's fees approved by the court.
4. Claims made under Chapter 50-01 (County Poor Relief Administrator).
5. Claims made under Chapter 50-24.5 (Aide to Aged, Blind and Disabled Persons).
6. Claims made under Chapter 50-06.3 and on behalf of the State Hospital (Department of Human Services – Human Services Centers and North Dakota State Hospital)

We have been in discussion with the department on this issue and they know and understand our position. It is the department's position that we and other health care providers would still not be paid as the bill is currently drafted. To assure the language is technically correct and to assure the health care provider gets paid when we have provided the care, attached is an amendment for your consideration. If you accept the amendment, line 14 would read: "Expenses of the last illness, other than those incurred by medical assistance."

HB 1351 as amended allows long term care facilities to get paid for the care they provide.

Your consideration and approval of HB 1351 as amended is requested. Thank you again for the opportunity to bring this issue and proposed solution to your attention.

Shelly Peterson, President
North Dakota Long Term Care Association
1900 North 11th Street
Bismarck, ND 58501
(701) 222-0660
www.ndltca.org

Amendment to HB 1351

Page 1, line 14, remove the overstrike over "~~Expenses~~" and remove "Hospital, nursing facility, basic care facility, and other medical"

Page 1, line 15, remove "expenses" and after "illness" insert: ", other than those incurred by medical assistance"

Testimony
House Bill 1351 – Department of Human Services
House Human Services Committee
Representative Clara Sue Price, Chairman
January 23, 2007

Chairman Price, members of the Human Services Committee, I am Melissa Hauer, an attorney with the Department of Human Services. I appear today to provide information regarding the fiscal note for this bill.

The Department does not believe the current version of House Bill 1351, if enacted, would have a fiscal impact. We understand the intent of the bill is to place hospital, nursing facility, basic care facility, and "other medical expenses of the last illness" ahead of other claims against an estate, including the claim of the State for repayment of Medicaid benefits paid to the deceased recipient or spouse. The bill as drafted, however, does not accomplish that goal because medical assistance pays "hospital, nursing facility, basic care facility, and other medical expenses of the last illness." Because expenses of last illness can include Medicaid benefits paid, the bill, as introduced, would not elevate nursing facility, basic care facility, or the other listed expenses above the priority of the State for its Medicaid claim.

If the intent is to unambiguously address this issue, appropriate language to replace what is now found in page 1, lines 14 and 15, is: "b. Expenses of the last illness, other than those incurred by medical assistance;" If the bill were amended in this way, a fiscal impact to the state of North Dakota would occur. Based on data for the period from July 1, 2003, through December 31, 2006, about \$7,050 was recovered by medical assistance on behalf of ten recipients, or about \$168 per month, that

might otherwise have been used to pay outstanding recipient liability amounts to nursing facilities.

Therefore, if this bill is amended as noted above, and enacted, the state has the potential of losing about \$4,032 in estate recovery during the 2007-2009 biennium. The nursing facilities will cumulatively gain a similar amount in revenue during the same period, and cumulative nursing facility cost reports of bad debts would be reduced by \$4,032.

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

**Testimony on HB 1351
Senate Human Services Committee
March 19, 2007**

Chairman Lee and members of the Senate Human Services Committee, thank you for the opportunity to testify in support of HB 1351. My name is Shelly Peterson, I'm President of the North Dakota Long Term Care Association. On behalf of our basic care and nursing facility members, we urge your passage of HB 1351.

The purpose of HB 1351 is to allow health care providers to get paid when they have delivered care and services to a Medicaid recipient. For the most part when individuals are Medicaid qualified, Medicaid pays for medical care and services. There is an exception in certain situations when care is provided and long term care facilities do not get paid. It is that exception process that is addressed and remedied in HB 1351.

For anyone age 55 years of age and older on Medicaid, there is always a recipient liability, the amount an individual pays toward his care and services. The Medicaid recipient pays this amount monthly and Medicaid assists in paying the remainder of the medical bills. If a Medicaid recipient dies while in our care, and they have not yet paid for their portion of the bill, the account is frozen and the facility is never paid. This occurs most often when a resident happens to die at the beginning of the month and the family/resident have not yet paid the bill. Possibly they die on the 7th of the month and normally they paid the bill on the 10th. Even though the facility provided care and services for the seven days at the beginning of the month, they don't get paid.

Most often families want to pay the bill, but the current law prevents them from doing so. Under current law there is a priority listing of preferred claims and the facility that cared for them in their final days is not on that priority listing. The preferred claims against the decedents estate, in order of priority are:

1. Funeral expenses not in excess of \$3,000.
2. Expenses of last illness.
3. Expenses of administer of the estate, including attorney's fees approved by the court.
4. Claims made under Chapter 50-01 (County Poor Relief Administrator).
5. Claims made under Chapter 50-24.5 (Aide to Aged, Blind and Disabled Persons).
6. Claims made under Chapter 50-06.3 and on behalf of the State Hospital (Department of Human Services – Human Services Centers and North Dakota State Hospital)

HB 1351 allows long term care facilities to get paid for the care they provide. I understand that the Department of Human Services is proposing an amendment to HB 1351. They are addressing another issue unrelated to our concern. We do not have any objections to their amendment.

Your consideration and approval of HB 1351 is requested. Thank you again for the opportunity to bring this issue and proposed solution to your attention.

Shelly Peterson, President
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**TESTIMONY BEFORE THE
SENATE HUMAN SERVICES COMMITTEE
REGARDING ENGROSSED HOUSE BILL NO. 1351
March 19, 2007**

Chairman Lee and members of the Senate Human Services Committee, my name is Blaine Nordwall. I am Director of Economic Assistance Policy for the Department of Human Services. I am here not to support or oppose this bill, but to request that this committee consider an amendment.

Since 1982, federal Medicaid law, at 42 U.S.C. § 1396p(b)(1) (A), has required that all state Medicaid agencies seek to recover from Medicaid recipients' estates "In the case of an individual described in . . . [42 U.S.C. § 1396p(a)] (1)(B)." In all of that time, department staff understood this to mean individuals subject to liens, known informally as "TEFRA" liens, after the 1982 law that established this requirement. North Dakota has never imposed such liens.

We learned this understanding was incorrect via a January 24 posting on a national list-serve for workers in Medicaid estate recovery. That was, unfortunately, two days after the last deadline for bills to be introduced in this Legislative Assembly. We are, therefore, seeking amendments to Engrossed House Bill No. 1351 because it has a suitable title, and seeks to amend the North Dakota Century Code section that currently prevents us from complying with this federal requirement.

An individual described in 42 U.S.C. § 1396p(a)(1)(B) is one:

- (i) who is an inpatient in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution . . . , and
- (ii) with respect to whom the State determines . . . that cannot reasonably be expected to be discharged from the medical institution and to return home.

The proposed amendments would incorporate those federal requirements into subsection 1 of North Dakota Century Code section 50-24.1-07. If adopted, the amendments would require the department to pursue estate recovery in cases involving individuals who die before reaching age fifty-five, and to increase the amounts of its claims in estates of individuals who die after reaching age fifty-five, but who are earlier determined to be permanently institutionalized.

Theoretically, these amendments, if adopted, would produce additional revenue, but we cannot accurately predict the amount. We have been able to learn from the state of Iowa, which has long followed this federal requirement, that these cases currently amount to less than 2% of their estate recovery cases and about two-tenths of one percent of their total estate recoveries.

These amendments would not in any way affect the change in payment priorities sought by Engrossed House Bill 1351. I will try to answer any questions the committee members may have.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1351

Page 1, line 7, after "was" insert "a resident of a nursing facility, intermediate care facility for the mentally retarded, or other medical institution and with respect to whom the department of human services has determined that resident cannot reasonably be expected to be discharged from the medical institution and to return home, or who was"

Page 1, line 10, after "following" insert "the determination that the recipient cannot reasonably be expected to be discharged from the medical institution, or" and after "birthday" insert ", as the case may be."

Re-number accordingly