

2013 HOUSE HUMAN SERVICES

HB 1172

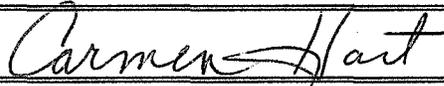
2013 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee Fort Union Room, State Capitol

HB 1172
January 22, 2013
17530

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the recovery from the estate of a medical assistance recipient.

Minutes:

You may make reference to "attached testimony."

Chairman Weisz: Opened the hearing on HB 1172.

Rep. Gary Kreidt: Last session I stood before you with a very similar bill. That legislation at that time would allow facilities to be able to be paid the rate for Medicaid individuals that die around the first of the month in hospital situations. We thought the last bill had taken care that the nursing homes would be first in line to receive their payment. Come to find out when the assets are frozen and an individual tries to pay a family member's bill, they are unable to. If you go to Line 17a on this bill, there is a line of order on how debts will be handled.

Chairman Weisz: Just to be clear, if I owed six months and then I keel over, you can only come after me or your priority is only for the month when I died. The prior six months that I maybe hadn't paid you, that doesn't show up as a priority claim. Correct?

Rep. Gary Kreidt: That is correct.

4:04 **Shelly Peterson, President of the ND Long Term Care Association** testified in support of the bill. (See Testimony #1)

11:16 **Chairman Weisz:** Is the number in that letter a typical recipient liability for a month?

Peterson: Yes, around the first social security check and that seemed very reasonable. That is minus \$50 for personal things Medicaid won't pay for. That is clothing, pop, perms, and special cuts that you want.

Chairman Weisz: Based on the fiscal note, \$49,810 general fund and \$50,000 in federal, roughly \$100,000 a biennium, is that roughly 100 individuals?

Peterson: It is not a lot. It is just when it happens at the beginning of the month and they haven't paid that recipient liability.

Chairman Weisz: It would be about 50 a year.

Rep. Mooney: Does the language in this bill supersede the frozen assets and allows the payment to be made then to the nursing home?

Peterson: That would be the intent. It makes it the top priority.

Tim Austin, Department of Human Services, appeared. The department is neutral on this bill. I will answer any questions the committee may have.

Rep. Mooney: Does this allow the payment then to be made to the nursing home even if the assets are frozen?

Austin: That is what it does. It establishes a higher priority than we have in current law.

There was no opposition.

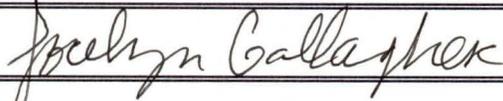
The hearing was closed on HB 1172.

2013 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee
Fort Union Room, State Capitol

HB 1172
January 28, 2013
17838

Conference Committee



Explanation or reason for introduction of bill/resolution:

Committee Action

Minutes:



Chairman Weisz: Opened the meeting on HB 1172. This is the one for nursing homes to get in front for the one month of recipient liability.

Rep. Silbernagel: For reference this is only for the current month, it is not for prior months just for the month of.

Chairman Weisz: Correct and part of the issue is that the law says their supposed to get paid on the first but that doesn't necessarily happen. You may get a few days in there and all of a sudden if the person dies and then there's that issue they could potentially run a hundred thousand between federal and state.

Rep. Mooney: Did we answer the question, after the person dies their assets are frozen, this still allows for the bill to the nursing home to be paid, is that correct?

Chairman Weisz: Not necessarily, it just puts them at the front of the list so they will get paid.

Rep. Mooney: My mother-in-law when she passed away, she was under Medicaid and assets were frozen before my husband could write the check at the end of the day. I was curious if that did address that.

Chairman Weisz: This allows the state to pay it. It is still going to be froze but it puts it ahead of the funeral expenses.

Rep. Porter: Move a do pass to be re-referred to appropriations. Second by Rep. Looyen.

Chairman Weisz: Any further discussion? Seeing none, clerk will call the roll for a do pass and re-refer to appropriations on 1172. 13-0 do pass. Rep. Anderson will carry the bill.

FISCAL NOTE
Requested by Legislative Council
01/20/2013

Bill/Resolution No.: HB 1172

- 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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$50,190	\$0	\$50,000
Expenditures	\$0	\$0	\$49,810	\$50,190	\$50,000	\$50,000
Appropriations			\$49,810	\$50,190	\$50,000	\$50,000

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

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 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).*

HB 1172 would allow nursing homes or basic care services the first preferred claim against a decedent's estate for outstanding recipient liability owed to the facility.

- 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 would allow nursing homes or basic care services the first preferred claim against a decedent's estate for outstanding recipient liability owed to the facility. This would result in a loss of estate collections of approximately \$100,000 per biennium. Estate collections are used to decrease the departments expenditures.

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 increase in revenues in each biennium is the additional federal funding the state will receive due to the increased expenditure relating to allowable expenditures.

- 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 costs paid by Medicaid for nursing facilities and basic care services are estimated to increase by \$100,000 in the 11-13 biennium, of which \$49,810 would be from the general fund. The costs for the 15-17 biennium are estimated at \$100,000 of which \$50,000 would be general fund.

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 Department will need an appropriation increase of \$100,000 in 13-15 biennium, of which \$49,810 would be from the General Fund and \$50,190 would be from federal funds. The Department will need an appropriation increase of \$100,000 in 15-17 biennium, of which \$50,000 would be from the General Fund and \$50,000 would be from federal funds.

Name: Debra A. McDermott

Agency: Department of Human Services

Telephone: 701-328-1980

Date Prepared: 01/21/2013

Date: 1-28-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1172

House Human Services Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

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

Motion Made By Rep. Porter Seconded By Rep. Looyesen

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN WEISZ	✓		REP. MOONEY	✓	
VICE-CHAIRMAN HOFSTAD	✓		REP. MUSCHA	✓	
REP. ANDERSON	✓		REP. OVERSEN	✓	
REP. DAMSCHEN	✓				
REP. FEHR	✓				
REP. KIEFERT	✓				
REP. LANING	✓				
REP. LOOYSEN	✓				
REP. PORTER	✓				
REP. SILBERNAGEL	✓				

Total (Yes) 13 No 0

Absent 0

Floor Assignment Rep. Anderson

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

REPORT OF STANDING COMMITTEE

HB 1172: Human Services Committee (Rep. Weisz, Chairman) recommends DO PASS and BE REREFERRED to the Appropriations Committee (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1172 was rereferred to the Appropriations Committee.

2013 HOUSE APPROPRIATIONS

HB 1172

2013 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Committee Roughrider Room, State Capitol

HB 1172
2/7/13
Job 18534

Conference Committee

Committee Clerk Signature

Meredith Traubolt

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact subsection 1 of section 50-24.1-07 of the North Dakota Century Code, relating to the recovery from the estate of a medical assistance recipient.

Minutes:

You may make reference to "attached testimony."

Rep. Robin Weisz, District 14: Introduced the bill.

Chairman Delzer: How does this affect the Medicaid payment to the facility?

Rep. Weisz: It would have no effect on the payment coming to them, it has strictly to do with those having a recipient liability, whatever that is. It averages \$100+ per month. Medicaid is still going to pay for however many days they were in the facility before they passed away. If they are there on the tenth of the month, it's probably been collected, because they bill the first of the month. But someone that dies the next day, if the facility hasn't collected it, it's tied up. Assets and accounts get frozen, they can't get a check, etc.

Chairman Delzer: If it's due on the first of the month, is that retrospective for the last month, or for the month they are in there?

Rep. Weisz: It's for the current month.

Chairman Delzer: Then aren't they already getting paid?

Rep. Weisz: They are supposed to be, it is due that first day of the month, but if the facility doesn't collect it for whatever reason, they are out in most cases.

Chairman Delzer: How many times has this issue been before us?

Rep. Weisz: I don't remember having this since I've been on Human Services.

Rep. Kreidt: This bill was introduced last session also. The attorneys at the department of human services went through it and found a technicality where they could freeze the assets of an individual on medical assistance. If the person dies on the first or second of the

month, and the family hasn't written a check to the facility, they'll automatically freeze the account. The family has the check book with the intention to pay the bill, but the department freezes it. Then you come into the litigation, the estate, everything. This bill will move the nursing home to the front of the line when it comes to creditors in regards to that account. The nursing home will be assured they will get their money before anybody else and the bill will be satisfied. This bill should take care of that problem.

Chairman Delzer: Questions? Thank you. The committee continued on to the next bill.

2013 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Committee Roughrider Room, State Capitol

HB 1172
2/12/13
Job 18836

Conference Committee

Committee Clerk Signature

Meredith Trachoff

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact subsection 1 of section 50-24.1-07 of the North Dakota Century Code, relating to the recovery from the estate of a medical assistance recipient.

Minutes:

You may make reference to "attached testimony."

Chairman Delzer: This was 13-0 out of Human Services committee. It has an approximately \$100,000 cost. I do not believe this money is in the budget, it is a Fiscal Note. Any comments from HR division? This was a case where the recipient liability is due on the first day of the month, but if they happen to pass away before the family pays it, this would put them first in line for it, instead of the department.

Rep. Kreidt: Historically, there used to be situations where the liability was \$100-\$200. Today you could wind up with a number like \$4000-\$5000. That loss to a facility is substantial. This is an important bill that will correct a flaw that's been in the system for too long.

Chairman Delzer: Do you honestly think it will cost \$100,000?

Rep. Kreidt: No, this is the recipient's money that they are talking about, they just won't be able to hold it.

Chairman Delzer: Does the department currently reimburse the facilities, in the end?

Rep. Kreidt: Right now the recipient isn't first in line, so another creditor like a pharmacy might be awarded money first. This will put the facility first in line, then go to other claimants if there is other money left.

Chairman Delzer: I don't see anything of how they came up with \$100,000.

Rep. Grande moved Do Pass, seconded by **Rep. Kreidt**.

Chairman Delzer: Further discussion? Seeing none, a roll call vote was done. The motion carried 21 Yes, 0 No, 1 Absent. **Rep. Bellew** will be our carrier, we'll send it back to policy.

FISCAL NOTE
Requested by Legislative Council
01/20/2013

Bill/Resolution No.: HB 1172

- 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.*

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Townships	\$0	\$0	\$0

- 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).*

HB 1172 would allow nursing homes or basic care services the first preferred claim against a decedent's estate for outstanding recipient liability owed to the facility.

- 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 would allow nursing homes or basic care services the first preferred claim against a decedent's estate for outstanding recipient liability owed to the facility. This would result in a loss of estate collections of approximately \$100,000 per biennium. Estate collections are used to decrease the departments expenditures.

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

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The costs paid by Medicaid for nursing facilities and basic care services are estimated to increase by \$100,000 in the 11-13 biennium, of which \$49,810 would be from the general fund. The costs for the 15-17 biennium are estimated at \$100,000 of which \$50,000 would be general fund.

- 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 Department will need an appropriation increase of \$100,000 in 13-15 biennium, of which \$49,810 would be from the General Fund and \$50,190 would be from federal funds. The Department will need an appropriation increase of \$100,000 in 15-17 biennium, of which \$50,000 would be from the General Fund and \$50,000 would be from federal funds.

Name: Debra A. McDermott

Agency: Department of Human Services

Telephone: 701-328-1980

Date Prepared: 01/21/2013

Date: 2/12/13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1172

House Appropriations Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

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

Motion Made By Rep. Grande Seconded By Rep. Kreidt

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer	X		Rep. Streyle	X	
Vice Chairman Kempenich	X		Rep. Thoreson	X	
Rep. Bellew	X		Rep. Wieland	X	
Rep. Brandenburg	X				
Rep. Dosch	X				
Rep. Grande	X		Rep. Boe	X	
Rep. Hawken	X		Rep. Glassheim	X	
Rep. Kreidt	X		Rep. Guggisberg	X	
Rep. Martinson	X		Rep. Holman	X	
Rep. Monson	X		Rep. Williams		
Rep. Nelson	X				
Rep. Pollert	X				
Rep. Sanford	X				
Rep. Skarpol	X				

Total Yes 21 No 0

Absent 1

Floor Assignment Rep. Bellew

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

REPORT OF STANDING COMMITTEE

HB 1172: Appropriations Committee (Rep. Delzer, Chairman) recommends **DO PASS**
(21 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1172 was placed on the
Eleventh order on the calendar.

2013 SENATE HUMAN SERVICES

HB 1172

2013 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee
Red River Room, State Capitol

HB 1172
03/6/13
19503

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the recovery from the estate of a medical assistance recipient

Minutes:

You may make reference to "attached testimony."

Chairwoman J. Lee. Opens HB 1172

(0:01:11) Shelly Peterson. President of the North Dakota Long Term Care Association. Testified in support of HB 1172 See Attachment #1

(0:07:16) Senator Axness: Wanted clarification on the payment schedule

Shelly Peterson: Payment if for the current month.

(0:07:49) Senator Axness: wanted to know if payments are per day or the entire month.

(0:08:00) Shelly Peterson: payment would be received for one day.

(0:08:08) Senator Dever: Source of funds for the recipient liability is Social Security?

(0:08:22) Shelly Peterson: Social Security or retirement account

(0:08:30) Chairwoman J. Lee: let the committee knows there is a fiscal note.

(0:08:47) Shelly Peterson: This problem is when the patient dies at the begin of the month.

(0:09:01) Chairwoman J. Lee shares experience.

(0:09:25) Senator Larsen: Questions about back billing

(0:9:49) Shelly Peterson: Per DHS and Medicaid regulations. Unless and it is private pay.

(0:10:41)Tim Austin of DHS is neutral and is here just to answer questions

(0:11:10) Senator Larsen: Asks Tim Austin about Back Billing

(0:11:43) Tim Austin: Under the billing procedures they may not be able to do it in reverse.

(0:12:34) There is a discussion about regulations and the federal government.

(0:12:44)Dever: Looking at the fiscal note asking clarification

(0:13:01) Tim Austin: It addresses what is paid out of the Department and the priority of the funds.

(0:13:44) Chairwoman J. Lee: Clarification about the payment procedure.

(0:14:10) Tim Austin: Clarifies how the funds are collected from the estate of the deceased patient.

(0:14:51) Chairwoman J. Lee Asks for clarification on how and estate may be distributed to a surviving spouse.

(0:15:19) Tim Austin: Clarifies how assets and Medicaid work.

(0:16:31) Chairwoman J Lee and Tim Austin: there is more discussion about how assists and estate of a married couple and Medicaid claims.

(0:17:45) Senator Larson: Needed clarification on priority of the payment process.

(0:18:00) Tim Austin: This would put the last month of care would have the higher priority.

(0:18:21) Senator Anderson: Clarification for the priority and the nursing home.

(0:19:00) Chairwoman J. Lee: Wanted to know if DHS would be collecting payments from the estate or the nursing home.

(0:19:05) Tim Austin: DHS counties can freeze the deceased accounts and remitted.

(0:19:50) There is a discussion about how the payment are collected and dispersed.

(0:22:00) Senator Dever: Needed clarification about payments when the patient is alive.

(0:22:12) Tim Austin: The payment is made directly to the nursing home.

(0:22:38) Discussion about frozen estate and payments to the nursing homes.

(0:23:39) Shelly Peterson: states that it's almost impossible for payment once a person dies. Because the account is frozen. The collection of payment in advance would be a hardship.

(0:24:33) Senator Dever: about the fix in 2007.

(0:24:40) Shelly Peterson: We were ranked but not in #1 and the last illness of care. The definition of last illness is what the individual died of.

Chairwoman J. Lee Close hearing

Senator Anderson motions for Do Pass and Re-Referral to Appropriations

Senator Dever: Seconds with motion for Re-Referral to Appropriations

Do Pass 5-0-0

Senator Anderson will carry to the floor.

FISCAL NOTE
Requested by Legislative Council
01/20/2013

Bill/Resolution No.: HB 1172

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Name: Debra A. McDermott

Agency: Department of Human Services

Telephone: 701-328-1980

Date Prepared: 01/21/2013

Date: 3-6-13
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1172

Senate Human Services Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

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

Motion Made By SEN. ANDERSON Seconded By SEN. DEVER

Senators	Yes	No	Senator	Yes	No
Chairman Judy Lee	✓		Senator Tyler Axness	✓	
Vice Chairman Oley Larsen	✓				
Senator Dick Dever	✓				
Senator Howard Anderson, Jr.	✓				

Total (Yes) 5 No 0

Absent _____

Floor Assignment SEN. ANDERSON

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

REPORT OF STANDING COMMITTEE

HB 1172: Human Services Committee (Sen. J. Lee, Chairman) recommends DO PASS and BE REREFERRED to the Appropriations Committee (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1172 was rereferred to the Appropriations Committee.

2013 SENATE APPROPRIATIONS

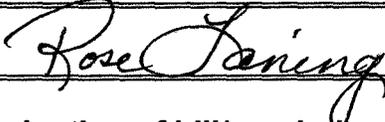
HB 1172

2013 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

HB 1172
March 19, 2013
Job # 20112

Conference Committee

Committee Clerk Signature 

Explanation or reason for introduction of bill/resolution:

This bill relates to the recovery from the estate of a medical assistance recipient.

Minutes:

Testimony attached # 1 - 2

Legislative Council - Brittani Reim
OMB - Sheila Peterson & Laney Herauf

Chairman Holmberg opened the hearing on HB 1172. All committee members were present.

Chairman Holmberg pointed out that because its fiscal impact is on the Dept. of Human Services this bill will go to the sub-committee on human services. The sub-committee is: Senator Kilzer, Senator Gary Lee, Senator Erbele, and Senator Mathern

Representative Gary Kreidt, District 33: This bill passed out of the House. It was also introduced last session but had a glitch so it was re-introduced again this session. It will allow facilities to capture their rentals when someone in a facility dies during the first part of a month. Occasionally the department will freeze the assets of that resident so the facility doesn't receive their payment for the rest of that month. Line 17 puts the nursing home and basic care facilities first in line to receive the dollars when the estate is settled.

V. Chairman Bowman: (6:35) If I died two days after a month started, do you charge for the whole month or by the day.

Rep. Kreidt: It's on a daily rate. You're always paying for the month behind. Private pay, you pay up front. Usually that money comes in on the first part of the month. When they die in the first few days of the month, that's where there is a problem.

Senator Kilzer: When you testified in the House, did all the other people not at the front of the line such as funeral people, medical people, and attorneys, testify against the bill.

Rep. Kreidt: I'm assuming not.
A voice from the crowd said, "They did not."

Chairman Holmberg said he visited with **Senator Kilzer** about Friday. If they want you to come back for a subcommittee, he will be willing to come back.

Shelly Peterson, President, North Dakota Long Term Care Association: Testified in favor of HB 1172. See attached testimony #1.

This only happens in the first couple days of the month if a person happens to pass away then.

(13:37) **Senator Warner:** Are you allowed to charge when your patient is transferred temporarily to a hospital.

Ms. Peterson: Yes. When a resident is transferred to the hospital for care there is pay for hospital leave which is at the lowest rate in the facility. You don't get the actual amount. But you get 15 leave days a year.

Senator Warner: How long before you lose the bed?

Ms. Peterson: I believe it is fifteen days for a hospital stay. If the resident is in for a longer length of time they wouldn't get paid at all.

Senator Warner: You wouldn't have a place to come back to.

Ms. Peterson: The facilities generally hold the bed for that individual.

Kim Jacobson, Director, Traill County Social Services: Testified in favor of HB 1172. See attached testimony #2.

(17:22) **Senator Mathern:** If this was not changed, how would payments like this be made? How does it resolve itself?

Ms. Jacobson: At this point in time, we equate it with a client's last illness. They would be in the mix of whatever is available. If a client passes, the account is frozen quickly.

Senator Mathern: If it is frozen and it is in the mix where the nursing homes, lawyers, attorneys all have a claim and there is \$1000 left, how is that allocated?

Ms. Jacobson: It would be sent to the estate recovery division to complete and do the percentage of breakdown.

Chairman Holmberg closed the hearing on HB 1172. The sub-committee will look at it. There is an appropriation of \$49,810 in the bill.

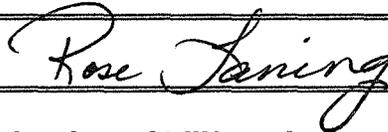
2013 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

HB 1172 subcommittee
March 25, 2013
Job # 20435

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A bill relating to the recovery from the estate of a medical assistance recipient.

Minutes:

Legislative Council - Becky J. Keller
OMB - Lori Laschkewitsch

Senator Kilzer opened the subcommittee hearing on HB 1172. Senators Lee, Erbele and Mathern were also present.

This was heard on March 19 and it related to estates of people in nursing homes who pass away and their assets go to probate and are frozen. The court decides how the remaining funds are distributed and this would put the nursing home first in line to have their bills paid.

Shelly Peterson, President, Long Term Care Association

The fiscal note is around \$50,000. She explained what happens when a nursing facility resident on Medicaid dies. If they die at the beginning of the month before their recipient liability is paid, the facility generally does not get their money because the account has been frozen.

If the person dies in the hospital, and the cause of death is unrelated to what they were being cared for in the nursing home, the hospital gets paid, but not the nursing home.

This is to clean up some language to assure that nursing facilities will get paid.

There has been no opposition. The department generally is the major recipient of all the estate.

Senator Kilzer: In this scenario - does the nursing home get paid 100% of what they are owed or do they get the same percentage as the other claims on the assets.

Ms. Peterson: If they were residing in the hospital, it's a reduced rate. In this legislation, it would be for their daily care (averages \$200/day). Generally, payment would be on the case mix of what they were receiving.

She talked about the payment if there was a contract.

Senator Gary Lee referred to legislation brought forth in 2007. He asked what the problem was.

Ms. Peterson explained that "expenses of last illness" has to be directly related to what they die from. If the nursing facility treated them for dementia and they died of pneumonia in the hospital, then they don't get paid because of how they define illness.

Senator Kilzer: Is that off the death certificate?

Tim Austin, Legal Services Division, DHS

If they are asking for an expensive last illness, the department looks at the death certificate and corresponding medical records to determine if is allowed. This bill is giving a priority to the nursing home expenses for the last month of life so that problem is eliminated and they are paid.

Senator Mathern: Did you run this past CMS? Would this present any difficulty to the department with the present federal arrangements?

Mr. Austin: This is part of the estate matters. The federal law compels us to collect on Medicaid claims but doesn't lay out the exact protocol. States have flexibility in that regard.

Senator Gary Lee: For clarification - if the patient was in nursing home for the first 2 days and then went to hospital and died three days later the nursing home would only get paid for the two days?

(08:50) Discussion followed on what the nursing facility would be paid for at the present and under this bill.

Senator Mathern moved Do Pass on version .02000

Senator Erbele seconded.

Senator Kilzer - y
Senator Erbele - y
Senator Gary Lee - y
Senator Mathern - y

Roll call vote - Yea: 4 Nay: 0 **Motion carried.**

Senator Kilzer closed the hearing on HB 1172.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

HB 1172
03-26-3013
Job # 20463

Conference Committee

Committee Clerk Signature	<i>Alice Delzer</i>
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Explanation or reason for introduction of bill/resolution:

A BILL that relates to the recovery from the estate of a medical assistance recipient (Do Pass).

Minutes:

You may make reference to "attached testimony."

Chairman Holmberg called the committee to order on Tuesday, March 26, 2013 in regards to HB 1172. All committee members were present.

Sheila M. Sandness- Legislative Council
Lori Laschkewitsch- OMB

Senator Kilzer: HB 1172 was a Bill that Shelly Peterson testified to and it concerned death and assets of the resident, particularly when they die and the first days of the month before the payment comes in for that month what happens is assets get frozen, bank accounts gets frozen, and so the nursing home has to line up with all the other creditors on the estate and then this would put the nursing home to be first in line for the assets. There was no opposition to the bill either before the whole committee or the subcommittee, and so it came out of your subcommittee do pass by a 3 to 0 vote. The fiscal note was about \$50,000.

Senator Mathern moved a Do Pass on HB 1172. 2nd by Senator Robinson.

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

This bill goes back to Human Services. **Senator Anderson will carry the bill.**

The hearing was closed on HB 1172.

FISCAL NOTE
Requested by Legislative Council
01/20/2013

Bill/Resolution No.: HB 1172

- 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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$50,190	\$0	\$50,000
Expenditures	\$0	\$0	\$49,810	\$50,190	\$50,000	\$50,000
Appropriations			\$49,810	\$50,190	\$50,000	\$50,000

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

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 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).*

HB 1172 would allow nursing homes or basic care services the first preferred claim against a decedent's estate for outstanding recipient liability owed to the facility.

- 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 would allow nursing homes or basic care services the first preferred claim against a decedent's estate for outstanding recipient liability owed to the facility. This would result in a loss of estate collections of approximately \$100,000 per biennium. Estate collections are used to decrease the departments expenditures.

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 increase in revenues in each biennium is the additional federal funding the state will receive due to the increased expenditure relating to allowable expenditures.

- 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 costs paid by Medicaid for nursing facilities and basic care services are estimated to increase by \$100,000 in the 11-13 biennium, of which \$49,810 would be from the general fund. The costs for the 15-17 biennium are estimated at \$100,000 of which \$50,000 would be general fund.

- 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 Department will need an appropriation increase of \$100,000 in 13-15 biennium, of which \$49,810 would be from the General Fund and \$50,190 would be from federal funds. The Department will need an appropriation increase of \$100,000 in 15-17 biennium, of which \$50,000 would be from the General Fund and \$50,000 would be from federal funds.

Name: Debra A. McDermott

Agency: Department of Human Services

Telephone: 701-328-1980

Date Prepared: 01/21/2013

Date: 3-26-13

Roll Call Vote # 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 1172

Senate Appropriations Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Adopt Amendment Do Pass
 Do Pass as Amended Do Not Pass

Motion Made By Mather Seconded By Robinson

Senators	Yes	No	Senator	Yes	No
Chairman Ray Holmberg	✓		Senator Tim Mather	✓	
Co-Vice Chairman Bill Bowman	✓		Senator David O'Connell	✓	
Co-Vice Chair Tony Grindberg	✓		Senator Larry Robinson	✓	
Senator Ralph Kilzer	✓		Senator John Warner	✓	
Senator Karen Krebsbach	✓				
Senator Robert Erbele	✓				
Senator Terry Wanzek	✓				
Senator Ron Carlisle	✓				
Senator Gary Lee	✓				

Total (Yes) 13 No 0

Absent 0

Floor Assignment Human Services Anderson

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

REPORT OF STANDING COMMITTEE

HB 1172: Appropriations Committee (Sen. Holmberg, Chairman) recommends DO PASS
(13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1172 was placed on the
Fourteenth order on the calendar.

2013 TESTIMONY

HB 1172

#1

Testimony on HB 1172
House Human Services Committee
January 22, 2013

Good morning Chairman Weisz and members of the House Human Services Committee. My name is Shelly Peterson, President of the North Dakota Long Term Care Association. I am here this morning to testify in support of HB 1172 and ask for your help on an important issue. This issue has been unresolved for a number of years. We brought legislation forward in 2007, which was intended to remedy this situation; however it still is not fixed.

The purpose of HB 1172 is to allow nursing and basic care facilities to get paid for the care they provide to a resident if they happen to die at the beginning of the month and/or if the "cause of death" is not directly related to the care they received in the care facility.

Today, fifty-two percent of residents in a nursing facility need Medicaid to help pay for their care. 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 nursing facility bill. If a Medicaid recipient dies at the beginning of the month, and they have not yet paid for their portion of the bill, it is almost impossible to get paid. When a Medicaid recipient dies, their bank account is frozen, and you must go through estate recovery to get paid.

There are two problems with this scenario:

1. Department of Human Services states that recipient liability is current only if it is collected, in advance, on the first of the month. This is almost impossible, most residents don't receive their income until the 3rd or 4th of the month.
2. In order to recover funds from the decedents estate (and thus get paid), the care they receive in the nursing home must be directly related to the cause of death. If the resident was in the nursing facility for advanced dementia, but transferred to the hospital and died of a stroke, heart attack or pneumonia, etc, you would not get paid. Care for dementia is not directly related "to the cause of death." To better illustrate this issue, I want to share with you a letter the Department of Human Services sent to a nursing facility denying payment for a resident that died December 9, 2011. To assure the residents confidentiality and privacy, their name has been blacked out.

Most often families want to pay their long term care bill in these circumstances, but the current law prevents payment, as their account is frozen and goes into estate recovery.

Thank you for your consideration of HB 1172. We ask for your passage so families can pay for their last days of care and facilities can receive payment.

Shelly Peterson, President
North Dakota Long Term Care Association
1900 North 11th Street • Bismarck, ND 58501 • (701) 222-0660
Cell (701) 220-1992 • www.ndltca.org • E-mail: shelly@ndltca.org



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Phone: 701-222-0660
www.ndltca.org



Jack Dalrymple, Governor
Carol K. Olson, Executive Director

December 23, 2011

Ms. Mary Farstveet
Accounts Receivable Manager
Missouri Slope Luth. Care Ctr.
2425 Hillview Ave.
Bismarck, ND 58501

Dear Ms. Farstveet:

On December 15, 2011, the North Dakota Department of Human Services ("Department") received from you a request that \$869 be paid to the Missouri Slope Lutheran Care Center ("Facility") for the amount owed by the decedent for the recipient liability owed for December 2011.

The decedent owes unpaid "recipient liability" to the Facility for the cost of services provided in December 2011. Recipient liability is incurred and should be paid on the first day of the month for which it is due. A Medicaid recipient is not technically eligible for a Medicaid payment until the recipient liability is collected. The nursing facility (not the Department) has the obligation of collecting the recipient liability.

The Department has a policy that it will reimburse unpaid recipient liability, from estate recovery funds, during the first five days of the month. This grace period allows a payment on the account of a recipient who passes away during this time, and their account is frozen before the nursing facility has a chance to collect it. The Department will not reimburse a nursing facility that fails to collect recipient liability for other reasons, and the Department cannot return money it did not receive.

To show that the Facility has a right to funds recovered from the decedent's estate that is superior to the rights of the Department, N.D.C.C. § 50-24.1-07(1) requires the amounts claimed to be for expenses of the decedent's last illness. The decedent's last illness is the condition or sickness that caused the decedent's death.

Ms. Mary Farstveet
December 23, 2011
Page 2

The Department will make a payment to a nursing facility for extra services provided during the recipient liability period that directly relates to the decedent's last illness. This is not for the usual and customary nursing services provided, but must be extra cost of care directly associated with the cause of death. The Department allows this claim, if applicable, because under the law, it has a higher priority than our claim against estate funds. In order to ensure that your recipient liability is current, collect it, in advance, pursuant to law, on the first of the month.

There is no basis to conclude that the debt owed by the decedent to the Facility relates to the decedent's last illness. The Department denies your request for payment of the December 2011 recipient liability in the total amount of \$869.00.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy J. Austin", written in a cursive style.

Timothy J. Austin
Special Assistant Attorney General

c. Deanne M. Gifford, Burleigh CSSB

Testimony on HB 1172
Senate Human Services Committee
March 6, 2013

Good morning Chairman Lee and members of the Senate Human Services Committee. My name is Shelly Peterson, President of the North Dakota Long Term Care Association. I am here this morning to testify in support of HB 1172 and ask for your help on an important issue. This issue has been unresolved for a number of years. We brought legislation forward in 2007, which was intended to remedy this situation; however it still is not fixed.

The purpose of HB 1172 is to allow nursing and basic care facilities to get paid for the care they provide to a resident if they happen to die at the beginning of the month and/or if the "cause of death" is not directly related to the care they received in the care facility.

Today, fifty-two percent of residents in a nursing facility need Medicaid to help pay for their care. 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 nursing facility bill. If a Medicaid recipient dies at the beginning of the month, and they have not yet paid for their portion of the bill, it is almost impossible to get paid. When a Medicaid recipient dies, their bank account is frozen, and you must go through estate recovery to get paid.

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Most often families want to pay their long term care bill in these circumstances, but the current law prevents payment, as their account is frozen and goes into estate recovery.

Thank you for your consideration of HB 1172. We ask for your passage so families can pay for their last days of care and facilities can receive payment.

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Legal Advisory Unit

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ND Relay TTY (800) 366-6888

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To show that the Facility has a right to funds recovered from the decedent's estate that is superior to the rights of the Department, N.D.C.C. § 50-24.1-07(1) requires the amounts claimed to be for expenses of the decedent's last illness. The decedent's last illness is the condition or sickness that caused the decedent's death.

Ms. Mary Farstveet
December 23, 2011
Page 2

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Timothy J. Austin
Special Assistant Attorney General

c. Deanne M. Gifford, Burleigh CSSB

Shelly Peterson
NB 1172

#1

Testimony on HB 1172 3-19-13
Senate Appropriations Committee
March 19, 2013

Good morning Chairman Holmberg and members of the Senate Appropriations Committee. My name is Shelly Peterson, President of the North Dakota Long Term Care Association. I am here this morning to testify in support of HB 1172 and ask for your help on an important issue. This issue has been unresolved for a number of years. We brought legislation forward in 2007, which was intended to remedy this situation; however it still is not fixed.

The purpose of HB 1172 is to allow nursing and basic care facilities to get paid for the care they provide to a resident if they happen to die at the beginning of the month and/or if the "cause of death" is not directly related to the care they received in the care facility.

Today, fifty-two percent of residents in a nursing facility need Medicaid to help pay for their care. 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 nursing facility bill. If a Medicaid recipient dies at the beginning of the month, and they have not yet paid for their portion of the bill, it is almost impossible to get paid. When a Medicaid recipient dies, their bank account is frozen, and you must go through estate recovery to get paid.

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Most often families want to pay their long term care bill in these circumstances, but the current law prevents payment, as their account is frozen and goes into estate recovery.

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Ms. Mary Farstveet
December 23, 2011
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Timothy J. Austin
Special Assistant Attorney General

c. Deanne M. Gifford, Burleigh CSSB

Kim Jacobson
HB 1172
3-19-13

#2

North Dakota Senate Appropriations Committee
March 19, 2013
House Bill 1172
Kim Jacobson, Director – Traill County Social Services

Chairman Holmberg and members of the Senate Appropriations Committee, my name is Kim Jacobson. I am the Director of Traill County Social Services and member of the ND County Social Service Director's Association. I speak in support of HB 1172, which is related to Medical Assistance Estate Recovery.

House Bill 1172 makes one change to the current law governing estate recovery. This change prioritizes that the client's recipient liability, upon death, be paid to the nursing home or basic care facility, prior to any other claim including funeral expenses, expenses of last illness, estate administration expenses, etc.

House Bill 1172 fundamentally does not change current practice. DHS legal has previously interpreted that the current law, which allows for expenses of last illness, to include the current month recipient liability to the nursing home or basic care facility. However, HB 1172 would streamline the process for prioritization of payment of the recipient liability to the nursing home/basic care facility and insure consistency in definition and application.

This bill is beneficial to nursing homes and basic care facilities, particularly in rural communities, by allowing them to receive payment for services rendered during the client's final days. This aids in facility financial viability and supports favorable working relationships between the state, county and these facilities.

For these reasons, I urge you to consider a "Do Pass" of House Bill 1172. Thank you for your time and attention in this matter. I would be happy to address any questions.