

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/24/2019**

Amendment to: HB 1318

- 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.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>				\$333,592		\$351,440
<b>Expenditures</b>			\$333,592	\$333,592	\$351,440	\$351,440
<b>Appropriations</b>			\$333,592	\$333,592	\$351,440	\$351,440

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

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
<b>Counties</b>			
<b>Cities</b>			
<b>School Districts</b>			
<b>Townships</b>			

- 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).*

Section 2 of HB 1318 removes the six thousand dollar limit that is designated for pre-need funeral service contracts, prepayments, or deposits not to be considered in eligibility determination.

- 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.*

HB 1194 section 2 removes the limit allowed to be excluded for pre-need funeral service contracts, prepayments, or deposits, not to be considered in eligibility determinations. This will allow Medicaid applicants to designate additional funds for burial expenses and therefore, spend down fewer assets prior to being eligible for Medicaid. In the most recent 12-month period, there were 366 Medicaid applicants who set aside six thousand. Based on information from ND Funeral Directors, the Department assumed 50% of ND burials involve cremation and excluded those from the calculation as the average cremation is less than the currently allowed six thousand. The Department estimated that of the remaining 50% of Medicaid applicants would have additional resources to set aside. The average cost of a funeral and the annual inflation rate were obtained from the North Dakota Funeral Association. The projected cost to remove the limit is expected to be \$667,184, of which \$333,592 are general funds for the 2019 - 2021 biennium.

The projected impact for the 2021 - 2023 biennium is \$702,880, of which \$351,440 are general funds.

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 Medicaid services provided to medicaid-eligible individuals who designate pre-need funeral expenses under Section 2 of HB 1318 are eligible to receive matching federal funds based off the Federal Medical Assistance Percentage (FMAP).

- 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.*

HB 1194 section 2 removes the limit allowed to be excluded for pre-need funeral service contracts, prepayments, or deposits, not to be considered in eligibility determinations. This will allow Medicaid applicants to designate additional funds for burial expenses and therefore, spend down fewer assets prior to being eligible for Medicaid. In the most recent 12-month period, there were 366 Medicaid applicants who set aside six thousand. Based on information from ND Funeral Directors, the Department assumed 50% of ND burials involve cremation and excluded those from the calculation as the average cremation is less than the currently allowed six thousand. The Department estimated that of the remaining 50% of Medicaid applicants would have additional resources to set aside. The average cost of a funeral and the annual inflation rate were obtained from the North Dakota Funeral Association. The projected cost to remove the limit is expected to be \$667,184, of which \$333,592 are general funds for the 2019 - 2021 biennium.

The projected impact for the 2021 - 2023 biennium is \$702,880, of which \$351,440 are general funds.

- 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.*

Section 2 of HB 1318 for the 2019 - 2021 biennium the Department of Human Services would need an appropriation increase, of \$667,184, of which \$333,592 would be general fund, to the base level budget in SB 2012.

For the 2021 - 2023 biennium the Department of Human Services would need appropriation authority of \$702,880, of which \$351,440 is general fund.

**Name:** Rhonda Obrigewitch

**Agency:** Human Services

**Telephone:** 328-4585

**Date Prepared:** 01/15/2019

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/08/2019**

Bill/Resolution No.: HB 1318

- 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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**Name:** Rhonda Obrigewitch

**Agency:** Human Services

**Telephone:** 328-4585

**Date Prepared:** 01/15/2019

**2019 HOUSE HUMAN SERVICES COMMITTEE**

**HB 1318**

# 2019 HOUSE STANDING COMMITTEE MINUTES

**Human Services Committee**  
Fort Union Room, State Capitol

HB1318  
1/16/2019  
30905

- Subcommittee  
 Conference Committee

Committee Clerk: Elaine Stromme by Donna Whetham

## **Explanation or reason for introduction of bill/resolution:**

Relating to Medicaid assets exempt for funeral expenses.

## **Minutes:**

Attachment 1-4

**Vice Chairman Rohr:** Opened the Hearing for HB 1318.

**Representative Mike Lefor, District 37:** In support of HB 1318. Explained changes in the bill. I would like to talk to the Department of Human Services for amendments. (See Attachment 1) (01:00-7:23).

**Vice Chairman Rohr:** Any other support of HB 1318?

**Mike Krumwiede I represent the ND Funeral Directors Association:** In support of HB 1318. (See Attachment 2) (8:17-

**Representative Skroch:** So you take out a plan when you are 40 and pass when your 80 by that time this plan has built up to \$20,000 now. Do you see the possibility of the family members maxing out the most expensive funeral for this individual and burning up as much of that asset as possible.

**Mike Krumwiede:** That could be a possibility but I don't see that happening because usually when these plans are taken out the contract will be for what the person's wishes are and what they have preplanned.

**Representative Skroch:** In forty years do you think the cost of the casket would go up?

**Mike Krumwiede:** It probably would but that is why the annuity plan has an interest bearing amount to it so it lasts you a lifetime.

**Representative Schneider:** What is the fiscal note for because the money that is put aside is the recipient's money, right?

**Mike Krumwiede:** We were working with the department and wondering if there would be a fiscal note we are not sure if that is calculated of future numbers.

**Representative Schneider:** it doesn't make sense to me that there is a cost unless they are figuring that more people with higher assets limits could qualify for medical assistance. If that is the case that is not a good projection. If they are putting their own money into the program that part has no cost to medical assistance. Is that what you understand as well?

**Mike Krumwiede:** That is how I would understand it.

**Vice Chairman Rohr:** Any other support of HB 1318?

**Alex Rydell Funeral Director in Fargo:** In support of HB 1318. (See Attachment 3). (15:55-18:36)

**Vice Chairman Rohr:** Are you also looking to work with Representative Lefor on potential amendments?

**Alex Rydell Funeral Director in Fargo:** Yes if that is a necessary thing we would absolutely be open to communications with that.

**Nic Stevenson Funeral Director, Dickinson Area:** In support of HB 1318. As we move forward with this we would be happy to help on proposed amendments to better serve the families. (See Attachment 4) (19:30-27:30)

**Vice Chairman Rohr:** Any questions?

**Representative Schneider:** What would you estimate would be the basic funeral cost for Mrs. Dorvall?

**Nic Stevenson:** The basic service that she had selected was around \$11,000 for the items she had picked out. When we talk about a funeral service, there are the services and then the out of pocket expenses that the families ask us to pay for. Such as flowers, obituaries in the newspaper, a cemetery lot or ordering food.

**Representative Schneider:** What would be the basic funeral part of that cost?

**Nic Stevenson:** The basic service is about \$11000. The out of pocket expenses to the family is usually around \$3000 to \$4000.

**Representative Schneider:** If you had to pick an amount that was picked for medical assistance purposes, right now it is \$6000. What would you say a dignified funeral costs?

**Nic Stevenson:** That is hard to say because there is such a variation. Such as cremation or traditional services. On the basic side it ranges from \$8,000 to \$9,000 upwards to \$14,000 to \$15,000. It depends on that person's choice. The back pages of my testimony is some notes that we shared with some of our area representatives or why we came about with the bill and some bullet points about the benefits of the bill. (See Attachment 4).

**Vice Chairman Rohr:** Any other support of HB 1318?

**Johnathan Alm, Attorney with Department of Human Services:** I don't have written testimony, but the department does have some amendments and that will add some clarity and simplify the process. When you look at the bill on page 2 on line 14 the underscored reasonable and necessary has been added, we would like that removed. It actually puts a requirement to the department what is reasonable and necessary for a funeral. The next is still on page 2 line 16 after the word entered, and it goes on to line 18, so it is "plus the portion of the three thousand dollar asset limitation the purchaser designates for funeral expenses. We would like that struck out because if you turn to page 3 on lines 18-20 that is also taken out so just for consistency purposes we would like the language to be the same. That would still allow the individuals to put any amount that is necessary into that irrevocable pre-need funeral account. The third change is on page 3 line 29, towards the end is the word section, with the changes that were made in this bill it should probably read chapter for the purpose of there is another Century Code provision that allows if there is not enough in a pre-need funeral account to cover the necessary expenses the estate can pay up to \$3000 to cover any additional expenses. By having "section" instead of "chapter" in here the state could not pay the additional \$3,000. These amendments would provide clarity and simplification.

**Representative Porter:** With the amendments that you are suggesting does that change the fiscal note?

**Johnathan Alm:** The fiscal note would stay the same.

**Representative Schneider:** The department is okay with having a reasonable without setting a maximum limit?

**Johnathan Alm:** Having no cost is better than having a reasonable and necessary cost where we would have to make the determination as to what is reasonable and necessary. Otherwise the department doesn't take a position as to if it should be a set amount or not.

**Representative Schneider:** For medical assistance purposes you have always had a set amount in there. First it was \$3,000 and now it is \$6,000. What if someone wants to put \$30,000 in there to qualify for assistance. Is the department okay with that? (37:03)

**Johnathan Alm:** Based on the prior discussion there will be some limitations as to how much those actual costs will be. In the past the department has suggested additional increases before and the legislative body has reduced those increases for the set amount in the past.

**Representative Schneider:** So you want to amend this bill to have a set amount in or do you want it passed as reasonable and necessary?

**Johnathan Alm:** With the amendment it would remove that "reasonable and necessary" and it would not have a limitation.

**Erik Elkins, Medical Services Division:** The way we developed this fiscal note in summary is if the assets are spent down sooner they become eligible for Medicaid sooner. So we took the average cost of a casket funeral obtained from the Funeral association. The current limit is \$6,000 and we took that difference. The average cost in for a funeral in 2019 is \$9,483 so the difference is \$3,483. We looked at a year of applications, there were 366 new approvals at that \$6,000 limit. From that we took  $\frac{1}{2}$  of that amount because of cremations are less and we removed that from the equation. We then figured  $\frac{1}{2}$  of the 50% which is 92 of those people would have more than the \$6,000 limit. We took 92 times the \$3,483 and that is how we came up with our fiscal note.

**Representative Schneider:** What is the average cost of a nursing home today for medical assistance per month?

**Erik Elkins:** I will have Joyce Johnson address that.

**Joyce Johnson, Medicaid Policies Director:** The average cost of nursing home care is \$8600.00 a month.

**Vice Chairman Rohr:** Any more questions? Any other support of HB 1318? Opposition? Neutral position? Seeing none.

Hearing closed on HB 1318.

# 2019 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee  
Fort Union Room, State Capitol

HB 1318  
1/23/2019  
31354

- Subcommittee  
 Conference Committee

Committee Clerk Signature Elaine Stromme by Nicole Klamann

## Explanation or reason for introduction of bill/resolution:

Relating to Medicaid assets exempt for funeral expenses

## Minutes:

Attachment 1,2

**Chairman Weisz:** opened meeting on HB 1318

**Chairman Weisz:** Relating to Medicaid funeral and the exempt assets. My understanding is someone had a proposed amendment and it's in the testimony? Is that correct?

**Representative Matthew Ruby:** Suggested amendment

Page 2, line 14; remove "reasonable and necessary"

Page 2, line 16, overstrike ",plus"

Page 2, overstrike line 17

Page 2, line 18, overstrike "for funeral expenses"

Page 3, line 12 overstrike "as"

Page 3, line 13, remove "reasonable and necessary"

Page 3, line 29, overstrike "section" and insert immediately thereafter "chapter" (See Attachment 1)

**Chairman Weisz:** Basically removing reasonable and necessary and can put irrevocable trust or the amount to pay for the funeral

**Representative Dobervich:** So does that mean that now for medical assistance eligibility you cannot be disqualified no matter what the amount in your preplanned funeral account was?

**Chairman Weisz:** Yes

**Rep.Skroch:** I'm trying to remember when we were talking about this. Was it if there was a balance remaining that that amount had to go to the state if there was an obligation to Social Services?

**Chairman Weisz:** Right, they will put a claim on the estate. Anything beyond will go to the department until they are paid in full. If there's excess, it goes back into the estate. So if someone puts \$35,000 in a trust and spends \$10,000 on a funeral, the department has a claim on the remaining \$25,000 until paid. If they spend \$35,000 on a funeral, then they can do that. What is the current limit? \$6,000 is the current limit. (See Attachment 2)

**Chairman Weisz:** Maybe we should deal with the amendment and then the bill.

**Representative Bill Devlin:** As I recall from the testimony this was Mr. Alm's recommendation for the amendment and the department is fine with this language.

**Chairman Weisz:** Thank you.

**Rep. Devlin:** I motion to adopt the amendment

**Rep Dobervich:** Seconded

**Voice Vote:** Motion carried to adopt amendment to HB 1318.

**Chairman Weisz:** We have an amended bill in front of us  
What are the Committee wishes?

**Rep Ruby:** Move a Do Pass on HB 1318 as amended and Rerefer to Appropriations.

**Representative Dwight Keifert:** Seconded

**Chairman Weisz:** Clerk will call the roll.

**Roll Call Vote taken:** Yes 11 No 0 Absent 3. Motion carries on a Do Pass as amended on HB 1318. Rerefer to Appropriations.

**Representative Dobervich:** Will carry the bill.  
Hearing closed.

19.0857.01001  
Title.02000

Adopted by the Human Services Committee

January 23, 2019

CM  
1/23/19  
1 of 1

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1318

Page 2, line 14, remove "reasonable and necessary"

Page 2, line 16, overstrike ", plus"

Page 2, overstrike line 17

Page 2, line 18, overstrike "for funeral expenses"

Page 3, line 12, overstrike "as"

Page 3, line 13, remove "reasonable and necessary"

Page 3, line 29, overstrike "section"

Page 3, line 30, after "~~dollars~~" insert "chapter"

Renumber accordingly

**2019 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. HB 1318**

House   Human Services   Committee

Subcommittee

Amendment LC# or Description:   19.0857.01001  

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   Representative Devlin   Seconded By   Representative Dobervich  

<b>Representatives</b>	<b>Yes</b>	<b>No</b>	<b>Representatives</b>	<b>Yes</b>	<b>No</b>
Robin Weisz - Chairman			Gretchen Dobervich		
Karen M. Rohr – Vice Chairman			Mary Schneider		
Dick Anderson					
Chuck Damschen					
Bill Devlin					
Clayton Fegley					
Dwight Kiefert					
Todd Porter					
Matthew Ruby					
Bill Tveit					
Greg Westlind					
Kathy Skroch					

Total   (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

Voice Vote Motion to Amend passes

**2019 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. HB 1318**

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   Representative M. Ruby   Seconded By   Representative Keifert  

<b>Representatives</b>	<b>Yes</b>	<b>No</b>	<b>Representatives</b>	<b>Yes</b>	<b>No</b>
Robin Weisz - Chairman	X		Gretchen Dobervich	X	
Karen M. Rohr – Vice Chairman	A		Mary Schneider	X	
Dick Anderson	A				
Chuck Damschen	X				
Bill Devlin	X				
Clayton Fegley	X				
Dwight Kiefert	X				
Todd Porter	A				
Matthew Ruby	X				
Bill Tveit	X				
Greg Westlind	X				
Kathy Skroch	X				

Total   (Yes)   11                             No   0  

Absent   3  

Floor Assignment   Representative Dobervich  

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

**REPORT OF STANDING COMMITTEE**

**HB 1318: Human Services Committee (Rep. Weisz, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (11 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). HB 1318 was placed on the Sixth order on the calendar.

Page 2, line 14, remove "reasonable and necessary"

Page 2, line 16, overstrike ", plus"

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Page 3, line 30, after "~~dollars~~" insert "chapter"

Renumber accordingly

**2019 HOUSE APPROPRIATIONS**

**HB 1318**

# 2019 HOUSE STANDING COMMITTEE MINUTES

**Appropriations Committee**  
Roughrider Room, State Capitol

HB 1318  
2/7/2019  
32341

- Subcommittee  
 Conference Committee

Committee Clerk Risa Bergquist

**Explanation or reason for introduction of bill/resolution:**

**Relating to Medicaid assets exempt for funeral expenses.**

**Minutes:**

**Chairman Delzer:** Called the meeting to order for HB 1318

**Representative Weisz:** Here to present this bill, historically the legislature has set a fixed amount that can be set aside for a funeral contract that doesn't count against your Medicaid assets limitations. Currently it's at 6 thousand, the bill in front of you does away with all that. What this bill does is says you can put away an unlimited amount of money in a irrevocable trust for your funeral services. If there is extra money after the funeral costs that money would be receptacle to Medicaid after the funeral is paid for.

**Chairman Delzer:** So there's no limit what so ever? If there was money left over so where would that money go? After Medicaid got there's where would the rest of the money go?

**Representative Weisz:** I would become part of the estate.

**Chairman Delzer:** What about land and assets? Could you put assets in your irrevocable trust?

**Representative Weisz:** You can do that now and once you pass on Medicaid comes in.

**Chairman Delzer:** The difference is then you have a 5 year look back with this you wouldn't.

**Representative Weisz:** This wouldn't change the 5 year look back.

**Chairman Delzer:** Could you put enough assets in there to protect yourself over and above what it will cost you to live in the nursing home?

**Representative Weisz:** Absolutely but it wouldn't protect you from Medicaid.

**Chairman Delzer:** It's a way to get around the 5 year look back because you could do this 3 month before you went into the nursing home.

**Representative Weisz:** Well with the 5 year look back after 5 years you are completely protected with this you aren't protected at all once the funeral is paid for Medicaid can come after whatever you have left.

**Chairman Delzer:** It's a case where their assets are more than the cost of the Medicaid cost.

**Representative Weisz:** They could probably qualify but it would just keep them from paying it now.

**Chairman Delzer:** Well they don't get it all back if they don't have a bill to cover it. I understand it doesn't make any difference because they are going to pay the bill either way.

**8:05 Representative Nathe:** Was there any discussion how many states are currently using this right now?

**Representative Weisz:** I am not aware if there was any discussion of how many other states do it this way.

**Representative Nathe:** I worked under this system when I was in Minnesota, this is not a sheltering devise, people don't walk into the funeral home and say they want to shelter 50 thousand dollars. Funeral homes have to write up a contract for whatever that funeral should cost.

**Chairman Delzer:** Do you do the irrevocable trust with the funeral home or with the bank?

**Representative Nathe:** The funeral home. There are forms that we as funeral homes have to fill out. So if they see a report that is charged 100 thousand dollars we would get a call immediately, this is customary and ordinary charges. I thought it was use it or lose it? So anything that isn't used would go back to the estate or Medicaid.

**Representative Weisz:** Yes, it would go back to the estate.

**Chairman Delzer:** Further discussion? If not we will close this hearing.

# 2019 HOUSE STANDING COMMITTEE MINUTES

**Appropriations Committee**  
Roughrider Room, State Capitol

HB 1318  
2/11/2019  
32541

- Subcommittee  
 Conference Committee

Committee Clerk: Risa Bergquist

## **Explanation or reason for introduction of bill/resolution:**

**Relating to Medicaid assets exempt for funeral expenses.**

**Minutes:**

**Chairman Delzer:** This bill is to set up an irrevocable trust fund with a funeral home to cover final expenses. Does this in any way effect the people that already have contracts and don't want to shift to the irrevocable trust? Because on page 3 of the bill it does take out some of the limits that they currently have been doing.

**Representative Nathe:** This would be all for the future contracts; this wouldn't affect any written contracts.

**Representative Kempenich:** The 5 year look back becomes very important, even if they become Medicaid eligible then Medicaid can come even after the fact.

**Chairman Delzer:** That's certainly true, if there's money left in it and there are costs from the nursing home and they are on Medicaid.

**Representative Nathe:** The other thing that wasn't mentioned the other day is this is good for the families, that are currently harassed by social services. Once it is in the trust they won't be getting those calls and harassment. This is more to protect those families.

**Chairman Delzer:** It is listed as a 330-thousand-dollar fiscal note, what are your wishes?

**Representative Kempenich:** I will make a motion for a Do Pass.

**Representative Holman: Second**

**Chairman Delzer:** Any further discussion on the motion for a Do Pass? If not, we will take the roll call.

**A roll call vote was taken. Yea: 19      Nay: 1      Absent: 1**

**Motion carries Representative Dobervich will carry the bill.**

**Chairman Delzer:** With that we will close the meeting.

Date: 2/11/2019  
 Roll Call Vote #: J

**2019 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. HB 1318**

House Appropriations 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 Representative Kempenich Seconded By Representative Holman

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer		X			
Representative Kempenich	X				
Representative Anderson	X		Representative Schobinger	X	
Representative Beadle	X		Representative Vigesaa	X	
Representative Bellew	X				
Representative Brandenburg	X				
Representative Howe	X		Representative Boe	X	
Representative Kreidt	X		Representative Holman	X	
Representative Martinson	X		Representative Mock	X	
Representative Meier	X				
Representative Monson	A				
Representative Nathe	X				
Representative J. Nelson	X				
Representative Sanford	X				
Representative Schatz	X				
Representative Schmidt	X				

Total (Yes) 19 No 1

Absent 1

Floor Assignment Representative Dobervich

**Motion Carries**

**REPORT OF STANDING COMMITTEE**

**HB 1318, as engrossed: Appropriations Committee (Rep. Delzer, Chairman)**  
recommends **DO PASS** (19 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING).  
Engrossed HB 1318 was placed on the Eleventh order on the calendar.

**2019 SENATE HUMAN SERVICES**

**HB 1318**

# 2019 SENATE STANDING COMMITTEE MINUTES

Human Services Committee  
Red River Room, State Capitol

HB 1318  
3/12/2019  
Job Number 33548

- Subcommittee  
 Conference Committee

Committee Clerk: Justin Velez / Marne Johnson

## Explanation or reason for introduction of bill/resolution:

A bill relating to Medicaid assets exempt for funeral expenses.

## Minutes:

Attachments #1-5

**Madam Chair Lee** opens the hearing on HB 1318.

**(00:50-04:52) Representative Mike Lefor, District 37. Introduces HB 1318 and provides testimony. Please see Attachment #1 for written testimony.**

**(05:42-07:06) Mike Krumwiede, representing the North Dakota Funeral Directors Association. Testifying in support of HB 1318. Please see Attachment #2 for written testimony.**

**(07:47-11:05) Alex Rydell, Funeral Director in Fargo, North Dakota. Testifying in support of HB 1318. Please see Attachment #3 for written testimony.**

**Vice Chair Larson:** They can purchase TVs and other things, but they can't purchase a burial insurance plan?

**Alex Rydell:** There is a limit to how much they can set aside for the funeral expenses. Currently, it is written as \$6,000 in funeral expenses and \$3,000 of their personal assets, any of which can be in the policy. Hence the \$8,500 that the woman I worked with had set aside.

**Senator Hogan:** Cremations tend to be much less expensive than traditional burials. Are you seeing a change with people coming to do preplanning on the cremation option versus the burial?

**Alex Rydell:** We are definitely seeing an increase in that nationwide. That has been reflected and sometimes people are coming in and requesting a simple cremation service. It opens up the option for people who want something different, so there is not that limitation on what a person wants.

**Senator Clemens:** My uncle had a contract for their funeral services for him and his wife and when it came time for the funeral, the funeral director said that the investments made with that money have not kept up with the rising cost of the funeral, so his daughter had to pay an additional \$1000, above the contract that they had. Is that legitimate? If I make a contract for my funeral, shouldn't that be binding at the time of my death?

**Alex Rydell:** There are guaranteed policies, and non-guaranteed policies. Different funeral homes carry different policies. Some funeral homes choose to guarantee the services, a person will set aside a certain amount of money and they will guarantee that certain items in the contract and some won't. Sometimes the contract can last for 20 plus years and the costs of the funeral expenses can go up. It's not an uncommon thing for people to see that and think that it will be taken care of, but it is up to the funeral home.

**Madam Chair Lee:** I would assume that the contract would have specified what was guaranteed and what was at risk.

**(15:30-21:15) Nic Stevenson, representing Stevenson Funeral Home. Testifying in support of HB 1318. Please see Attachment #4 for written testimony.** The hope is that HB 1318, we can have the set up so that families can put away the funds they desire for the service, and then it's set up irrevocably, it can't become an asset to be withdrawn or used on other items. It has to be used towards the funeral service. There is no risk of families putting away a larger sum than what they intend to use, and the heirs are able to keep it. If they are on Medicaid eligibility, and the funds aren't used on the service, they must be returned to the state. Continued with written testimony, page 3.

**Senator Hogan:** What is the average cost of a basic funeral today in North Dakota?

**Nic Stevenson:** That can vary, but I would say it is in the \$10,000-\$12,000 range for the services and merchandise selected. Cremations can be somewhat less, but based on the services they can select, those can vary widely as well.

**No opposition testimony.**

**(22:25-25:30) Maggie Anderson, Department of Human Services. Provides neutral testimony and an overview of the fiscal note for HB 1318 to the committee. Please see Attachment #5 for Medicaid Assets and Funeral Set Aside chart.**

**Senator Hogan:** Did you look at all the eligibility time changes that were referenced by the funeral directors?

**Maggie Anderson:** We asked that information from our eligibility staff. While they would not need to review a contract, there is still an annual Medicaid eligibility review, that this one piece isn't going to save a considerable amount of time, where we were able to calculate the 46 county units that they would save x amount of time, because there is still an annual eligibility determination review, even if the individual doesn't have a funeral contract. We do look at that but, it was not something that was going to save time. The other piece is our current Medicaid eligibility policy indicates that if we have something electronically to be able

to review, we already tap into those electronic means to view those documents. We did consider it but felt we couldn't attach an administrative savings to it.

**Vice Chairman Larsen:** If we are talking about the funds going back that haven't been spent, is there a calculation for that; and where do those funds go?

**Maggie Anderson:** For example, if someone set aside \$30,000 and they only used \$15,000, that extra \$15,000, assuming Medicaid had expenditures that would become part of Medicaid estate collections, we would bring that money back into the department, then we have to return the appropriate federal share, and then the remaining general fund share is built into our grants tables. As we build the budget we estimate how much we will receive for estate collections and how much we'll spend. We use those dollars in our grants to fund other Medicaid services.

**Vice Chairman Larsen:** It wouldn't be earmarked for the funeral, to keep that afloat.

**Maggie Anderson:** That is correct, it is seen as any other estate funding that we collect.

**Senator Hogan:** Will that be additional administrative time? Because estate collections can be quite complicated; or is that just part of the routine?

**Maggie Anderson:** No, we would not. It is just part of what we would do.

**Vice Chairman Larsen:** What is the figure of that asset from the Medicaid, what is that yearly?

**Maggie Anderson:** Our current asset limit for Medicaid for a single individual is \$3,000. They can also set aside the \$6,000. Those are the two asset piece we have.

**Vice Chairman Larsen:** The money of this, if it was an overspend, it would go back into your funds, is there an asset forfeiture that comes?

**Maggie Anderson:** It's really estate collections, it would be at the point when the person passes away, their funeral expenses are complete, if there was extra funding in this irrevocable trust, then it would be subject to estate collections. There wouldn't be an annual amount, and in our fiscal note, because we can't predict; it's not that we believe people will be using this to shelter money, we don't expect there will be a lot, but what is available would be subject to estate collections.

**Vice Chairman Larsen** closes the hearing on HB 1318.

# 2019 SENATE STANDING COMMITTEE MINUTES

**Human Services Committee**  
Red River Room, State Capitol

HB 1318  
3/12/2019  
Job #33555

- Subcommittee  
 Conference Committee

Committee Clerk: Justin Velez

## **Explanation or reason for introduction of bill/resolution:**

Relating to Medicaid assets exempt for funeral expenses.

## **Minutes:**

No Attachments

After discussing HB 1105, Madam Chair Lee and the Senate Human Services Committee moved on to discuss HB 1318. There were no amendments made during committee discussion and a motion of **DO PASS** was made.

**Senator O. Larsen:** I move a **DO PASS** on HB 1318 and **REREFER TO APPROPRIATIONS.**

**Seconded by Senator Clemens**

**Madam Chair Lee:** Any further discussion on HB 1318?

## **ROLL CALL VOTE TAKEN**

**6 YEA, 0 NAY, 0 ABSENT**

**MOTION CARRIES, DO PASS, REREFER TO APPROPRIATIONS.**

**Senator Clemens will carry HB 1318 to the floor.**

**Roll call vote was partially recorded due to technical difficulties.**

**2019 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1318**

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 Sen. O. Larsen Seconded By Sen. Clemens

Senators	Yes	No	Senators	Yes	No
Sen. Judy Lee	x		Sen. Kathy Hogan	x	
Sen. Oley Larsen	x				
Sen. Howard C. Anderson	x				
Sen. David Clemens	x				
Sen. Kristin Roers	x				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Clemens

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

**REPORT OF STANDING COMMITTEE**

**HB 1318, as engrossed: Human Services Committee (Sen. J. Lee, Chairman)** recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1318 was rereferred to the **Appropriations Committee**.

**2019 SENATE APPROPRIATIONS**

**HB 1318**

# 2019 SENATE STANDING COMMITTEE MINUTES

## Appropriations Committee Harvest Room, State Capitol

HB 1318  
3/21/2019  
Job # 34141

- Subcommittee  
 Conference Committee

Committee Clerk: Rose Laning / Carie Winings

### Explanation or reason for introduction of bill/resolution:

Relating to Medicaid assets exempt for funeral expenses.

### Minutes:

Testimony # 1 - 2

Legislative Council: Levi Kinnischtzke  
OMB: Stephanie Gullickson

**Chairman Holmberg:** Called the committee to order on HB 1318.

### Mike Krumwiede, North Dakota Funeral Directors Association

Testimony in support of HB 1318 - Attached # 1.

**(0:00) Senator Dever:** When you say any money returned to the county, do you mean to say to the estate that might be recoverable?

**Mike Krumwiede:** That is correct. It would be returned to the estate. That would be the correct terminology that social services would use.

### Maggie Anderson, Department of Human Services:

Testimony on HB 1318 – Medicaid Assets and Funeral Set Aside - Attached # 2. Attachment explains the fiscal note. Like HB 1124 that we discussed last week, the money is also not appropriated in the bill at this time, and it is not appropriated in SB 2012. Somewhere we're looking for the funds to be appropriated.

**(3:45) Chairman Holmberg:** If the bill passes, and the Governor signs it, then it would be one of the things that your folks would do to work with the conference committee or the House on SB 2012 to see that the funding was there. Is that accurate?

**Maggie Anderson:** The sequence of those events is important. That there is an indication that there is an appropriation that would be coming for a policy bill that needs appropriation to go with it.

**Chairman Holmberg:** That is one of the things that we have had some discussions on. Because the Senate and the House have not been doing all of this the same way. We have,

in some areas, bills floating around with no money, but are policy bills and they need to be rectified before we go home.

**Maggie Anderson:** I would agree with that.

**Chairman Holmberg:** Anyone else wishing to talk to us about this today?

**Chairman Holmberg:** Closed the hearing on HB 1318.

**Senator Sorvaag:** Moved a Do Pass on HB 1318.

**Senator Robinson:** Seconded the motion.

**Chairman Holmberg:** Any discussion? (There was none.)

**A Roll Call Vote Was Taken: 14 yeas, 0 nays, 0 absent.**

**Motion Carried.**

Date: 3-21-2019

Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1318

Senate Appropriations 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 Sorvaag Seconded By Robinson

Senators	Yes	No	Senators	Yes	No
Senator Holmberg	✓		Senator Mathern	✓	
Senator Krebsbach	✓		Senator Grabinger	✓	
Senator Wanzek	✓		Senator Robinson	✓	
Senator Erbele	✓				
Senator Poolman	✓				
Senator Bekkedahl	✓				
Senator G. Lee	✓				
Senator Dever	✓				
Senator Sorvaag	✓				
Senator Oehlke	✓				
Senator Hogue	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment H. Services

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

**REPORT OF STANDING COMMITTEE**

**HB 1318, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman)**  
recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).  
Engrossed HB 1318 was placed on the Fourteenth order on the calendar.

**2019 TESTIMONY**

**HB 1318**

#1  
HB 1318  
1-16-19  
Pg 1.

Good Morning Chairman Rohr and members of the House Human Services Committee, my name is Mike Lefor and I serve District 37 - Dickinson in the North Dakota House.

I bring HB 1318 to you on behalf of a constituent, Mr. Nic Stevenson as well as the North Dakota Funeral Directors Association. When an individual decides to purchase an irrevocable pre-need funeral contract, they are most likely doing so to provide for the payment and planning of their funeral services and take that burden away from their families at a difficult time.

In the North Dakota Century Code, currently, it allows for pre-need funeral contracts up to \$6000 or less for Medicaid Eligibility in their later years. In addition, you may keep \$3000 of your assets, which also may be used for your funeral. The current costs of a funeral would not be covered with the amount allowed.

I will go through the changes in the bill. First, on page one is basically updating within the code. Next, if you would go to page two, line fourteen, it changes the irrevocable amount, which would be allowed in a pre-need contract from the allowable exclusion for Medicaid eligibility (or \$6000) to a reasonable and necessary amount to pay for a funeral service.

On page three, lines eleven through thirteen, it removes the \$6000 or less limitation and allows those dollars to be placed in an irrevocable itemized funeral contract which would be changed to as reasonable and necessary costs of the funeral service.

Moving to lines eighteen through twenty, it removes the three thousand dollar asset limitation for pre-need funeral contracts, prepayments or deposits. If HB 1318 becomes law, this exclusion would no longer become necessary. Lines twenty-nine and thirty, removes the \$6000 limitation once again.

This bill would allow individuals to fully fund their funeral services through an irrevocable pre-need funeral contract. If there are excess funds after the funeral has been paid, the remaining funds would be returned to the state and not to the family.

There are many positive benefits to this legislation:

#### Consumer Benefits

1. Families would be able to fund the funeral services they wish.
2. Families will not be forced to have their children pay for their funerals.
3. Families are ensured they receive the funeral service they selected and the peace of mind to know everything has been properly taken care of.

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HB 1318  
1-16-19  
Pg 2

Department of Human Services Benefits

1. One time eligibility review for each applicant.
2. No annual reviews to determine if the balance has gone over \$6000.
3. Reduces time spent on each case.
4. All left over funds must be returned to the state.

Funeral Professional Benefits

1. They are able to let the families plan and pre-fund the funeral service they want.
2. No more disappointed families that have to contribute to their parent's funeral services.
3. The family must follow through on a pre-planned funeral service.
4. Unused funds must be returned to the state.
5. No more yearly audits on all pre-need funeral contracts.

Further, it is my understanding approximately 350 pre-need funeral contracts are purchased annually in our state. Of the funeral services performed in North Dakota, approximately 46% of those are cremations where the costs will vary from \$1500 to \$3500.

This percentage continues to grow every year. According to the North Dakota Funeral Directors Association the changes which are made in this legislation reflect existing Medicaid eligibility in most other states including Minnesota and Montana to name a couple.

It is my understanding that Human Services may wish to change some of the wording within this bill such taking out wording such as "reasonable and necessary" when describing funeral costs and we would not object to that.

Mr. Chairman and members of the committee that completes my testimony, I would be happy to answer any questions.

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1-16-19  
pg 1



## House Human Services Committee

January 15, 2019

### Support HB 1318

Vice Chair Rohr and members of the House Human Services Committee. For the record my name is Mike Krumwiede and I represent the North Dakota Funeral Directors Association. We are here today in support of HB 1318. Our association currently has just over 100 Funeral Directors who represent 63 of the 75 Funeral Homes in North Dakota. The bill you see before you arises from a problem that our association has been trying to solve for a very long time. The issue at hand is pre-need funeral plans for people who are applying to Medicaid are limited to \$6,000. This is usually not enough money to cover the funeral and families end up chipping in to pay for a funeral that a deceased family member thought they had pre-planned and funded. This is definitely a problem, and you will hear from some Funeral Directors today that will explain this issue with real world examples.

The ND Funeral Directors have made it a priority to try and come up with a better way to help serve these families who are faced with this very dilemma. We've done research on how other states are handling this issue and realized our surrounding states and many others are using the irrevocable trust method.

Essentially what this means is the money that is set aside would have to be placed in an itemized irrevocable burial contract that can only be used to fund a funeral. Because these contracts are irrevocable they cannot be cashed out for other uses. Any remaining money after the funeral is paid for would be returned to the county. This assures the person who is doing the responsible thing and pre-planning their own funeral with their own money would receive the funeral they had planned.

After agreeing that this would be the best method we consulted with the Director of Human Services. Under the current method when an individual qualifies for Medicaid assistance, each county social service office is required to check on the updated value of the individual's burial account at least twice a year. This creates countless hours of work for county social service offices. With an irrevocable plan the verification of the plan would only have to be done once when the individual initially qualifies for assistance. After discussions the director believed this is a good move and would align with the departments goal of reducing administrative work on social service workers.

We have also reached out to the Association of Counties and they agreed this would be a good change as it reduces the amount of time their workers would spend verifying balances on pre-need burial plans.

This reduced workload equates to saving time and saving money for the Department of Human Services.

For these reasons, we respectfully request a Do Pass recommendation on HB 1318. It's now my pleasure to ask some members of our Funeral Directors Association to provide some more detailed testimony with real world applications in support of HB 1318. Thank you for your time.

**HB1318 Testimony  
Alex Rydell**

Chairman Weisz and Members of the Committee

My name is Alex Rydell and I am a funeral director in Fargo, ND at Hanson-Runsvold Funeral Home and the President of the North Dakota Funeral Directors Association, and I appear before you today in support of House Bill 1318.

The proposed bill will allow North Dakota residents the option to set aside a reasonable and necessary amount of money for the funeral that they want into an irrevocable burial account and maintain eligibility for Medicaid.

I have been a funeral director in North Dakota for eleven years and in those years I have helped hundreds of individuals preplan their funeral services. Preplanning one's funeral arrangements is an invaluable and meaningful gift a person can leave for their family and I am honored to be able to help them with their options. As I walk them through the process, they will share many of their wishes and preferences ranging from a simple cremation to a full funeral service with multiple ceremonies.

When I make prearrangements with an individual who has been in a nursing home for some time and is in a spend-down for Medicaid, there is often an urgency for them to set aside the money for funeral expenses as their savings have been exhausted in paying for their care. They have reached a time when they have a month or two worth of nursing home expenses left and have been instructed to look into setting aside funds for their funeral. They often share with me the things that they are spending their remaining money on or are told they can spend it on, items they often don't see value in but are allowed to purchase in the spend down such as a new TV or a recliner and maintain their eligibility for Medicaid.

When it comes time to set aside the money for funeral expenses, something with a meaningful and lasting value to their family, they are limited to what they can pay for and at times can't set aside enough to cover the funeral service they want. In the past several months I have sat with several individuals who began to cry and apologize to their children when they found out they couldn't set aside enough and their children would need to pay out of their own pockets for the funeral their mother or father wanted.

This bill will allow those individuals in the Medicaid spend-down, if they so choose, to set aside the money necessary to pay for the funeral they want so their children don't have to bear that burden. It will save time and effort for the Department of Human Services as the frequent verifications of revocable policies

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1-16-19  
Pg. 2.

will become a one-time verification of an irrevocable itemized funeral contract that won't need to be revisited.

This is a bill that will positively impact your constituents and the Department of Human Services and it is my hope that you will support it. This completes my testimony, I am happy to answer any questions you may have at this time.

Alex Rydell  
Funeral Director  
Hanson-Runsvold Funeral Home  
President – North Dakota Funeral Directors Association  
[alex@hansonrunsvold.com](mailto:alex@hansonrunsvold.com)  
Cell: (701)866-3207

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Chairman Weisz and Members of the Committee

My name is Nic Stevenson, I have worked in the funeral industry of North Dakota for over 15 years. I am a proud representative of the families that I serve day in and day out at Stevenson Funeral Home. These families come to us in their darkest moments of their lives and ask for guidance and help. We do everything in our power to aide these families and lighten their burden as we help them arrange a fitting tribute and service for their loved ones.

We also aide families through the challenges they face in pre-planning and pre-funding their funeral. Unfortunately, the current Medicaid restrictions can be very frustrating and at times, unfair to these families.

Several years ago the family of Vivian Schorsch realized that their mom needed more care than they could provide, so they placed her into a long term care facility. Vivian's assets were quickly used up to pay for her stay at the facility. When Vivian was 40 years old she took out a \$10,000.00 life insurance policy for the purpose of her funeral expenses. Vivian payed on this policy each month for the rest of her life and eventually outlived the usefulness of the policy investing over \$13,000.00 into the policy with the death benefit never rising above \$10,000.00. Because Vivian had exhausted her assets she needed to apply for Medicaid to pay for her stay at the long term care facility. Because the state requires an individual to have their assets below \$9,000.00 before they are eligible for Medicaid, Vivian was forced to cancel her life insurance policy. When she canceled the policy she was penalized by the life insurance company for surrendering the policy and only received about \$6,000.00, and this was all that she had to place in a funeral trust. Vivian had done everything right. She was responsible in wanting to pay for her funeral. She didn't want her children to have to pay for it. She didn't want the state to have to pay for it. But because, it did not match up perfectly to the set dollar amounts of the state Medicaid requirements she spent \$13,000.00 and was left with \$6,000.00 which was not enough to cover her funeral expenses. When I asked her son, Chuck Schorsch, who ranches south of Richardton, if I could share his mom's story with you today, he replied, "Hell yes, something has to be changed."

I hear similar stories to this each and every week from families that come to us for guidance and help. Our hope is that if House Bill 1318 passes, families will no longer be faced with these difficult circumstances. They will be able to put away a reasonable and necessary amount for their funeral in an irrevocable funeral contract. They would be able to select the service and merchandise they want for their funeral and fully fund the pre-planned funeral so their family would not have to worry about having to pay. The pre-funded funeral would be irrevocable so it would not be an asset of the individual that could be cashed out or canceled. This would eliminate hundreds of hours of work from county social services who are currently required to review each Medicaid recipient at least twice a year and update their values. Because it would

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P2

be irrevocable, it would be filed one time and never need to be evaluated again. These funds would have to be used on a funeral or else they would be returned to the state. This would prevent families from inflating an irrevocable account for the purpose sheltering the funds. They would have to use it or lose it.

If HB 1318 would have been in place for Vivian's circumstance, she would have been able to irrevocably assign her life insurance policy for the purpose it was intended for, paying for her funeral.

I strongly urge you to vote Do Pass on House Bill 1318

Thank you for your time and efforts,

Nic Stevenson

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Pg 3

January 15, 2019

Members of the committee,

On December 15<sup>th</sup> 2018 I said goodbye to the greatest women I have ever known, when my mother, Barbara Dorval passed away.

My mother worked hard her entire life. She earned her nursing certificate at the age of 21. She raised three children while helping my father farm. She baked, cooked and kept us all clothed with her skilled sewing. We were not wealthy, by any stretch, but we never went without. I owe so much to my mother for the care and love she provided for my family.

When my dad passed away in 1996, my mother sold the farm and moved to town. When her health declined at the age of 90 she moved into a long-term care facility in Dickinson. My siblings and I are very grateful for the care mom received at these care facilities, but it came at a large expense. Over the next several years my mother's life savings of over \$800,000.00 was completely exhausted to pay for her long-term care. We followed social services guidelines to make sure my mom was eligible for Medicaid to begin paying for her stay at the long-term care facilities. They advised us to reduce her assets, by purchasing un-needed items such as a recliner, TV and clothes. Because my mother had pre-planned her funeral and put funds away we assumed that there was nothing else to worry about if her savings was gone. Unfortunately, the Medicaid guidelines, did not allow my mom to put away enough funds to cover the funeral she selected. My mother was not a fancy person and selected a very basic funeral service that reflected her love for God and the church. It was very upsetting to my family and I when we discovered that mom had spent over \$800,000.00 in care, but yet was not able to fund the funeral that she requested.

There has to be a better solution. My mom worked and saved her entire life. The last thing she ever wanted to be was burden to her family. This is the reason she pre-planned her funeral, so her family wouldn't be troubled by the decisions or expenses. The fact that she spent almost a million dollars for her care at the nursing home and yet, was not able to pay for the basic funeral she selected, is not right. I urge you to please make changes that will prevent other families from suffering this tragic out come as we have.

Respectfully,



Mary Ann Kessel

**50-24.1-02.3. When designated pre-need funeral service contracts, prepayments, or deposits not to be considered in eligibility determination.**

**Background for HB 1318**

Individuals who require care from a long term care facility, such as a nursing home, require the residence to pay for their stay at a rate of \$7,000.00 to \$13,000.00 per month, based on the amount of care they require. These monthly payments, over time, will deplete the individual's entire life savings. Currently, families that near the end of their savings are advised to visit with the county social service worker so that they can become eligible for Medicaid assistance when their assets are depleted.

These meetings take place when an individual has two to three months of personal assets remaining to pay for their care at the care facility or roughly \$30,000.00. At this meeting the families are informed that they must reduce their assets to a level below \$9,000.00 before they will be eligible for Medicaid assistance. They are informed that they can protect a maximum of \$8,500.00 designated for burial/funeral expenses. The state allows \$6,000.00 for funeral expenses and \$2,500.00 of personal assets, totaling \$8,500.00 for burial/funeral expenses. The families are then advised to spend down the remaining assets of the individual on items such as TV's, furniture, clothing and various other items in order to deplete their assets to the \$9,000.00 threshold allowed by Medicaid. When an individual qualifies for Medicaid assistance, each county social service office is required to check on the updated value of the individual's burial account at least twice a year. This creates countless hours of work for county social service offices.

Unfortunately families today are spending down their hard earned assets on items they don't need or want, in order to become eligible for Medicaid and yet they are not able to protect enough of these assets to fully pay for their funeral service. When it is time for the funeral to take place the surviving families are faced with the burden that they are required to pay the additional cost of the services that are not covered by the funds designated for burial/funeral expenses. These are families that have worked hard their entire lives and saved their money only to have it quickly depleted by the care they currently require at their long term care facility.

The proposed bill would allow individuals to put away and reasonable and necessary amount for a funeral in and itemized irrevocable burial contract. Because the contracts are irrevocable, they would not be counted as an asset towards the individual, nor would they be able to cash out the funds for other uses. These funds would be required for funeral use only. If there were excess funds remaining after the funeral expenses were paid, the remaining funds must be returned to the county for recovery.

Rather than have families spend down the remaining \$20,000.00 to \$30,000.00 on unneeded items over the last several months they would now be able to fully fund the funeral they select. This would alleviate families having to pay additional expenses for funeral services because it could all be protected. It would also eliminate the possibility of families over funding or sheltering funds, because funds must be used for the funeral service or returned to North Dakota social services. This would also eliminate countless hours of work for local social service offices checking on updated values of burial accounts. Because the accounts are now irrevocable, they would never have to be evaluated again.

#4 AB 1318  
1-16-19  
pg 5.

## Benefits of proposed bill changes.

### Consumer Benefits

- Families would be able to fund the funeral they want
- Life insurance policies will be used for their intended purpose – funeral expenses
- Families would not be at a loss when they realize they can't fund the funeral they wanted
- Families won't be forced to have their children pay for their funerals
- Families are ensured that they receive the funeral they selected
- Peace of mind knowing funeral is all planned and paid for – Priceless!

### Department of Human Services

- One time eligibility review for each applicant
- No annual reviews
- Reduce countless hours of work per case, per year
- All left over funds MUST be returned to the estate

### Funeral Professional

- Able to let families plan and pre-fund the service they want
- No more disappointed families that have to contribute to parents funeral expenses
- Pre-planned funerals must be followed through by family
- Un-used funds will be returned to the state
- No more yearly audits on all pre-funded funeral accounts

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PROPOSED AMENDMENTS TO HOUSE BILL NO. 1318

Page 2, line 14, remove "reasonable and necessary"

Page 2, line 16, overstrike ", plus"

Page 2, overstrike line 17

Page 2, line 18, overstrike "for funeral expenses"

Page 3, line 12, overstrike "as"

Page 3, line 13, remove "reasonable and necessary"

Page 3, line 29, overstrike "section" and insert immediately thereafter "chapter"

Renumber accordingly

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Testimony  
House Bill 1318 - Department of Human Services  
House Human Services Committee  
Representative Robin Weisz, Chairman  
January 16, 2019

Chairman Weisz, and members of the House Human Services Committee, I am Jonathan Alm, an attorney with the Department of Human Services (Department). I appear before you to support House Bill 1318, with amendments to clarify and simplify the intent of this Bill.

**Section 1:**

The Department proposes an amendment to page 2, line 14, to remove “reasonable and necessary” as the Department does not want to be in a position to determine what is “reasonable and necessary” to pay for a funeral. If the Department was required to determine what is “reasonable and necessary”, I foresee the need for the Department to create administrative rules establishing guidelines as to what would be “reasonable and necessary”. This may include a need to establish a specific dollar amount, which would be contrary to the intent of House Bill 1318. This same change will need to occur on page 3, line 13.

The second amendment to Section 1 is to remove “, plus the portion of the three thousand dollar asset limitation the purchaser designates for funeral expenses” from page 2, lines 16 through 18. This proposed amendment would be consistent with the current proposed changes being made to Section 2 on page 3, lines 18 through 20.

**Section 2:**

The Department proposes an amendment to page 3, line 29, to replace “section” with “chapter”. If “section” remains, it will eliminate the deceased Medicaid recipient estate’s ability to pay up to \$C.000, pursuant to section 50-24.1-07 of the North Dakota Century Code, if the pre-need funeral service contract does not cover the funeral expenses. It is the Department’s position that this proposed amendment would be consistent with the intent of this Bill.

This concludes my testimony. I would be happy to try to answer any questions the committee may have. Thank you.

**NDLA, Intern 09 - O'Neill, Seth**

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page 2

**From:** Lefor, Mike  
**Sent:** Wednesday, January 23, 2019 10:48 AM  
**To:** Alm, Jonathan E.  
**Cc:** NDLA, Intern 09 - O'Neill, Seth; Mike Krumwiede  
**Subject:** Re: HB 1318

Jonathan:

Thank you for the update. Do they do an annual review for other reasons?

Mike

On Jan 23, 2019, at 9:27 AM, Alm, Jonathan E. <[jealm@nd.gov](mailto:jealm@nd.gov)> wrote:

Dear Representative Lefor:

The Department will not be amending the Fiscal Note. After further discussion with Medicaid Eligibility Policy Director and staff, the State/County is still required to verify all assets annually, which would include whether the individual has the irrevocable contract.

Thank you,

Jonathan Alm

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**From:** Lefor, Mike <[mlefor@nd.gov](mailto:mlefor@nd.gov)>  
**Sent:** Tuesday, January 22, 2019 2:19 PM  
**To:** Alm, Jonathan E. <[jealm@nd.gov](mailto:jealm@nd.gov)>; NDLA, Intern 09 - O'Neill, Seth <[intern9@nd.gov](mailto:intern9@nd.gov)>  
**Cc:** Mike Krumwiede <[mike@scgnd.com](mailto:mike@scgnd.com)>  
**Subject:** RE: HB 1318

Will DHS have any changes to the fiscal note due to less labor time in county audits as the state pays for social services?

Rep. Mike Lefor  
Industry Business and Labor Committee  
Energy and Natural Resources Committee  
*"Proudly serving District 37."*

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**From:** Alm, Jonathan E.  
**Sent:** Tuesday, January 22, 2019 2:16 PM  
**To:** NDLA, Intern 09 - O'Neill, Seth <[intern9@nd.gov](mailto:intern9@nd.gov)>  
**Cc:** Lefor, Mike <[mlefor@nd.gov](mailto:mlefor@nd.gov)>; Mike Krumwiede <[mike@scgnd.com](mailto:mike@scgnd.com)>  
**Subject:** HB 1318

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#1 pg. 1

Good Morning Chairman Lee and members of the Senate Human Services Committee. My name is Mike Lefor and I represent District 37 - Dickinson in the North Dakota House.

I bring HB 1318 to you today on behalf of a constituent, Mr. Nic Stevenson as well as the North Dakota Funeral Directors Association. When an individual decides to purchase an irrevocable pre-need funeral contract, they are most likely doing so to provide for the payment and planning of their funeral service and take that burden away from their families at a difficult time.

In the North Dakota Century Code, currently, it allows for a pre-need funeral contracts up to \$6000 or less for Medicaid eligibility in their later years. In addition, you may keep \$3000 of your assets, which also may be used for your funeral. The current costs of a funeral would not be covered with the amount allowed.

I will go through the changes in the bill. First, on page one is basically updating within the code. Next, if you would go to page two, line fourteen, it changes the irrevocable amount, which would be allowed in a pre-need contract from the allowable exclusion for Medicaid eligibility (or \$6000) to "pay for a funeral and recognized as an" which allows funding for the funeral and taking away the \$6000 ceiling.

On page three, lines 11 and 12, removes the six thousand or less exemption with "are placed in an irrevocable itemized funeral contract" again, allowing for the funeral to be paid.

Further, on page three lines 18-20, it strikes the \$3000 asset limitation. If HB 1318 becomes law, this exclusion would no longer be necessary. The bill would allow individuals to fully fund their funeral services through an irrevocable pre-need funeral contract. If there are excess funds after the funeral has been paid, the remaining funds would be returned to the state and not to the family.

There are many positive benefits to this legislation:

#### Consumer Benefits

1. Families would be able to fund the funeral services they wish.
2. Families will not be forced to have their children pay for their funerals.
3. Families are ensured they receive the funeral service they selected and the peace of mind to know everything has been properly taken care of.

#### Department of Human Services Benefits

1. One time eligibility review for each applicant.
2. No annual reviews to determine if the balance has gone over \$6000.
3. Reduces time spent on the case.
4. All left over funds are returned to the State.

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#2 pg.1



**Senate Human Services Committee**

**March 12, 2019**

**Support HB 1318**

Chair Lee and members of the Senate Human Services Committee. For the record my name is Mike Krumwiede and I represent the North Dakota Funeral Directors Association. We are here today in support of HB 1318. Our association currently has just over 100 Funeral Directors who represent 63 of the 75 Funeral Homes in North Dakota. The bill you see before you arises from a problem that our association has been trying to solve for a very long time. The issue at hand is pre-need funeral plans for people who are applying to Medicaid are limited to \$6,000. This is usually not enough money to cover the funeral and families end up chipping in to pay for a funeral that a deceased family member thought they had pre-planned and funded. This is definitely a problem, and you will hear from some Funeral Directors today that will explain this issue with real world examples.

The ND Funeral Directors have made it a priority to try and come up with a better way to help serve these families who are faced with this very dilemma. We've done research on how other states are handling this issue and realized our surrounding states and many others are using the irrevocable trust method.

Essentially what this means is the money that is set aside would have to be placed in an itemized irrevocable burial contract that can only be used to fund a funeral. Because these contracts are irrevocable they cannot be cashed out for other uses. Any remaining money after the funeral is paid for would be returned to the county. This assures the person who is doing the responsible thing and pre-planning their own funeral with their own money would receive the funeral they had planned.

After agreeing that this would be the best method we consulted with the Director of Human Services. Under the current method when an individual qualifies for Medicaid assistance, each county social service office is required to check on the updated value of the individual's burial account at least twice a year. This creates countless hours of work for county social service offices. With an irrevocable plan the verification of the plan would only have to be done once when the individual initially qualifies for assistance. After discussions the director believed this is a good move and would align with the departments goal of reducing administrative work on social service workers.

We have also reached out to the Association of Counties and they agreed this would be a good change as it reduces the amount of time their workers would spend verifying balances on pre-need burial plans.

This reduced workload equates to saving time and saving money for the Department of Human Services.

For these reasons, we respectfully request a Do Pass recommendation on HB 1318. It's now my pleasure to ask some members of our Funeral Directors Association to provide some more detailed testimony with real world applications in support of HB 1318. Thank you for your time.

**HB1318**  
**Alex Rydell**

My name is Alex Rydell and I am a funeral director in Fargo, ND at Hanson-Runsvold Funeral Home and the President of the North Dakota Funeral Directors Association, and I appear before you today in support of House Bill 1318.

The proposed bill will allow North Dakota residents the option to set aside the amount of money for the funeral that they want into an itemized irrevocable burial account and maintain eligibility for Medicaid.

I have been a funeral director in North Dakota for eleven years and in those years I have helped hundreds of individuals preplan their funeral services. Preplanning one's funeral arrangements is an invaluable and meaningful gift a person can leave for their family and I am honored to be able to help them with their options. As I walk them through the process, they will share many of their wishes and preferences ranging from a simple cremation to a full funeral service with a visitation and prayer service the evening prior.

When I help an individual make their prearrangements who has been in a nursing home for some time and is in a spend-down for Medicaid, there is often an urgency for them to set aside the money for funeral expenses as their savings have been exhausted in paying for their care. They have reached a time when they have a month or two worth of nursing home expenses left and have been instructed to look into setting aside funds for their funeral. They often share with me the things that they are spending their remaining money on or are told they can spend it on, items they often don't see value in but are allowed to purchase in the spend down such as a new TV or a recliner and maintain their eligibility for Medicaid.

When it comes time to set aside the money for funeral expenses, something with a meaningful and lasting value to their family, North Dakota residents are limited to what they can pay for and at times can't set aside enough to cover the funeral service they want. In the past several months I have sat with several individuals who began to cry and apologize to their children when they found out they couldn't set aside enough and their children would need to pay out of their own pockets for the funeral their mother or father wanted. I am currently working with a family whose aunt, who never had children and never married, wasn't able to set aside enough for the service she wanted. They are now looking at having only a graveside service in lieu of the funeral she wanted because they don't have the additional money to pay for the funeral.

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This bill will allow those individuals in the Medicaid spend-down, if they so choose, to set aside the money necessary to pay for the funeral they want so their children don't have to bear that burden. It will save time and effort for the Department of Human Services as the frequent verifications of revocable policies will become a one-time verification of an irrevocable itemized funeral contract that won't need to be revisited.

This is a bill that will positively impact your constituents and the Department of Human Services and it is my hope that you will support it.

Thank you,  
Alex Rydell  
Funeral Director  
Hanson-Runsvold Funeral Home  
President – North Dakota Funeral Directors Association  
[alex@hansonrunsvold.com](mailto:alex@hansonrunsvold.com)  
Cell: (701)866-3207

Chairperson Lee and Members of the Committee

My name is Nic Stevenson, I have worked in the funeral industry of North Dakota for over 15 years. I am a proud representative of the families that I serve day in and day out at Stevenson Funeral Home. These families come to us in their darkest moments of their lives and ask for guidance and help. We do everything in our power to aide these families and lighten their burden as we help them arrange a fitting tribute and service for their loved ones.

We also aide families through the challenges they face in pre-planning and pre-funding their funeral. Unfortunately, the current Medicaid restrictions can be very frustrating and at times, unfair to these families.

Several years ago the family of Vivian Schorsch realized that their mom needed more care than they could provide, so they placed her into a long term care facility. Vivian's assets were quickly used up to pay for her stay at the facility. When Vivian was 40 years old she took out a \$10,000.00 life insurance policy for the purpose of her funeral expenses. Vivian payed on this policy each month for the rest of her life and eventually outlived the usefulness of the policy investing over \$13,000.00 into the policy with the death benefit never rising above \$10,000.00. Because Vivian had exhausted her assets she needed to apply for Medicaid to pay for her stay at the long term care facility. Because the state requires an individual to have their assets below \$9,000.00 before they are eligible for Medicaid, Vivian was forced to cancel her life insurance policy. When she canceled the policy she was penalized by the life insurance company for surrendering the policy and only received about \$6,000.00, and this was all that she had to place in a funeral trust. Vivian had done everything right. She was responsible in wanting to pay for her funeral. She didn't want her children to have to pay for it. She didn't want the state to have to pay for it. But because, it did not match up perfectly to the set dollar amounts of the state Medicaid requirements she spent \$13,000.00 and was left with \$6,000.00 which was not enough to cover her funeral expenses. When I asked her son, Chuck Schorsch, who ranches south of Richardton, if I could share his mom's story with you today, he replied, "Hell yes, something has to be changed."

I hear similar stories to this each and every week from families that come to us for guidance and help. Our hope is that if House Bill 1318 passes, families will no longer be faced with these difficult circumstances. They will be able to put away a reasonable and necessary amount for their funeral in an irrevocable funeral contract. They would be able to select the service and merchandise they want for their funeral and fully fund the pre-planned funeral so their family would not have to worry about having to pay. The pre-funded funeral would be irrevocable so it would not be an asset of the individual that could be cashed out or canceled. This would eliminate hundreds of hours of work from county social services who are currently required to review each Medicaid recipient at least twice a year and update their values. Because it would be irrevocable, it would be filed one time and never need to be evaluated again. These funds

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would have to be used on a funeral or else they would be returned to the state. This would prevent families from inflating an irrevocable account for the purpose sheltering the funds. They would have to use it or lose it.

If HB 1318 would have been in place for Vivian's circumstance, she would have been able to irrevocably assign her life insurance policy for the purpose it was intended for, paying for her funeral.

I strongly urge you to vote Do Pass on House Bill 1318

Thank you for your time and efforts,

Nic Stevenson

January 15, 2019

Members of the committee,

On December 15<sup>th</sup> 2018 I said goodbye to the greatest woman I have ever known, when my mother, Barbara Dorval passed away.

My mother worked hard her entire life. She earned her nursing certificate at the age of 21. She raised three children while helping my father farm. She baked, cooked and kept us all clothed with her skilled sewing. We were not wealthy, by any stretch, but we never went without. I owe so much to my mother for the care and love she provided for my family.

When my dad passed away in 1996, my mother sold the farm and moved to town. When her health declined at the age of 90 she moved into a long-term care facility in Dickinson. My siblings and I are very grateful for the care mom received at these care facilities, but it came at a large expense. Over the next several years my mother's life savings of over \$800,000.00 was completely exhausted to pay for her long-term care. We followed social services guidelines to make sure my mom was eligible for Medicaid to begin paying for her stay at the long-term care facilities. They advised us to reduce her assets, by purchasing un-needed items such as a recliner, TV and clothes. Because my mother had pre-planned her funeral and put funds away we assumed that there was nothing else to worry about if her savings was gone. Unfortunately, the Medicaid guidelines, did not allow my mom to put away enough funds to cover the funeral she selected. My mother was not a fancy person and selected a very basic funeral service that reflected her love for God and the church. It was very upsetting to my family and I when we discovered that mom had spent over \$800,000.00 in care, but yet was not able to fund the funeral that she requested.

There has to be a better solution. My mom worked and saved her entire life. The last thing she ever wanted to be was burden to her family. This is the reason she pre-planned her funeral, so her family wouldn't be troubled by the decisions or expenses. The fact that she spent almost a million dollars for her care at the nursing home and yet, was not able to pay for the basic funeral she selected, is not right. I urge you to please make changes that will prevent other families from suffering this tragic outcome as we have.

Respectfully,



Mary Ann Kessel

## **Benefits of HB 1318**

### **Consumer Benefits**

- Families would be able to fund the funeral they want
- Life insurance policies will be used for their intended purpose – funeral expenses
- Families would not be at a loss when they realize they can't fund the funeral they wanted
- Families won't be forced to have their children pay for their funerals
- Families are ensured that they receive the funeral they selected
- Peace of mind knowing funeral is all planned and paid for – Priceless!

### **Department of Human Services**

- One time eligibility review for each applicant
- No annual reviews
- Reduce countless hours of work per case, per year
- All left over funds MUST be returned to the estate

### **Funeral Professional**

- Able to let families plan and pre-fund the service they want
- No more disappointed families that have to contribute to parents funeral expenses
- Pre-planned funerals must be followed through by family
- Un-used funds will be returned to the state
- No more yearly audits on all pre-funded funeral accounts

Department of Human Services  
 Medical Services Division  
 House Bill 1318  
 Medicaid Assets and Funeral Set Aside

	Prepaid Burial Limit #	New Cases ##	Percent of Utilization*	Adjusted	Annual Increase	Increase from the current 6K limit	Increase total Spend	General fund at 50% FMAP	Other	Annual Inflation Rate **
SFY 2020	\$9,578	366	25%	92	\$95	\$3,578	\$329,176	\$164,588	\$164,588	1%
SFY 2021	\$9,674	366	25%	92	\$96	\$3,674	\$338,008	\$169,004	\$169,004	1%
SFY2022	\$9,771	366	25%	92	\$97	\$3,771	\$346,932	\$173,466	\$173,466	1%
Sfy 2023	\$9,869	366	25%	92	\$98	\$3,869	\$355,948	\$177,974	\$177,974	1%

Biennium Summary	Total	General	Other
2019 -2021	\$ 667,184	\$ 333,592	\$ 333,592
2021-2023	\$ 702,880	\$ 351,440	\$ 351,440

## In the 12 month period from 12-2017 through 11-2018 there were 366 new approvals w/Prepaid Burials at the \$6,000 limit.

\* Approximately 50% of funerals in ND utilize cremation, and the average cost of funerals utilizing cremation is less than the current, \$6,000 limit. Of the remaining estimate of New Cases, it is assumed that 50% of those would have the additional funds to set aside for funeral expenses. (366 \*.50 = 183 \*.50 = 92)

# Based on information from the ND Funeral Association, the average cost of a casket funeral in 2016 was \$9,296. (In addition, the average increase in the cost from 2014 to 2017 was about 1% per year.) If clients are allowed to have unlimited amounts, it is estimated they have kept the increased amount and been eligible for Medicaid sooner.

\*\* Annual Inflation increase is based on the annual increases in the average cost of funerals involving a casket for Calendar Years 2014 through 2018.

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**Senate Appropriations Committee**

**March 21, 2019**

**Support HB 1318**

Chairman Holmberg and members of the Senate Appropriations Committee. For the record my name is Mike Krumwiede and I represent the North Dakota Funeral Directors Association. I'm here today in support of HB 1318. Our association currently has just over 100 Funeral Directors who represent 63 of the 75 Funeral Homes in North Dakota. The issue at hand is pre-need funeral plans for people who are applying to Medicaid are currently limited to \$6,000. This is usually not enough money to cover the costs of the funeral, so HB 1318 removes the limit of \$6,000 for a funeral and replaces it with the requirement that those funds go into an irrevocable trust.

Essentially what this means is the money that is set aside would have to be placed in an itemized irrevocable burial contract that can only be used to fund a funeral. Because these contracts are irrevocable, they cannot be cashed out for other uses. Any remaining money after the funeral expenses are paid would be returned to the county. This assures the person who is doing the responsible thing and pre-planning their own funeral with their own money would receive the funeral they had planned.

The reason for the fiscal note is that people would be able to set more money aside for a funeral that would not be considered an asset in the Medicaid qualification process. Currently, what happens is a spend down process to reduce assets by paying the nursing home or care center until your assets are below the threshold and you qualify for Medicaid. People currently are able to spend money on things like TVs, recliners, clothing, etc. This bill would allow people to also decide to put the money aside for their funeral. Although it seems as though this may cost more money, people are already spending the money on TVs, etc.

Because this itemized irrevocable burial contract has to be itemized for a funeral and only can be spent on their funeral, it assures it can't be used to set aside more money than a person would need and is not a way to shelter the money, because any excess is returned to state.

Through this process we have worked with the Department of Human Services Director and the Association of Counties who are in agreement with the new process laid out in HB 1318.

For these reasons, we respectfully request a Do Pass recommendation on HB 1318. Thank you for your time.

Department of Human Services  
 Medical Services Division  
 House Bill 1318  
 Medicaid Assets and Funeral Set Aside

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	Prepaid Burial Limit #	New Cases ##	Percent of Utilization*	Adjusted	Annual Increase	Increase from the current 6K limit	Increase total Spend	General fund at 50% FMAP	Other	Annual Inflation Rate **
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SFY2022	\$9,771	366	25%	92	\$97	\$3,771	\$346,932	\$173,466	\$173,466	1%
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