

HOUSE BILL NO. 1249

Introduced by

Representatives Keiser, Price

1 A BILL for an Act to create and enact two new sections to chapter 50-24.1 of the North Dakota
2 Century Code, relating to transfers of assets and avoiding medical creditors.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** A new section to chapter 50-24.1 of the North Dakota Century Code is
5 created and enacted as follows:

6 **Department to seek waiver.** The department of human services shall seek a waiver of
7 federal law to provide that a disqualifying transfer of assets by an individual or an individual's
8 spouse will disqualify the individual, the individual's spouse, or both, from the receipt of
9 long-term care services for a period of time as required by 42 U.S.C. 1396p(c)(1)(E) [as added
10 by section 13611(a)(1) of Public Law No. 103-66; 107 Stat. 622] and that begins on the first
11 date on which the individual or the individual's spouse:

- 12 1. Has disposed of any asset for less than fair market value;
- 13 2. Has applied for and would be eligible for medical assistance coverage for
14 long-term care services but for the period of disqualification; and
- 15 3. a. Is institutionalized; or
16 b. Seeks home and community-based care.

17 **SECTION 2.** A new section to chapter 50-24.1 of the North Dakota Century Code is
18 created and enacted as follows:

19 **Transfer of assets to avoid medical creditors.**

- 20 1. A transfer of assets made by an individual or an individual's spouse within sixty
21 months of the date on which the individual or the individual's spouse applies for
22 medical assistance is fraudulent as to creditors without regard to the actual intent
23 of the individual or the individual's spouse if:

- 1 a. The individual did not receive equivalent value in exchange for the transfer;
- 2 and
- 3 b. The individual or the individual's spouse is receiving or reasonably expects to
- 4 receive long-term care for the remediation of an illness or condition that exists
- 5 at the time the transfer is made.
- 6 2. An individual who transferred assets as described in subsection 1 may obtain the
- 7 same relief as may be obtained by a creditor under section 13-02.1-07.
- 8 3. If an individual or the spouse of an individual who has transferred assets as
- 9 described in subsection 1 has been found eligible for benefits under this chapter,
- 10 the department of human services, in the name of the individual or the individual's
- 11 spouse, may obtain the same relief as may be obtained by a creditor under section
- 12 13-02.1-07.
- 13 4. For purposes of this section "assets" has the meaning provided in 42 U.S.C.
- 14 1396p(e) [as added by section 13611(c) of Public Law No. 103-66; 107 Stat. 628].
- 15 5. Except as provided in subsection 6, this section applies to transfers made after
- 16 July 31, 2005.
- 17 6. This section is ineffective during any month in which a waiver described in
- 18 section 1 of this Act is in effect.
- 19 7. The department of human services shall certify to the legislative council the date
- 20 that the waiver described in section 1 of this Act goes into effect and the date, if
- 21 any, that the waiver described in section 1 of this Act becomes ineffective.