MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M

GREAT SEAL
STATE OF NORTH DAKOTA

ROLL NUMBER

DESCRIPTION

1467

2007 HOUSE HUMAN SERVICES

HB 1467

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1467

House Human Services Committee

☐ Check here for Conference Committee

Hearing Date: January 23, 2007

Recorder Job Number: 1624

Committee Clerk Signature	Judy Kohrach

Minutes:

Chairman Price: Opening the hearing on HB 1467

Representative Gary Kreidt, District 33: This might be new for some of you, in ways to track funding for nursing facilities in ND. The bill will have some amendments coming forward. We have been trying to fine tune the bill, with rates, and policy and procedure in putting this together. This is happening in 30 other states. We are trying to sustain the industry as we look into the future. We are hoping a 3% figure to put the formula in place. It will bring back into this nursing facilities assurance fund a little over 15 million dollars per biennium.

Shelly Peterson, President of the ND Long Term Care Association: See attached testimony along with purposed amendments. We will support the direction you want to go.

Bob Owens, Administrator of Cresent Manor in New Salem: I know the impact of the passage of this. I am going to ask you to think about the toughest part of our industry. That is to continually attract quality people who provide quality care. We need to attract young people to our state with increases for the staff.

Barb Fischer, does some commenting on the fiscal note. The impact indicated a zero, because the department does not believe that the assessments would be in law of federal expenditures. We are waiting for amendments from the regional office.

Representative Kaldor: Could you explain hold harmless provisions.

Ms. Fischer: From the language that was included in here, it would appear that the broad based on patients stay. The hold harmless provisions, there are indications in here that a facility would be refunded any tax that wasn't used.

Chairman Price: any one else in favor or opposing or any information on HB 1467? If not we will close the hearing on HB 1467

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1467

House Human Services Committee

☐ Check here for Conference Committee

Hearing Date: January 29, 2007

Recorder Job Number: 2216

Committee Clerk Signature	Judy Schock

Minutes:

Chairman Price: committee take out HB 1467, and what has been found out about CMS.

Barb Fischer: We received an email from CMS this morning. We did send out the bill along with the proposed amendments. They do have concerns. Under section 2 they say what is the rate of tax? Are you going to figure out the amount that can be collected, and than translate that in to per patient day amount? Will that require additional cost recording on the part of the nursing home to report to the tax commissioner? They say the penalties are collected by the commissioner and deposited in the nursing facility quality insurance button. They would like to know more the role of the commissioner. CMS will need to fully evaluate reimbursement methodology under a submitted state plan to further determine with the commerce division.

Representative Porter: On page 4 line 14, it talks about adjusting the inflation, is this language we recently removed? Also under section 5 with the refund, what amount would be there that is not required under the stats? You said CMS was wondering what the refund was about. Under section 5, it says the nursing facility that has paid an amount that is not required under this act file a refund.

Ms Fischer: I don't know what the refund is they would be referring to. Unless they were contemplating that there would be payments made and than retrospectively, which is one question I had. Did it mean they would go back and review the revenue at that point ain time and refund the difference? I have a question on what refund is?

Shelly Peterson: I am not a tax consultant. When the council was drafting the bill, it was difficult to do. After the bill was drafted we had an outside consultant, who helped with the proposed amendments. We were trying to get the best ill before you for this session.

Chairman Price: Any more questions before we take action on the bill?

Representative Potter: I am not sure why we have this bill. Why this year if we have done this in the past?

Representative Kaldor: the fiscal says it could have a negative effect.

Representative Pietsch, moves a do not pass, seconded by **Representative Damschen.** The vote is 11 yeas 0 nays, and 1 absent. **Representative Price** will to carry to the floor.

FISCAL NOTE
Requested by Legislative Council
01/22/2007

Bill/Resolution No.: HB 1467

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

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

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

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The bill provides for a provider assessment on nursing facilities.

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.*

The Department does not believe the assessment would be an allowable federal expenditure because it does not appear to be broad based and appears to contain hold harmless provisions. Also, if it is not a health care related tax Medicaid expenditure could in fact be negatively impacted.

The Department has sent this bill language to The Center for Medicare and Medicaid Services (CMS) and is awaiting their response to determine the fiscal impact.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

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

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

Name:	Debra A. McDermott	**Agency:**	Dept. of Human Services
Phone Number:	328-3695	**Date Prepared:**	01/23/2007

Date: 1/29
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. "Click here to type Bill/Resolution No."

House HUMAN SERVICES HB 1467 Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Not Pass

Motion Made By Rep Pietsch Seconded By Rep Damschen

Representatives	Yes	No	Representatives	Yes	No
Clara Sue Price – Chairman	✓		Kari L Conrad		
Vonnie Pietsch – Vice Chairman	✓		Lee Kaldor	✓	
Chuck Damschen	✓		Louise Potter	✓	
Patrick R. Hatlestad	✓		Jasper Schneider	✓	
Curt Hofstad	✓				
Todd Porter	✓				
Gerry Uglem	✓				
Robin Weisz	✓				
	✓				

Total (Yes) "Click here to type Yes Vote" 11 No "Click here to type No Vote" 0

Absent 1

Floor Assignment Rep Price

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

REPORT OF STANDING COMMITTEE

HB 1467: Human Services Committee (Rep. Price, Chairman) recommends **DO NOT PASS** (11 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1467 was placed on the Eleventh order on the calendar.

2007 TESTIMONY

HB 1467

Testimony on HB 1467
House Human Services Committee
January 23, 2007

Chairman Price and members of the House Human Services Committee, thank you for the opportunity to testify on HB 1467. My name is Shelly Peterson, I'm President of the North Dakota Long Term Care Association. I am here to provide information regarding provider taxes and help explain HB 1467. Our Association took a position in December of 2006 to not actively pursue provider taxes. However, should legislators believe it is the path to pursue to assure adequate funding for care and services of nursing facility residents, we will support you in your decision.

<u>Background of Bill Drafting:</u>

When the Legislative Council received the request to draft a nursing facility provider assessment bill they quickly found out how technical and difficult this area of law is. Facing a deadline we recommended they review and follow other state statutes who had approved provider assessment laws. It was decided to follow the Oregon State Law on provider assessments. After the legislation was drafted we had it review by Joseph M. Lubarsky, the leading national expert on nursing home provider assessment programs. We felt if North Dakota was going to implement such a program it needed to be done right. Mr. Lubarsky has been involved in the design and/or implementation of every provider tax program implemented in the last three years except for the District of Columbia. This involved working with providers and state agencies in California, Connecticut, Georgia, Indiana, Kentucky, Michigan, Mississippi, Nevada, New Hampshire, New Jersey, North Carolina, Oregon, Pennsylvania, Utah, and Washington.

His work entailed making sure the programs were developed and operated in accordance with federal regulations, reviewed tax models to assure uniformity and broad-based ness, and he designed reimbursement methodologies which utilized the tax dollars and federal matching funds in conformity with federal rules. Mr. Lubarsky confers with CMS on a regular basis regarding provider assessment issues. Most importantly, Mr. Lubarsky reviews and drafts statutory language to assure compliance with CMS rules and interpretation guidelines on provider assessment. I have attached to my testimony amendments Mr. Lubarsky recommends to assure federal compliance and provider acceptance of the program. Because the amendments are complex and difficult to follow, I've attached a copy of the bill, incorporating the proposed amendments in "yellow."

I requested Mr. Lubarsky to provide some basic background information and cite statutory authority for provider assessment to help you better understand this funding mechanism.

State Medicaid Funding Mechanisms: Provider Taxes by Joseph Lubarsky.

Historically, state Medicaid programs have relied upon a variety of mechanisms, including health care provider taxes, provider donations, and intergovernmental transfers, as a means of increasing state Medicaid revenues and thereby enhancing and enlarging their federal financial participation ("FFP") payments. The Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991, P.L. No. 102-234, were designed to limit the use of provider donations and taxes as sources for funding of state Medicaid programs.

These restrictions are embodied in 42 U.S.C. §1396b(w) and 42 C.F.R. Part 433 Subpart B. Relative to provider taxes, the tax must:

1. Be broad-based;
2. Be imposed at a uniform rate; and
3. Not include any direct or indirect "hold harmless" provision.

Broad-based means that all non-public providers in the same class (in this case, nursing facilities ["NFs"]) in the state are taxed regardless of Medicaid participation. Uniformity requires that the tax be imposed at the same rate on all providers in the class.

Waivers of either the broad-based or uniformity requirements are possible and the rules governing these waivers are found at 42 C.F.R. §433.68(e). A waiver of the uniformity or broad-based requirements or both is approved if the mathematical and/or statistical tests in that section are met <u>and</u> the tax program does not fall within the direct or indirect hold harmless provisions specified in 42 C.F.R. §433.68(f).

If the tax is uniform and broad-based, and provider taxes and federal matching funds are used to fund or enhance the Medicaid rate reimbursement system, the direct hold harmless tests are non-applicable. CMS has indicated that as part of the rate enhancement process, the portion of the tax related to Medicaid patients can be a direct rate pass-through to providers. The only hold-harmless test applied then is the "indirect hold harmless test" requiring that taxes not exceed 6% of revenue (5.5% effective October 01, 2007).

There is no CMS pre-approval requirement for a broad-based and uniform tax program, only quarterly reporting requirements on the sources and uses of taxes collected. However, a waiver of either the broad-based or uniformity requirements requires advance approval from CMS before implementation.

Based upon the North Dakota Department of Human Services estimates in the 2005 session a 3% provider tax would have netted another $15 million a biennium. The impact on nursing facility residents was estimated to increase their daily rate $4.32 per resident, per day (at a 3% tax).

In summary we believe HB 1467 as amended would:

1. Meet all federal requirements of being broad-based and achieve a uniform rate.
2. Does not include any direct or indirect "hold harmless" provision
3. A waiver of broad-baseness or uniformity requirements are not requested so CMS doesn't need to pre-approve.
4. The state may need to submit a State Plan Amendment, outlining any changes in the nursing facility payment system.
5. The tax would be an allowable cost in the year end cost report.
6. Each quarter nursing facilities would be assessed a 3% fee beginning January 2008.
7. Private pay residents would see an increase in their daily rate by approximately $4 or more per day beginning January 1, 2008.
8. The state would access additional federal funds under this funding mechanism and they would be deposited in the nursing facility quality assurance fund.
9. The nursing facility quality assurance fund would be used to fund nursing facility rebasing, which is already required in NDCC and annual inflationary adjustment, at a minimum of the CPI not to exceed 6%.

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

Shelly Peterson, President
North Dakota Long Term Care Association
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(701) 222-0660
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Amendments to HB 1467

Page 1, Line 18, after "facility," insert: "whose payer source is not Medicare Part A or Medicare managed care,"

Page 2, Line 13, after "electronically." insert: "No payment is due until rates are adjusted in accourdance with subsection 4 of section 8 of this Act."

Page 2, Line 19, prior to "Before," insert: "Beginning with state fiscal year 2009, b"

Page 2, Lines 24, 25 and 26, remove: ", excluding the annual gross revenue of nursing facilities that are exempt from the assessment imposed under section 2 of this Act" and after "reports" insert: ". For assessment quarters beginning after December 31, 2007 and before July 01, 2008, the assessment rate must be a rate estimated to collect an amount that does not exceed three percent of the annual gross revenue of all nursing facilities in this state for that time period as determined from the previous year's cost reports, prorated for the number of days in the assessment period(s), or through other required revenue reports."

Page 2, Lines 27, 28, 29, 30 and 31, remove: "2. Before June fifteenth of each year, the commissioner shall refund any overage in tax dollars collected under section 2 of this Act which exceeds the maximum percentage of the projected annual gross revenue of all nursing facilities in this state as described in subsection 1. The commissioner shall refund any overage described in this subsection by crediting the percentage of the overage attributable"

Page 3, Lines 1, 2, 3, and 4, remove: "to each nursing facility subject to the assessment described in section 2 of this Act against taxes owed by that facility in succeeding assessment periods. The commissioner may collect any delinquent assessments, but may not collect any underages in actual collections through an adjustment in assessment rates."

Page 3, Line 18, remove "subject to assessment under section 2 of this Act"

Page 4, Line 8, remove "may" and after "Act" insert: "must"

Page 4, Line 10, after "4." insert: "If the rate increases prescribed in subsection 4 are funded through state appropriation, the funds in the nursing facility quality assurance fund can be carried over and used to increase rates in a subsequent year. If the assessment sunsets, the amounts in the nursing facility quality assurance fund will be refunded to nursing facilities proportionately based upon each facility's assessment as a percentage of the total assessment in the year prior to the termination of the assessment program."

Page 4, Line 12, after "includes" insert: ", at a minimum:"

Page 4, Line 15, after "percent" insert: "and; c. fully reimbursing the Medicaid portion of the assessment."

Page 4, Lines 16, 17, 18, and 19, remove: "SECTION 9. Adjustments. An assessment in a calendar quarter may be adjusted as provided in subsection 2 of section 3 of this Act to take into account overages or underages raised under the assessment rate set under subsection 1 of section 3 of this Act. An adjustment under this subsection may be made at any time."

Impact of a Reduction in the Nursing Facility Quality [illegible]e as Proposed in the FY 2007 Administration Budget

Preliminary Estimates (February 24, 2006)

		Current Law				FY 2007 Budget Proposal				
	FY 2007 FMAP	Approximate Current Tax Rate	Estimated State Tax Revenue	Estimated Federal Matching Funds **	Estimated Total Funds Generated	Estimated State Tax Revenue	Estimated Federal Matching Funds	Estimated Total Funds Generated	Lost Federal Funds	
	(%)	(%)	($ million)	($ million)	($ million)	($ million)	($ million)	($ million)	($ million)	($ ppd)
United States			**$3,015.0**	**$3,801.9**	**$6,483.9**	**$1,585.5**	**$2,236.7**	**$3,822.2**	**-$1,571.8**	**($6.41)**
Alabama*	68.85%	4.5%	$49.4	$109.2	$158.6	$32.9	$72.8	$105.7	-$36.4	($5.87)
Arkansas	73.37%	6.0%	$48.0	$132.2	$180.2	$24.0	$66.1	$90.1	-$66.1	($15.43)
California	50.00%	6.0%	$250.0	$250.0	$500.0	$125.0	$125.0	$250.0	-$125.0	($5.43)
Connecticut*	50.00%	6.0%	$132.0	$90.0	$180.0	$45.0	$45.0	$90.0	-$45.0	($6.52)
District of Columbia	70.00%	6.0%	$1.0	$2.4	$3.4	$0.5	$1.2	$1.7	-$1.2	($1.35)
Georgia	61.97%	4.0%	$99.3	$161.8	$261.1	$74.5	$121.4	$195.8	-$40.5	($3.97)
Illinois	50.00%	1.4%	$60.0	$60.0	$120.0	$60.0	$60.0	$120.0	$0.0	
Indiana	62.61%	6.0%	$111.0	$148.7	$237.5	$44.4	$74.3	$118.7	-$74.3	($7.74)
Kentucky	69.58%	6.0%	$71.0	$124.0	$178.2	$27.1	$62.0	$89.1	-$62.0	($10.87)
Louisiana*	69.69%	5.0%	$76.3	$175.5	$251.8	$45.8	$105.3	$151.1	-$70.2	($9.00)
Maine	63.27%	6.0%	$29.0	$25.0	$39.5	$7.3	$12.5	$19.7	-$12.5	($7.35)
Massachusetts	50.00%	6.0%	$145.0	$145.0	$290.0	$72.5	$72.5	$145.0	-$72.5	($6.78)
Michigan*	56.38%	6.0%	$214.0	$225.0	$399.1	$87.1	$112.5	$199.6	-$112.5	($11.25)
Minnesota	50.00%	6.0%	$104.2	$34.3	$68.6	$17.2	$17.2	$34.3	-$17.2	($2.20)
Mississippi*	75.89%	6.0%	$55.9	$175.9	$231.8	$27.9	$88.0	$115.9	-$88.0	($15.43)
Missouri	61.60%	6.0%	$127.0	$169.8	$275.6	$52.9	$84.9	$137.8	-$84.9	($9.54)
Montana	69.11%	4.0%	$13.4	$30.0	$43.4	$8.4	$18.7	$27.1	-$11.2	($9.37)
Nevada	53.93%	6.0%	$14.5	$17.0	$31.5	$7.3	$8.5	$15.7	-$8.5	($8.18)
New Hampshire*	50.00%	6.0%	$31.1	$28.9	$57.8	$14.5	$14.5	$28.9	-$14.5	($8.50)
New Jersey	50.00%	6.0%	$140.0	$90.0	$180.0	$45.0	$45.0	$90.0	-$45.0	($4.29)
New York	50.00%	4.2%	$391.3	$391.3	$782.5	$276.8	$276.8	$553.5	-$114.5	($3.82)
North Carolina	64.52%	4.5%	$85.0	$154.6	$239.6	$56.7	$103.0	$159.7	-$51.5	($5.40)
Ohio	59.66%	4.0%	$150.0	$168.6	$282.6	$85.5	$126.4	$211.9	-$42.1	($2.16)
Oklahoma	68.14%	6.0%	$58.0	$124.0	$182.0	$29.0	$62.0	$91.0	-$62.0	($13.20)
Oregon	61.07%	6.0%	$33.0	$51.8	$84.8	$16.5	$25.9	$42.4	-$25.9	($13.62)
Pennsylvania	54.39%	6.0%	$280.0	$333.9	$613.9	$140.0	$167.0	$307.0	-$167.0	($8.18)
Rhode Island*	52.35%	6.0%	$31.2	$34.3	$65.5	$15.6	$17.1	$32.7	-$17.1	($7.79)
Tennessee	63.65%	4.0%	$85.0	$148.8	$233.8	$63.8	$111.6	$175.4	-$37.2	($4.48)
Utah	70.14%	3.2%	$10.0	$23.5	$33.5	$9.4	$22.0	$31.4	-$1.5	($1.33)
Vermont	58.93%	6.0%	$13.0	$18.7	$31.7	$6.5	$9.3	$15.8	-$9.3	($11.82)
Washington	50.12%	4.0%	$36.5	$18.3	$36.6	$13.7	$13.8	$27.4	-$4.6	($1.07)
West Virginia*	72.82%	6.0%	$33.9	$90.9	$124.8	$17.1	$45.8	$62.9	-$45.1	($17.33)
Wisconsin*	57.47%	1.5%	$36.0	$48.6	$84.6	$36.0	$48.6	$84.6	$0.0	

Source: BDO Seidman. Estimated Nursing Facility Provider Tax Impact in FY 2007 Budget, February 24, 2006

Note: * Preliminary; ** Reflects only the amount of state tax revenue used for Medicaid covered services.