

Sixtieth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2132

Introduced by

Human Services Committee

(At the request of the Department of Human Services)

1 A BILL for an Act to create and enact a new section to chapter 50-24.1 of the North Dakota
2 Century Code, relating to responsibilities of third parties liable for payments on behalf of
3 medical assistance recipients.

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

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

7 **Third-party liability recovery.**

8 1. For purposes of this section:

9 a. "Department" means the department of human services.

10 b. "Third party" means an individual, entity, or program that is or may be liable to
11 pay all or part of the expenditures for medical assistance furnished under this
12 chapter.

13 2. The department shall seek recovery of reimbursement from a third party to the limit
14 of legal liability and for the full amount of third-party benefits but not in excess of
15 the amount of medical assistance paid.

16 3. A medical assistance recipient shall inform the department of any rights the
17 recipient has to third-party benefits and shall inform the department of the name
18 and address of any individual, entity, or program that is or may be liable to provide
19 third-party benefits.

20 4. A release or satisfaction of a cause of action, suit, claim, counterclaim, demand,
21 judgment, settlement, or settlement agreement is not valid or effectual as against a
22 claim created under this chapter unless the department joins in the release or
23 satisfaction or executes a release of its claim.

- 1 5. The department shall recover the full amount of all medical assistance provided on
2 behalf of a recipient to the full extent of third-party benefits. The department shall
3 recover the third-party benefits directly from any third party; from the recipient or
4 legal representative, if the recipient or legal representative has received third-party
5 benefits; or from the provider of a recipient's medical services if third-party benefits
6 have been received by the provider up to the amount of medical assistance
7 provided to the recipient.
- 8 6. An applicant for or recipient of medical assistance shall cooperate in the recovery
9 of third-party benefits.
- 10 7. To enforce its rights to third party benefits, the department may institute, intervene
11 in, or join any legal or administrative proceeding in its own name.
- 12 a. If either the recipient or the department brings an action against a third party,
13 the recipient or the department must provide to the other within thirty days
14 after filing the action written notice by personal delivery or registered mail of
15 the action, the name of the court in which the case is brought, the case
16 number of such action, and a copy of the pleadings. If either the department
17 or the recipient brings an action, the other may become a party to or may
18 consolidate an action brought independently with the other.
- 19 b. A judgment, award, or settlement in an action by a recipient to recover
20 damages for injuries or other third-party benefits in which the department has
21 an interest may not be satisfied without first giving the department notice and
22 a reasonable opportunity to file and satisfy its claim or proceed with any action
23 as otherwise permitted by law.
- 24 8. Any transfer or encumbrance of any right, title, or interest to which the department
25 has a right with the intent, likelihood, or practical effect of defeating, hindering, or
26 reducing recovery by the department for reimbursement of medical assistance
27 provided to a recipient is a fraudulent conveyance and the transfer or encumbrance
28 is void and of no effect against the claim of the department unless the transfer was
29 for adequate consideration and the proceeds of the transfer are reimbursed in full
30 to the department up to the amount of medical assistance provided.

1 9. A recipient who has notice or who has actual knowledge of the department's rights
2 to third-party benefits who receives any third-party benefit or proceeds for a
3 covered illness or injury is either required to pay the department within sixty days
4 after receipt of settlement proceeds the full amount of the third-party benefits up to
5 the total medical assistance provided or to place the full amount of the third-party
6 benefits in a trust account for the benefit of the department pending judicial or
7 administrative determination of the department's right to the third-party benefits.

8 10. Notwithstanding any provision in this section to the contrary, the department is not
9 required to seek reimbursement from a liable third party on claims for which the
10 amount it reasonably expects to recover will be less than the cost of recovery or for
11 which recovery efforts will not be cost-effective. Cost-effectiveness is determined
12 based on the following:

- 13 a. Actual and legal issues of liability as may exist between the recipient and the
14 liable party;
15 b. Total funds available for settlement; and
16 c. An estimate of the cost to the department of pursuing its claim.