

Sixty-first
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1157

Introduced by

Human Services Committee

(At the request of the Department of Human Services)

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

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

4 **SECTION 1. AMENDMENT.** Section 50-24.1-07 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **50-24.1-07. Recovery from estate of medical assistance recipient.**

- 7 1. On the death of any recipient of medical assistance who was a resident of a
8 nursing facility, intermediate care facility for the mentally retarded, or other medical
9 institution and with respect to whom the department of human services determined
10 that resident reasonably was not expected to be discharged from the medical
11 institution and to return home, or who was fifty-five years of age or older when the
12 recipient received the assistance, and on the death of the spouse of the deceased
13 recipient, the total amount of medical assistance paid on behalf of the recipient
14 following the determination that the recipient cannot reasonably be expected to be
15 discharged from the medical institution, or the recipient's fifty-fifth birthday, as the
16 case may be, must be allowed as a preferred claim against the decedent's estate
17 after payment, in the following order, of:
- 18 a. Funeral expenses not in excess of three thousand dollars;
 - 19 b. Expenses of the last illness, other than those incurred by medical assistance;
 - 20 c. Expenses of administering the estate, including attorney's fees approved by
21 the court;
 - 22 d. Claims made under chapter 50-01;
 - 23 e. Claims made under chapter 50-24.5;
 - 24 f. Claims made under chapter 50-06.3 and on behalf of the state hospital; and

g. Claims made under subsection 4.

2. A claim may not be required to be paid nor may interest begin to accrue during the lifetime of the decedent's surviving spouse, if any, nor while there is a surviving child who is under the age of twenty-one years or is blind or permanently and totally disabled, but no timely filed claim may be disallowed because of the provisions of this section.

3. Every personal representative, upon the granting of letters of administration or testamentary shall forward to the department of human services a copy of the petition or application commencing probate, heirship proceedings, or joint tenancy tax clearance proceedings in the respective district court, together with a list of the names of the legatees, devisees, surviving joint tenants, and heirs at law of the estate. Unless a properly filed claim of the department of human services is paid in full, the personal representative shall provide to the department a statement of assets and disbursements in the estate.

4. a. ~~The department of human services shall, after September thirtieth of each year, divide the average amount required to be paid each month under 42 U.S.C. 1396u-5(c)(1)(A), or a substantially similar federal law, during the twelve months preceding that September thirtieth, by the average number of full-benefit dual-eligibles each month during the same period.~~

b. ~~In each calendar year following determination of an amount under subdivision a, the claims~~ A claim of the department of human services made against the decedent's estate of a recipient of medical assistance who was a full-benefit dual-eligible recipient, or against the decedent's estate of the spouse of a deceased recipient of medical assistance who was a full-benefit dual-eligible recipient, must include a claim for an amount equal to the amount ~~determined under subdivision a multiplied times the number of full or partial months~~ required to be paid each month under 42 U.S.C. 1396u-5(c)(1)(A), or a substantially similar federal law, which reasonably may be attributable to benefits paid on behalf of the deceased recipient in a month during which the deceased recipient received medical assistance under this chapter and was eligible for medicare.

- 1 5. All assets in the decedent's estate of the spouse of a deceased medical assistance
2 recipient are presumed to be assets in which that recipient had an interest at the
3 time of the recipient's death.
- 4 6. To the extent a claim for repayment of medical assistance arises for services
5 provided in months during which the department of human services has in effect an
6 approved state plan amendment that provides for the disregard of assets in an
7 amount equal to the insurance benefit payments that are made to or on behalf of
8 an individual who is a beneficiary of an insurance policy under a qualified state
9 long-term care insurance partnership, the department's claim need not be paid out
10 of assets of the decedent's estate of a recipient of medical assistance, or assets of
11 the decedent's estate of the spouse of such a recipient, of a value equal to an
12 amount the estate demonstrates was paid for long-term care provided to the
13 recipient of medical assistance during those months by that insurance policy.
- 14 7. For purposes of this section:
 - 15 a. "Full-benefit dual-eligible" has the meaning provided in 42 U.S.C. 1396u-5;
16 and
 - 17 b. "Qualified state long-term care insurance partnership" has the meaning
18 provided in 42 U.S.C. 1396p(b).