

Fifty-fifth  
Legislative Assembly  
of North Dakota

## HOUSE BILL NO. 1062

Introduced by

Legislative Council

(Insurance and Health Care Committee)

(Representatives Glassheim, Wald, Price, R. Kelsch, Svedjan)  
(Senator Thane)

1 A BILL for an Act to create and enact a new section to chapter 13-02.1 and two new  
2 subsections to section 50-24.1-07 of the North Dakota Century Code, relating to the fraudulent  
3 transfer of assets and recovery from estates of medical assistance recipients; and to provide an  
4 appropriation.

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

6 **SECTION 1.** A new section to chapter 13-02.1 of the North Dakota Century Code is  
7 created and enacted as follows:

#### 8 **Medical creditors.**

- 9 1. For purposes of this section:
- 10 a. "Asset" includes the value of health insurance as that term is defined in  
11 section 14-09-09.10.
- 12 b. "Debt" does not include amounts owed to a relative of the debtor unless  
13 pursuant to a valid written contract executed before the rendering of any  
14 consideration claimed to support the debt.
- 15 c. "Debtor" includes the spouse or minor child of a debtor.
- 16 d. "Medical creditor" means a person who has a claim for payment for medical  
17 care or for payment or repayment of the cost of medical care.
- 18 e. "Relative" means an individual, or an individual's spouse, who is related by  
19 half or whole blood, through birth or adoption, to the debtor or the debtor's  
20 spouse, as parent, stepparent, child, son-in-law, daughter-in-law, stepchild,  
21 brother, sister, stepbrother, stepsister, grandparent, grandchild, uncle, aunt,  
22 niece, or nephew.

- 1           2.   a.   A transfer made or obligation incurred is fraudulent as to a medical creditor,  
2                   whether the claim arose before or after the transfer was made or the  
3                   obligation incurred, if:
- 4                   (1)   The debtor made the transfer or incurred the obligation without  
5                   receiving equivalent value in exchange for the transfer or obligation;  
6                   and  
7                   (2)   The debtor was receiving medical care or contemplated receiving  
8                   medical care for which the remaining assets of the debtor were  
9                   unreasonably small in relation to the cost of medical care the debtor  
10                  was receiving or contemplated receiving or the debtor believed or  
11                  reasonably should have believed that the debtor would incur debts  
12                  beyond the debtor's ability to pay as they became due.
- 13           b.   For purposes of this subsection, a debtor contemplates receiving medical care  
14                  if the medical care is for the remediation of an illness or condition that exists  
15                  at the time the transfer is made or obligation is incurred.
- 16           3.   If the creditor is a medical creditor, in determining actual intent under subdivision a  
17                  of subsection 1 of section 13-02.1-04, consideration may be given, among other  
18                  factors, to whether:
- 19                  a.   The transfer or obligation was to a relative; or  
20                  b.   The transfer occurred as a part of a plan to transfer the debtor's assets in  
21                  contemplation of the debtor's demise, but which plan did not contemplate  
22                  payment in full of the cost of the debtor's medical care out of the debtor's  
23                  assets.
- 24           4.   If the creditor is a medical creditor, the debtor may obtain the same relief as may  
25                  be obtained by a creditor under section 13-02.1-07.
- 26           5.   If the debtor has been found eligible for benefits under chapter 50-24.1, the  
27                  department of human services may seek any remedy, and bring any action,  
28                  provided for under subsection 4, in the name of the debtor. The debtor may  
29                  intervene in any action brought under this subsection, but may not compromise the  
30                  action without the consent of the department. Any recovery made or remedy  
31                  secured by the department under this subsection, less the cost of bringing the

1 action, must be held in trust for the debtor, subject to no limitation, except the  
2 debtor may not make or authorize any transfer of an asset subject to trust without  
3 the trust receiving reasonably equivalent value in exchange.

4 6. A transfer made or an obligation incurred by a debtor to an organization exempt  
5 from taxation under section 501(c)(3) of the Internal Revenue Code [26 U.S.C.  
6 501(c)(3)] may not be treated as fraudulent as to a medical creditor under this  
7 section.

8 7. Transfer of an asset by a debtor or a debtor's spouse to the debtor's child,  
9 stepchild, son-in-law, daughter-in-law, or grandchild may not be treated as  
10 fraudulent as to a medical creditor under this section if the total cumulative  
11 uncompensated value of all transferred assets does not exceed seventy-five  
12 thousand dollars.

13 8. Transfer of an asset by a debtor or a debtor's spouse may not be treated as  
14 fraudulent as to a medical creditor under this section if the transferee purchases for  
15 the debtor a long-term care insurance policy with a value equivalent to the lesser of  
16 a lifetime policy or the total cumulative uncompensated value of all assets  
17 transferred to the transferee.

18 9. A determination that a transfer made or an obligation incurred by a debtor is not  
19 fraudulent as to a medical creditor under this section does not affect any action that  
20 may be brought under this chapter without reference to this section.

21 10. This section applies to all obligations incurred or transfers made after the effective  
22 date of this Act.

23 **SECTION 2.** Two new subsections to section 50-24.1-07 of the 1995 Supplement to the  
24 North Dakota Century Code are created and enacted as follows:

25 The medicaid education fund is a special fund in the state treasury. The  
26 department shall deposit in the fund ten percent of the nonfederal share of all  
27 moneys received by the department through the operation of this section. The  
28 moneys in the fund are appropriated as a continuing appropriation to the  
29 department to develop educational materials and provide educational services to  
30 inform potential recipients of benefits under this chapter of the limitations on  
31 taxpayer-supported medical services, the duty of an individual to pay for personal

1                   and a spouse's necessary medical care, and the need for planning consistent with  
2                   that duty.

3                   A decedent's estate subject to claim under this section includes any property and  
4                   other assets in which a deceased recipient of benefits under this chapter had any  
5                   legal title or interest at the time of death, to the extent of that interest, including  
6                   property and assets conveyed to a survivor, heir, devisee, or assignee of the  
7                   decedent through survivorship, inheritance, or any other arrangement. The  
8                   department may act as necessary to secure payment of claims under this section.