

SENATE BILL NO. 2124

Introduced by

Human Services Committee

(At the request of the Department of Human Services)

1 A BILL for an Act to amend and reenact sections 50-24.1-02.5 and 50-24.1-07 of the North
2 Dakota Century Code, relating to implementing federal medical assistance provisions; to repeal
3 sections 50-24.1-02.9 and 50-24.1-21 of the North Dakota Century Code, relating to long-term
4 care insurance and medical assistance waiver provisions inconsistent with federal law; and to
5 declare an emergency.

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

7 **SECTION 1. AMENDMENT.** Section 50-24.1-02.5 of the North Dakota Century Code
8 is amended and reenacted as follows:

9 **50-24.1-02.5. Effect of purchase of insurance on disqualifying transfer.**

- 10 1. An individual who secures and maintains insurance that covers the cost of
11 substantially all necessary medical care, including necessary care in a nursing
12 home and necessary care for an individual who qualifies for admission to a nursing
13 home but receives care elsewhere, for at least thirty-six months after the date an
14 asset is disposed of, may demonstrate that the asset was disposed of exclusively
15 for a purpose other than to qualify for medical assistance by providing proof of that
16 insurance.
- 17 2. If purchased after July 31, 2003, the insurance coverage under this section must
18 include home health care coverage, assisted living coverage, basic care coverage,
19 and skilled nursing facility coverage. The coverage required under this subsection
20 must include a daily benefit equal to at least one and fifty-seven hundredths times
21 the average daily cost of nursing care for the year in which the policy was issued
22 and an aggregate benefit equal to at least one thousand ninety-five times that daily
23 benefit.

1 3. This section applies only to policies purchased before the effective date of an
2 approved amendment to the state plan for medical assistance that provides for a
3 qualified state long-term care insurance partnership under section 1917(b) of the
4 Social Security Act [42 U.S.C. 1396p].

5 4. The department of human services shall certify to the legislative council the
6 effective date described in subsection 3.

7 **SECTION 2. AMENDMENT.** Section 50-24.1-07 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **50-24.1-07. Recovery from estate of medical assistance recipient.**

10 1. On the death of any recipient of medical assistance who was fifty-five years of age
11 or older when the recipient received the assistance, and on the death of the
12 spouse of the deceased recipient, the total amount of medical assistance paid on
13 behalf of the recipient following the recipient's fifty-fifth birthday must be allowed as
14 a preferred claim against the decedent's estate after payment, in the following
15 order, of:

- 16 a. Funeral expenses not in excess of three thousand dollars;
17 b. Expenses of last illness;
18 c. Expenses of administering the estate, including attorney's fees approved by
19 the court;
20 d. Claims made under chapter 50-01;
21 e. Claims made under chapter 50-24.5; ~~and~~
22 f. Claims made under chapter 50-06.3 and on behalf of the state hospital; and
23 g. Claims made under subsection 4.

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

29 3. Every personal representative, upon the granting of letters of administration or
30 testamentary shall forward to the department of human services a copy of the
31 petition or application commencing probate, heirship proceedings, or joint tenancy

1 tax clearance proceedings in the respective district court, together with a list of the
2 names of the legatees, devisees, surviving joint tenants, and heirs at law of the
3 estate. Unless a properly filed claim of the department of human services is paid in
4 full, the personal representative shall provide to the department a statement of
5 assets and disbursements in the estate.

6 4. a. The department of human services shall, after September thirtieth of each
7 year, divide the average amount required to be paid each month under
8 42 U.S.C. 1396u-5(c)(1)(A), or a substantially similar federal law, during the
9 twelve months preceding that September thirtieth, by the average number of
10 full-benefit dual-eligibles each month during the same period.

11 b. In each calendar year following determination of an amount under
12 subdivision a, the claims of the department of human services made against
13 the decedent's estate of a recipient of medical assistance, or against the
14 decedent's estate of the spouse of a deceased recipient of medical
15 assistance, must include a claim for amount equal to the amount determined
16 under subdivision a multiplied times the number of full or partial months during
17 which the deceased recipient received medical assistance under this chapter.

18 5. All assets in the decedent's estate of the spouse of a deceased medical assistance
19 recipient are presumed to be assets in which that recipient had an interest at the
20 time of the recipient's death.

21 6. To the extent a claim for repayment of medical assistance arises for services
22 provided in months during which the department of human services has in effect an
23 approved state plan amendment that provides for the disregard of assets in an
24 amount equal to the insurance benefit payments that are made to or on behalf of
25 an individual who is a beneficiary of an insurance policy under a qualified state
26 long-term care insurance partnership, the department's claim need not be paid out
27 of assets of the decedent's estate of a recipient of medical assistance, or assets of
28 the decedent's estate of the spouse of such a recipient, of a value equal to an
29 amount the estate demonstrates was paid for long-term care provided to the
30 recipient of medical assistance during those months by that insurance policy.

31 7. For purposes of this section:

- 1 a. "Full-benefit dual-eligible" has the meaning provided in 42 U.S.C. 1396u-5;
2 and
3 b. "Qualified state long-term care insurance partnership" has the meaning
4 provided in 42 U.S.C. 1396p(b).

5 **SECTION 3. REPEAL.** Sections 50-24.1-02.9 and 50-24.1-21 of the North Dakota
6 Century Code are repealed.

7 **SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure.