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DESCRIPTION

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Jo Costa Richardson
Operator's Signature

10/6/03
Date

2003 HOUSE HUMAN SERVICES

HB 1469

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Yolanda Richardson
Operator's Signature

10/6/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1469

House Human Services Committee

☐ Conference Committee

Hearing Date February 4, 2003

Tape Number	Side A	Side B	Meter #
1	x		0.5 - 30.6
Committee Clerk Signature <i>Sharon Renshaw</i>			

Minutes:

Rep. Weisz appeared as prime sponsor with written testimony.

Rep. Niemeier asked if Rep. Weisz had investigated different policies. Answer: Yes

Rep. Porter referred to the Indiana model that Rep. Weisz mentioned and wanted to know being this is for a 36th month policy, would the waiver allow coverage in the 37th month? Yes

Rep. Amerman asked on long term care insurance if it was cheaper the younger you were? Yes

Rep. Potter had concerns with those that can afford vs. those that can't and having assets.

No Opposition.

Blaine Nordwall, Director of Economic Assistant on Policy for Dept. of Human Services appeared neutral on the bill with written testimony.

Rep. Price asked there was any study done on the 4 states that have done this have any impact as far as how many of those people ended up on Medicaid.

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Salvatore Riccardi
Operator's Signature

10/16/03
Date

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House Human Services Committee

Bill/Resolution Number HB 1469

Hearing Date February 4, 2003

Mr. Nordwall stated that anyone could become eligible by given their stuff away and so to the extent that long term care insurance paid for the care of people who would otherwise be eligible for Medicaid. Every dollar that was paid for out of those policies was a dollar saved for Medicaid.

Shelly Peterson, ND Long Term Care Assoc. appeared in support was asked to answer some questions of the committee regarding admissions now and what the average length of days are.

Answer: Today's admissions are less than 1 year and some facilities that are actually less than 30 days as compared to at least 3 years ago where the length of stay was 3 1/2 years. Generally our discharges were because of death and many of our discharges are now discharges to homes. So feels that 36 month coverage is adequate.

Closed hearing.

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1469

House Human Services Committee

☐ Conference Committee

Hearing Date 2-12-03

Tape Number	Side A	Side B	Meter #
2	XX		9.6--25.9
Committee Clerk Signature <i>Sharon Griffin</i>			

Minutes: **Chair Price:** Take up HB1469.

Rep. Weisz: Blaine Nordwall likes the bill now with the amendments. Explained amendments (tape mumbled at times--hard to pick up) There is no limit on assets. Indiana Plan had a dollar for dollar match. You can have unlimited assets protected. Section 2 is where this bill is dependent on waiver. The change is the start on the month you go into a home. Now, we have a 36 month look back for purposes of assets. You can give your assets away three years prior to going into a nursing home.

Rep. Neimeier: 19.0 We would still be under the three year rule? **Chair Price:** Yes

Rep. Wieland: If you already have a policy in effect, but it doesn't reach the \$150 per day benefit, then what?

Rep. Weisz: It is retroactive. You can increase your policy to meet qualifying standards. Your assets will not be protected any more then presently.

Rep. Sandvig: Does the 5 years only go if this bill passes?

Page 2
House Human Services Committee
Bill/Resolution Number HB 1469
Hearing Date 2-12-03

Rep. Weisz: If the bill passes and we get the waiver. Everyone gets the 5 year look back.

I move the amendments. Rep. Devlin: I second. Passed by voice vote.

Rep. Kreidt: Move a DO PASS AS AMENDED.

Rep. Pollert: I second.

VOTE: 13 YES 0 NO 0 ABSENT Rep. Weisz will carry the bill.

Salvatore Riccardi
Operator's Signature

10/16/03
Date

FISCAL NOTE
Requested by Legislative Council
03/26/2003

Amendment to: HB 1469

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.*

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 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.*

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

Current law allows an individual who has purchased qualifying long-term care insurance to become eligible for Medicaid even though the individual has transferred assets that would otherwise disqualify eligibility. This bill would increase the requirements for qualifying long term care insurance. This change would not affect Medicaid expenditures for at least three years after its effective date. The fiscal impact of this bill after that period of time is underterminable.

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, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Debra A. McDermott	Agency:	Human Services
Phone Number:	328-3695	Date Prepared:	03/27/2003

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Debra A. McDermott
Operator's Signature

10/16/03
Date

12

FISCAL NOTE
Requested by Legislative Council
02/14/2003

Amendment to: HB 1469

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.*

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 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.*

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

Current law allows an individual who has purchased qualifying long-term care insurance to become eligible for Medicaid even though the individual has transferred assets that would otherwise disqualify eligibility. This bill would increase the requirements for qualifying long term care insurance. This change would not affect Medicaid expenditures for at least three years after its effective date. The fiscal impact of this bill after that period of time is underterminable.

This bill would also require the Department of Human Services to seek a change to the Medicaid State Plan that would require a waiver of applicable federal law. No such waiver has yet been granted by Federal authorities. Medicaid expenditures would be affected no earlier than thirty-six months after the granting of the required waiver. The fiscal impact of this bill after that period of time is underterminable.

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, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Debra A. McDermott	Agency:	Human Services
	328-3695		

Phone Number:

Date Prepared: 01/17/2003

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Yolanda Rickford
Operator's Signature

10/6/03
Date

FISCAL NOTE
Requested by Legislative Council
01/21/2003

Bill/Resolution No.: HB 1469

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.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 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.

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

This bill would allow an individual who has purchased qualifying long term care insurance to become eligible for Medicaid when the benefits from their insurance policy have exhausted, regardless of the individual's income or resources. Since this would violate several provisions in the federal Medicaid law (42 U.S.C. sec. 1396 et seq.), the costs of care provided to individuals made eligible under this bill would not be eligible for federal funds. All costs would have to be funded with state general funds. The Department of Human Services was not able to determine the fiscal impact since data was not available about the number of individuals who have purchased or would be purchasing as a result of this bill, a qualified long-term care insurance policy.

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, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

Name:	Debra A. McDermott	Agency:	Human Services
Phone Number:	328-3695	Date Prepared:	01/24/2003

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Richard
Operator's Signature

10/16/03
Date

30730.0101
Title.0200

Adopted by the Human Services Committee
February 12, 2003

VR
2/12/03
1082

HOUSE AMENDMENTS TO HOUSE BILL NO. 1469 HS 2-13-03

Page 1, line 1, after "Act" insert "to create and enact a new section to chapter 50-24.1 of the North Dakota Century Code, relating to eligibility for medical assistance; and" and replace "50-24.1-02.4" with "50-24.1-02.5"

Page 1, line 4, replace "50-24.1-02.4" with "50-24.1-02.5"

Page 1, replace lines 6 through 24 with:

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

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

SECTION 2. A new section to chapter 50-24.1 of the North Dakota Century Code is created and enacted as follows:

Department to submit plans and seek waivers.

1. Unless a waiver under subsection 2 is required, the department of human services shall submit amendments to the state plan for medical assistance to provide for a sixty-month look-back period for assignments or transfers of property which disqualify the applicant or the applicant's spouse from the receipt of long-term care services, and which apply any period of disqualification beginning the first month during which the disqualified individual would otherwise be found eligible for the services under medical assistance.
2. If the state plan amendment provided for in subsection 1 is or will be denied, the department of human services shall seek a waiver of federal law to provide for a sixty-month look-back period for assignments or transfers of property which disqualify the applicant or the applicant's spouse from the receipt of long-term care services, and which apply any period of disqualification beginning the first month during which the disqualified individual would otherwise be found eligible for the services under medical assistance.
3. Unless the amendment to the state plan or the request for waiver would otherwise be denied, the requirements of this section apply only to transfers that occur on or after the effective date of the state plan amendment or waiver.

Page No. 1

30730.0101

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Valista Richard
Operator's Signature

10/6/03
Date

Renumber accordingly

2082

Page No. 2

30730.0101

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Salvatore Riccardi
Operator's Signature

10/16/83
Date

12
Date: February , 2003
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1469

House _____ HUMAN SERVICES _____ Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DP As Amended

Motion Made By Rep Kreidt Seconded By Rep. Pollert

Representatives	Yes	No	Representatives	Yes	No
Rep. Clara Sue Price - Chair	✓		Rep. Sally Sandvig	✓	
Rep. Bill Devlin, Vice-Chair	✓		Rep. Bill Amerman	✓	
Rep. Robin Weisz	✓		Rep. Carol Niemeier	✓	
Rep. Vonnie Pietsch	✓		Rep. Louise Potter	✓	
Rep. Gerald Uglem	✓				
Rep. Chet Pollert	✓				
Rep. Todd Porter	✓				
Rep. Gary Kreidt	✓				
Rep. Alon Wieland	✓				

Total (Yes) 13 No 0

Absent 0

Floor Assignment Rep Weisz

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

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Colista Richardson
Operator's Signature

10/16/03
Date

REPORT OF STANDING COMMITTEE (410)
February 13, 2003 9:19 a.m.

Module No: HR-28-2537
Carrier: Welsz
Insert LC: 30730.0101 Title: .0200

REPORT OF STANDING COMMITTEE

HB 1469: Human Services Committee (Rep. Price, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1469 was placed on the Sixth order on the calendar.

Page 1, line 1, after "Act" insert "to create and enact a new section to chapter 50-24.1 of the North Dakota Century Code, relating to eligibility for medical assistance; and" and replace "50-24.1-02.4" with "50-24.1-02.5"

Page 1, line 4, replace "50-24.1-02.4" with "50-24.1-02.5"

Page 1, replace lines 6 through 24 with:

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

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

SECTION 2. A new section to chapter 50-24.1 of the North Dakota Century Code is created and enacted as follows:

Department to submit plans and seek waivers.

1. Unless a waiver under subsection 2 is required, the department of human services shall submit amendments to the state plan for medical assistance to provide for a sixty-month look-back period for assignments or transfers of property which disqualify the applicant or the applicant's spouse from the receipt of long-term care services, and which apply any period of disqualification beginning the first month during which the disqualified individual would otherwise be found eligible for the services under medical assistance.
2. If the state plan amendment provided for in subsection 1 is or will be denied, the department of human services shall seek a waiver of federal law to provide for a sixty-month look-back period for assignments or transfers of property which disqualify the applicant or the applicant's spouse from the receipt of long-term care services, and which apply any period of disqualification beginning the first month during which the disqualified individual would otherwise be found eligible for the services under medical assistance.
3. Unless the amendment to the state plan or the request for waiver would otherwise be denied, the requirements of this section apply only to

REPORT OF STANDING COMMITTEE (410)
February 13, 2003 9:19 a.m.

Module No: HR-28-2537
Carrier: Welsz
Insert LC: 30730.0101 Title: .0200

transfers that occur on or after the effective date of the state plan
amendment or waiver."

Renumber accordingly

(2) DESK, (3) COMM

Page No. 2

HR-28-2537

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La Costa Rickford
Operator's Signature

10/16/03
Date

2003 SENATE HUMAN SERVICES

HB 1469

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Alister Rickford 10/6/03
Operator's Signature Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1469

Senate Human Services Committee

☐ Conference Committee

Hearing Date 03-10-03

Tape Number	Side A	Side B	Meter #
1	X		2340 - 5675
Committee Clerk Signature <i>Donna Kramer, Clerk</i>			

Minutes:

SENATOR JUDY LEE opened the public hearing for HB 1469 relating to eligibility for medical assistance.

REPRESENTATIVE PRICE (in place for REPRESENTATIVE WEISZ) introduced the bill.

Effects of the long-term care. Four states have put this bill in place. ... (Written testimony)

(Meter #2423 - 2930)

BLAINE L. NORDWALL, ND Department of Human Services, testified in support of the bill.

He said he did not have prepared written testimony, but was there to answer any questions.

Senator Lee requested that he elaborate on the bill to help the committee understand how this evolved. He stated the formula is intended to provide a daily benefit of \$200 per day and also to provide that benefit for a period of time equal to 3 years. ... Limit is raised. ... The concern was that there has been considerable increase in the cost of long-term care and there is no reason to think that it is not going to continue. He continued to discuss and answer questions from the

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Salvatore Riccardi
Operator's Signature

10/16/03
Date

Page 2

Senate Human Services Committee

Bill/Resolution Number HB 1469

Hearing Date March 10, 2003

committee about estate recovery ... people discouraged from making long-term transfers, disqualifying transfers, age limit, "look back" on long term care (Meter # 3000 - 5230)

SHELLY PETERSON, President of Long-Term Care Association, testified in support of the bill.

In North Dakota, we have the largest 85+ population. ... ND in the top 5 states for people paying their own way. ... In North Dakota, probably out every 100 people, 56 of them that are in a nursing home are accessing Medicaid. In other states, it's generally around 70% Study completed by UND and NDSU of the over 50 population in ND. ...Of responses to question regarding purchasing nursing home insurance, over 25.9% of people over age 50 have purchased nursing home insurance. ... (Meter # 5238 - 5576)

SENATOR LEE closed the public hearing. (Meter # 5675)

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1469

Senate Government and Veterans Affairs Committee

☐ Conference Committee

Hearing Date 03/18/03

Tape Number	Side A	Side B	Meter #
Tape 2	x		1000-1600
Committee Clerk Signature <i>Donna Kramer, Clerk</i>			

Minutes:

Committee discussion on HB 1469. Senator Fairfield was absent.

Senator Brown motions for a Do Not Pass

Senator Fischer 2nd

Senator Fischer: How do we educate people that this is available?

Senator Brown: Why doesn't the department go through the insurance agents, or the Insurance Commissioner's office.

5 yes 0 No 1 Absent

Carrier: Senator Brown

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Volosta Rickford
Operator's Signature

10/16/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1469

Senate Human Services Committee

☐ Conference Committee

Hearing Date March 24, 2003

Tape Number	Side A	Side B	Meter #
1		X	330 - 1929
Committee Clerk Signature <i>Donna Kramer, Clerk</i>			

Minutes:

SENATOR JUDY LEE reopened the committee discussion for HB 1469 relating to eligibility for medical assistance for long-term care. Stated that the committee was asked to reconsider action.

The bill had been held and has not been turned in to the Senate.

SENATOR FISCHER made a motion to RECONSIDER ACTIONS.

SENATOR BROWN seconded the motion.

SENATOR LEE asked for discussion to reconsider our actions.

SENATOR POLOVITZ asked why we wanted to reconsider our actions.

SENATOR LEE stated Representative Weisz, who is the prime sponsor, asked if we would be

willing to reconsider it; because he would like to see something done that would provide

additional assurances that people aren't divest themselves of their assets in order to go on

Medicaid; at a time when people have the money they should be contributing to their own costs.

And, if at least it went to conference committee, we might be able to figure out if there is

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Salvatore Richard
Operator's Signature

10/16/03
Date

Page 2

Senate Human Services Committee

Bill/Resolution Number HB 1469

Hearing Date March 24, 2003

something. It came to us in a totally unacceptable form. Out of respect for the sponsor, I said I would bring it up again and if we wanted to reconsider it, we could just amend it. It will then end up going into a conference committee and we can talk about it. ... The length of coverage is not the problem apparently, the look-back. Right now, the feds say 36 months is all you can do ... the date of implementation is the problem - when the look-back was applied.

SENATOR FISCHER: With the new one, it would be the time when you applied for the service. So if we changed it to the date of the transfer - 5 years. That means if you transferred something today and 5 years and 1 day from now, you require services - you don't have a problem. ...

Continued discussion regarding look-back.

SENATOR LEE asked for vote on the motion to reconsider. All in favor 4 and 2 opposed.

Motion passes.

SENATOR FISCHER: Change the implementation from the date of service to the date of transfer.

Continued committee discussion on sections where this was indicated and costs of coverage.

SENATOR LEE read opinion notes from Attorney Nick Vogel. (Meter # 967 - 1023)

TaLisa was asked to draft a new amendment. Continued discussion regarding what to be contained in the amendments - three changes. (Meter # 1034 - 1157)

SENATOR FISCHER made a motion to MOVE NEW AMENDMENTS. (Meter # 1158 - 1211)

SENATOR FAIRFIELD second motion.

SENATOR LEE asked for discussion. Continued discussion on people who have a lot of money, so that they don't impoverish themselves. ... change of Home Health Care as a tactic to talk about in the conference committee ... waiver included ... clarification of the 5-year look-back ...

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Senate Human Services Committee
Bill/Resolution Number HB 1469
Hearing Date March 24, 2003

SENATOR FISCHER made a MOTION TO DO PASS AS AMENDED.

SENATOR BROWN seconded the motion

Roll call was read. 4 yeas and 2 no.

SENATOR BROWN will be the carrier. (Meter # 1935)

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1469

Senate Human Services Committee

☐ Conference Committee

Hearing Date March 25, 2003

Tape Number	Side A	Side B	Meter #
1	X		5509 - 6000
Committee Clerk Signature <i>Donna Kramer, Clerk</i>			

Minutes:

SENATOR JUDY LEE reopened the committee discussion on HB 1469 relation to eligibility for medical assistance for long-term care.

TALISA NEMEC reviewed the amendments. ... She stated that Federal law dictates the "look back" period of 5 years. ... We will not be able to restrict that. ...

Continued discussion regarding the statute and amendments. ... Section 2 removed - no problem.

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La Costa Richard
Operator's Signature

10/16/03
Date

Date: 3/18/03
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 469

Senate Human Services Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Brown Seconded By Fischer

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee - Chairman	✓				
Senator Richard Brown - V. Chair.	✓				
Senator Robert S. Erbele	✓				
Senator Tom Fischer	✓				
Senator April Fairfield	✓				
Senator Michael Polovitz	✓				

Total (Yes) 5 No 0

Absent 1

Floor Assignment Brown

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

REPORT OF STANDING COMMITTEE (410)
March 18, 2003 4:56 p.m.

Module No: SR-48-5141
Carrier: Brown
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HB 1469, as engrossed: Human Services Committee (Sen. J. Lee, Chairman)
recommends **DO NOT PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
Engrossed HB 1469 was placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-48-5141

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Salvatore Riccardi
Operator's Signature

10/16/03
Date

Date: 03-24-03
Roll Call Vote #: (1)

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1469

Senate	Human Services	Committee
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☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Reconsider Action

Motion Made By Sen. Fischer Seconded By Sen. Brown

[illegible]

Total (Yes) 4 No 2

Absent

Floor Assignment

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

To Costa Rica
Operator's Signature

10/16/03
Date

30730.0201
Title.0300

Adopted by the Human Services Committee
March 24, 2003

JB
3-25-03

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1469

- Page 1, line 1, remove "create and enact a new section to chapter 50-24.1 of the North Dakota"
- Page 1, line 2, remove "Century Code, relating to eligibility for medical assistance; and to"
- Page 1, line 16, remove "home health care coverage."
- Page 1, remove lines 22 through 24
- Page 2, remove lines 1 through 17
- Renumber accordingly

Page No. 1

30730.0201

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La Costa Richard
Operator's Signature

10/6/03
Date

Date: 03-24-03
Roll Call Vote #: (2)

2003 SENATE STANDING COMMITTEE POLL CALL VOTES
BILL/RESOLUTION No. 1469

Senate Human Services Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Action on Amendment - 3 changes

Motion Made By Sen. Fischer Seconded By Sen. Fairfield

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee - Chairman	✓				
Senator Richard Brown - V. Chair.	✓				
Senator Robert S. Erbele	✓				
Senator Tom Fischer	✓				
Senator April Fairfield	✓				
Senator Michael Polovitz	✓				

Total (Yes) 6 No 0

Absent _____

Floor Assignment _____

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

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Richard Costa
Operator's Signature

10/16/03
Date

Date: 03-24-03
Roll Call Vote #: (3)

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1469

Senate Human Services Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 30730.0201 Title.0300

Action Taken Do Pass as amended.

Motion Made By Sen. Fischer Seconded By Sen. Brown

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee - Chairman	✓				
Senator Richard Brown - V. Chair.	✓				
Senator Robert S. Erbele		✓			
Senator Tom Fischer	✓				
Senator April Fairfield		✓			
Senator Michael Polovitz	✓				

Total (Yes) 4 No 2

Absent _____

Floor Assignment Sen. Brown

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

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Richard Costa
Operator's Signature

10/16/03
Date

REPORT OF STANDING COMMITTEE (410)
March 25, 2003 4:28 p.m.

Module No: SR-53-5742
Carrier: Brown
Insert LC: 30730.0201 Title: .0300

REPORT OF STANDING COMMITTEE

HB 1469, as engrossed: Human Services Committee (Sen. J. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1469 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "create and enact a new section to chapter 50-24.1 of the North Dakota"

Page 1, line 2, remove "Century Code, relating to eligibility for medical assistance; and to"

Page 1, line 16, remove "home health care coverage."

Page 1, remove lines 22 through 24

Page 2, remove lines 1 through 17

Renumber accordingly

2003 HOUSE HUMAN SERVICES

CONFERENCE COMMITTEE

HB 1469

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Salvatore Riccardi
Operator's Signature

10/6/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1469

House Human Services Committee

☒ Conference Committee

Hearing Date 4-7-03

Tape Number	Side A	Side B	Meter #
1	x		0.2-42.2
Committee Clerk Signature <i>Sharon Kengra</i>			

Minutes: Chairman Weisz: called the conference committee to order on HB 1469.

Senator Fischer, Senator Brown, Senator Fairfield, Representative Weisz, Representative Pietsch, Representative Amerman were present.

Representative Weisz: would the Senate like to explain the changes they made and why?

Senator Fischer: Senator Lee wanted to remove Home Health Care Coverage, so we can discuss that section. The other piece, or the removal of that the look back, in essence of what I want to do is change the dates, instead of transfer to date, it would change it to the date of application.

Representative Weisz: our intention was, if you have assets, your should pay, if I went and bought a qualifying policy today, and in 30 days from now I end up in long term care, I'm covered.

Senator Brown: carry that one step further, your in the nursing home you have a million dollar maximum, you hit the million dollars after how many ever years, why does your Spouse have to write down the assets that she may need for the rest of her life?

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Yolanda Rickford
Operator's Signature

10/16/03
Date

Page 2
House Human Services Committee
Bill/Resolution Number HB 1469
Hearing Date 4-7-03

Representative Weisz: if waiver goes into effect the state picks up the tab, the spouse is protected.

Senator Fischer: the other argument on the home health care coverage the reason that was taken out is because most people that have enough assets, are going to pay for that themselves, if they don't have any assets, they are not going to buy that anyway and drives the cost of this care up.

Representative Weisz: that is not the word we got from the Insurance Department. From the States perspective I assume people aren't going to worry about transferring their assets strictly on the in home care component, because its normally not that expense, and pay for it out of pocket. If we are going to insure for all, throw that component on there, that's a issue because otherwise nobody is going to buy the policy.

Senator Fischer: how much are these people costing us on Medicaid?

Representative Weisz: you don't know, all you know is they qualified for Medicaid, we have no way of determining.

Senator Fischer: The same people that don't have assets are qualifying for Medicaid and so they want to get something into law so they don't lose their assets and they do qualify for Medicaid. the only problem that I have is the fact of requiring insurance doesn't bother me at all, I think we all should have that. Is there a problem with it now?

Representative Wiesz: yes, I think there is because every one is using it to get around and they are going to qualify for Medicaid.

Senator Fischer: how about those that are on it that have \$100,000.00 in assets and the spouse has to go into the nursing home.

Page 3

House Human Services Committee

Bill/Resolution Number HB 1469

Hearing Date 4-7-03

Representative Weisz: they have \$96,000.00 now and again if you have assets that's what they are there for, I never believed that I had the ability to take all my assets with me.

Senator Fischer: how much is a waiver come and man hours of labor going to cost to apply for and not get it?

Representative Weisz: I guess if you want to kill it, you have the ability, we had language that the Feds intent was to allow these types of things to happen.

Senator Fischer: where is the fiscal note on here?

Representative Weisz: there isn't any.

Senator Fischer: it's undeterminable.

Senator Brown: does it have to be in State law to ask for a waiver?

Senator Fischer: we would have to implement the change to bother with the waiver.

Senator Brown: I don't see any reason to put it into law on something that may happen, I like the idea of encouraging nursing home coverage, I also know a number of people that have paid for their own nursing home expenses and not ask for anything from the state.

Representative Weisz: I'm really failing to understand why we say we aren't responsible for long term care? If I accumulated assets, its up to me to see that my care is taken care of, not to say that they should be exempt or I should be able to transfer them so that I could qualify.

Senator Brown: how many people are in nursing homes today being paid by Medicaid, that have gotten rid of assets?

Representative Weisz: we don't know, it has never been tracked.

Senator Fischer: 57% of the Medicaid budget is serving 3,500 people.

Page 4
House Human Services Committee
Bill/Resolution Number HB 1469
Hearing Date 4-7-03

Representative Weisz: my concern is down the road in 10 years we have a crisis on our hands, with our aging population, the state is not going to be able to pay for all of it. It's maybe not a crisis today, but it is going to be when you look at the demographics and where we are headed. I would like to see them try the waiver, if they don't get the waiver then its 3 years.

Senator Fischer: I would rather leave it at 60 months and change date of application, if they allow Connecticut to do it, that they are going to change their policy, don't you think so? if the pilot has been going for a few years, and they grant Connecticut the waiver, my bet is they intend to change it in five years. You transfer your 5 years out your OK. If we leave it in the insurance agents are happy.

Representative Weisz: North Dakota is the highest in the nation, it is still low compared to some states 18% or 19% , the nation average is around 10%.

Representative Weisz: we would agree to delete the home health care on line 16, and leave anything else in there. We could need to recede and then further amend, then on page 2 line 17, take out effective date.

Senator Brown: generally speaking we are trying to encourage a 50 year old to buy long term care, and then the home health care is not going to mean a lot to that premium.

Representative Pietsch: they do some now that you can buy them out say in 10 years, and its a paid up policy, it could be a little higher premium, but it would encourage people to say I'm only going to have it for 10 years, and then its a paid up policy.

Senator Fischer: lets leave home health care in. So we were going to recede from our amendments and then further amend, and the only amendment is that we would propose that it

La Costa Richard
Operator's Signature

10/16/03
Date

Page 5

House Human Services Committee

Bill/Resolution Number HB 1469

Hearing Date 4-7-03

would be at the date of transfer instead of date of application, on page 2, subsection 2, starting on lines 12.

Representative Weisz: delete line 14, 13 on page 2, at least 60 months.

Senator Fischer: **MOVE** to **RECEDE** from our amendments and further **AMEND**.

Senator Brown: **SECOND** the motion.

VOTE: 4-YES 2-NO 0-ABSENT.

Motion carries

Representative Weisz: will carry the bill.

30730.0202
Title.0400

Adopted by the Human Services Committee
April 7, 2003

Conference Committee Amendments to Engrossed HB 1469 - 04/07/2003

That the Senate recede from its amendments as printed on page 1108 of the House Journal and pages 918 and 919 of the Senate Journal and that Engrossed House Bill No. 1469 be amended as follows:

Page 2, line 5, replace ". and which apply any period of disqualification beginning the first month" with an underscored period

Page 2, remove lines 6 and 7

Page 2, line 12, replace ". and which apply any period of disqualification beginning the first month" with an underscored period

Page 2, remove lines 13 and 14

Renumber accordingly

**REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)**

Bill Number **HB 1469** (, as (re)engrossed):

Your Conference Committee **HOUSE HUMAN SERVICES**

For the Senate:

For the House:

Sen. Fischer	<u>YES</u>	✓	Rep. Weisz	<u>yes</u>	✓
Sen. Brown	<u>yes</u>	✓	Rep. Pietsch	<u>yes</u>	✓
Sen. Fairfield	<u>NO</u>	✓	Rep. Amerman	<u>NO</u>	✓

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) 918 -- 919

_____ and place _____ on the Seventh order.

✓, adopt (further) amendments as follows, and place HB 1469 on the Seventh order:

having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) HB 1469 was placed on the Seventh order of business on the calendar.

DATE: 4/7/03

CARRIER: Rep Weisz

LC NO. of amendment
LC NO. of engrossment
Emergency clause added or deleted
Statement of purpose of amendment

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La Costa Richard
Operator's Signature

10/6/03
Date

REPORT OF CONFERENCE COMMITTEE (420)
April 8, 2003 2:44 p.m.

Module No: HR-63-7115

Insert LC: 30730.0202

REPORT OF CONFERENCE COMMITTEE

HB 1469, as engrossed: Your conference committee (Sens. Fischer, Brown, Fairfield and Reps. Welsz, Pietsch, Amerman) recommends that the **SENATE RECEDE** from the Senate amendments on HJ pages 918-919, adopt further amendments as follows, and place HB 1469 on the Seventh order:

That the Senate recede from its amendments as printed on page 1108 of the House Journal and pages 918 and 919 of the Senate Journal and that Engrossed House Bill No. 1469 be amended as follows:

Page 2, line 5, replace "and which apply any period of disqualification beginning the first month" with an underscored period

Page 2, remove lines 6 and 7

Page 2, line 12, replace "and which apply any period of disqualification beginning the first month" with an underscored period

Page 2, remove lines 13 and 14

Renumber accordingly

Engrossed HB 1469 was placed on the Seventh order of business on the calendar.

2003 TESTIMONY

HB 1469

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Alister Rickford
Operator's Signature

10/6/03
Date

12

HB1469
Testimony by Rep. Robin Weisz

Madam Chairman and members of the Human Services committee. I am here today to urge your support for House Bill 1469. 33% of our Medicaid budget goes for nursing home services and 50% of our medicaid dollars goes for some form of long term care. North Dakota has the highest ratio of citizens 85 or older in the nation. It is projected that within 10-15 yrs. We will also have the highest porportion of seniors age 65 or older in the country. Today North Dakota is experencing increasing difficulty in paying for these costs. What has become a budgeting problem today will soon become a crisis for our state and its citizens. HB1469 is an attempt to address this impending crisis before it is too late.

In a perfect world the simple solution to our problem is to have every citizen purchase a long term care policy that will cover all their costs should they ever end up with a need to utilize long term care services. The reality is that only a very small percentage of our citizens do this. Less than 30% purchase any type of long term care policy. While there are many reasons for this, one is the attitude that the state has an obligation to take care of me in my old age.

What this bill will do is tell our citizens that if you are willing to buy a qualifying policy the state will ensure that no matter how high you care costs go the state will pick up the tab without requiring the individual to spend down any of their assets. This will ensure that the farmer or businessman who wants to leave their estate to their children will not have to worry about selling all their assets to pay for their care, or as many are doing, get a good attorney to allow them to give their assets away so that medicaid has to pay for their care. This bill will also ensure that the couple who does not have a lot of assets to protect will be able to protect their house and income necessary to live.

IR

This bill is a work in progress. It does not have all the details to make this work and there will be amendments offered to address the issues that will arise. I am not trying to say that this will solve all our long term care problems but I think that it is a step we need to take by helping the citizens of our State become more responsible for planning for their future needs.

IR

**TESTIMONY BEFORE THE
HOUSE HUMAN SERVICES COMMITTEE
REGARDING HOUSE BILL NO. 1469
February 4, 2003**

Chairman Price, members of the House Human Services Committee, my name is Blaine Nordwall. I am Director of Economic Assistance Policy for the Department of Human Services. That division is responsible for implementing Medicaid eligibility policy.

House Bill 1469 would encourage people to buy long-term care insurance coverage by making the policyholder absolutely eligible for Medicaid benefits after the policy benefits are exhausted. There are two major problems with this approach.

1.

The reason people buy long-term care insurance is to preserve their estate assets. This requires two things:

- Any necessary long-term care costs must be paid without using the protected assets, usually by a combination of the insurance coverage, the individual's own income, and Medicaid benefits; and
- The policy buyer's estate must not have to repay Medicaid benefits.

In 1993, Congress required all states to make claims against the estates of deceased Medicaid recipients for benefits provided after the recipient's fifty-fifth birthday. See 42 U.S.C. 1396p(b)(1)(C), attached. That law provides that only those states with an approved Medicaid state plan in effect as of May 14, 1993 are exempted from making estate recoveries. The states with the necessary plan approvals were California, Connecticut, Indiana, and New York. We could not expect to secure approval of the necessary state plan amendment to avoid

1

La Costa Richard
Operator's Signature

10/6/03
Date

making recoveries in the estates of deceased Medicaid recipients who had purchased qualified long-term care insurance policies.

2.

House Bill 1469 would allow anyone whose qualifying insurance benefits had been exhausted to become eligible for Medicaid without regard to any income or resources the individual might have. This would violate a provision of federal Medicaid law at 42 U.S.C. § 1396a(a)(10)(C)(iii) (copy attached), which requires each state to use a "single standard" for determining income and asset eligibility for the medically needy. Individuals with assets worth protecting by long-term care insurance would invariably seek Medicaid benefits under the medically needy group. We could not expect to secure approval of the necessary state plan amendments to allow purchasers of qualified long-term care insurance policies to avoid consideration of income and assets once policy benefits are exhausted.

* * *

To carry out the provisions of House Bill 1469, in the absence of Medicaid state plan approval, all costs of providing long term care assistance to purchasers of qualified long-term care insurance would have to be funded entirely with state general fund dollars.

I'd be happy to try and answer any questions the committee may have.

12

**ATTACHMENT TO TESTIMONY
REGARDING HOUSE BILL NO. 1469**

42 U.S.C. § 1396a(a)(10)(C)(i)(III) provides:

"A State plan for medical assistance must --

*** * ***
(10) provide --

**(C) that if medical assistance is included for any [medically
needy] group . . . , then --**

(i) the plan must include a description of . . .

**(iii) the single standard to be employed in
determining income and resource eligibility
for all such groups"**

42 U.S.C. § 1396p(b)(1)(C) provides:

**(1) No adjustment or recovery of any medical assistance correctly
paid . . . may be made, except that the State shall seek
adjustment or recovery . . . in the case of the following
individuals:**

*** * ***
**(C)(i) In the case of an individual who has received (or is
entitled to receive) benefits under a long-term care insurance
policy in connection with which assets or resources are
disregarded in the manner described in clause (ii), except as
provided in such clause, the State shall seek adjustment or
recovery from the individual's estate on account of the medical
assistance paid on behalf of the individual for nursing facility
and other long-term care services.**

**(ii) Clause (i) shall not apply in the case of an individual
who received medical assistance under a State plan of a
State which had a State plan amendment approved as of
May 14, 1993, which provided for the disregard of any
assets or resources--**

**(i) to the extent that payments are made under
a long-term care insurance policy; or**

**(ii) because an individual has received (or is
entitled to receive) benefits under a long-
term care insurance policy.**

Richard
Operator's Signature

10/16/03
Date

Prepared by the North Dakota
Department of Human Services
February 12, 2003

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1469

Page 1, line 1, after "Act" insert "to create and enact a new section to chapter 50-24.1, relating to eligibility for medical assistance; and " and replace "50-24.1-02.4" with "50-24.1-02.5"

Page 1, line 4, replace "50-24.1-02.4" with "50-24.1-02.5"

Page 1, after line 5, replace the remainder of the bill with:

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

1. An individual who secures and maintains insurance that covers the cost of substantially all necessary medical care, including necessary care in a nursing home and necessary care for an individual who qualifies for admission to a nursing home but receives care elsewhere, for at least thirty-six months after the date an asset is disposed of, may demonstrate that the asset was disposed of exclusively for a purpose other than to qualify for medical assistance by providing proof of that insurance.
2. If purchased on or after August 1, 2003, the insurance coverage described in subsection 1 must include home health care coverage, assisted living coverage, basic care coverage, and skilled nursing facility coverage with a daily benefit at least equal to 1.57 times the average daily cost of nursing care for the year in which the policy was issued, and an aggregate benefit at least equal to 1095 times that daily benefit.

SECTION 2. A new section to chapter 50-24.1 of the North Dakota Century Code is created and enacted as follows:

Department to submit plans and seek waivers.

1. Unless a waiver under subsection 2 is required, the department of human services shall submit amendments to the state plan for medical assistance to provide for a sixty-month look-back period for assignments or transfers of property that disqualify the applicant or the applicant's spouse from the receipt of long-term care services.

and that apply any period of disqualification beginning the first month during which the disqualified individual would otherwise be found eligible for such services under medical assistance.

2. If the state plan amendment provided for in subsection 1 is or will be denied, the department of human services shall seek a waiver of federal law to provide for a sixty-month look-back period for assignments or transfers of property that disqualify the applicant or the applicant's spouse from the receipt of long-term care services, and that apply any period of disqualification beginning the first month during which the disqualified individual would otherwise be found eligible for such services under medical assistance.
3. Unless the amendment to the state plan or the request for waiver would otherwise be denied, the requirements of this section shall apply only to transfers that occur on or after the effective date of the state plan amendment or waiver."

Renumber accordingly

ATTACHMENT

**NORTH DAKOTA ADMINISTRATIVE RULES
IMPLEMENTING
THE "PARTNERSHIP PROGRAM"**

75-02-02.1-33.1. Disqualifying transfers made after August 10, 1993.

1. a. Except as provided in subsections 2 and 9, an individual is ineligible for nursing facility services, swing-bed services, and medicaid-waivered services if the individual or the spouse of the individual disposes of assets or income for less than fair market value on or after the look-back date specified in subdivision b.
- b. The look-back date specified in this subdivision is a date that is thirty-six months (or, in the case of payments from a trust or portions of a trust that are treated as income or assets disposed of by an individual, sixty months) before the date on which the individual is both an institutionalized individual and has applied for benefits under this chapter, without regard to the action taken on the application.
- c. The period of ineligibility begins the first day within the first month during or after which income or assets have been transferred for less than fair market value and which does not occur in any other periods of ineligibility under this section or section 75-02-02.1-33.
- d. The number of months of ineligibility under this subdivision for an individual shall be equal to the total, cumulative uncompensated value of all income and assets transferred by the individual (or individual's spouse) on or after the look-back date specified in subdivision b, divided by the average monthly cost of nursing facility care in North Dakota at the time of application.

* * *

8. For purposes of this section:

- a. "Average daily cost of nursing care" means the cost determined by the department under 42 U.S.C. 1396p(c)(1)(E)(i)(II) or subdivision d of subsection 1.

* * *

- c. "Major medical policy" includes any policy, certificate, or subscriber contract issued on a group or individual basis by any insurance company, nonprofit health service organization, fraternal benefit society, or health maintenance organization, which provides a plan of health insurance or health benefit coverage including medical, hospital, and surgical care, approved for issuance by the insurance regulatory body in the state of issuance, but does not include accident-only, credit, dental, vision, medicare supplement, long-term care, or disability income insurance, coverage issued as a supplement to liability insurance or automobile medical payment insurance, or a policy or certificate of specified disease, hospital confinement indemnity, or limited benefit health insurance.

* * *

- e. "Medicare supplement policy offering plan F benefits" means a policy, group, or individual accident and health insurance policy or a subscriber contract of a health service corporation or a health care plan of a health maintenance organization or preferred provider organization, other than a policy issued pursuant to a contract under section 1876 or 1833 of the Social Security Act [42 U.S.C. 1395, et seq.] or an issued policy under a demonstration project authorized pursuant to amendments to the Social Security Act that:

- (1) Is advertised, marketed, or designed primarily as a supplement to reimbursements under medicare for the hospital, medical, or surgical expenses of persons eligible for medicare;
- (2) Is not a policy or contract of one or more employers or labor organizations, or the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organization;
- (3) Is approved for issuance by the insurance regulatory body in the state of issuance; and
- (4) Includes:

- (a) Hospitalization benefits consisting of medicare part A coinsurance plus coverage for three hundred sixty-five additional days after medicare benefits end;
- (b) Medical expense benefits consisting of medicare part B coinsurance;
- (c) Blood provision consisting of the first three pints of blood each year;
- (d) Skilled nursing coinsurance;
- (e) Medicare part A deductible coverage;
- (f) Medicare part B deductible coverage;
- (g) Medicare part B excess benefits at one hundred percent coverage; and
- (h) Foreign travel emergency coverage.

* * *

11. An individual is not ineligible for medicaid by reason of subsection 1 if, for a period of at least thirty-six consecutive months, beginning after August 1, 1995, the individual has in force home care and long-term care coverage, with a daily benefit at least equal to 1.25 times the average daily cost of nursing care for the year in which the policy is issued or an aggregate benefit at least equal to 1095 times that daily benefit, and:

- a. For each such month during which the individual is not eligible for medicare benefits, the individual has in force a major medical policy that provides a lifetime maximum benefit of one million dollars or more, an annual aggregate deductible of five thousand dollars or less, and an out-of-pocket maximum annual expenditure per qualifying individual of five thousand dollars or less; and
- b. For each such month during which the individual is eligible for medicare benefits, the individual has in force a medicare supplement policy offering plan F benefits, or their equivalent.

Engrossed House Bill 1469

Prepared by TaLisa Nemec, Legislative Intern at the request of Senator Fischer.

Example of how an asset transfer affects nursing home medicaid eligibility (see also attached brochure published by Legal Assistance of North Dakota)

John, age 63, and his 4 sons have farmed together for 35 years. His sons are not joint owners of the family farm, but have provided the labor needed to keep the farm going. He wants to get his estate in order and transfers what he believes his son's fair share is. He is in good health at the time of the transfer.

2000 (June) Transferred family farm to children for \$100,000.
Value of farm in 2000 = \$484,640
Difference in value received and value = \$384,640.

Note: From June 2000 until May 2003, John used 100,000 for living expenses, has no other assets.

2003 (May) John has a stroke and is in need of nursing care. He applies for medicaid nursing home coverage.

The State will:
divide \$348,640 by \$3,864 (average monthly cost of nursing home care) = 100 (months).

John will be ineligible for medicaid for 100 months (8 years and 4 months) from time of transfer, until October, 2008. John cannot legally compel his sons to give the farm back to him. If his sons are not able or willing to pay for his care, (perhaps they already sold the farm or they put the farm up for sale, but it takes a year to sell) John will not get the care he needs for a 100 months, or until someone can pay for it.

FYI: under current law, if John had sold the farm for fair market value during the 36 month look back period, he could have squandered the money (a few vacations to Vegas) and this would be an allowable disposition of his assets - but because he transferred to his sons for less than fair market, it disqualifies him.

The original Bill (attached) - as introduced in the House, is unrecognizable in its current engrossed form. While the original Bill, would not have helped "John" in the example provided, unless he had purchased a qualifying insurance policy, the engrossed Bill would allow the State to go back 2 years further, and if John had transferred any assets during those two years, the months of his ineligibility could increase - depending on the value of those asset)

The Bill as introduced would have merely excluded the consideration of John's assets and income- if he had purchased qualifying private insurance and that insurance had payed for 3 years.

In its current form the Bill extends the states reach from 36 months to 60 and restricts the type of insurance that will qualify a recipient for a possibility of having transferred assets excluded - if the recipient can demonstrate that the transfer was not for the purpose of qualifying for medicaid.



How Does A Transfer Affect Eligibility?

Property transferred by you or your spouse for less than fair market value could make you ineligible for receiving institutional services including nursing services or nursing facility type services in any facility or home and community based waver services.

What is the Penalty?

- You are not eligible for payment of institutionalized services.
- You are still eligible for other services paid by the program.

How Is The Penalty Determined?

On all transfers, except from a trust, there is a 36 month look-back period.

- This is 36 months before you became institutionalized, if already on assistance. If institutionalized and not on assistance when making the transfer, the look-back period is from the date you apply.
- Then divide the value of each transferred resource by the average cost of nursing home care.
- This amount for 2002 is \$3,864 a month or \$127.05 a day. (January through June 2001; \$3,345 per month; \$109.98 per day. July through December 2001; \$3,652 per month; \$120.08 per day.)
- Add together the number of penalty months for each transfer. The penalty period begins with the month of the first transfer and continues until all months have gone by. There is no limit on the number of months the penalty period can last.
- The penalty period begins with the date of the transfer.
- On transfers from certain trusts there is a 60 month look-back period.

What Resources Are Exempt?

- Household goods, personal effects, and a motor vehicle
- Property necessary for self support
- Burial spaces and burial funds
- Indian trust land, per capita and judgment funds
- Counties have been instructed to exempt a life estate. However a change in the law to this effect has not been finalized yet. Projected income from a life estate would be counted as a transfer

Are There Other Resources Which Can Be Transferred Without A Penalty?

- You can transfer any asset to your spouse, minor, blind or disabled child, or in trust for them.
- Any asset for a reason other than to qualify.
- Any asset if you can show you intended to transfer at fair market value or denial would work an

http://www.legalassist.org/centralized_intake/pdf_brochures/med_assis_transfer_elig1.html 3/10/2003

undue hardship.

Can A Home Ever Be Transferred?

Yes, You can transfer your home to:

- a spouse,
- a minor, blind or disabled child
- a sibling who has an equity interest and who lived in the home one year immediately before you became institutionalized
- an adult child who lived in the home for two years immediately before you became institutionalized and who provided care which permitted you to live at home.

January 2002

Cite: NDCC 50-24.1-02 NDAC 75-02-02.1-33, 33.1 42 U.S.C. 1396p

Published by Legal Assistance of North Dakota

In conjunction with Department of Aging Services - Title III.

http://www.legalassist.org/centralized_intake/pdf_brochures/med_assis_transfer_elig1.html 3/10/2003

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Jo Costa Rickford
Operator's Signature

10/16/03
Date



What is Medical Assistance For Institutional Care?

A program to help pay for swing bed, state hospital, or nursing home facility care when:

- 1) you are likely to be there for 30 consecutive days; and
- 2) you have limited income and resources.

How Much Of My Income Can I Keep?

You can keep \$50 per month for personal needs.

What Amount Of Resources Am I Allowed To Keep?

You can keep up to \$3,000 in countable resources.

What Resources Are Not Counted?

- Your home, if a doctor states you are likely to return to it within six months or if a minor or disabled child lives in the home.
- Personal effects, household goods, and one motor vehicle.
- Property which is up for sale, but not sold.
- A \$3,000 burial fund and a burial plot for each family member
- The value of a life estate.
- Trust land, per capita funds and judgment funds.

January 2002

Published in conjunction with Department of Aging Services - Title IIIb



What Kind Of Care Is Covered?

This program can help pay for swing bed, state hospital, or nursing facility care if you have limited income and resources and are likely to be there for 30 consecutive days.

How Much Of My Income Can I Keep?

You can keep \$50 per month for personal needs.

Can My Spouse Get Any Of My Income?

Yes. The community spouse can receive your other income to bring his/her income up to \$2,232 per month (2002). This amount increases each year.

Does My Spouse Have To Spend His Or Her Own Income On My Nursing Home Care?

No. Income in the community spouse's name is that person's income and not available to you.

What Amount Of Resources Am I Allowed To Keep?

You can keep up to \$3,000 in countable resources.

What Amount Of Resources Can My Spouse At Home Keep?

Your spouse can keep \$39,280 (2002) in countable resources. This amount increases each year.

How Do I Determine The Amount Of Resources My Spouse At Home Can Keep?

- If you became institutionalized after September 30, 1989, the program looks at what resources you had when you entered the facility. This includes resources in your name and in your spouses name.
- You can request the county social services office to do an assessment of your resources.
- The assessment will show how much either of you can keep
- It is advisable to request the assessment at the time you enter the facility. This is so you do not use resources which you can keep.
- If you became institutionalized before September 30, 1989, the program looks at what resources you have when you apply.

What Resources Are Not Counted?

- Your home and all connecting land, one motor vehicle, household goods, and personal effects.
- Property used to produce income and property up for sale, but not sold.
- A burial fund up to \$1,500 (may consist of burial contracts or trusts, cash, or bank account

identified as burial account, life insurance, etc.)

- A burial space or agreement representing the purchase as a burial spouse for the individual, the individual's spouse or any other member of the individual's immediate family.
- The institutionalized spouse has the option to exclude prepayments up to \$3,000 for a pre-need funeral service contact for the institutionalized spouse instead of excluding the burial fund and burial space
- Trust land, per capita funds and judgment funds and the value of a life estate. However, the projected income from a life estate could be a transfer.

July 2002

Published in conjunction with Department of Aging Services - Title III.

HB
1469

Dear Chairperson Judy Lee:

This email is in regards to serious concerns that we, as estate planning attorneys in North Dakota, have regarding House Bill 1469, as amended.

Although we have concerns regarding the entire Bill, this email specifically addresses Paragraph 2 of Section Two. This Paragraph sets forth that a look-back period for transfers of property would not begin to run until the time of application for Medical Assistance. This is a change from the look-back period beginning to run at the time of transfer.

It is fundamentally unfair to begin a period of ineligibility at the time of application, and this will have a chilling effect on even modest transfers, especially those transfers of business or farming interests.

Paragraph 2 of Section Two is a substantial change to what has been basic and fundamental rules regarding Medical Assistance transfers and eligibility. We respectfully request that the Budget Committee on Human Services recommend that House Bill 1469 be the subject of an Interim study resolution, whereby the Bill could receive the measured consideration that it deserves and to allow input from all who may be impacted by the Bill, including all estate planning attorneys and their clients in North Dakota.

Thank you for your consideration.

Please call me or my partner, Susan E. Johnson-Drenth, if you have any questions.

Sincerely,

William L. Guy III
Gunhus, Grinnell, Klinger, Swenson & Guy, Ltd.
215 30th Street North
P.O. Box 1077
Moorhead, MN 56561-1077
(218) 236-6462
(218) 236-9873 (fax)

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Salvatore Riccardi
Operator's Signature

10/16/03
Date

Tim Mathern

03/11/2003 10:34 AM

To: April J. Fairfield/NDLC/NoDak@NoDak,
michael_polovitz@und.nodak.edu

cc:

Subject: Re: HB1469

----- Forwarded by Tim Mathern/NDLC/NoDak on 03/11/2003 10:32 AM -----



"Ken & Sharon
Kroepelin"

<kaskroep@ictp.com>

To: "Tim Mathern" <tmathern@state.nd.us>

cc:

Subject: Re: HB1469

03/11/2003 07:18 AM

Please respond to "Ken
& Sharon Kroepelin"

Good Morning Tim,
Marcia is a good friend of ours and a good source if you ever have any
questions on programs. I agree with Marcia, at the very least, change the
qualification dates to match current law.
Thanks.

Ken

----- Original Message -----

From: "Tim Mathern" <tmathern@state.nd.us>

To: "Marcia L. Beglau" <20begm@state.nd.us>

Cc: "Ken & Sharon Kroepelin" <kaskroep@ictp.com>

Sent: Monday, March 10, 2003 2:35 PM

Subject: Re: HB1469

Thank you for the heads up on this, I will look into this. I agree with
your concerns.

Senator Tim Mathern
406 Elmwood
Fargo ND 58103
tmathern@state.nd.us

Dear Senator Mathern,

First I wish to introduce myself. I am Marcia Beglau and currently
the Director of Social Services in Griggs County. As director in a small
county the size of Griggs County one of my other duties is determining
eligibility for Medicaid. I currently handle the Medicaid applications of
those seeking assistance regarding nursing home care cost. I am writing
this letter as an individual and not on behalf of my County or any
affiliation.

I have just recently become aware of the language in HB 1469. Upon
visiting with former senator, Ken Kroepelin, he suggested I take my concerns
to you.

The language of this bill basically makes it easier for the wealthy to
transfer assets upon entering long term care. It allows for transfer of
assets if they purchase 36 months of insurance, whereas, anyone else would
have a look back period of 60 months.

HB 1469 would complicate today's eligibility determination process.
Especially if assets transferred within the 5 year look back period were
transferred in good faith like helping a son or daughter enter the family
farming or family business on main street. HB 1469 places the

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Date

disqualification on the person at the time of seeking Medical versus the date of the actual transfer. This could create extreme hardships in some cases versus how transferred assets are assessed in using today's eligibility process.

There is nothing stopping an individual today from purchasing nursing home insurance to protect their assets. The federal guidelines that we follow today deals with all walks of life fairly and should HB 1469 pass a federal waiver may need to be pursued.

I urge you and other Senators to not let this bill pass at this time. Or at the very least amend the date the disqualifications take place on an individual to be the date the transfer occurred. Should you wish to contact me, I can be reached at my Griggs County Social Service Office (797-2121 ext, 5) or home (797-2556).

Thank you for your time and consideration.

La Costa Rickford
Operator's Signature

10/16/03
Date