MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
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GREAT SEAL 1889
STATE OF NORTH DAKOTA

ROLL NUMBER

DESCRIPTION

1249

2005 HOUSE HUMAN SERVICES

HB 1249

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1249

House Human Services Committee

❑ Conference Committee

Hearing Date January 19, 2005

Tape Number	Side A	Side B	Meter #
#1		x	#1233- 3128

Committee Clerk Signature

Minutes:

Chairman Price opened hearing on HB 1249.

Curtis Volesky, Director of Eligibility DHS. See attached testimony.

Rep. Porter: On page 1, line 12, is refers to less that market value, how will that be determined?

C. Volesky: The individual who owns that property provides information showing what the value of that property and also information concerning the transfer.

Rep. Porter: So they have an appraisal that says one thing, and you feel it is worth more, how do you determine the value?

C. Volesky: We accept the appraisal. It is that individuals responsibility to provide that information, the only time that we would question a document is if the appraisal was completed by a family member or someone having an interest in the property.

Rep. Weisz: In the 5 year look back for assets?

C. Volesky: That is my understanding.

Rep. Weisz: We are not doing anything different then, in this bill.

C. Volesky: We haven't done anything different, in Sec. 2, that is not tied to the look back.

Opposition:

Greg Larson, Attorney: See attached testimony

Rep. Porter: In your second you used a charity, wouldn't that be at fair market value. I don't understand how that applies to this situation.

G. Larson: They sold it, could be property at 50%. Charity is not giving you any far market value.

Rep. Kaldor: In Section 2, transfer being within 60 months of the date, you indicate that this could carry back further than 60 months.

G. Larson: Yes, there are 2 parts to this, typically when you make a transfer 6-7 years ago, then the statute would apply, however, under this proposed legislation, I am not sure how far back they can go back. However, regarding the fraudulent conveyance, that would have to be done with in the 60 months period.

Rep. Kaldor: In the first section, if I were dispose of an assets, by making a gift to a foundation, and that was 7-8 years ago, and I am now in need of assistance. Are you saying the dept. could go to that charity and request that back?

G. Larson: Because it was longer that 5 years ago, the only negative effect, is to the person that gave it away, because they will have a disqualification period beginning when they go into the nursing home, for this gift that they made to the charity.

C. Volesky: I would like to clarify some areas of the bill. Sec. 1 - that asks the dept. to seek a waiver, it does not change a look back period. Sec 2 only would be in effect, if Sec. 1 is not.

Rep. Kaldor: The disqualification period does not begin, even if I made that transfer, prior to the look back period, I will not have to go through that disqualification period to the extent of what I gave away.

C. Volesky: That is correct; if you gave it away within the 36 months, then if would effect it.

Rep. Weisz: What does Sec 1 do? If I gave $100,000 to a charity, will you count that if I am eligible or not.

C. Volesky: If someone makes a transfer within the 36 month period then we would establish a penalty, but it would only start when the person enters the nursing home. If someone gave away $50,000.00, they would have a disqualification period of approximately of 10 months. If they did not need care in 12 months, there would be no penalty, if this waiver was approved and they gave away within 12 month, then they would have a 10 month penalty.

Rep. Kaldor: Current law provides this look back period, so if we make the transfer, within the 36 month period, your saying we are disqualified the day we make the transfer, even if we don't need assistance.

C. Volesky: Yes, that is exactly right.

Close hearing on HB 1249.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1249

House Human Services Committee

❑ Conference Committee

Hearing Date January 25, 2005

Tape Number	Side A	Side B	Meter #
#1		x	#3584-

Committee Clerk Signature

Minutes:

Chairman Price opened discussion on HB 1249.

Rep. Devlin: The subcommittee agrees unanimously that this bill can't be fixed. We struggled with many parts of this bill, but the committee agrees that major changes in the law and looking back the 60 month period from the time when the person went into the home and doing their advanced estate planning, we understood the intent. Some of the changed language allowed it to coincide with the existing law. Everything we looked at could not be agreed on except that the bill should be killed or it be given to a new subcommittee for reconsideration.

Rep. Kaldor: I agree.

M. Hauer: The consideration was given to eliminating Sec 2.

Rep. Kaldor: We then questioned how it would affect Section 1 if Section 2 was dropped.

M. Hauer: That would just change how we implement the penalty period, if the Fed govt. granted a waiver, you would start the penalty period when the person needs the NH care, not when the transfer was made.

Chairman Price: Did you discuss only leaving Section 1?

Rep. Devlin: Section 1 did not appear to be a problem. This was such a massive change and I believe people are truly trying to do estate planning, making plans for NH care. There is no way they can plan for that. We did not feel that the Fed. Govt. would consider approving the waiver.

Chairman Price: Was delaying the implementation date discussed?

Rep. Devlin: At this stage, if the Fed. Govt. did not give a waiver, there would be a major problem.

Rep. Kaldor: I think it is challenging, the intent is noble and trying to meld this bills to intensify the effort in getting long term care insurance. The disqualification period is very disturbing to me, there are to many circumstances involved, so I have really struggled with it.

Rep. Devlin: Motion for a Do Not Pass.

Rep. Peitsch: Second.

Vote: 12-0-0.

FISCAL NOTE

Requested by Legislative Council
01/12/2005

Bill/Resolution No.: HB 1249

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.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	**Other Funds**	**General Fund**	**Other Funds**	**General Fund**	**Other Funds**
Revenues	$0	$0	$0	$0	$0	$0
Expenditures	$0	$0	$0	$0	$0	$0
Appropriations	$0	$0	$0	$0	$0	$0

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	**Cities**	**School Districts**	**Counties**	**Cities**	**School Districts**	**Counties**	**Cities**	**School Districts**
$0	$0	$0	$0	$0	$0	$0	$0	$0

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

This bill would create and enact two new sections to chapter 50-24.1 of the NDCC relating to transfers of assets and avoiding medical creditors.

HB 1249 has no fiscal impact for the department.

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:	Brenda Weisz	**Agency:**	Human Services
Phone Number:	325-2397	**Date Prepared:**	01/13/2005

Date: 1/25/05 Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1249

House **Human Services** **Committee**

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Not Pass

Motion Made By Rep Devlin Seconded By Rep Pietsch

Representatives	Yes	No	Representatives	Yes	No
Chairman C.S. **Price**	\		Rep.L. **Kaldor**	\	
V Chrm.G. **Kreidt**	\		Rep.L. **Potter**	\	
Rep. V. **Pietsch**	\		Rep.S. **Sandvig**	\	
Rep.J.O. **Nelson**	\				
Rep.W.R. **Devlin**	\				
Rep.T. **Porter**	\				
Rep.G. **Uglem**	\				
Rep C. **Damschen**	\				
Rep.R. **Weisz**	\				

Total (yes) 12 **No** 0

Absent 0

Floor Assignment Rep Devlin

on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1249: Human Services Committee (Rep. Price, Chairman) recommends **DO NOT PASS** (12 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1249 was placed on the Eleventh order on the calendar.

2005 TESTIMONY

HB 1249

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Members of the House Human Services Committee,

Although I am a member of the Governor's Committee on Aging, we did not have time to fully discuss all of the proposed legislation. Therefore my support for **HB1217, HB1281 & HB1249** is not meant to be considered an endorsement nor opposition by the GcoA.

Medicaid is meant to be a program for those who need it, not those who have figured out the best way to qualify. Attorneys who specialize in Medicaid planning circumvent this intent and often can do harm to their clients. With other proposals in the legislature to expand what Medicaid may pay for it is vital that those who receive this state benefit be deserving of it. Arizona thought that they could save money by paying for care other than in a nursing home but found that the state then suffered from what became to be known there as the "woodwork effect". This put a negative pressure on the purchasing of private LTC insurance. The number of people applying for Medicaid rapidly increased. We need to learn from Arizona and Florida. Arizona later made the corrections similar to these three bills.

HB1281 & H1249 both are good measures to see that Medicaid is used for those it is intended and also to discourage people trying to dispose of assets just to increase their children's inheritance at taxpayer expense.

HB1217 is a much needed correction towards defining what type of LTC insurance that should be encouraged. The old definition was of $130/day coverage with a three year minimum. No inflation rider was required. This allowed a thirty year old to be given credit on a claim when he would be 70. It did not protect someone who purchased a (ex) 4 year, $120/day with inflation plan. Attorneys would encourage people to apply for the inferior 3 year coverage. As proposed in **HB1217** this practice would be corrected. The larger percentage of our total population, not just seniors, who take on the responsibility themselves for long term care, the better North Dakota will be.

There is a question that I have on **HB1217,** page two, line 1-2. If some one had coverage of $150/day, inflation and *lifetime coverage,* they will never exhaust their benefits. If their care costs $170/day they will have to dip into their personal savings to cover the difference. Someone with a five year benefit period would be covered by the exemption even though it will cost the state budget $54000 more in years 6 plus. State law should not discourage people from covering themselves while at the same time potentially costing the state more money.

I feel that all three of these bills promote fairness, encourage self reliance and save the state money. Money saved that could be used to pay for those who deserve the benefits and also to help increase wages of caregivers in North Dakota. Without these three bills, North Dakota could be headed towards a financial disaster that will swamp the overall budget.

Respectfully,
Kelly B Wentz
January 18, 2005

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TESTIMONY BEFORE THE HOUSE HUMAN SERVICES COMMITTEE

REGARDING HOUSE BILL 1249

JANUARY 19, 2005

Chairman Price, members of the committee, I am Curtis Volesky, Director of Medicaid Eligibility for the Department of Human Services. I am here in support of HB 1249.

Section 1 of this bill requires the Department to seek a waiver of one of the provisions of the federal disqualifying transfer law. The federal disqualifying transfer provision has been frustrating to states because of apparent loopholes, so states such as Connecticut and Minnesota have requested waivers similar to the one required by section 1. None of the waivers relating to the transfer provision have been acted on as of this date, and we are not confident that they will be granted any time soon. If the Connecticut and Minnesota waivers are approved, however, there is little reason to believe our request for a waiver would not also be approved. We believe such a policy would discourage transfers and decrease future Medicaid costs.

I will be glad to answer any questions regarding my testimony. Thank you.

(3) opposition

January 19, 2005

House Human Services Committee
HB#1249

CHAIRMAN PRICE AND COMMITTEE MEMBERS:

My name is Gregory C. Larson. I am an attorney in Bismarck appearing here today on my own behalf.

I am opposed to this bill for the following reasons:

1. It changes the way disqualifying transfers are treated in North Dakota. Federal law requires that when a person transfers an asset for less than adequate consideration, a disqualification period arises. This disqualification period is determined by dividing the amount of the disqualifying transfer by the average private pay rate for nursing home care per month in North Dakota. Currently, that amount is $4,395.00.

The disqualification period starts in the month of the asset transfer. Therefore, if you make a $44,000.00 transfer and divide by $4,395.00, you will have slightly more than a ten month disqualification period. Normally, if that transfer is made in January 2005, the disqualification period would be over in November 2005. If in January 2006, the transferor or spouse would go into a nursing home, the disqualification period for the transfer would have expired.

Under this bill, the disqualification period, for any transfer, would begin when the person goes into a nursing home and has applied for medical assistance. This would be devastating regarding transfers made during a person's lifetime. It would provide uncertainty as to whether those transfers could be relied upon.

2. Transfers of assets to avoid medical creditors. This is essentially a fraudulent conveyance statute. It takes the conveyances out from under Medicaid law and puts them under North Dakota's fraudulent conveyance statute.

The problem again with this bill is that it would bring uncertainty into transfers made by individuals down to their family or to charity. Similar bills were proposed...and defeated.... in 1997, 1999 and 2001.

I respectfully request that the committee give this bill a do not pass. Thank you for your time and consideration. I would be glad to answer any questions.