2009 HOUSE HUMAN SERVICES

HB 1303

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1303**

House Human Services Committee

☐ Check here for Conference Committee

Hearing Date: **January 21, 2009**

Recorder Job Number: 7420

Committee Clerk Signature	Jan Frueder

Minutes:

Chairman Weisz opened the hearing of HB 1303.

Representative Gary Kreidt, District 33, introduced the bill. This bill is for the purpose of allowing nursing facilities to collect their bad debts when an individual can't pay for their care. This allows for 180 days to collect before it goes to a collection agency. There is a whole process you have to go through to be able to collect a bad debt.

Shelly Peterson, president of the ND Long Term Care Association, testified in favor of the bill. **(Attachment 1)**

Representative Conrad: Do I understand that the lawsuit is between the department and the individual?

Peterson: The one suit that is before the Supreme Court is an individual, a Medicaid applicant, and the Department of Human Services. The Department has denied the divorce settlement. They found the person ineligible. It was appealed by the administrative law judge and the district court. The court said they thought it a fair settlement and you make her eligible. The Department of Human Service disagrees with the district court. The Supreme Court case is the individual Medicaid applicant and the Department of Human Services.

Representative Conrad: The guardian didn't make an effort—that's what the Department is basing its denial upon?

Peterson: In essence the guardian did not pursue an equitable distribution of the assets as perceived by the Department.

Representative Conrad: So the guardian made the mistake.

Peterson: In the Department's eyes, although the district court agreed with the guardian that it was an equitable distribution. Part of the issue was when you look at having to raise three surviving children. It's a difficult case and difficult situation.

Chairman Weisz: The way it stands it's a disqualifying transfer of assets. That was their perspective.

Representative Conrad: So this person is not eligible until 2010?

Peterson: Yes, you are correct. Because of the amount of the assets that supposedly should have been made available to the residence. There is probably a farm involved.

Chairman Weisz: Clarify for me—on a disqualifying transfer of assets and if they won in the Supreme Court would they be able to get the back payments from Medicaid?

Peterson: Medicaid eligibility is not my area of expertise; however, my understanding is if resident wins at the Supreme Court then they will be found eligible and Medicaid will be required to pay back three months from the date of application. In essence, perhaps the major part of the care will be reimbursed.

Representative Porter: Refresh my memory on the ability of a nursing facility to go after the individual who received the non-qualifying transfer.

Peterson: That was legislation we brought to you last session. If you happen to need nursing home care and apply for Medicaid and there was a transfer of assets during that period of time and if you did it for the purposes of qualifying for Medicaid, you need to get that asset back to pay for your care. Right now our legal recourse is going after that asset. Many people don't understand that what we tried to do in the last session was to put in to statute that if you transfer an asset and that asset makes you ineligible, that you know and understand that the facility that is providing care will go after that asset. That's the legal recourse right now but we thought if we put it in statute then the everyday citizen would know and understand it. Any medical provider can go after that asset but a lot of people don't understand that.

Representative Frantsvog: Is there a time limit as to when that asset can be transferred so that it doesn't cause ineligibility.

Peterson: Congress changed that. It used to be that as long as you transferred assets within 36 months prior to needing care that all those assets that you transferred in that 3-year period would not be considered in your Medicaid eligibility. On February 8, 2007, congress changed that application of the penalty period. Right now when you go in to a nursing facility and you make application Medicaid they will look back at all the assets within a 5-year period and potentially can go back beyond the 5-year period. If you transferred an asset 4 years and 3 months prior to needing care are supposedly now need to be made available for your care. You no longer have that protection of transferring your assets in advance of when you might need care. Anything transferred within that 5-year period is now to be made available for your care. What we strongly encourage people to do now in their planning is if you have assets that you want to protect, consider long-term care insurance. If I had a house and wanted to give it to my son, the rule is that whatever the value of that asset is figured at 100% of the appraised value. I can sell it someone else for 75% of the value. What they wanted to prevent sweetheart deals between families. You can't do those kinds of deals. There's a rule for everything and it's really to protect Medicaid so that only the poor and improvised and those that don't have assets qualify.

Chairman Weisz: Isn't it still prorated or did they do away with that when they went to the 5-year look back?

Peterson: I believe it's the true value of the asset. Under the 36-month rule it was prorated. It is a harsh change in that policy.

Representative Nathe: I've had some dealings with people trying to get it in with the 60-month period. Part of the problem from our side is a lot of the Social Workers and other people involved are not quite up on everything that you just explained to us this morning. Part of the problem is they are giving the wrong information. We are trying to reeducate them and they are frustrated.

Peterson: You are absolutely correct. Medicaid law is very complex. We have attorneys who sometimes give misinformation. It's changing and it's complex. We do training. We give it our best and have at our annual convention over 1000 people attending for continuing education.

There being no further testimony, Chairman Weisz closed the hearing of HB 1303.

Later that same day Chairman Weisz opened further hearing of HB 1303.

Barbara Fischer, assistant director of Budget and Operations of the Medical Services Division for the Department of Human Services, provided information regarding the fiscal note on HB 1303. **(Attachment 2)**

Representative Porter: We changed it last session to 120 days?

Fischer: The 120 days has always been in rule and was in some time back in the '90s. There hasn't been legislation that increased it to 120 days—that has been established by rule.

Representative Frantsvog: Your paragraph on the second page says "the current approved Medicaid. . . . allows 120 days of bad debt." In your opinion what does increasing it to 180 days do? Are you saying that is not going to happen immaterial of what this committee does?

Fischer: We would have to submit an amendment to our state plan and it would have to be approved by CNS in order to include the increase as an allowable expense for the Medicaid rate.

Representative Frantsvog: Shelly (Peterson) do you understand that's what's happening.

Peterson: Yes, that's the normal process.

Chairman Weisz closed the hearing of HB 1303.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1303**

House Human Services Committee

☐ Check here for Conference Committee

Hearing Date: **January 27, 2009**

Recorder Job Number: 7911

Committee Clerk Signature	Jan Prindle

Minutes:

Chairman Weisz opened discussion of HB 1303: I believe there are some suggested amendments.

Representative Hofstad: Shelly Peterson brought this amendment to me and it simply adds that "the allowable bad debt expense shall be allocated back to the appropriate cost category of where the expense was incurred." I would expect it is to keep the direct or indirect costs exactly where they were supposed to be. I asked if there would be any fiscal expense and she did not have a good answer.

Chairman Weisz: Currently there is no fiscal impact or it cannot be determined. It just put it's in the correct category.

Representative Hofstad: I **move the amendment.**

Representative Pietsch: Second.

Representative Potter: Did Shelly talk about this during her testimony? I don't remember if she did.

Representative Porter: In general she talked about exceeding the rate in particularly the indirect rate. I don't recall any specific mention of amending it. I'm not sure how this amendment affects the Department. If a bad debt has a blanket lump sum and is put in to the indirect category and the facility is maxed out, then the bad debt means nothing when it comes to setting rates. If the bad debt is broken down to the categories incurred, it will definitely change how they are based in the future. It allows it to be allocated to the categories it came out of.

Chairman Weisz: The bill as is has some effect but it won't have it as much.

Representative Porter: It will have an effect on every one below that blue line if you left it alone. If you put it on it would have the effect on 2/3 of the facilities. One third wouldn't realize a net increase on rebasing. If you change it and split it back. . . .

Representative Conrad: Is that a more accurate reflection of rebasing?

Representative Porter: I don't know. I think you have to ask yourself when you have a bad debt that it just goes in to the category of bad debt. Typically the bad debt has all been indirect care. What we are saying is that portion of the bad debt that related to direct care can be charged back to direct care and the rebasing of rates.

Representative Conrad: Does accuracy come in at all?

Representative Porter: I don't know. I guess I look at it as bad debt is bad debt. If you start breaking it down to the appropriate category, it's definitely going to change the rebasing structure of nursing home rates. The good part about it is that it is going to allow facilities; because of the problem they have with personnel in the direct category, to move that category faster and retain help.

Chairman Weisz: You have to look at it from the standpoint of the bad debt becomes an indirect cost because they have already been allocated to direct costs that they provided for that patient that didn't pay the bill. From a business standpoint bad debt becomes an indirect cost because it's not related to providing the direct care. That's why the Department has put it there. If we shift it and say half of the bad debt was involved with the direct care and half was indirect care and we break it up, it will increase payment rates. The question for this Committee is: Should bad debt be expanded beyond indirect costs?

Representative Pietsch: The end result is the cash payer is going pay higher.

Chairman Weisz: Everyone will. That's more of an issue. We're nibbling around the edges here.

Representative Kilichowski: Is there is a fiscal note if we went from the 10 to 20% on indirect.

Chairman Weisz: It might be a fairly substantial one. I have no idea what it is. If that would raise it roughly $5 a day and you had 2/3 of your homes multiplied by $5 a day at 365 days by how many residents . . . it would obviously . . . You are probably looking at $800,000 or a million bucks.

Representative Kilichowski: If we break this down to direct and indirect cost, when they recalculate that debt will be back in to the allocation for reassessing to get to your average? We are going to get an increase one way or the other.

Chairman Weisz: That's true. When the state pulled that median do they look at the actual indirect costs or do those that are over and just put them at $52.

. . . Open discussion of HB 1433 for clarification of costs. . . .

They do take into account their costs regardless of the cap so this amendment won't have any effect on rebasing. What it will do when they rebase the rate which is now $52.27 for indirect costs which is the cap. What will happen if the bill passes is there will be more indirect costs allowed. This will add about $2 to everybody to about $54. It will factor in with or without the amendment. The issue seems to be with the indirect costs. Is that the overriding problem here? This amendment is to get around the indirect cost cap.

Representative Frantsvog: Will that then allow the nursing home to allocate those costs to salaries? What if they are capped out?

Chairman Weisz: If they are already capped out on indirect costs the bad debt expense doesn't do them any good except they still report it and when the State rebases, they are going to look at that.

Representative Frantsvog: Two things: 1) If this is going to be successful; it's going to have a fiscal note. 2) In the testimony by Barbara Fischer, she states that "any change to the number of days of bad debt expense will need to be submitted to and approved by Centers for Medicare and Medicaid Services." Is that a possibility?

Chairman Weisz: That's a given because it doesn't exceed anything. Any change still has to go through CMS but it's all within what Medicaid will do anyway. That's not an issue. I don't recall we have ever been turned down on a change.

Representative Porter: When the department doesn't like the change they seem to delay the asking. We should look at amendment that says the Department must submit the changes from 90 days of the bill becoming law. This bill already has a fiscal note that says "no impact can be determined." By changing it, I would venture the same thing happens. When it will be noticeable will be when they rebase during the interim and then come back with a dollar amount.

Representative Holman: In the Fischer testimony that's what she says.

Chairman Weisz: It will be minimal now. It will be when it rebased that it will have a fiscal effect.

Representative Conklin: How often do they rebase?

Chairman Weisz: Now it has to be done every two years.

Representative Conrad: Is that germane to this bill? If that is an issue I would rather do something that would correct the situation.

. . . . Unstructured discussion. .

Representative Potter: With Shelly Peterson's testimony, bad debt whatever amount may be allowed is considered an indirect expense. Are we saying it could be split between direct and indirect?

Chairman Weisz: That is what the amendment does. It specifically directs them to allocate it according how the bad debt was incurred.

A voice vote on the amendment was taken: The amendment was accepted

Representative Hofstad: I move do pass as amended.

Representative Uglem: Second

A roll call vote was taken: Yes: 13, No: 0, Absent: 0

HB 1303 as amended was passed.

Representative Holman will carry the bill.

FISCAL NOTE

Requested by Legislative Council
03/09/2009

Amendment to: Engrossed HB 1303

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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 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.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill increases the amount of allowable bad debt expense from the current 120 days to an amount not to exceed 180 days per year of resident care or an aggregate of 360 days for any one individual when determining nursing home rates.

No fiscal impact can be determined due to the lack of data.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

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, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Debra A. McDermott	**Agency:**	Human Services
Phone Number:	328-3695	**Date Prepared:**	03/09/2009

FISCAL NOTE

Requested by Legislative Council
01/13/2009

Bill/Resolution No.: HB 1303

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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 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.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The purpose of the bill is to increase the amount of allowable bad debt expense from the current 120 days to an amount not to exceed 180 days per year of resident care for any one individual when determining nursing home rates.

The fiscal impact cannot be determined due to the lack of data.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

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, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Debra A. McDermott	**Agency:**	Human Services
Phone Number:	328-3695	**Date Prepared:**	01/15/2009

90637.0101
Title.0200

Adopted by the Human Services Committee
January 27, 2009

VK
1/27/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1303

Page 1, after line 16, insert:

"4. The allowable bad debt expense must be allocated back to the appropriate cost category from which the expense was incurred."

Renumber accordingly

Date: 27 Jan 09
Roll Call Vote #:

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House HUMAN SERVICES Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken ☐ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Hofstad Seconded By Pietsch

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN ROBIN WEISZ			REP. TOM CONKLIN		
VICE-CHAIR VONNIE PIETSCH			REP. KARI L CONRAD		
REP. CHUCK DAMSCHEN			REP. RICHARD HOLMAN		
REP. ROBERT FRANTSVOG			REP. ROBERT KILICHOWSKI		
REP. CURT HOFSTAD			REP. LOUISE POTTER		
REP. MICHAEL R. NATHE					
REP. TODD PORTER					
REP. GERRY UGLEM					

Voice

Total (Yes) No

Absent Accepted

Bill Carrier

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

bad Debt expense allocated back to appropriate category

Date: 1-27-09
Roll Call Vote #:

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1303

House HUMAN SERVICES Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amended

Motion Made By Rep. Hofstad Seconded By Rep. Uglem

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN ROBIN WEISZ	✓		REP. TOM CONKLIN	✓	
VICE-CHAIR VONNIE PIETSCH	✓		REP. KARI L CONRAD	✓	
REP. CHUCK DAMSCHEN	✓		REP. RICHARD HOLMAN	✓	
REP. ROBERT FRANTSVOG	✓		REP. ROBERT KILICHOWSKI	✓	
REP. CURT HOFSTAD	✓		REP. LOUISE POTTER	✓	
REP. MICHAEL R. NATHE	✓				
REP. TODD PORTER	✓				
REP. GERRY UGLEM	✓				

Total (Yes) 13 No 0

Absent 0

Bill Carrier Rep. Holman

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

REPORT OF STANDING COMMITTEE

HB 1303: Human Services Committee (Rep. Weisz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1303 was placed on the Sixth order on the calendar.

Page 1, after line 16, insert:

"4. The allowable bad debt expense must be allocated back to the appropriate cost category from which the expense was incurred."

Renumber accordingly

2009 SENATE HUMAN SERVICES

HB 1303

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1303

Senate Human Services Committee

☐ Check here for Conference Committee

Hearing Date: 2/25/09

Recorder Job Number: 9701

Committee Clerk Signature	Mary K Monson

Minutes:

Senator J. Lee opened the hearing on Engrossed HB 1303 relating to factors considered in determining nursing home rates.

Rep. Gary Kreidt (District 33) introduced HB 1303 and explained that 120 days before starting a collection process in not enough and 180 days is a more realistic number.

Shelly Peterson (President of the ND Long Term Care Association) spoke in support of HB 1303. Attachment #1 She pointed out that the dept. has a problem with the amendment put on in the house about allocating the bad debt expense back to the appropriate cost category where the expense was incurred. She supports an amendment by the dept. to change it to allocating it back to the property cost category. (Meter 13:55)

Barbara Fischer (Dept. of Human Services) spoke in opposition to HB 1303. Attachment #2 She pointed out that the bill says 180 days/year. Currently the limit is first 120 days of care not per year.

Senator J. Lee asked Ms. Fischer to explain the equalization of rates.

Ms. Fischer explained that only two states in the nation have rate equalization – ND and MN. She explained how it works and that Medicaid actually sets the rates for all individuals in the facility with the exception of Medicare which has rate setting authority.

Some discussion followed on rate equalization.

Senator J. Lee asked why the dept. would have any say in what a divorce settlement is.

Ms. Fischer said it is an eligibility issue.

Maggie Anderson (Dept. of Human Services) explained that the dept looks at all of the settlements whether it be an annuity, trust, divorce for the equitable distribution of the assets to make sure there weren't intentional distributions that would have otherwise made someone eligible for Medicaid.

There was some further discussion on each case be looked at on its own merits.

Senator Dever asked about the concern of 180 days/year.

Ms. Anderson addressed that concern.

Senator Dever asked Ms.Fischer if she would be in support of the bill if the house amendment were removed.

Ms. Fischer replied that it would be more acceptable if it was removed or identified to be in property and the dept. would be neutral with the bill.

Senator Heckaman asked if the "per year" should be taken out.

Ms. Fischer said it would be up to the facility to aggressively pursue some other means of payment.

Senator Marcellais said his concern is the hardship provision. It's there but nobody qualifies for it. Why?

Ms. Fischer said it is in federal statute.

Senator J. Lee asked Ms. Peterson to comment on the 180 days/year.

Ms. Peterson explained that an average length of stay is 350 days a year. It was their intention that each year a facility be eligible to get paid for at least half the care given in a year.

Senator J. Lee asked about putting a limit of possibly two years.

Ms. Peterson said that would even help.

Applying for Medicaid and Medicaid eligibility was discussed.

Senator J. Lee asked Ms. Fischer to comment on having some kind of limit.

Ms. Fischer said putting a limit on would be better than leaving it open ended.

The hearing on HB 1303 was closed.

Senator J. Lee asked the committee if it was agreeable to have an amendment to: (1) move it into the property expense category and (2) limit of 2 years at 180 days year.

After some discussion it was agreed upon and **Senator J. Lee** asked **Ms. Peterson** and **Ms. Fischer** if they would work with the intern to draft it. They said they would.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1303

Senate Human Services Committee

☐ Check here for Conference Committee

Hearing Date: 3/2/09

Recorder Job Number: 9993

Committee Clerk Signature	Mary K Monson

Minutes:

Senator J. Lee opened committee work on HB 1303.

Amendments dated 3/2/09 were reviewed. Attachment #3

Senator Heckaman moved to accept the amendments.

Second by **Senator Dever**.

Roll call vote 5-0-1. **Amendment adopted.**

Senator Heckaman moved a **Do Pass as Amended.**

Second by **Senator Dever**.

Roll call vote 5-0-1. **Motion carried**.

Carrier is **Senator Dever**.

90637.0201
Title.0300

Adopted by the Human Services Committee
March 2, 2009

93
3/3/9

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1303

Page 1, line 15, replace "allowable bad debt expenses may not exceed" with "the department shall:

a. Include, contingent upon approval of the medicaid state plan by the centers for medicare and medicaid services, allowable bad debt expenses in an amount not to exceed one hundred eighty days of resident care per year or an aggregate of three hundred sixty days of resident care for any one individual; and

b. Include allowable bad debt expenses in the property cost category in the report year in which the bad debt is determined to be uncollectible with no likelihood of future recovery."

Page 1, remove lines 16 through 18

Renumber accordingly

Date: 3/2/09

Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1303

Senate Human Services Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 3/2/09

Action Taken ☐ Do Pass ☐ Do Not Pass ☐ Amended ☐ Rerefer to Appropriations

☒ Adopt Amendment ☐ Reconsider

Motion Made By Sen. Heckaman Seconded By Sen. Dever

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee, Chairman	✓		Senator Joan Heckaman	✓	
Senator Robert Erbele, V.Chair	✓		Senator Richard Marcellais		
Senator Dick Dever	✓		Senator Jim Pomeroy	✓	

Total (Yes) 5 No 0

Absent 1

Floor Assignment

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

Date: 3/2/09

Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1303

Senate Human Services Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 90637.0201 Title .0300

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Rerefer to Appropriations

☐ Adopt Amendment ☐ Reconsider

Motion Made By Sen. Heckaman Seconded By Sen. Dever

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee, Chairman	✓		Senator Joan Heckaman	✓	
Senator Robert Erbele, V.Chair	✓		Senator Richard Marcellais		
Senator Dick Dever	✓		Senator Jim Pomeroy	✓	

Total (Yes) 5 No 0

Absent 1

Floor Assignment Senator Dever

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

REPORT OF STANDING COMMITTEE

HB 1303, as engrossed: Human Services Committee (Sen. J. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1303 was placed on the Sixth order on the calendar.

Page 1, line 15, replace "allowable bad debt expenses may not exceed" with "the department shall:

a. Include, contingent upon approval of the medicaid state plan by the centers for medicare and medicaid services, allowable bad debt expenses in an amount not to exceed one hundred eighty days of resident care per year or an aggregate of three hundred sixty days of resident care for any one individual; and

b. Include allowable bad debt expenses in the property cost category in the report year in which the bad debt is determined to be uncollectible with no likelihood of future recovery."

Page 1, remove lines 16 through 18

Renumber accordingly

2009 TESTIMONY

HB 1303

1

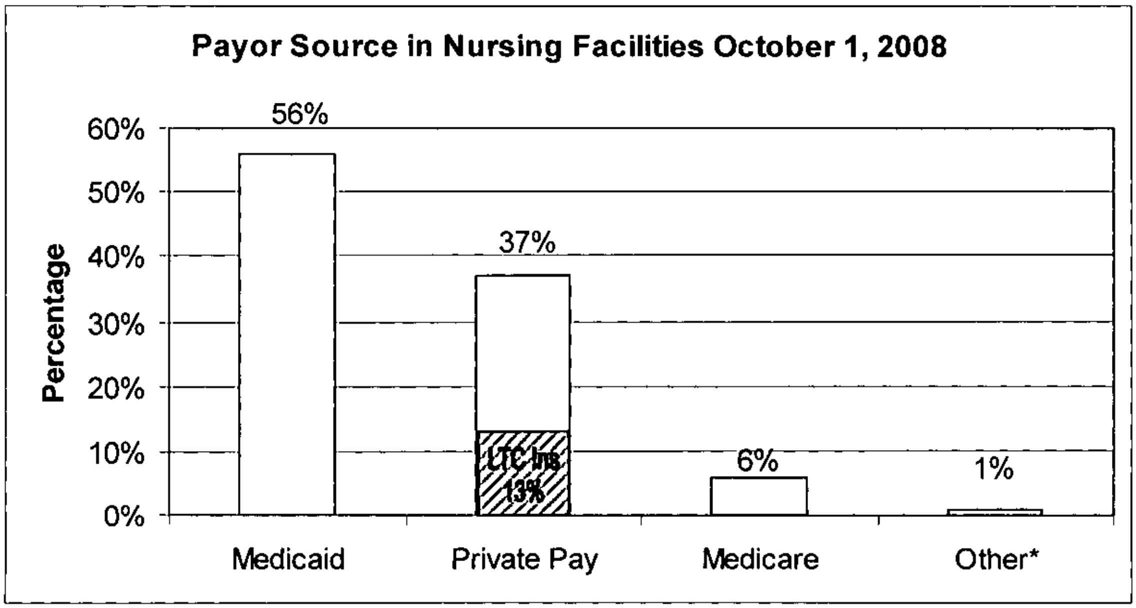
Testimony on HB 1303
House Human Services Committee
January 21, 2009

Good Morning Chairman Weisz and members of the House Human Services Committee. My name is Shelly Peterson, President of the North Dakota Long Term Care Association. I am here to ask for your support of HB 1303. HB 1303 increases the bad debt expense that would be allowed for a resident not paying their monthly bill. Currently, if all conditions are met, you may be allowed 120 days of care for the entire time a resident may be in your facility. HB 1303 expands the 120 days to a new maximum of 180 days for every year the resident remains in your facility.

Let me share with you the problem that exists and how HB 1303 will help but not fully solve the problem. I don't want to diminish any consideration of your support of HB 1303, we need it but it does have some limitations.

Bad Debt Concerns in Nursing Facilities:

When an individual is admitted to a nursing facility, a key question is "how will the daily care be paid for?" A survey on October 1, 2008 of nursing facility residents revealed the following payment sources:



In past legislative sessions you have clarified nursing facilities do not need to admit a resident if a viable payment source is not identified. To help facilities evaluate how a resident bill was going to be paid, we recommended they complete a "Nursing Facility Intake Form" on every potential admission prior to admission. (See Attachment A) Certainly you can tell from the form that it is comprehensive and would give you the information you need to determine how the bill was going to be paid. We found two problems with the form:

1. The form was time consuming and many residents were in the hospital and needed admission now;
2. Families many times didn't like the intrusion into their financial affairs and were offended by the questions.

Those using the form today or some version of it have done so because past or current resident bad debts are harming the financial viability of their facility and they have no choice but to carefully evaluate all admissions.

Today 11% of all nursing facility bills are past due 60 or more days. The total amount of delinquent resident accounts more than 60 days past due amounts to a minimum of $3.94 million, and estimated to be as high as $4.68 million. Most past due accounts are related to Medicaid eligibility issues, Medicare appeals, pending sales of assets and families are not paying the bill.

Why not discharge someone if they are not paying the bill? Under the North Dakota Bill of Rights, nursing facilities have the right to discharge a resident if they are not paying their bill. Yes, you in theory have the right to discharge for non-payment; however federal regulations dictate that when you discharge someone you must find them a suitable place that will meet their needs.

If someone is not paying their bill, it becomes virtually impossible to ask another facility to assume the care of the resident and not get paid. Rarely can a resident be discharged to the family because most often they cannot meet the demands of caregiving. Even if the family has the money, isn't paying the bill, indicates they are not capable of caring for their mother, you cannot discharge them back home. In cases with these circumstances, administrative law judges have not allowed the discharge.

Hardship Provision

Another option to consider when no one is paying the bill would be to apply to the Department of Human Services under a provision called the hardship provision. The hardship provision is suppose to be available to help residents who will be deprived of food, clothing, shelter, or the necessities of life, or medical care such that the individuals health or life may be endangered.

Since the hardship provision became available, no one has ever qualified. In order to meet the provision of deprivation of food, shelter and clothing, a resident must be discharged from a facility and the person's life must be perceived to be in danger. Who would ever really do that? Not North Dakota nursing facility providers! We may try to discharge, but is an idle threat that we hope will get someone to pay attention and pay the bill. No one will ever put a resident's life at risk to collect payment under the hardship provision.

See Attachment B, the letter from the Department of Human Services regarding a case at the Good Samaritan Society—Crosby. In the second and third paragraph it states:

> "Upon receipt of a request for a hardship exception, the Medicaid Eligibility Unit reviews the information and determines whether an undue hardship exists. An undue hardship exists only if specific conditions are demonstrated to exist.
>
> One of the conditions require that there is information that shows that the application of the penalty period will deprive the individual of food, clothing, shelter, or the other necessities of life, or medical care such that the individual's health or life may be endangered. Since the court did not allow you to discharge, this condition has not been met."

In the Good Samaritan Society—Crosby case the facility is due over $145,000 as of January 1, 2009 and the person will not be Medicaid eligible until the summer of 2010.

Another non-payment case comes from the facility in Tioga. This resident's bad debt is $168,765 effective January 13, 2009. This case is before the North Dakota Supreme Court and should you want to listen to this tragic story you can find the case on the North Dakota Supreme Court web site.

The issue in this case is Medicaid eligibility because of a perceived unfair divorce settlement. The resident is a 47 year old female with Huntington's disease. She is the mother of three living children and one deceased child, who died on June 6, 2000. The deceased child suffered from multiple medical problems. The couple divorced. She was disqualified for Medicaid because the guardians did not fight for a reasonable divorce settlement. It was felt by Medicaid that the resident should have received one-half of the assets in the divorce, even though the husband has custody of the three children remaining at home and has assumed all the debts of the marriage.

The Judge decided in the initial determination, as well as in the appeal re-confirmed and directed Medicaid to make her eligible. The Department has appealed to the North Dakota Supreme Court to overrule the district courts decision. The case is Reinholdt versus Department of Human Services with oral arguments heard on December 18, 2008. Please note the resident is living in swing bed and not in their skilled nursing facility, however, the outcome of this case will affect other cases where the division of assets in a divorce are causing a resident to be ineligible in a skilled nursing facility.

As you can see, the facility is many times caught in the middle regarding the resident they are caring for and a resident's eligible for Medicaid. Many times assets no longer exist, they desperately need care and the facility is left with very little recourse. HB 1303 can provide some relief to some facilities.

I really didn't want to get so lengthy but we have some very difficult cases, with facilities called upon to deliver care and sometimes never get paid.

I said I wanted to touch upon the limitations of this solution and there are two:

1. Bad debt, whatever amount may be allowed is considered "an indirect" expense. Today this limit is set at $52.28 per day. Effective with the new January 1, 2009 rates, 25 of 79 nursing facilities (or 32%) exceed this limit. When you exceed the limit, no matter how many additional expenses you incur in this cost category you will never get paid. (See Attachment C) Today, 25 nursing facilities are spending $2,021,461 over this limit. Good Samaritan Society—Crosby is exceeding this limit, so for them it will not help.

2. The facility must pursue all avenues of collection, including liens, judgments, and lawsuits; and only after <u>all</u> avenues have been pursued <u>may</u> your bad debt to be allowed. (See Attachment D)

These two safeguards or limitations will limit facilities access to bad debt relief; however, it is still one more baby step forward as we try to seek good solutions to non-payment issues.

Thank you for your consideration of HB 1303. I would be happy to answer questions at this time.

Shelly Peterson, President
North Dakota Long Term Care Association
1900 North 11th Street • Bismarck, ND 58501
(701) 222-0660 • www.ndltca.org • E-mail: shelly@ndltca.org

Attachment A

NURSING HOME INTAKE QUESTIONNAIRE

Same handout given to Senate.

Please complete this form in its entirety and return it to the receptionist.

Last name, First Name, Middle Initial:			
Date of Birth:		Social Security Number:	
Mailing Address:		City, State, Zip:	
Phone Number:	Cell Phone Number:	Best Method and Time to Reach You:	
Spouse's Last name, First Name, Middle Initial:			
Spouse's Date of Birth:		Spouse's Social Security Number:	
Spouse's Mailing Address:		City, State, Zip:	
Spouse's Phone Number:	Spouse's Cell Phone Number:	Spouse's Work Number:	Spouse's Fax Number:
Spouse's E-mail Address:		Best Method and Time to Reach Your Spouse:	
Contact Person's Name:	Contact's Address, City, State, Zip:		
Contact's Phone Number:	Contact's Cell Phone Number:	Contact's Work Number:	Contact's Fax Number:

1. Except for personal effects, list all assets owned by you and your spouse, including the cash surrender value of life insurance, stocks, bonds, vehicles, life estates, antiques, collectibles, and pensions, with the value as of the date of admission into the nursing home. (Attach additional pages if needed.)

Owner of Asset	Description of Asset	Value of Asset
a.		
b.		
c.		
c.		
e.		
f.		
g.		
h.		
i.		
j.		

2. List all debts owed by you and your spouse, with values as of the date of admission into the nursing home.

Debtor	Description of Debt	Amount of Det
b.		
c.		

3. List all transfers or gifts of assets within the past five years by you and your spouse, including transfers of **a** remainder interest in real property.

Date of Transfer	Description of Asset	Recipient	Value of Asset
a.			
b.			
c.			
d.			
e.			
f.			

4. List all pre-paid burial contracts, burial accounts, and pre-paid burial or funeral items owned by you or your spouse or by a thi party for the benefit of you or your spouse.

Description	Owner	Value
a.		
b.		
c.		
d.		
e.		

5. List all sources of income for you and your spouse, including but not limited to rental payments, CRP income, long-term care insurance benefits, Social Security benefits, veteran's benefits, and employment income.

Description of Income	Date or Frequency of Payment	Amount of Payment
a.		
b.		
c.		
d.		

6. List all health and pharmacy insurance for you and your spouse.

	Name of Insured	Name of Insurer	Description of Insurance	Monthly Premium Amount
a.				
b.				
c.				
d.				
e.				
f.				

7. Identify your agent under your financial power of attorney. (Please attach a copy hereto.)

Name, address, and telephone number:

8. Identify your agent under your health care power of attorney. (Please attach a copy hereto.)

Name, address, and telephone number:

9. Did the agent or attorney-in-fact listed under your financial power of attorney assist you with making any of the transfers or gifts referenced in section number 3 above, or benefit or receive any of the assets transferred or gifted? If yes, please explain.

10. Were any of the assets described in section number 3 above transferred or gifted to or from a trust? If yes, explain the nature of the transaction and identify the trust involved.

11. Have you previously applied for Medicaid? If yes, provide the date and county in which application was made.

12. Do you or your spouse reside on a farm?

13. Are you actively engaged in farming or any other trade or business? If yes, describe the nature of the business.

14. Are you or your spouse employed by another or self-employed? If yes, provide the name of the employer or the nature of the self-employment, the hours worked, and the wage or salary earned.

15. Are you or your spouse the beneficiary of any trust?

Do you have any pending legal action from which you may receive money or medical benefits, including inheritance? If yes, describe.

This questionnaire complies with section 50-24.1-22 of the North Dakota Century Code. By my signature below, I hereby authorize the nursing home to contact the county social services for information regarding my Medicaid application and eligibility, and I hereby release and authorize the county social services to release any information to the nursing home. I also authorize the nursing home to contact any and all of the above-identified financial institutions to obtain information regarding my assets and income, and I hereby release and authorize the financial institutions to release any information to the nursing home. I further authorize the nursing home to release to its attorneys any information regarding my application for admission.

I understand that providing false information could result in discharge and/or denial of my application. The answers provided herein are true and correct to the best of my knowledge and information.

Signature:______________________ Date:______________________

ATTACHMENT B

north dakota
department of
human services

Medical Services
(701) 328-2321
Toll Free 1-800-755-2604
Fax (701) 328-1544
ND Relay TTY 1-800-366-6888
Provider Relations (701) 328-4030

n Hoeven, Governor
Carol K. Olson, Executive Director

Same handout to given Senate.

COPY

November 18, 2008

Ms. Elaine Heide, Administrator
Good Samaritan Society - Crosby
705 SE 4th Street
Crosby ND 58370

RE: Medicaid Hardship Exception for

Dear Ms. Heide:

This letter is in response to your request for an undue hardship exception for was determined to have made a disqualifying transfer of assets which resulted in a penalty period which began August 18, 2008 and ends May 31, 2010.

Upon receipt of a request for a hardship exception, the Medicaid Eligibility Unit reviews the information and determines whether an undue hardship exists. An undue hardship exists only if specific conditions are demonstrated to exist.

One of the conditions require that there is information that shows that the application of the penalty period will deprive the individual of food, clothing, shelter, or the other necessities of life, or medical care such that the individual's health or life may be endangered. Since the court did not allow you to discharge , this condition has not been met.

One of the conditions requires or her representative to show that she has exhausted all lawful means to recover the transferred assets. The information presented with the request for an exception does not show that any lawful efforts have been made to recover the assets.

Another condition requires a showing that the nursing home in which receives her care has no cause of action, or has exhausted all causes of action, against the transferee of the assets under North Dakota Century Code chapter 13-02.1, the Uniform Fraudulent Transfers Act. The information presented with the request for an exception does not show that your facility has exhausted all causes of action. The "Resolution of Legal Disputes" cannot bind the daughter and does not preclude other actions.

Accordingly, the information you provided with your request for a hardship exception to the penalty period does not establish that a hardship exists, and is denied.

If you believe the decision contained in this notice is incorrect, you may request a hearing before the North Dakota Department of Human Services. You must request a hearing in writing within 30 days from the date of this notice by sending a written request to: Appeals Supervisor, North Dakota Department of Human Services, 600 East Boulevard Avenue, Bismarck ND 58505. You may have an attorney, relative, friend, or any other person assist you at the hearing. If you do not have the money to pay an attorney, you can contact one of the free legal service organizations in your area to see if they can assist you. If you would like one of these organizations to represent you at your hearing, it is advisable that you contact them as soon as possible.

The North Dakota Department of Human Services makes the following listing of Legal Aid organizations available for your use. Providing this listing does not constitute an endorsement of these organizations by the Department of Human Services.

1. Centralized Intake for
   Legal Services of North Dakota
   PO Box 1666
   Minot, ND 58702-1666
   Intake: 1-800-634-5263

   Legal Services has 4 regional offices located in Bismarck, Fargo, New Town, and Minot to serve all North Dakota counties and Indian Reservations.

   Senior Hotline
   PO Box 1666
   Minot, ND 58702-1666
   Hotline: 1-866-621-9886

2. Dakota plains Legal Services
   PO Box 507
   Fort Yates, ND 58538
   Phone: 854-7204

   Dakota Plains serves Standing Rock Sioux Reservation.

Sincerely,

Deborah R. Masad

Deborah R. Masad
Administrator, Medicaid Eligibility Policy
ND Department of Human Services

Cc: Beverly Fuhrman, Divide County Social Services

Provider Name	Provider No.	City	Census	90%	Licensed Beds	ACTUAL Direct	ACTUAL Other Direct	ACTUAL Indirect	Case-Mix Direct Rate	Other Direct Rate	Indirect Rate	Property Rate	Incentive	Operating Margin	Total Rate	LIMITED DIRECT $109.23	LIMITED OTHER DIRECT $20.70	LIMITED IN-DIRECT $52.28	# of LIMITS	ONE LIMIT	TWO LIMITS	THREE LIMITS	DIFFERENCE Direct	DIFFERENCE Other Direct	DIFFERENCE Indirect
Kenmare Community Hospital	30459	Kenmare	4,224	3,953	12	$115.13	$26.73	$87.60	109.23	20.70	52.28	12.25	-	3.60	198.06	1	1	1	3			1	$5.90	$6.03	$35.32
North Dakota Veterans Home	30293	Lisbon	13,687	12,517	38	$138.68	$23.06	$74.60	109.23	20.70	52.28	9.76	-	3.40	195.37	1	1	1	3			1	$29.45	$2.36	$22.32
Ashley Medical Center	30168	Ashley	13,718	14,494	44	$85.66	$23.17	$56.00	85.66	20.70	52.28	5.94	-	2.77	167.35		1	1	2		1			$2.47	$3.72
Tri County Health Center	30018	Hatton	14,573	13,835	42	$94.27	$21.20	$74.49	94.27	20.70	52.28	16.74	-	3.27	187.26		1	1	2		1			$0.50	$22.21
Southwest Healthcare Services	30403	Bowman	21,726	20,093	61	$113.16	$17.19	$57.27	109.23	17.19	52.28	16.89	-	3.42	199.01	1		1	2		1		$3.93		$4.99
Wedgewood Manor	30194	Cavalier	18,840	19,764	60	$93.37	$20.80	$58.06	93.37	20.70	52.28	8.38	-	3.33	178.06		1	1	2		1			$0.10	$5.78
Northwood Deaconess Health Center	30031	Northwood	21,495	20,093	61	$103.25	$20.78	$56.06	103.25	20.70	52.28	17.13	-	3.51	196.87		1	1	2		1			$0.08	$3.78
Westhope Home for the Aged	30037	Westhope	8,591	8,235	25	$97.33	$20.85	$64.31	97.33	20.70	52.28	10.85	-	3.22	184.38		1	1	2		1			$0.15	$12.03
Hillsboro Medical Center	30019	Hillsboro	12,014	11,858	36	$113.22	$19.69	$55.84	109.23	19.69	52.28	54.18	-	3.23	238.61	1		1	2		1		$3.99		$3.56
Missouri Slope Lutheran Care Center, Inc.	30004	Bismarck	91,236	82,350	250	$110.07	$19.92	$50.41	109.23	19.92	50.41	10.52	0.20	3.67	193.85	1			1	1			$0.84		
Towner County Medical Center	30379	Cando	15,685	14,823	45	$70.91	$19.60	$57.95	70.91	19.60	52.28	23.06	-	2.83	168.68			1	1	1					$5.67
Heartland Care Center	30010	Devils Lake	29,698	28,987	88	$113.91	$19.13	$51.54	109.23	19.13	51.54	7.58	-	3.87	191.35	1			1	1			$4.68		
Jacobson Memorial Hospital Care Center	30077	Elgin	8,625	8,235	25	$82.98	$17.19	$64.32	82.98	17.19	52.28	7.87	-	2.95	163.27			1	1	1					$12.04
Garrison Memorial Hospital Nursing Home	30134	Garrison	10,168	9,223	28	$101.71	$14.57	$53.91	101.71	14.57	52.28	13.46	-	3.05	185.07			1	1	1					$1.63
Aneta Parkview Health Center	30322	Aneta	12,895	12,847	39	$92.64	$16.27	$54.10	92.64	16.27	52.28	10.42	-	2.91	174.52			1	1	1					$1.82
Arthur Good Samaritan Center	30058	Arthur	16,215	15,482	47	$82.35	$14.83	$54.32	82.35	14.83	52.28	10.39	-	2.84	162.69			1	1	1					$2.04
Baptist Home	30003	Bismarck	50,880	46,445	141	$110.51	$19.50	$44.95	109.23	19.50	44.95	3.91	2.60	3.61	183.80	1			1	1			$1.28		
Crosby Good Samaritan Center	30122	Crosby	15,125	13,835	42	$81.53	$14.74	$57.20	81.53	14.74	52.28	7.90	-	2.73	159.18			1	1	1					$4.92
Dunseith Community Nursing Home	30052	Dunseith	11,629	11,529	35	$75.90	$19.06	$57.80	75.90	19.06	52.28	4.78	-	2.64	154.68			1	1	1					$5.52
Hi-Acres Manor Nursing Center	30021	Jamestown	47,606	46,775	142	$113.65	$17.78	$46.47	109.23	17.78	46.47	11.38	2.60	3.60	191.06	1			1	1			$4.42		
Osnabrock Good Samaritan Center	30117	Osnabrock	7,466	7,906	24	$72.90	$15.97	$55.40	72.90	15.97	52.28	7.58	-	2.74	151.47			1	1	1					$3.12
Rock View Good Samaritan Center	30155	Parshall	12,376	12,517	38	$94.78	$18.40	$61.67	94.78	18.40	52.28	10.59	-	3.27	179.32			1	1	1					$9.39
Mountrail Bethel Home	30032	Stanley	19,901	18,776	57	$102.83	$17.63	$54.03	102.83	17.63	52.28	7.99	-	3.28	184.01			1	1	1					$1.75
McKenzie County Healthcare System	30449	Watford City	16,982	15,482	47	$105.70	$18.21	$54.11	105.70	18.21	52.28	4.29	-	3.34	183.82			1	1	1					$1.83
Manorcare of Fargo ND, LLC	30478	Fargo	37,666	35,905	109	$84.58	$15.04	$52.41	84.58	15.04	52.28	10.22	-	3.47	165.59			1	1	1					$0.13
Knife River Care Center	30002	Beulah	30,834	28,328	86	$98.00	$19.13	$52.80	98.00	19.13	52.28	37.93	-	3.40	210.74			1	1	1					$0.52
Heart of America Medical Center	30135	Rugby	28,347	26,352	80	$105.75	$20.23	$53.30	105.75	20.23	52.28	10.37	-	3.69	192.32			1	1	1					$1.02
Parkside Lutheran Home	30109	Lisbon	14,311	13,176	40	$86.07	$16.48	$56.78	86.07	16.48	52.28	7.82	-	2.81	165.56			1	1	1					$4.50
Hill Top Home of Comfort, Inc.	30271	Killdeer	18,011	16,470	50	$98.79	$19.98	$53.73	98.79	19.98	52.28	13.70	-	3.66	188.41			1	1	1					$1.45
Medcenter One St. Vincent's Care Center	30005	Bismarck	36,837	33,269	101	$101.26	$15.93	$42.86	101.26	15.93	42.86	11.67	2.60	3.65	177.97										
Golden Acres Manor Nursing Home	30008	Carrington	21,368	19,764	60	$86.43	$17.64	$42.55	86.43	17.64	42.55	12.45	2.60	2.87	164.54										
Cooperstown Medical Center	30095	Cooperstown	16,680	15,811	48	$100.74	$16.71	$48.12	100.74	16.71	48.12	16.82	1.73	3.19	187.31										
Marian Manor Healthcare Center	30067	Glen Ullin	31,401	28,328	86	$96.52	$15.82	$37.72	96.52	15.82	37.72	5.51	2.60	3.10	161.27										
St. Gerard's Community Nursing Home	30163	Hankinson	13,154	12,188	37	$83.48	$18.79	$50.09	83.48	18.79	50.09	3.21	0.41	2.75	158.73										
Western Horizons Living Center	30477	Hettinger	17,469	16,963	62	$97.52	$13.62	$52.10	97.52	13.62	52.10	12.36	-	3.16	178.76										
Nelson County Health System Care Center	30384	Mcville	14,025	12,812	39	$78.61	$20.63	$49.69	78.61	20.63	49.69	16.34	0.67	2.77	168.71										
Trinity Home	30028	Minot	99,830	96,185	292	$107.21	$17.49	$49.47	107.21	17.49	49.47	11.78	0.82	3.63	190.40										
Medcenter One Golden Manor	30106	Steele	17,364	16,470	50	$97.62	$18.05	$47.12	97.62	18.05	47.12	6.57	2.39	3.29	175.04										
Strasburg Care Center	30033	Strasburg	21,239	19,764	60	$100.59	$18.79	$38.53	100.59	18.79	38.53	2.00	2.60	2.97	165.48										
Tioga Medical Center	30176	Tioga	10,629	9,882	30	$83.60	$19.34	$48.23	83.60	19.34	48.23	9.18	1.65	2.94	164.94										
Prairieview Home-Medcenter One	30053	Underwood	21,849	19,764	60	$89.35	$17.92	$41.93	89.35	17.92	41.93	3.58	2.60	2.92	158.30										
Wishek Home for the Aged	30039	Wishek	26,200	24,376	74	$97.38	$18.85	$49.62	97.38	18.85	49.62	3.22	0.72	3.19	172.98										
Bottineau Good Samaritan Center	30118	Bottineau	27,142	26,681	81	$100.47	$17.89	$51.10	100.47	17.89	51.10	9.76	-	3.28	182.50										
Devils Lake Good Samaritan Center	30115	Devils Lake	22,303	21,740	66	$95.52	$14.76	$47.08	95.52	14.76	47.08	6.67	2.42	3.27	169.72										
St. Benedict's Health Center	30237	Dickinson	58,384	54,022	164	$83.45	$19.06	$42.05	83.45	19.06	42.05	9.44	2.60	3.06	159.66										
St. Luke's Home	30011	Dickinson	30,358	27,670	84	$98.11	$19.66	$47.92	98.11	19.66	47.92	5.11	1.86	3.45	176.11										
Prince of Peace Care Center	30012	Ellendale	17,778	18,117	55	$67.89	$11.71	$51.29	67.89	11.71	51.29	13.12	-	2.46	146.47										
Maryhill Manor	30108	Enderlin	19,018	17,788	54	$93.55	$15.73	$49.91	93.55	15.73	49.91	9.37	0.53	2.90	171.99										
Bethany Home	30060	Fargo	69,584	63,245	192	$101.27	$20.39	$50.08	101.27	20.39	50.08	8.70	0.42	3.52	184.38										
Elim Home	30051	Fargo	47,846	44,798	136	$90.80	$18.52	$46.67	90.80	18.52	46.67	5.82	2.60	3.44	167.85										
Rosewood on Broadway	30015	Fargo	40,053	36,563	111	$95.04	$18.81	$49.35	95.04	18.81	49.35	22.29	0.90	3.62	190.01										
Villa Maria Healthcare	30086	Fargo	45,501	45,457	138	$92.11	$18.57	$52.20	92.11	18.57	52.20	28.74	-	3.28	194.90										
Four Seasons Health Care Center, Inc.	30406	Forman	9,964	10,541	32	$61.68	$14.79	$43.87	61.68	14.79	43.87	11.81	2.60	2.30	137.05										
Benedictine Living Center of Garrison	30247	Garrison	21,434	20,752	63	$82.37	$20.44	$49.04	82.37	20.44	49.04	10.59	1.11	2.90	166.45										
Lutheran Sunset Home	30016	Grafton	34,693	34,258	104	$99.60	$18.13	$50.73	99.60	18.13	50.73	5.67	-	3.30	177.43										
Central Dakota Village	30020	Jamestown	35,676	32,940	100	$107.41	$16.28	$45.63	107.41	16.28	45.63	22.51	2.60	3.50	197.93										
Lakota Good Samaritan Nursing Home	30097	Lakota	16,641	16,141	49	$83.06	$15.92	$42.70	83.06	15.92	42.70	13.47	2.60	2.70	160.45										
St. Rose Care Center	30119	LaMoure	13,486	14,494	44	$78.04	$15.35	$50.93	78.04	15.35	50.93	10.67	-	2.89	157.88										
Maple Manor Care Center	30083	Langdon	20,747	20,752	63	$81.16	$15.93	$42.16	81.16	15.93	42.16	5.83	2.60	2.72	150.40										
Larimore Good Samaritan Center	30113	Larimore	16,155	14,823	45	$76.14	$14.62	$49.39	76.14	14.62	49.39	11.08	0.88	2.49	154.60										
Medcenter One Care Center	30288	Mandan	43,449	39,528	120	$97.95	$16.21	$40.86	97.95	16.21	40.86	38.82	2.60	3.47	199.71										
Luther Memorial Home	30024	Mayville	33,781	32,611	99	$100.56	$16.37	$51.89	100.56	16.37	51.89	7.81	-	3.22	179.85										
North Central Good Samaritan Center	30173	Mohall	20,190	19,435	59	$89.84	$16.99	$50.20	89.84	16.99	50.20	8.38	0.34	3.05	168.80										
Mott Good Samaritan Nursing Center	30142	Mott	16,781	16,799	51	$75.77	$16.48	$46.09	75.77	16.48	46.09	5.79	2.60	2.57	149.30										
Napoleon Care Center	30114	Napoleon	14,888	14,494	44	$87.05	$15.00	$51.55	87.05	15.00	51.55	9.17	-	2.68	165.45										
Lutheran Home of the Good Shepherd	30029	New Rockford	27,917	26,352	80	$97.29	$17.08	$45.36	97.29	17.08	45.36	6.51	2.60	3.28	172.12										
Elm Crest Manor	30116	New Salem	22,350	20,423	62	$91.83	$16.78	$45.00	91.83	16.78	45.00	7.60	2.60	3.03	166.84										
Oakes Manor Good Samaritan Center	30124	Oakes	35,511	33,599	102	$78.38	$14.05	$40.66	78.38	14.05	40.66	7.51	2.60	2.59	145.79										
Park River Good Samaritan Center	30154	Park River	26,855	25,034	76	$80.71	$16.93	$44.09	80.71	16.93	44.09	7.53	2.60	2.68	154.54										
Sheyenne Care Center	30073	Valley City	61,409	50,728	154	$95.15	$16.12	$39.65	95.15	16.12	39.65	13.58	2.60	2.90	170.00										

BASED [illegible]T BEGINNING JANUARY 1, 2009

[illegible]ACHMENT C

						ACTUAL										$109.23	$20.70	$52.28					DIFFERENCE		
																LIMITED									
Provider Name	Provider No.	City	Census	90%	Licensed Beds	Direct	Other Direct	Indirect	Case-Mix Direct Rate	Other Direct Rate	Indirect Rate	Property Rate	Incentive	Operating Margin	Total Rate	DIRECT	OTHER DIRECT	IN-DIRECT	# of LIMITS	ONE LIMIT	TWO LIMITS	THREE LIMITS	Direct	Other Direct	Indirect
Souris Valley Care Center	30216	Velva	16,242	16,470	50	$79.51	$16.85	$51.35	79.51	16.85	51.35	8.27	-	2.83	158.81										
St. Catherine's Living Center	30034	Wahpeton	35,746	34,258	104	$74.36	$15.29	$48.80	74.36	15.29	48.80	14.08	1.27	2.60	156.40										
Pembilier Nursing Center	30035	Walhalla	11,832	12,188	37	$80.50	$12.19	$46.52	80.50	12.19	46.52	2.82	2.60	2.49	147.12										
Bethel Lutheran Home	30038	Williston	56,342	57,316	174	$94.05	$19.28	$43.78	94.05	19.28	43.78	11.09	2.60	3.10	173.90										
Manor Care of Minot ND, LLC	30479	Minot	36,760	34,916	106	$75.98	$16.03	$50.18	75.98	16.03	50.18	6.11	0.35	3.03	151.68										
Presentation Medical Center	30466	Rolette	11,341	15,152	46	$76.71	$18.93	$47.01	76.71	18.93	47.01	4.15	2.46	3.05	152.31										
St. Aloisius Medical Center	30129	Harvey	37,019	34,916	106	$91.49	$16.27	$48.10	91.49	16.27	48.10	6.24	1.74	2.92	166.76										
Valley Eldercare Center	30017	Grand Forks	61,437	57,974	176	$96.80	$17.67	$45.30	96.80	17.67	45.30	22.52	2.60	3.55	188.44										
Woodside Village	30201	Grand Forks	42,603	38,869	118	$101.89	$18.08	$43.53	101.89	18.08	43.53	27.58	2.60	3.54	197.22										
Dacotah Alpha	30225	Mandan	4,360		20	$172.63	$25.81	$78.47							-								$172.63	$25.81	$78.47
Sheyenne Care Center - Geropsych	30423	Valley City	5,852		16	$144.31	$16.12	$39.65							-								$144.31	$16.12	$39.65
Total																8	7	25	40	20	7	2			

Same handout given to Senate as Attachment C.

ATTACHMENT D

75-02-06-10. Bad debts.

1. Bad debts for charges incurred on or after January 1, 1990, and fees paid for the collection of those bad debts, are allowable, provided all the requirements of this subsection are met.

   a. The bad debt must result from nonpayment of the payment rate or part of the payment rate.

   b. The facility shall document that reasonable collection efforts have been made, the debt was uncollectible, and there is no likelihood of future recovery. Reasonable collection efforts include pursuing all avenues of collection available to the facility, including liens and judgments. In instances where the bad debt is owed by a person determined to have made a disqualifying transfer or assignment of property for the purpose of securing eligibility for medical assistance benefits, the facility shall document that it has made all reasonable efforts to secure payment from the transferee, including the bringing of an action for a transfer in fraud of creditors.

   c. The collection fee may not exceed the amount of the bad debt.

   d. The bad debt may not result from the facility's failure to comply with federal and state laws, state rules, and federal regulations.

   e. The bad debt may not result from nonpayment of a private room rate in excess of the established rate, charges for special services not included in the established rate, or charges for bed hold days not billable to the medical assistance program under subsections 3, 4, 5, and 6 of section 75-02-06-14.

   f. The facility shall have an aggressive policy of avoiding bad debt expense that limits potential bad debts. The facility shall document that the facility has taken action to limit bad debts for individuals who refuse to make payment.

2. Allowable bad debt expense may not exceed one hundred twenty days of resident care for any one individual.

3. Finance charges on bad debts allowable under subsections 1 and 2 are allowable only if the finance charges have been offset as interest income.

History: Effective September 1, 1980; amended effective December 1, 1983; January 1, 1990; November 22, 1993; January 1, 1996; January 1, 1998.
General Authority: NDCC 50-24.1-04, 50-24.4-02
Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

#2

Testimony
House Bill 1303 – Department of Human Services
House Human Services Committee
Representative Robin Weisz, Chairman
January 21, 2009

Chairman Weisz, members of the House Human Services Committee, I am Barbara Fischer, Assistant Director, Budget and Operations of the Medical Services Division for the Department of Human Services. I am here today to provide information regarding the fiscal note for House Bill 1303.

The fiscal impact of increasing allowable bad debt expense from 120 days to 180 days cannot be determined. Allowable bad debt is an inconsistent expense for which the Department does not have data readily accessible. Bad debt expense is reported in its entirety on a cost report and is unallowable except for the portion a facility identifies as meeting the criteria for allowable bad debt. Only the portion of bad debt expense being claimed as allowed is reviewed on an individual client basis when establishing the facility's rates and then only if the facility is under the limit for the Indirect Care cost category.

The Department does not know how many individuals would incur an additional 60 days; however, the lowest nursing facility rate in the state, as of January 1, 2009, is $113.61 and the highest rate is $421.02. An individual incurring bad debt for an additional 60 days could increase facility costs from $6,817 to $25,261, respectively.

Under current rules, bad debts expense can be included in a nursing facility's rates if the following criteria are met:

- The bad debt is a result of nonpayment of the payment rate.

- Reasonable documented collection efforts have been made, the debt is uncollectible, and there is no likelihood of future recovery.
- The bad debt is not from failure to comply with federal or state laws, rules, or regulations.
- It is not for nonpayment of private rooms, special services not included in the rate, or non-covered bed-hold days.
- The facility has an aggressive policy of avoiding bad debts and documents they have taken action to limit bad debts for those individuals refusing payment.
- The bad debt expense may not exceed 120 days of resident care.

The currently approved Medicaid state plan allows for up to 120 days of bad debt expense to be included in a facility's rates. Because of rate equalization, debt incurred by an individual who does not pay for his/her own care is included in the rate paid by Medicaid and by private pay individuals.

Any change to the number of days of bad debt expense will need to be submitted to and approved by the Centers for Medicare and Medicaid Services.

I would be happy to address any questions that you may have.

Proposed Amendment for HB 1303

Add a new number 4:

50-24.4-06. Rate Determination.

4. The allowable bad debt expense shall be allocated back to the appropriate cost category of where the expense was incurred.

#1

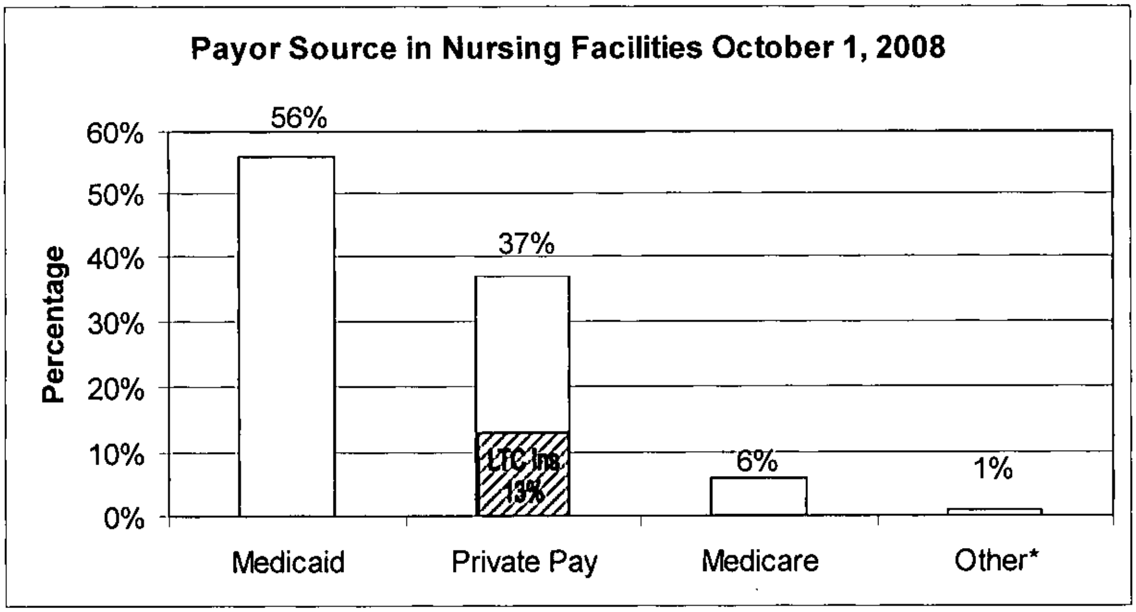
Testimony on HB 1303
Senate Human Services Committee
February 25, 2009

Good Morning Chairman Lee and members of the Senate Human Services Committee. My name is Shelly Peterson, President of the North Dakota Long Term Care Association. I am here to ask for your support of HB 1303. HB 1303 increases the bad debt expense that would be allowed for a resident not paying their monthly bill. Currently, if all conditions are met, you may be allowed 120 days of care for the entire time a resident may be in your facility. HB 1303 expands the 120 days to a new maximum of 180 days for every year the resident remains in your facility.

Let me share with you the problem that exists and how HB 1303 will help reduce this financial burden.

Bad Debt Concerns in Nursing Facilities:

When an individual is admitted to a nursing facility, a key question is "how will the daily care be paid for?" A survey on October 1, 2008 of nursing facility residents revealed the following payment sources:



In past legislative sessions you have clarified nursing facilities do not need to admit a resident if a viable payment source is not identified. To help facilities evaluate how a resident bill was going to be paid, we recommended they complete a "Nursing Facility Intake Form" on every potential admission prior to admission. (See Attachment A) Certainly you can tell from the form that it is comprehensive and would give you the information you need to determine how the bill was going to be paid. We found two problems with the form:

1. The form was time consuming and many residents were in the hospital and needed admission now;
2. Families many times didn't like the intrusion into their financial affairs and were offended by the questions.

Those using the form today or some version of it have done so because past or current resident bad debts are harming the financial viability of their facility and they have no choice but to carefully evaluate all admissions.

Today 11% of all nursing facility bills are past due 60 or more days. The total amount of delinquent resident accounts more than 60 days past due amounts to a minimum of $3.94 million, and estimated to be as high as $4.68 million. Most past due accounts are related to Medicaid eligibility issues, Medicare appeals, pending sales of assets and families are not paying the bill.

Why not discharge someone if they are not paying the bill? Under the North Dakota Bill of Rights, nursing facilities have the right to discharge a resident if they are not paying their bill. Yes, you in theory have the right to discharge for non-payment; however federal regulations dictate that when you discharge someone you must find them a suitable place that will meet their needs.

If someone is not paying their bill, it becomes virtually impossible to ask another facility to assume the care of the resident and not get paid. Rarely can a resident be discharged to the family because most often they cannot meet the demands of caregiving. Even if the family has the money, isn't paying the bill, indicates they are not capable of caring for their mother, you cannot discharge them back home. In cases with these circumstances, administrative law judges have not allowed the discharge.

Hardship Provision

Another option to consider when no one is paying the bill would be to apply to the Department of Human Services under a provision called the hardship provision. The hardship provision is suppose to be available to help residents who will be deprived of food, clothing, shelter, or the necessities of life, or medical care such that the individuals health or life may be endangered.

Since the hardship provision became available, no one has ever qualified. In order to meet the provision of deprivation of food, shelter and clothing, a resident must be discharged from a facility and the person's life must be perceived to be in danger. Who would ever really do that? Not North Dakota nursing facility providers! We may try to discharge, but is an idle threat that we hope will get someone to pay attention and pay the bill. No one will ever put a resident's life at risk to collect payment under the hardship provision.

See Attachment B, the letter from the Department of Human Services regarding a case at the Good Samaritan Society—Crosby. In the second and third paragraph it states:

> "Upon receipt of a request for a hardship exception, the Medicaid Eligibility Unit reviews the information and determines whether an undue hardship exists. An undue hardship exists only if specific conditions are demonstrated to exist.
>
> One of the conditions require that there is information that shows that the application of the penalty period will deprive the individual of food, clothing, shelter, or the other necessities of life, or medical care such that the individual's health or life may be endangered. Since the court did not allow you to discharge, this condition has not been met."

In the Good Samaritan Society—Crosby case the facility is due over $145,000 as of January 1, 2009 and the person will not be Medicaid eligible until the summer of 2010.

Another non-payment case comes from the facility in Tioga. This resident's bad debt is $168,765 effective January 13, 2009. This case is before the North Dakota Supreme Court and should you want to listen to this tragic story you can find the case on the North Dakota Supreme Court web site.

The issue in this case is Medicaid eligibility because of a perceived unfair divorce settlement. The resident is a 47 year old female with Huntington's disease. She is the mother of three living children and one deceased child, who died on June 6, 2000. The deceased child suffered from multiple medical problems. The couple divorced. She was disqualified for Medicaid because the guardians did not fight for a reasonable divorce settlement. It was felt by Medicaid that the resident should have received one-half of the assets in the divorce, even though the husband has custody of the three children remaining at home and has assumed all the debts of the marriage.

The Judge decided in the initial determination, as well as in the appeal re-confirmed and directed Medicaid to make her eligible. The Department has appealed to the North Dakota Supreme Court to overrule the district courts decision. The case is Reinholdt versus Department of Human Services with oral arguments heard on December 18, 2008. Please note the resident is living in swing bed and not in their skilled nursing facility, however, the outcome of this case will affect other cases where the division of assets in a divorce are causing a resident to be ineligible in a skilled nursing facility.

As you can see, the facility is many times caught in the middle regarding the resident they are caring for and a resident's eligible for Medicaid. Many times assets no longer exist, they desperately need care and the facility is left with very little recourse. HB 1303 can provide some relief to some facilities.

I really didn't want to get so lengthy but we have some very difficult cases, with facilities called upon to deliver care and sometimes never get paid.

An important feature of HB 1303 is that the bad debt expense is allocated back to the appropriate cost category of where the expense was incurred. Most of our bad debt is in the nursing, direct care category. Today, the rules require this expense to be in the indirect cost category where almost 40% of all facilities are exceeding the limit. Thus even if you can get some bad debt allowed, it will not be a solution for those over the indirect limit.

There is a safeguard in this solution. Prior to any bad debt being allowed you must:

1. Pursue all avenues of collection, including liens, judgments, and lawsuits; and only after all avenues have been pursued may your bad debt to be allowed. (See Attachment C)

This safeguard will limit facilities access to bad debt relief; however, HB 1303 it is still one more step forward as we try to seek good solutions to non-payment issues.

Thank you for your consideration of HB 1303. I would be happy to answer questions at this time.

Shelly Peterson, President
North Dakota Long Term Care Association
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(701) 222-0660 • www.ndltca.org • E-mail: shelly@ndltca.org

#2

Testimony
House Bill 1303 – Department of Human Services
Senate Human Services Committee
Senator Judy Lee, Chairman
February 25, 2009

Chairman Lee, members of the Senate Human Services Committee, I am Barbara Fischer, Assistant Director, Budget and Operations of the Medical Services Division for the Department of Human Services. I am here today to provide information regarding the fiscal note for House Bill 1303 and to oppose the amendment adopted by the House.

House Bill 1303 will have a fiscal impact; however, the fiscal impact of increasing allowable bad debt expense from 120 days to 180 days cannot be determined. Allowable bad debt is an inconsistent expense for which the Department does not have data readily accessible. Bad debt expense is reported in its entirety on a cost report and is unallowable except for the portion a facility identifies as meeting the criteria for allowable bad debt. Only the portion of bad debt expense being claimed as allowed is reviewed on an individual client basis when establishing the facility's rates and then only if the facility is under the limit for the Indirect Care cost category.

The Department does not know how many individuals would incur an additional 60 days; however, the lowest nursing facility rate in the state, as of January 1, 2009, is $113.61 and the highest rate is $421.02. An individual incurring bad debt for an additional 60 days could increase facility costs from $6,817 to $25,261, respectively. The "bad debt" costs would be applied to the rates for all residents, regardless of the nature of the debt.

Under current rules, bad debts expense can be included in a nursing facility's rates if the following criteria are met:

- The bad debt is a result of nonpayment of the payment rate.
- Reasonable documented collection efforts have been made, the debt is uncollectible, and there is no likelihood of future recovery.
- The bad debt is not from failure to comply with federal or state laws, rules, or regulations.
- It is not for nonpayment of private rooms, special services not included in the rate, or non-covered bed-hold days.
- The facility has an aggressive policy of avoiding bad debts and documents they have taken action to limit bad debts for those individuals refusing payment.
- The bad debt expense may not exceed 120 days of resident care.

The currently approved Medicaid state plan allows for up to 120 days of bad debt expense to be included in a facility's rates. Because of rate equalization, debt incurred by an individual who does not pay for his/her own care is included in the rate paid by Medicaid and by private pay individuals.

Allowable bad debt expense is an administrative expense which is included in the Indirect Cost category. The engrossed bill added section four at lines 17 and 18 which requires that bad debts be allocated back to the appropriate cost category from which the expense was incurred. An allocation would imply that more than one cost category is involved in bad debt. Bad debt results from all or a portion of nonpayment of the daily per diem rate. An allocation of bad debt to the direct cost category would result in individuals in the higher case mix classifications paying a disproportionate share of costs that do not directly relate to their care needs. For example, if bad debt effected the direct cost category by $1.00 per day an individual in the highest classification would have a $2.62 increase in his/her rate and an individual in the lowest classification would have only a $.62 increase in his/her rate. In addition, bad debt expense may be claimed many years after the debt was incurred making allocation to a cost category difficult if not impossible to determine.

If the intent of section four is to ensure that bad debt expense not be subject to the limit for Indirect Care then rather than allocating it back to cost categories, the bad debt expense should be included in the property cost category which is a pass through and has no limitations or inflation applied to it.

Any change to the provisions for bad debt expense will need to be submitted to and approved by the Centers for Medicare and Medicaid Services.

I would be happy to address any questions that you may have.

3-2-09

#3

PROPOSED AMENDMENT TO ENGROSSED HOUSE BILL NO. 1303

Line 15 After "rates" insert "the Department shall:

a. Include, contingent upon approval of the Medicaid state plan by the Centers for Medicare and Medicaid, allowable bad debt expenses in an amount not to exceed one hundred eighty days of resident care per year or an aggregate of three hundred and sixty days of resident care for any one individual;

b. Include allowable bad debt expense in the property cost category in the report year in which the bad debt is determined to be uncollectible with no likelihood of future recovery.

And delete the remaining language on line 15

Delete Lines 16, 17, and 18

Renumber accordingly