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La Costa Rickford
Operator's Signature

10/16/03
Date

2003 HOUSE HUMAN SERVICES

HB 1496

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Yolanda Richardson
Operator's Signature

10/6/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1496

House Human Services Committee

☐ Conference Committee

Hearing Date January 29, 2003

Tape Number	Side A	Side B	Meter #
1		x	43.0 - 61.8
2	x		0.0 - 22.4
2		x	0.0 - 6.6
Committee Clerk Signature <i>Sharon Kenyon</i>			

Minutes:

Rep. Dennis Johnson appeared as prime sponsor stating this is a very serious issue.

Shelly Peterson, ND Long Term Care Assoc. appeared in support with written testimony stating this bill only affects Basic Care facilities.

Rep. Kreidt noted the problem with assistance & down grading to Basic Care.

Mark Ulrich, Administrator of the Odd Fellows Home, a Basic Care Facility in Devils Lake appeared in support with written testimony and to share a situation with the committee.

Timothy Exner, Owner & Administrator of Rock of Ages, a basic care facility in Jamestown with written testimony appeared in support.

Rep. Kreidt: with the basic care facility that provide Alzheimer's services, do they fall under the same standards as the regular basic care facility. Answer: Alzheimer's units is under the basic care licensure but my reimbursement is a waiver program.

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10/16/03
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House Human Services Committee

Bill/Resolution Number HB 1496

Hearing Date January 29, 2003

Blaine Nordwall, Director of Economic Assistance Policy to the Dept. of Human Services

appeared in opposition with written testimony.

Alternative is to provide the coverage to married individuals receiving services in basic care facilities using only the state general funds. That would require amendments to the bill.

Rep. Weisz: What kind of Medicaid waiver on basic care, what do we get out of basic care allowance. Answer: Medicaid alizing - what we were able to do was identify the service called personal care as being a component of basic care services. Medicaid only covers part of the basic care costs.

Rep. Devlin: States share is \$40.00, Basic care facility rate is \$50.00 and we used all out of general fund, we are talking \$10.00 difference per day per individual. Answer: yes

Shelly Peterson, ND Long Term Care Assoc. appeared to recommend that the committee kill the bill given the fact that they will not be able to access the federal funds.

Rep. Porter made a motion for DO NOT PASS, second by Rep. Pollert

Rep. Porter stated that Mr. Nordwall offered an amendment and wanted to know if we should get it, beings he offered it to us, we should take it.

VOTE: 8 - 5 - 0

Rep. Amerman to carry the bill

Rep. Wieland asked how does the State lobby the Federal Govt. for these types of things and who does it. Answer: by Rep. Price, lobbying our congressional delegation, sometimes resolutions are used to try to send a message, in some cases applications for waivers, work through your international governors assoc., legislative organizations.

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FISCAL NOTE
Requested by Legislative Council
01/21/2003

Bill/Resolution No.: HB 1496

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

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

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

This bill would extend "spousal impoverishment prevention" concepts to include individuals residing in a basic care facility. In order to receive federal Medicaid funds for the additional individuals that would become eligible for Medicaid under this bill, the Medicaid income and asset limits would need to be increased for all two-person Medicaid units to the limits set for spousal impoverishment prevention. Alternatively, with amendments to the bill, the additional costs of providing care to married residents of basic care facilities could be covered by state general funds. Since the Department of Human Services was not able to determine the number of new Medicaid cases resulting from the bill, the fiscal impact is unknown.

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 M. Weisz	Agency:	Human Services
Phone Number:	328-2397	Date Prepared:	01/27/2003

B. Costa
Operator's Signature

10/16/03
Date

Date: January 29, 2003
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1496

House _____ HUMAN SERVICES _____ Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DNP

Motion Made By Rep. Porter Seconded By Rep. Pollert

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

Total (Yes) 8 No 5

Absent 0

Floor Assignment Rep. Amerman

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

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Volcosta Rickford
Operator's Signature

10/6/03
Date

REPORT OF STANDING COMMITTEE (410)
January 30, 2003 8:46 a.m.

Module No: HR-18-1314
Carrier: Amerman
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HB 1496: Human Services Committee (Rep. Price, Chairman) recommends DO NOT
PASS (8 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). HB 1496 was placed on the
Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-18-1314

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La Costa Richard
Operator's Signature

10/6/03
Date

2003 TESTIMONY

HB 1496

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Richard Costa
Operator's Signature

10/16/03
Date

LP

Testimony on HB 1496
House Human Services Committee
January 29, 2003

Chairman Price and members of the House Human Services Committee, thank you for the opportunity to testify on HB 1496. My name is Shelly Peterson, President of the North Dakota Long Term Care Association. We represent nursing facilities, basic care facilities and assisted living facilities in North Dakota.

North Dakota extends protection against impoverishment to spouses of recipients of Medicaid waiver home and community based care and nursing home residents. This allows individuals who admit their spouse to a nursing home or need care at home, to receive services and not spend down to poverty levels.

The proposed legislation adopts this impoverishment provision to individuals whose spouse needs basic care services. Since 1997 a few individuals have moved their spouse from a basic care facility to a nursing home to receive this greater resource limit. This move was made, not because nursing care was necessary, but for asset and income protection.

We understand the community spouse, not needing care not wanting to deplete the vast majority of their assets and income. In these limited situations, basic care was the least restrictive and most appropriate setting for the spouse. The average daily cost of basic care is \$50.85. The average daily cost of nursing facility care is \$129.71. In both settings we receive federal matching dollars. If we can maintain more spouses appropriately in basic care, government dollars could be saved.

The bill draft before you would extend spousal income and asset protection in basic care, as currently available to spouses of recipients of Medicaid waiver home and community based care and nursing facility care. The 2003 income and asset levels are \$2,267 monthly and \$90,660 respectively.

Today a basic care assistance spouse has a \$12,000 asset limit. Conceivably \$6,000 is for their burial, with \$6,000 remaining. Attached to my testimony is a Fact Sheet on Basic Care. If we can support more individuals in basic care, they save money, the state saves money and the person needing care is in the least restrictive, most independent level of care.

To be eligible for basic care services the individual can not be severely impaired in any of the activities of daily living of toileting, transferring to or from a bed or chair, or eating; and has health, welfare or safety needs, including a need for supervision or a structured environment or must be impaired in three of the four instrumental activities of daily living: preparing meals, doing housework, taking medicine, and doing laundry.

Your consideration of extending spousal income and asset protection to spouses of basic care recipients is appreciated. I would be happy to answer questions you may have.

Shelly Peterson, President
North Dakota Long Term Care Association
1900 North 11th Street
Bismarck, ND 58501
(701) 222-0660

Basic Care Fact Sheet

- North Dakota has 47 basic care facilities representing 1,496 beds.
- Basic care facilities are 87% occupied. Each day approximately 1300 individuals receive basic care services.
- The average cost for one day in basic care is \$50.85.
- The top two reasons a person will enter a basic care facility is the need for twenty-four hour supervision and medication administration.
- Basic care financial assistance is available to help people who need assistance to pay for their care. Approximately 38% of recipients in basic care rely upon the state to help pay for their care.
- Basic care provides cost effective twenty-four hour care, providing room and board, transportation, social activities, medication and nursing supervision, companionship and a nurturing environment.
- The average age of a basic care resident is 85 years old.

Basic Care Assistance Program

The State provides financial assistance to individuals in need of basic care services but who are unable to pay for their care. In order to receive assistance you must meet financial requirements and complete an assessment process that determines you need 24 hour care and support. In September 2002, 477 individuals received basic care assistance.

SB 2012 – Basic Care Funding

SB 2012 budgets \$8.4 million for the Basic Care Assistance program. Of this total, approximately \$3 million is state funds. The budget provides for 497 individuals to be serviced monthly. Basic care providers are budgeted to receive an annual inflator of 1.2% and a 3% operating margin.

Basic Care Spousal Impoverishment

Currently North Dakota provides protection against impoverishment to spouses of recipients of Medicaid waiver home and community based care and nursing home care. This can become an issue for a couple when one is healthy and one requires significant care and services. Spousal Impoverishment protection allows the disabled spouse to receive care and assistance and not require the healthy spouse to "spend down" to poverty levels in order to qualify for assistance. This provision allows the community spouse to receive asset and income protection and live in the manner they were accustomed to prior to their spouse needing care. Couples, where one is in need of basic care services, have been negatively affected by this lack of spousal protection in basic care. When faced with this issue a spouse will attempt to move their mate to the nursing home to access the greater resource and income limit. This lack of spousal impoverishment protection in basic care can cause premature entry into the nursing facility. In 2003, income and asset levels are \$2,267 monthly and \$90,660 respectively. NDLTCA supports legislation to correct this inequitable situation.



Chairman Price, Members of the Committee. Good Morning!

My name is Mark Ulrich. I have been administrator of the Odd Fellows Home, a Basic Care Facility in Devils Lake. I have been administrator of this facility for the past seven and half years.

I would like to share with you today a situation that has happened in my facility twice and ironically this same situation is pending today with another possible admission to my facility.

Lets say, for discussion purposes, that my mother and father, it could very well your mother or father or grand parents, who are living in a home in Devils Lake, living in a house with a value of \$75,000.00. They have lived at this same location since their retirement some years ago. They have a combined social security income of \$1200.00 per month and they have a savings account of \$20,000.00.

One member of the household has become sick and the other spouse has provided loving care for the sick spouse. But, for the sake of this example, because of a dementia related disease, the spouse can no longer care for the loved one and whose own health has declined and is unable to provide the proper cares for that spouse.

They inquire at my facility and yes the questions come up on how payments will be made. They are referred to the local social services, who then advises them that there are no provisions that protect income and assets available for basic care. They would also be told that they are not eligible for BCAP (which is the Basic Care Assistance Program). However, they would be eligible if they were to spend down to the allowed combined asset amount of \$6000.00 and a combined funeral fund of \$6000.00. At this point the spouse would then be eligible for BCAP in the Basic Care Facility. The community

spouse would only have her share of the social security, which in most cases is not much in comparison to the male member of the household. She would be forced to live the latter years of her life in a life of poverty.

Now using this same situation, the local social services may also tell the family that if the spouse were to be admitted into a skilled care facility, where there is income and asset limits in place and the community spouse would be able to live a lifestyle as he or she is now living. The community spouse would be able to keep all assets that the couple have worked hard for over the years and would not live a life of poverty.

The average basic care rate in the State of North Dakota is \$50.85 per day or \$2.12 per hour. Skilled care on the other hand, has an average cost of \$129.71 per day or \$5.40 per hour. There are income and asset provisions in a skilled care setting. The limits for 2003 are income and asset levels of \$2267.00 monthly and \$90,660.00 respectively. In order to preserve their income and assets, for which they have worked hard for, this spouse will be admitted to a skilled facility.

. Is this level of care needed for someone who can still live a relatively independent lifestyle in a basic care facility worth the extra cost of \$78.86 per day, or an annual cost difference of \$28,705.04 for basically the same care?

In summary, I strongly support HB1496. Currently North Dakota provides protection against impoverishment to spouses of recipients of Medicaid waiver home and community based care and nursing home care. Spousal Impoverishment protection allows the disabled spouse to receive care and assistance and would not require the healthy spouse to "spend down" to poverty levels in order to qualify for assistance. This provision allows that community spouse to receive income and asset protection and live

in the manner they were accustomed to prior to their spouse needing care. Couples, who's loved one is in need of basic care services, have been negatively affected by this lack of spousal protection in basic care. This lack of income and asset protection in basic care can and does cause premature entry into a nursing facility.

Basic care provides a cost effective twenty-four hour per day care, provides room and board, transportation, social activities, medication and nursing supervision, championship and a safe and nurturing environment.

I thank you for your consideration of HB1496 and I urge you, on behalf of those residents who have been prematurely admitted to a skilled care facility, that you support HB1496.

TESTIMONY ON HB 1496

TESTIMONY BY: Timothy Exner, owner and administrator of Rock of Ages a basic care in Jamestown.

Chairman Price and members of House Human Service Committee, I thank you for the opportunity to testify on HB 1496. My name is Tim Exner, owner and administrator of Rock of Ages, Inc., a 53 bed basic care facility in Jamestown.

I'm in support of HB 1496 because of some past experiences I've had with placing residents in my facility under spousal impoverishment. It's my understanding in a skilled facility you may have 90,660 in assets plus a car and house regardless of appraised value and an income of \$2267 per month. Under a Medicaid waived service you may have the same. Under a SPED program you may have \$50,000 in assets with a car and house, I'm not sure of income allowed per month. Under basic care you may have \$3000 per person for burial fund and \$3000 per person in assets, a total of \$12,000. Income follows the individual. If the husband is getting \$700 in social security and the wife is getting \$400 and the husband enters a basic care facility his \$700 will go to pay the facility. The wife will have \$400 to live on. More than likely she will end up applying for SSI for assistance with monthly expenses.

I feel that these programs should be equal or at least comparable when dealing with the issue of spousal impoverishment. If an individual has a diagnosis of Alzheimer's they can qualify for skilled care, even though they are appropriate for basic care placement. I have experienced individuals transferring to a skilled nursing facility prematurely to save the spouses income and assets. This costs the state an additional \$2353 per month using the average basic care daily rate and the average skilled daily rate.

Please keep in mind the large discrepancies between skilled, home services and basic care. It would help to have them closer.

Thank you for the opportunity to comment, I'll try to answer any questions.

**TESTIMONY BEFORE THE
HOUSE HUMAN SERVICES COMMITTEE
REGARDING HOUSE BILL NO. 1496
January 29, 2003**

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

House Bill 1496 would extend "spousal impoverishment prevention" concepts to individuals residing in basic care facilities by expanding the definition of "institutionalized spouse" in state law. Spousal impoverishment prevention is provided for in federal law only with respect to "institutionalized spouses," as defined at 42 U.S.C. § 1396r-5(h)(1) (copy attached). Changing the state law definition does not expand the definition in federal law. For purposes of the federal Medicaid law, the individuals residing in basic care are not "institutionalized individuals."

Federal law allows states to treat, as "institutionalized," those individuals who receive care in nursing care facilities and swing-bed facilities. States also have the option of including individuals who receive home or community-based services under a Medicaid waiver, provided they are screened as requiring nursing facility level of care. North Dakota has elected that option through the definition of "institutionalized spouse" currently found in N.D.C.C. § 50-24.1-02.2. However, individuals living in basic care facilities cannot have been screened as requiring nursing facility level of care. Basic care facilities may not house individuals who "require regular twenty-four-hour medical or nursing services." N.D.C.C. § 23-09.3-01(1).

We could make these married basic care residents eligible for Medicaid, but only by increasing the Medicaid income and asset limits, for all medically needy two-person Medicaid units, to the limits set for spousal impoverishment prevention. This is because the federal Medicaid law requires a state that provides coverage to the medically needy to have a "single standard to be employed in determining income and resource eligibility" for all groups. 42 U.S.C. § 1396a(a)(10)(C)(i)(III) (copy attached). The required asset limit would be \$96,660 (the community spouse asset allowance of \$90,660 required by N.D.C.C. § 50-24.1-02.2, plus the \$3,000 funeral set-aside and the \$3,000 asset allowance, both required by N.D.C.C. § 50-24.1-02.3, totals \$96,660), and the required medically needy income level would be \$2,317 per month (the community spouse income level of \$2,267, plus the nursing home income level of \$50 totals \$2,317).

Alternatively, we could provide coverage to married individuals receiving services in basic care facilities, and apply spousal impoverishment prevention income and asset levels, if the state general fund were to bear the entire cost of the coverage. That would require amendments to House Bill 1496.

We have not calculated the considerable costs of an overall increase in Medicaid asset limits and income levels. We faced difficulty in determining the number of new Medicaid cases likely resulting from that change. We have not calculated the cost of providing higher income and asset limits for married basic care residents, solely at state general fund expense, because House Bill 1496 does not call for that approach.

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

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**ATTACHMENT TO TESTIMONY
REGARDING HOUSE BILL NO. 1496**

42 U.S.C. § 1396r-5(h)(1) provides:

- "(1) The term "institutionalized spouse" means an individual who --**
(A) is in a medical institution or nursing facility or who (at the option of the State) is described in section 1396a(a)(10)(A)(ii)(VI) of this title, and
(B) is married to a spouse who is not in a medical institution or nursing facility;
but does not include any such individual who is not likely to meet the requirements of subparagraph (A) for at least 30 consecutive days."

42 U.S.C. § 1396a(a)(10)(A)(ii)(VI) provides:

"A State plan for medical assistance must --

*** * ***

(10) provide --

- (A) for making medical assistance available ... to --**
(ii) at the option of the State ... any reasonable category of individuals ... [who are not mandatory eligibles] but --
(VI) who would be eligible ... if they were in a medical institution, with respect to whom there has been a determination that but for the provision of home or community-based services ... they would require the level of care provided in a hospital, nursing facility or intermediate care facility for the mentally retarded the cost of which could be reimbursed under the State plan, and who will receive home or community based services pursuant to a waiver"

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

"A State plan for medical assistance must --

*** * ***

(10) provide --

- (C) that if medical assistance is included for any [medically needy] group . . . , then --**
(i) the plan must include a description of . . .
(iii) the single standard to be employed in determining income and resource eligibility for all such groups"