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SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2071

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Salvatore Rickford
Operator's Signature

10/15/03
Date

2003 SENATE JUDICIARY

SB 2071

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10/15/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2071

Senate Judiciary Committee

☐ Conference Committee

Hearing Date 01/20/03

Tape Number	Side A	Side B	Meter #
1	X		39.0-49
		X	16.0-24
Committee Clerk Signature <i>Maria L. Selberg</i>			

Minutes: Senator John T. Traynor, Chairman, called the meeting to order. Roll call was taken and all committee members present. Sen. Traynor requested meeting starts with testimony on the bill.

Testimony in support of SB 2071

Mr. Blaine Nordwall Director of Economic Assistance Policy for the Dept of Human Services.

(meter 45.1) Attachment 1.

Senator John T. Traynor asked if this \$3,000 change would effect any bill in the House. He responded no. If this bill passes that a copy of Notice to Creditors be Senator Thomas L. Trenbeath to your department.

Senator Carolyn Nelson discussed the cost of a funeral (Tape 2, meter 1.4)

Discussion of Medicaid recipient if spouse dies and the have a joint account or an account with a child how would this bill effect that income? It does not under the multiple party account portion.

Page 2

Senate Judiciary Committee

Bill/Resolution Number 2071

Hearing Date 01/20/03

Senator Dick Dever discussed what a 'preferred' claim and a "general" claim.

Questions: Testimony in opposition of SB 2071:

There was no testimony in opposition of bill.

Neutral Testimony to SB 2071

There was no testimony neutral to SB 2071

.Sen. Traynor closed hearing on bill.

Senator John T. Traynor, Chairman, called the meeting to order. Roll call was taken and all committee members present. Sen. Traynor requested committee work on the bill.

Discussion on morning hearing (tape 4, side 1, meter 15.9)

Motion made to amend SB 2071 Senator Carolyn Nelson. Seconded by Senator Thomas L. Trenbeath

Roll Call Vote: 6 Yes. 0 No. Absent

Motion carried, amendment passed.

Motion made to Do Pass SB 2071 as amended Senator Thomas L. Trenbeath. Seconded by Senator Dennis Bercler

Roll Call Vote: 6 Yes. 0 No. Absent

Motion carried Bill Passed

Floor: Senator Thomas L. Trenbeath

FISCAL NOTE
Requested by Legislative Council
01/03/2003

Bill/Resolution No.: SB 2071

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.

The bill clarifies and encourages prompt processing of Medicaid recipient's estates. The fiscal impact of this bill is undeterminable.

3. State fiscal effect detail: For information shown under state fiscal effect in 1A, please:

A. Revenues: Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

B. Expenditures: Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

C. Appropriations: Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

Name:	Debra A. McDermott	Agency:	Human Services
Phone Number:	328-3695	Date Prepared:	01/14/2003

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10/15/03
Date

38205.0101
Title.0200

Adopted by the Judiciary Committee
January 21, 2003

703
1-21-03

PROPOSED AMENDMENTS TO SENATE BILL NO. 2071

Page 2, line 11, replace "hundred eighty days" with "year"

Renumber accordingly

Page No. 1

38205.0101

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10/15/03
Date

Date: January 20, 2003
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2071

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 38205.0101

Action Taken Amend

Second m
Motion Made By Senator Thomas L. Trenbeath *Made m*
Seconded By Sen. Nelson

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	X	
Sen. Stanley Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) Six (6) No Zero (0)

Absent Zero (0)

Floor Assignment _____

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

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LaCosta Rickford 10/15/03
Operator's Signature Date

Date: January 20, 2003
Roll Call Vote #: 2

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2071

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Senator Thomas L. Trenbeath Seconded By Sen. Bercier

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	X	
Sen. Stanley. Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) Six (6) No Zero (0)

Absent Zero (0)

Floor Assignment Sen. Trenbeath

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

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Operator's Signature

10/15/03
Date

REPORT OF STANDING COMMITTEE (410)
January 23, 2003 9:04 a.m.

Module No: SR-13-0948
Carrier: Trenbeath
Insert LC: 38205.0101 Title: .0200

REPORT OF STANDING COMMITTEE

SB 2071: Judiciary Committee (Sen. Traynor, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, ABSENT AND NOT VOTING). SB 2071 was placed on the Sixth order on the calendar.

Page 2, line 11, replace "hundred eighty days" with "year"

Renumber accordingly

(2) DESK, (3) COMM

Page No. 1

SR-13-0948

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La Costa Rickford

Date

10/15/03

2003 HOUSE JUDICIARY

SB 2071

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La Costa Rickford

10/15/03

Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2071

House Judiciary Committee

☐ Conference Committee

Hearing Date 3-4-03

Tape Number	Side A	Side B	Meter #
1	xx		5-16.5
Committee Clerk Signature <i>Alenose</i>			

Minutes: 12 members present, 1 member absent (Rep. Maragos)

Chairman DeKrey: We will open the hearing on SB 2071.

Blaine Nordwall, Director of Economic Assistance Policy for Department of Human

Services: Support (see attached testimony).

Rep. Klemin: On the interest provision, in the situation where you have married persons, a husband receives assistance and wife does not, husband dies first and wife dies many years later. Under subsection 4, interest accrues at the legal rate beginning one year after the death of the medical assistance recipient, so then would the interest then be accruing all during the rest of the life of the wife of that spouse.

Mr. Nordwall: Yes, that's correct. It would operate that way. Currently, we pursue interest under the general statutory interest provisions for the same period. There isn't a specific provision there now.

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Operator's Signature

10/15/03
Date

Page 2
House Judiciary Committee
Bill/Resolution Number SB 2071
Hearing Date 3-4-03

Rep. Klemin: So if there is some longevity on the part of the spouse, we could have a fairly large interest amount accrued by the end of that spouse's life.

Mr. Nordwall: That's correct.

Rep. Klemin: And we are talking about 6% interest, here the legal rate.

Mr. Nordwall: Also, correct.

Rep. Klemin: Why do you need all that interest, I guess I am puzzled by this, because before you didn't collect interest over that many years did you?

Mr. Nordwall: Yes, we have. I have to acknowledge very rarely. The reason is that it is very rarely, is because if you have a substantial claim, the chances are that the claim itself exhausts the estate. In our experience, the claims that we would pursue in these estates are typically long term care benefits. If you have someone receiving long term care benefits for 2 or 3 years will typically have a claim in the many, many tens of thousands of dollars, and some over an excess of \$100,000, and interest becomes completely irrelevant as soon as the amount of the claim, without interest, exhausts the amount of the estate. We have collected very, very little money on the interest. As I say, this is to avoid dalliance, rather than to produce money.

Rep. Klemin: How does it happen without this change and why you need the interest. The way I understand you to say now that you are entitled to and do accrue this interest, even without the statute. This just says when the interest starts to accrue.

Mr. Nordwall: Yes, that's correct. The process that we have right now without the bill in place, is that if we file a claim in a decedent's estate and we've gotten notice of the estate because of a notice that complies with subsection 3, but doesn't comply with the probate code division.

That's the situation. The statute that we used to rely upon, which is probate code statute

Page 3

House Judiciary Committee

Bill/Resolution Number SB 2071

Hearing Date 3-4-03

specified that interest begins to accrue 60 days after the last day for the filing of a claim in the estate which, if you have a proper notice, occurs based upon when you get the notice. We get a notice, the individual or estate doesn't pay us for a good long time, and we ask for interest, we find that, as a consequence of their not being a notice consistent with the probate code provision, the triggering device that starts the interest to run, doesn't trigger. The Supreme Court said in the Brenden case there was no interest owed except for a period of days, that arose because it was more than three years after the decedent's death. The final date to file claims is if you don't have a proper notice is 3 years after the decedent's death.

Rep. Klemin: What if there is no probate on the death of the first person to die.

Mr. Nordwall: That is not really all that unusual. If there is no probate, what we will do if we are aware of the death, and we're not always aware of the death either, but if we are, we will make a determination whether or not there appears to be a surviving spouse. If there is a surviving spouse, we will take no action, because there is no probate in which to file a claim and we couldn't enforce it anyway.

Rep. Klemin: So there is no time in which the interest accrual is started.

Mr. Nordwall: That is a matter that lawyers might debate. There is no probate code provision relating to the time that interest might start to run. What we have done is take the position that the Supreme Court has said these claims accrue at the time the individual actually receives the service, if they are over 55 and receive medical service, the claim begins to accrue. The claim comes into existence, we're just prevented from pursuing the claim during their lifetime and then during the lifetime of the surviving spouse. Based on that, we have argued that the general statute regarding interest on an obligation, which is also 6% interest rate, applies. That is not

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House Judiciary Committee
Bill/Resolution Number SB 2071
Hearing Date 3-4-03

established law, that is practice. In that practice, and within the context of that practice, because it is so hard to calculate interest, given that these claims arise at many, many times and many, many different amounts, it is a matter of practice, we just have calculated the interest 6 months after the individual's death, from that point, because medical providers have generally billed us for all of the services they provided.

Rep. Klemin: Let's say the surviving spouse remarries, they have a spouse who isn't on medical assistance. Sometimes that second marriage, somebody may die first. Do you still have the person who was the spouse of the medical care recipient who was living, and if she inherits from her second husband's estate, and that becomes her assets, and then she dies, do the assets of her second husband's estate then become responsible for payment of these claims and all that interest.

Mr. Nordwall: No, what happens then is a completely separate provision comes into play there. There is a series of decisions by the Supreme Court that say in effect, we have to trace the assets in the surviving spouse's estate to assets that the recipient had an interest in at some time in their life. So using the example you stated, if the Medicaid recipient married, dies, spouse remarries, 2nd spouse dies, 2nd spouse had essentially 100% of the assets that were in the hands of the surviving spouse widowed twice, but would not be successful in pursuing a claim in her estate because she wouldn't have any assets that we could assert our claim against. So all of this would become potentially immaterial.

Chairman DeKrey: Thank you. Further testimony in support, testimony in opposition. We will close the hearing.

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2071

House Judiciary Committee

☐ Conference Committee

Hearing Date 3-5-03

Tape Number	Side A	Side B	Meter #
2		x	13-18.1
Committee Clerk Signature <i>APenrose</i>			

Minutes: 11 members present, 2 members absent (Rep. Wrangham & Rep. Bernstein)

Chairman DeKrey: What are the committee's wishes in regard to SB 2071.

Rep. Delmore: I move a Do Not Pass.

Rep. Grande: Seconded.

11 YES 0 NO 2 ABSENT DO NOT PASS CARRIER: Rep. Klemin

Date: 3/5/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2071

House Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Not Pass

Motion Made By Rep. Delmore Seconded By Rep. Grande

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Vice Chairman Maragos	✓		Rep. Eckre	✓	
Rep. Bernstein	AB		Rep. Onstad	✓	
Rep. Boehning	✓				
Rep. Galvin	✓				
Rep. Grande	✓				
Rep. Kingsbury	✓				
Rep. Klemm	✓				
Rep. Kretschmar	✓				
Rep. Wrangham	AB				

Total (Yes) 11 No 0

Absent 2

Floor Assignment Rep. Klemm

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Operator's Signature LaCosta Rickford

Date 10/15/03

REPORT OF STANDING COMMITTEE (410)
March 5, 2003 3:35 p.m.

Module No: HR-39-4032
Carrier: Klemin
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2071, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends **DO NOT PASS** (11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2071 was placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-39-4032

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La Costa Rickford

Date

10/15/03

2003 TESTIMONY

SB 2071

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10/15/03
Date

TESTIMONY BEFORE THE
SENATE JUDICIARY COMMITTEE
REGARDING SENATE BILL NO. 2071
January 20, 2003

Attach
#1

Chairman Traynor, members of the Senate Judiciary Committee, I am Blaine Nordwall, Director of Economic Assistance Policy for the Department of Human Services. I appear in support of Senate Bill No. 2071, which was introduced at the request of the department.

Federal Medicaid law requires that states pursue estate recovery for services furnished after a recipient's 55th birthday. N.D.C.C. § 50-24.1-07 is the state law directing those claims. Proposed amendments address interpretations made by the North Dakota Supreme Court concerning this section.

Subsection 1 provides that, in the case of a married recipient, no claim may be enforced while either spouse remains alive. The court concluded, in Redfield v. Bitterman, 2000 ND 217, 620 N.W.2d 570, that this section does not provide for claims in the estate of the recipient's spouse if the spouse is the first to die. The amendments to subsection 1, on lines 13, 16, and 17, would remove any distinction regarding the order of the deaths. It would not change the requirement that both spouses must be deceased before a claim must be paid.

The North Dakota Supreme Court also held, in N.D. Dept. of Human Services v. Brenden, 2000 ND 155, 615 N.W.2d 538, that the notice required by subsection 3 does not comply with the requirements for a notice to creditors under section 30.1-19-01 of the Probate Code. The amendment to subsection 3, on page 2, lines 19 and 20, would require the estate to provide the same notice that it provides to other creditors. Estates that provide a notice that complies

with the existing provisions of subsection 3, but not with the Probate Code requirements, may be able to avoid paying the Medicaid claim for three years, and, at the same time, avoid paying any interest otherwise required under section 30.1-19-06(5). Unfortunately, that outcome could continue if estates simply continue to provide a non-conforming notice. Proposed new subsection 4, at page 3, lines 3 through 5, addresses that problem by requiring interest to be paid at the legal rate beginning six months after the death of the recipient. Even though interest could be charged, under section 47-14-05, from the time the medical service is provided, the department has long refrained from seeking interest on claims for any time earlier than six months after the recipient's death. We are not so much seeking to maximize revenue as to encourage prompt payment of the claim.

Section 2 of the bill provides an effective date section to make clear that these changes would only affect probate proceedings commenced after August 1.

I'd be happy to answer questions you may have.

Prepared by:

Blaine L. Nordwall
Director, Economic Assistance Policy
ND Department of Human Services

TESTIMONY BEFORE THE
HOUSE JUDICIARY COMMITTEE
REGARDING SENATE BILL NO. 2071
March 4, 2003

Chairman DeKrey, members of the House Judiciary Committee, I am Blaine Nordwall, Director of Economic Assistance Policy for the Department of Human Services. I appear in support of Senate Bill No. 2071, which was introduced at the request of the department.

Federal Medicaid law requires that states pursue estate recovery for services furnished after a recipient's 55th birthday. N.D.C.C. § 50-24.1-07 is the state law directing those claims. Proposed amendments address interpretations made by the North Dakota Supreme Court concerning this section.

Subsection 1 provides that, in the case of a married recipient, no claim may be enforced while either spouse remains alive. The court concluded, in Redfield v. Bitterman, 2000 ND 217, 620 N.W.2d 570, that this section does not provide for claims in the estate of the recipient's spouse if that spouse is the first to die. The amendments to subsection 1, on page 1, lines 10, 12, and 13, would remove any distinction regarding the order of the deaths. It would not change the requirement that both spouses must be deceased before a claim must be paid.

The North Dakota Supreme Court also held, in N.D. Dept. of Human Services v. Brenden, 2000 ND 155, 615 N.W.2d 538, that the notice required by subsection 3 does not comply with the requirements for a notice to creditors under section 30.1-19-01 of the Probate Code. The amendment to subsection 3, on page 2, lines 6 and 7, would require the estate to provide the same notice that it provides to other creditors.

Estates that provide a notice that compiles with the existing provisions of subsection 3, but not with the Probate Code requirements, are now able to delay paying the Medicaid claim for three years, and, at the same time, avoid paying any interest otherwise required under section 30.1-19-06(5). That could continue if those estates don't conform their notices to the Probate Code requirement. Proposed new subsection 4, at page 2, lines 10 and 11, addresses that problem by requiring interest to be paid at the legal rate beginning one year after the death of the recipient. This is not so much to maximize revenue as to remove an incentive to ignore the law.

Section 2 of the bill provides an effective date to make clear that these changes would only affect probate proceedings commenced after August 1.

I'd be happy to answer questions you may have.

Prepared by:

Blaine L. Nordwall
Director, Economic Assistance Policy
ND Department of Human Services