

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1281

2005 HOUSE HUMAN SERVICES

HB 1281

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1281

House Human Services Committee

☐ Conference Committee

Hearing Date January 19, 2005

Tape Number	Side A	Side B	Meter #
#1		x	5163 6204
#2	x		0-2171

Committee Clerk Signature



Minutes:

**Chairman Price** opened hearing.

**Rep. Kreidt:** See Attached Testimony

**Shelly Peterson, President Long Term Care Assoc.** See Attached Testimony

**Leslie Oliver, Counsel, Long Term Care Assoc.** See Attached Testimony

**Rep. Kaldor:** In Section 1, is the liability to transferee not currently in the law?

**L.Oliver:** No.

**Rep. Weisz:** If the landlord sold the land at 1/2 price, if doesn't qualify, come after the person buying the land?

**L. Oliver:** In Sub.Sec.1, makes transferee liable, facility/person has no access to funds. Could possibly obtain full market value.

**Rep. Devlin:** The first 2 section have no fiscal impact on the dept., but in Sec. 3 not allowable under federal regulations. Do you have any thoughts on that or should we wait for the DHS to respond.

**L.Oliver:** I understand the dept. have some concern about Sub Sec. 3, is not intended to be an automatic eligibility provision, it is an opportunity for both the resident/recipient of the assets to correct the situation and does not make individual eligible.

**Darwin Lee, Nursing Home Administrator, West hope, ND**

This is a serious problem and it is typical statewide. In regards to HIPPA, most time the Board does not know the names of people, and the circumstances. State wide, we have serious debts ranging from \$30,000.00 - ¼ of a million dollars. If you evoke eviction, for instance - the son gets the farm, resident applies for Medicaid, there is no deed filed, the Medicaid is denied, the son loses the farm by having to pay the nursing home.

**Rep. Nelson:** Is there a data base on nursing homes regarding the amounts owed?

**D. Lee:** According to our association information, 60% responded and we do have a problem.

**Bob Owens, Administrator, Elm Crest Manor, New Salem, ND.**

See Attached Testimony

**Greg Hanson, Valley Elder Care.** We have questions about if the transfers are legal, and seem not to meet Medicaid guidelines.

**Opposition:**

**David Zentner, Director of Medical Services -DHS** See Attached Testimony

**Damian Huettl:** See Attached Testimony

Close hearing on HB 1281

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1281

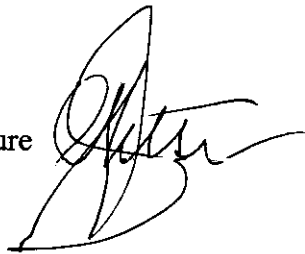
House Human Services Committee

☐ Conference Committee

Hearing Date January 24, 2005

Tape Number	Side A	Side B	Meter #
#1		x	#5580- 6197

Committee Clerk Signature



Minutes:

**Chairman Price** opened discussion on HB 1281

**Rep. Kreidt:** We got together with the DHS and drafted the wording "the individual shall not be ineligible for medical assistance if application of disqualifying transfer provisions will deprive the individual of nursing care & services" and we expanded on the language in 1 & 2 of the bill to better clarify that. The dept., committee & association were in agreement that this made this a better bill.

**Chairman Price:** Everyone agreed on this?

**Rep. Kreidt:** Move on Amendments as presented.

**Rep. Porter:** Second

**Rep. Devlin:** Made motion to reconsider action by which we passed the previous HB 1281.

**Rep. Porter:** Second.

Voice Vote: 11-0-1

Page 2

House Human Services Committee

Bill/Resolution Number HB 1281

Hearing Date January 24,2005

**Rep. Devlin** moved Do Pass on HB 1281.

**Rep. Porter:** Second

**Vote:** 11-0-1

**Carrier:** Rep. Kreidt

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1281

House Human Services Committee

☐ Conference Committee

Hearing Date January 26, 2005

Tape Number	Side A	Side B	Meter #
#2	x		# 0-590

Committee Clerk Signature



Minutes:

**Chairman Price** reopened the discussion on HB 1281.

**Rep. Kreidt:** We have come to the conclusion that we are unable to move Sec. 1, in removing lines 6-13 and line 4 with two new sections.

**Rep. Devlin:** Move

**Rep. Porter:** Second

**Rep. Potter:** I had marked on mine, lines 19-24.

**Chairman Price:** Those were removed and the others were added.

**Voice Vote:** 11-0-1,

**Rep. Kreidt:** Move do pass on amendments.

**Rep. Kaldor:** Second

**Chairman Price:** We discussed this at length with LTC Assn. and we came to the conclusion that we could pass this but had to make the adjustments to Sec. 1.

**Rep. Potter:** Can LTC facilities not request income assets at all at this point?

**Rep. Kriedt:** To a degree, there is a waiver that the dept./counties have, that we weren't aware of that you can come into a facility and ask for an application. They will give you a form that requests financial information when returning it.

**Rep. Potter:** Does it change that much from what is happening now.

**Chairman Price:** Due to some of the language, they may deny this, so we wanted to try and add the language to assist with the problem.

**Rep. Kaldor:** If someone does prefer to go into a nursing home, and is indigent and no means of support. Could that home deny admission or would Medicaid/Medicare take care of it?

**Rep. Kreidt:** Yes, that would be no problem.

**Vote: 11-0-1 Carrier: Rep. Kreidt**



**FISCAL NOTE**  
**Requested by Legislative Council**  
01/28/2005

Amendment to: HB 1281

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

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

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

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

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

This bill would create and enact two new sections to chapter 50-24.1 of the NDCC relating to medical assistance eligibility and long-term care facilities.

The bill with amendments has no fiscal impact.

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

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

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

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

Name: Brenda Weisz  
Phone Number: 328-2183

Agency: Human Services  
Date Prepared: 01/31/2005

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/12/2005

Bill/Resolution No.: HB 1281

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

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

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

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

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

This bill would create and enact three new sections to chapter 50-24.1 of the NDCC relating to medical assistance eligibility and long-term care facilities.

The first two sections would have no fiscal impact to the department. The intent of the third section is not allowable under federal regulations and as such has no fiscal impact.

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

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

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

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

Name: Brenda Weisz  
Phone Number: 328-2397

Agency: Human Services  
Date Prepared: 01/14/2005

## Amendment for HB 1281

Page 1, Line 19 omit: A resident of a

Page 1, Lines 20-24, omit all.

Page 2, Lines 1-3, omit all.

Line 19, after eligibility. Insert:

An individual shall not be <sup>in</sup>eligible for medical assistance if application of disqualifying transfer provisions would deprive the individual of nursing care and services and the individual makes a satisfactory showing that:

1. For periods after the return, all income or assets constituting the disqualifying transfer have been transferred or assigned back to the individual and the individual is otherwise eligible for medical assistance; or
2. Compensation equal to the fair market value of the income or asset at time of transfer is paid to, or on behalf of, the individual for nursing care and services provided by a long-term care facility and the individual is otherwise eligible for medical assistance.

VRC  
1/27/05

**HOUSE AMENDMENTS TO HOUSE BILL NO. 1281 H.S. 1-27-05**

Page 1, line 1, replace "three" with "two"

Page 1, line 4, replace "Three" with "Two"

Page 1, remove lines 6 through 13

Page 1, line 19, replace "A resident of a" with "An individual is not ineligible for medical assistance if application of disqualifying transfer provisions would deprive the individual of nursing care and services and the individual makes a satisfactory showing that:

1. For periods after the return, all income or assets constituting the disqualifying transfer have been transferred or assigned back to the individual and the individual is otherwise eligible for medical assistance; or"

Page 1, remove lines 20 through 24

**HOUSE AMENDMENTS TO HB 1281 H.S. 1-27-05**

Page 2, line 1, after the second "the" insert "income or"

Page 2, line 2, replace "applicant or resident" with "individual"

Page 2, line 3, after "facility" insert "and the individual is otherwise eligible for medical assistance"

Renumber accordingly

Date: 1/24/05

Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1281

House

Human Services

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

*Do Pass as Amended*

Motion Made By

*Devlin*

Seconded By

*Porter*

Representatives

Yes

No

Representatives

Yes

No

Chairman C.S. Price

V Chrm. G. Kreidt

Rep. V. Pietsch

Rep. J.O. Nelson

Rep. W.R. Devlin

Rep. T. Porter

Rep. G. Uglem

Rep. C. Damschen

Rep. R. Weisz

Rep. L. Kaldor

Rep. L. Potter

Rep. S. Sandvig

*AB*

Total ( ) //

No 0

Absent /

Floor Assignment

*Rep. Kreidt*

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

*Rep. Devlin - motion DVA - Porter 2nd - 12-01*

*Rep. Devlin motion to reconsider*

Date: 1/26/05

Roll Call Vote #: J

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1281

House

Human Services

Committee

☐

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass as Amel (Reconsidered)

Motion Made By Rep Devlin Seconded By Rep Porter

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

Total (gl) 11

No 0

Absent 1

Floor Assignment

Rep Kreidt

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

Date: 1/26/05

Roll Call Vote #:

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 128J

House

Human Services

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Ream - No Pass - Re-re Amended -

Motion Made By

Rep Kreidt

Seconded By

Uglen

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

Total

( ) Yes - 11

No

0

Absent

1

Floor Assignment

Rep Kreidt

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

**REPORT OF STANDING COMMITTEE**

HB 1281: Human Services Committee (Rep. Price, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1281 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "three" with "two"

Page 1, line 4, replace "Three" with "Two"

Page 1, remove lines 6 through 13

Page 1, line 19, replace "A resident of a" with "An individual is not ineligible for medical assistance if application of disqualifying transfer provisions would deprive the individual of nursing care and services and the individual makes a satisfactory showing that:

1. For periods after the return, all income or assets constituting the disqualifying transfer have been transferred or assigned back to the individual and the individual is otherwise eligible for medical assistance;  
or"

Page 1, remove lines 20 through 24

Page 2, line 1, after the second "the" insert "income or"

Page 2, line 2, replace "applicant or resident" with "individual"

Page 2, line 3, after "facility" insert "and the individual is otherwise eligible for medical assistance"

Renumber accordingly



2005 SENATE HUMAN SERVICES

HB 1281

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1281

Senate Human Services Committee

☐ Conference Committee

Hearing Date February 23, 2005

Tape Number	Side A	Side B	Meter #
1	x		1445-end
1		x	00-520

Committee Clerk Signature



Minutes:

Chairman Lee opened the public hearing on HB 1281. All members were present.

**Representative Gary Kreidt, District 33, introduced the bill.** This bill relates to medical assistance eligibility and long-term care facilities. See written testimony (attachment 1).

**Rep. Kreidt:** Some individuals run up high bills. This would give nursing facilities a better way to determine if the person has assets to pay.

**Chairman Lee:** What would happen if a person transferred their assets to their kids in anticipation of going into a nursing home and the kids have spent the money and it's within that three-year look-back time and all those other things that create an issue on this transfer of assets; if the money isn't there, then what?

**Rep. Kreidt:** If it was done prior to the 36 months, there's no problem. But if not, we should be able to, with this bill, explore all avenues, and hope there isn't the money there and the son or

daughter has spent that money. The possibility is that they won't be admitted to that facility just to keep them out of trouble.

**Chairman Lee:** If this person needs the care, and because of the transfer of assets issues, they don't qualify for Medicaid, who's going to take care of that person?

**Rep. Kreidt:** The possibility is that the facility might pursue legal action against the son/daughter that spent the assets. You can't get blood out of a turnip. But if they did have assets, they could legally go after that money.

**Chairman Lee:** If the money just isn't there, and you're going through all the hassles about determining whether or not the eligibility takes place...if you were the administrator of that facility what can you do, other than going after the adult child who spent the money, what other recourse do you have, any?

**Rep. Kreidt:** Not really. You eat it and it's happening right now. Hopefully, with this bill, we can alleviate some of that and also, if it does pass, and people that are planning estates will take the time to look at this bill and give that information to their clients that they don't wind up in those situations.

**Sen. Dever:** I see this bill is to 'create and enact' as opposed to 'amend and reenact' I'm wondering are facilities now prevented from either asking for that information or denying somebody admission?

**Rep. Kreidt:** Prior to this, it was a gray area, and it was difficult to get information from the person applying and sometimes the counties or the state; hopefully we'll have an easier time with this bill.

**Chairman Lee:** Can hospitals get this information now? We haven't heard from them yet.

**Rep. Kreidt:** I'm sure they do

**Testimony in favor of the bill**

**Shelly Peterson, President of the North Dakota Long Term Care Association.** See written testimony (Attachment 2)

**Leslie Oliver, Counsel to the North Dakota Long Term Care Association.** See written testimony (Attachment 3) She was involved in drafting this bill with the Department of Human Services, other attorneys and with the Association.

**Chairman Lee:** This legislature has worked very hard to make people responsible for their own debts because the attitude we've had is that we are responsible for our own debts and that we shouldn't be able to transfer assets to somebody else in order to have taxpayers pay for that cost.

**Neutral Testimony**

**David Zentner, Director of Medical Services for the Department of Human Services.** See written testimony (Attachment 4)

**Sen. Lyson:** If a parent gives a child a gift, but needed to go into a nursing home before the 36 months were up, does that gift fall into this area of whose eligible?

**Zentner:** It depends on how much was given and when it was given. Right now, what we look at it from the date the asset was given away. For example, if you give \$10,000 away, and the average nursing home cost is about \$4400/month, so within three months, that asset would no longer be counted, because the period of ineligibility would have gone by because that \$10,000 had been incurred.

**Sen. Dever:** If I heard Ms. Peterson correctly I think she said 70% of admissions are transfers from hospitals. What are the options, if the nursing home says, no, we can't take them, is the

hospital going to keep them, the children aren't going to take them, or they're going to find another nursing home that doesn't ask the questions.

**Zentner:** It creates a dilemma; the hospital is caught in a catch-22 because if they are Medicare or Medicaid eligible, we pay on a DRG basis, so an extended period of time is not going to be payable. I would think, in that case, if they can't find a nursing home, the other option is to take them home. This doesn't happen a great deal, but it certainly is a possibility and it does put the nursing homes in a precarious position because they're caught between the hospital wanting to discharge and the family needing a place if they cannot take care of them at home. Yet we have the issue of the fact that there were dollars available to pay for that care and how much responsibility do the taxpayers of North Dakota have to pay in those kinds of circumstances.

**Sen. Dever:** Then, do they wait a week and become Medicaid eligible because the hospital bill will be higher than the nursing home bill.

**Chairman Lee:** Not necessarily, because the hospital is paid on a DRG basis.

**Sen. Warner:** Can they partition their bad debt so that they send in some in different years to avoid the limitations of indirect costs? Or do they (nursing home) need to write it off in the year which it occurred?

**Zentner:** I believe they have to write it off in the year it occurred.

**Sen. Warner:** Is that state policy or federal policy? I'm trying to figure out how to get rid of this \$4 million backlog.

**Zentner:** I assume that it's a state issue, but you also have the accounting issue aspect, how long you can expense something. Again, if they're over the limit, it doesn't make any difference, they can't claim any dollars anyway. Of course, we're rebasing next year which should allow a

number of facilities to access that aspect of it because the limits will be going up so more facilities will have access to it. It's probably a state requirement. Again, how much responsibility should the taxpayers have for individuals who don't plan appropriately and give their assets away and think the state and federal taxpayers ought to pick up the difference.

**Steve Rickson, lobbyist for MedCenter One Health Systems.** He did some checking and they do not have a big problem with annuity or asset transfer to qualify for medical assistance in a hospital setting. But will have the residual problem if they come to us from nursing homes. And to answer Senator Dever's question, in a hospital situation, they would take care of patients that wouldn't qualify for medical assistance to get into a long-term care facility. Our situation is somewhat unique because we have long-term care nursing facilities as well as the hospital.

**Bruce Murry, Protection and Advocacy Project.** He suggested on small adjustmenet that might relieve some of the negative impact, that is to have a beginning date on which these transfers would be subject to the additional infomation gathering and additional remedy for the nursing facility of collection. The reason I ask that is if this is a tool to try to change the direction of estate planning, some of the people who do this in the next six months may not have gotten the word.

**Zentner:** As it realtes to the transfer of assets, that's set in federal policy, I don't see where a beginning date would assist us, from our standpoint in that process because we have....it's pretty well laid out how we deal with the transfer issue; it depends when you give it away and how much you give away, so I don't know how a beginning date in that circumstance would have a real effect on how we would deal with that issue.

There was no further testimony. Chairman Lee closed the hearing on HB 1281.

Chairman Lee reopened discussion on this bill.

**Sen. Lyson:** I don't have any problems with 1281.

**Sen. Warner:** If the spent the asset away and then there's a determination, and then there's going to be a determination that they suspect is going to find not eligible, then they sneak the asset back in, then it's a wash. Is there some penalty if the determination is make and then the transfer of the asset?

**Peterson:** I don't believe there's a penalty. You're just kind of undoing the transfer. And what would happen is the value of that transfer would be available for care then, so you'd have to spend that money toward the care and then you'd be eligible for Medicaid.

**Sen. Warner:** Can you explain Dave's comment when he made an analogy that there would be an accumulated bill, that clog of payment and then there would be a determination of non-eligibility and then transfer of the asset. Now would the transfer of the asset to be applied to the back bill, so that would be considered, how would there be a negative against that asset and only the balance would carry forward determining eligibility.

**Peterson:** It's a little more complex than that. But generally that asset should be available for and so it would be the bill going forward. There's an issue on past medical bills and Medicaid eligibility that you're only allowed to pay \$15 per month toward past medical bills. So that's a different rule that the department. Normally when you undo the asset, the proceeds of the asset would be used toward the unpaid medical bill. Which means they're probably still ineligible for Medicaid until the proceeds are used toward that bill. And then you can set aside at least \$3000 in the burial or \$5000 if it changes, and then \$3000 in other assets. So you'd have to spend down

to a certain point before Medicaid picks up. Now Medicaid will go back three months from the date that you apply.

**Chairman Lee:** The good thing about the three months is that they can be admitted to a facility and apply and then once the determination is made to qualify, then the facilities cost will be paid and so a facility wouldn't be reluctant to admit somebody who appears to be Medicaid qualified because they know they're going to get paid back to day one in that three month period.

There was further general conversation on eligibility, the family farm issue and liquid assets versus non-liquid. Senator Dever asked if the facility can ask a person to pledge the farm upfront.

**Peterson:** We can't ask them that. We can't ask for prepayment, or an advance down. The part of the bill that was amended out was our ability to go after the asset that was transferred. Right now, in practice, that's the only way a facility can get money, is to go after that asset that was transferred. We're hoping if ever getting paid, then we have to do that. Generally, families that can, will try to come up with the money.

**Chairman Lee:** The original bill allowed you to go after the transferred asset? But the engrossed one does not?

**Peterson:** Correct. There are seven very important sentences that we felt were the meat of the bill, and those were taken from us. We wanted to put in statute what we were doing in practice. Because in practice right now, in order to get paid, we have to go after that asset, otherwise there isn't any money to get paid. The amended part said that we could go after that asset. We thought estate planners could inform individuals that are doing estate planning, that, should you need care within 36 months and you transferred those assets, then the facility that was providing the care



may come after this asset. They were worried about going after the family farm, but that's what we're doing right now, because that's the only asset available. Some of these outstanding debts owed to smaller nursing homes will sink them. This bill says that up front we need to be having a conversation with families, for their benefit and ours too. You don't want to get in the position of having to evict someone.

Chairman Lee wanted to look at the original bill and what the House amended out and if there's anything they're interested in reviewing. I think there might have been something valuable in there to begin with, and we should determine whether or not we're comfortable with the changes. Ms. Peterson agreed that she liked the original bill better. She added that some attorneys that do estate planning didn't like it.

**Sen. Lyson:** The only problem I see with changing this is, we don't want to lose the bill.

**Chairman Lee:** I don't want to lose the bill, either. But I think it's worth us taking a peek at what was in the original bill and see if there's anything there we want to talk about and I believe we shouldn't let the perfect get in the way of the good, but there might be something in there we might want to take a second look at.

Chairman Lee closed discussion on HB 1281. No action was taken

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1281

Senate Human Services Committee

☐ Conference Committee

Hearing Date March 7, 2005

Tape Number	Side A	Side B	Meter #
1		X	49.6 - 56.7
2	X		7.8 - 8.7
2	X		57.9 - 59.6

Committee Clerk Signature



Minutes:

**Senator Judy Lee**, Chairman of the Senate Human Services Committee opened committee work on HB 1281 relating to medical assistance eligibility and long-term care facilities.

All members of the committee were present.

Discussion was held as to when the beginning date is set and if it is not already set by federal law.

**Senator Lee** asked the intern to contact Dave Zentner, Director of Medical Services for the North Dakota Department of Human Services for confirmation.

**Tape #2, Side A, 7.8 - 8.7**

Conference call with Dave Zentner:

**Senator Lee** questioned the beginning date issue.

**Dave Zentner** stated this was not an issue because federal law does not allow any latitude.

Page 2  
Senate Human Services Committee  
Bill/Resolution Number HB 1281  
Hearing Date 3-7-05

**Tape #2, Side A, 57.9 -**

**Senator Lee** opened committee work on HB 1281, asking if there was any other questions on the bill.

**Senator Stanley Lyson** made a motion for Do Pass of HB 1281.

**Senator Richard Brown** second the motion.

Roll call vote for a Do Pass of HB 1281 was taken indicating 5 YEAS, 0 NAYS AND 0 ABSENT OR NOT VOTING.

**Senator Lyson** will carry HB 1281.

**Senator Lee** closed the committee work meeting on HB 1281.

Date: 3-7-05  
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB1281

Senate Human Services

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass

Motion Made By Sen Lyson Seconded By Sen Brown

Senators	Yes	No	Senators	Yes	No
Sen. Judy Lee - Chairman	✓		Sen. John Warner	✓	
Sen. Dick Dever - Vice Chairman	✓				
Sen. Richard Brown	✓				
Sen. Stanley Lyson	✓				

Total (Yes) 5 No 0

Absent 0  
Floor Assignment Sen Lyson

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

**REPORT OF STANDING COMMITTEE (410)**  
March 7, 2005 3:54 p.m.

**Module No: SR-41-4313**  
**Carrier: Lyson**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1281, as engrossed: Human Services Committee (Sen. Seymour, Chairman)**  
recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).  
Engrossed HB 1281 was placed on the Fourteenth order on the calendar.

**2005 TESTIMONY**

HB 1281

1  
Members of the House Human Services Committee,

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

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

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

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

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

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

Respectfully,  
Kelly B Wentz  
January 18, 2005

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January 19, 2005

Good morning Chairman Price and members of the House Human Services Committee.

I am Representative Gary Kreidt, District 33 from New Salem.

I am here to introduce HB 1281 and urge a do pass from this committee.

Today 56% of individuals in a nursing facility have Medicaid as a primary source of payment. There are a number of other individuals, who apply for Medicaid and are ineligible because of asset transfer issues. Currently facilities are carrying close to four million dollars in accounts receivable related to transfer of asset issues and no one is claiming responsibility or paying the bill. Many residents are at risk of eviction. However, there is no place to send them. Medicaid has determined funds should be available for care. However, the residents many times do not have access to their transferred assets. This bill does not deny the legal rights of all residents to transfer assets. However, it makes clear the legal right to have individuals pay for services that have been provided.

I urge a do pass on HB 1281 and would be happy to answer any questions. Shelly Peterson of the NDLTC will explain the bill in greater detail.

Thank you,

Gary Kreidt  
State Representative, District 33



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**Testimony on HB 1281**  
**House Human Services Committee**  
**January 19, 2005**

Chairman Price and members of the House Human Services Committee, thank you for the opportunity to testify on HB 1281. My name is Shelly Peterson, President of the North Dakota Long Term Care Association. I am here to testify in support of HB 1281.

I would like to provide some general comments and then Leslie Oliver with the Vogel Law Firm will address the specific provisions in HB 1281. Almost a year ago, our Association members began discussing this issue of non-payment and Medicaid ineligibility. We surveyed our members and with 60% reporting they identified \$3.8 million in current receivables related to residents "not having any money" to pay for their care and Medicaid refusing to pay the bill. In these cases, Medicaid had determined assets "should" be available for care and denied coverage.

Medicaid was created as a program for the poor. For those who have little or no money or who have spent all of their savings on their care. It's our society's ultimate safety net. Over time Medicaid has evolved into a program to cover the cost of long term care. Today, well over half of the individuals in North Dakota nursing homes are Medicaid recipients. Through trust and estate planning more and more Americans are applying for Medicaid and being served. We recognize estate planning is a legal process and we are not here to take away the legal right to spend down and transfer assets. We are here because we are getting caught in the nightmare of someone giving away assets and not having money available for their care. Medicaid, we assume is correct in denying coverage in these complex asset transferring and trust issues. We just want to provide the necessary care and have the resources to pay the caregivers who are providing the care.

We have outlined some solution in HB 1281 that we hope will lessen our receivable problem. Currently when a resident doesn't pay their monthly bill, our recourse is to evict them. Residents have received eviction notices, some have gone back home with children but many more are receiving care in our nursing homes and no one is paying the bill.

In December 2004 we invited the Department of Human Services and attorney's who specialize in estate planning to help us outline legislative solutions. We found facilities need to be more responsible and aggressive in up-front gathering of financial information from potential residents. HB 1281 strengthens our rights in this area.

I would like to emphasize that nothing we are proposing lessens an individual's rights and ability to transfer assets. Your consideration of our HB 1281 is deeply appreciated.

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

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## **Testimony on HB 1281 House Human Services Committee January 19, 2005**

Chairman Price and members of the House Human Services Committee, thank you for the opportunity to testify on HB 1281. My name is Leslie Oliver, and I am counsel to the North Dakota Long Term Care Association. I am here to testify in support of HB 1281.

I would like to provide some background information about this bill, and then address the specific provisions of HB 1281.

HB 1281 applies only to circumstances where a nursing facility resident, or applicant, is found ineligible for medical assistance due to a disqualifying transfer. A disqualifying transfer is a transfer of assets or income for less than fair market value. The period of ineligibility is determined by the fair market value of the asset at the time of transfer.

For example: If an individual transfers an asset with a fair market value of \$600,000 for \$100,000, the individual will not be eligible for medical assistance until he or she has incurred \$500,000 in skilled nursing services.

According to medical assistance regulations, a transfer for less than fair market value is presumed disqualifying, or, done for the express purpose of reducing income or assets to become eligible for medical assistance benefits.

Long term care facilities admit individuals under stressful and often hurried circumstances. Federal law prohibits facilities from requiring pre-payment or a deposit as a condition of admission, or from requiring a guarantee of payment from anyone but the applicant. It is not unusual for facilities to admit an individual with a pending medical assistance application. If medical assistance is denied due to a disqualifying transfer, the facility is stuck – it must continue to provide care to the resident without payment, and consider its only other alternative - eviction proceedings.

Nursing facility evictions are highly regulated, expensive, difficult, and a last resort for nursing facilities for many reasons. Evicting a nursing facility resident requires a thirty day written notice. The resident has the right to a fair hearing challenging the eviction, and the right to appeal an eviction all the way to the Supreme Court. The process can last for more than one year. In the end, even if the facility succeeds, there is often no where for the resident to be transferred to. Facilities continue to incur greater debt for the care that must be provided to the resident during this time.

HB 1281 gives nursing facilities a fair and reasonable remedy in the event an applicant or a resident is determined ineligible for medical assistance due to a disqualifying transfer. The first subsection of the bill, makes the transferee, or recipient of the asset, and the transferor, or resident, jointly and severally liable for the debt resulting from any care provided by the facility up the amount of the fair market value of the asset at the time of transfer.

The second subsection of the bill explains the facility's right to obtain financial information from applicants, to determine their ability to pay for nursing care. This includes the right to information concerning assets, transfer of assets, health insurance and medical assistance benefits or application for benefits. This subsection informs applicants of the facility's right to deny admission to anyone who can not verify a payment source for the cost of care. This subsection does not give the facility the right to deny admission because the applicant has a pending medical assistance application.

Subsection three of HB 1281 remedies or reverses ineligibility determinations, in a process utilized by the transferee, or the recipient of the transferred asset, and the transferor, the resident, if the asset is transferred back to the resident, or compensation equal to the fair market value of the asset at the time of transfer is paid to, or for the resident's care and services provided by a nursing facility.

HB 1281 will not cure all the problems created by medical assistance ineligibility due to disqualifying transfers. It does, however, address a significant problem facing our state facilities today, and provide a fair and reasonable means to obtain payment, under limited circumstances, for the care and services provided to residents.

Thank you.

Leslie Bakken Oliver  
Vogel Law Firm  
U.S. Bank Building  
200 N. 3<sup>rd</sup> St., Ste. 201  
Bismarck, ND 58501  
(701) 258-7899

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HB 1281

My name is Bob Owens I am the administrator of the Elm Crest Manor in New Salem, North Dakota. I come before you today to speak in favor of House Bill 1281. I am speaking as a private citizen and with concern for my 100 employees and my 61 residents.

About 1 year ago a lady entered into our care center currently on SSI and needing skilled nursing home service. She has for assets a home that sits in Center, North Dakota and to my understanding not the most valuable property in the city.

She also receives social security income and this is controlled by the daughter who is the P.O.A. She makes application in Oliver County to become a part of the Medicaid system. Again when I say she, this would be her daughter doing everything as she has to ability to do nothing. After about 3 months Elm Crest makes contact to the daughter who is keeping all of the social security checks and stating that she will be approved for Medicaid in Oliver County.

The question is the house because they have listed with a Mandan realtor it is not considered meeting the requirements of proper listing and she will not qualify.

The bill is now 6 months old and no payment is being received and we now hire a lawyer for collection. The daughter has filed for appeal and with the help of Legal aide is told that she will win and has done everything. Now during this whole process everyone thinks our answer is to send a notice of discharge because of non payment.

The problem is that with that notice we must provide a proper discharge that meets her needs. This is where the problems just continue to grow. There is no proper discharge, the lady that you are kicking out has not done any of this but she would be the one that would have to be put at risk. The daughter continues to spend the social security and continues to say she has to pay mothers bills.

We make all the calls that can be made, the state ombudsman, the states attorneys office, legal aide and yes during this time continue to pay the lawyer who in the end will tell you that you can kick her out but he has no plan for discharge.

You now go to plan two. Let's pursue the daughter she is not acting in her mother's behalf. You go to the Morton County sheriff office and press charges of elderly abuse against the daughter but the officer calls you back and says that no information can be gotten because the lawyer for legal assistance says everything is in appeal and she has done nothing wrong. You are still asking about the social security check so you file to have it sent to Elm Crest. The daughter files again on top of

you and with more phone calls and a determination hearing on who should act in her behalf. You prove that the money has not been turned over for her care and the good news is in just 45 to 60 days you will be the person getting the social security checks so that she will have some income for her.

We now move to month 10 and the only way to get through the process so someone will work in her behalf is to find a guardian. You are told by the Health Departments office to file for guardian ship so that you can get rid of the house so that she can qualify for Medicaid. You obtain the papers, pay \$80.00 and they tell you they believe that you may not have enough information for the paper work that needs to be completed.

The reason is that through hipa no one will give you the information. You file the papers in hopes that someone will see that you are trying to resolve the issue. The bill now comes to the 12th month and during that time you have received nothing and again everyone tells you that you can toss the lady out because she didn't pay the bill but remember you can be held liable for the action and a proper discharge is needed. What other nursing home in the state would want this problem.

In closing I remind you that if this bill passes it does not aide us or homes prior to this legislation but I am here today to give you the information that can show you just how fast and how it can happen to any home in the state.

5  
**TESTIMONY BEFORE THE HOUSE HUMAN SERVICES COMMITTEE**

**REGARDING HOUSE BILL 1281**

**JANUARY 19, 2005**

**Chairman Price, members of the committee, I am David Zentner, Director of Medical Services for the Department of Human Services. I appear before you to provide information regarding this bill.**

**This bill creates three new subsections relating to eligibility for the North Dakota Medicaid program. The first subsection creates a debt for either the transferor or transferee, when assets are transferred at less than fair market value that results in Medicaid ineligibility. We have no problem with this subsection.**

**The second subsection allows nursing facilities to collect information regarding income and assets from applicants to admission. We also have no problem with this subsection.**

**The third subsection permits individuals who have transferred assets, at less than fair market value, to obtain the assets from the transferee, and then become eligible for Medicaid if the transfer penalty would deprive the individual of nursing care services, and compensation equal to the fair market value of the asset is paid to the nursing facility.**

**The language indicates that an individual who complied with the above requirement would be determined to be automatically eligible for the Medicaid program. This is not permissible, as anyone applying for Medicaid eligibility must still meet all other requirements. We could not automatically enroll an individual into the Medicaid program simply because they agreed to take back transferred assets that were given away at less than fair market value.**

Under current policy, if a disqualifying transfer is returned before a Medicaid decision is made, the transfer is not considered when determining eligibility; but the returned asset would be included in determining if the applicant was eligible for Medicaid. If the assets are returned after a Medicaid decision is made the transfer ends at that time, and the returned assets would be considered when determining if the individual qualified for the Medicaid program in future months. An individual can use those returned assets to pay for medical services including nursing facility services. This policy follows current federal law regarding the transfer of assets at less than fair market value. We are unable to deviate from this policy.

I would be happy to respond to any questions you may have.

*Assume - 60,000 transfer -*

*40,000 -*

*20,000 - in assets - pay down -  
(not qualify)  
then and qualify -*

*Process - to rework some debts -*

January 19, 2005

HOUSE HUMAN SERVICES COMMITTEE  
SD #2070 HB 1281

CHAIRPERSON PRICE AND COMMITTEE MEMBERS:

My name is Damian Huettl. I am an attorney from Bismarck appearing here today on my own behalf.

I oppose this bill creating three new sections to chapter 50-24.1 of the North Dakota Century Code for the following reasons:

A. ASSETS TRANSFER OR ASSIGNMENT – EFFECT ON LONG-TERM CARE FACILITY DEBT

1. Because of the language providing “that results in a final determination by the department of human services that the transfer or assignment is a disqualifying transfer that results in an applicant...being ineligible for medical assistance,” it is clear that this provision would only apply after an application for medical assistance was made and denied. An unsuccessful applicant has appeal rights to challenge such a determination by the department. Thus, the department cannot be allowed to make the final determination of whether a transfer or assignment is a disqualifying transfer.
2. A disqualifying transfer is generally defined as a transaction in which fair market value is not received in exchange for a particular asset. As such, a prospective Medicaid applicant could sell a car for 70% of its fair market value and a disqualifying transfer would occur. This bill would hold the purchaser responsible for the nursing home bills of the seller for the entire value of the car, even though a disqualifying transfer of 30% of the value occurred.
3. It is against the dictates of sound public policy to hold a recipient of a disqualifying transfer responsible for the nursing home costs of the transferor, whether the recipient is a family member, charity, or third party. The consequences should be suffered by the transferor as the law currently provides and not an unsuspecting recipient. *(nontransfer)*

B. LONG-TERM CARE FACILITY INFORMATION

1. With a limited number of nursing home beds available in our state, this provision would enable a nursing home to discriminate between an individual with substantial assets and those with very little. Thus, an individual with \$500,000 in assets is much more likely to be allowed admission into a nursing home with limited space than an individual with



\$20,000 in assets and likely to apply for medical assistance within the next 3-5 months.

C. LONG-TERM CARE FACILITY RESIDENT – MEDICAL ASSISTANTANCE  
ELIGIBILITY

1. This provision provides that an individual is eligible for medical assistance if an asset constituting a disqualifying transfer was returned or fair market value was paid to the individual for the asset. This could potentially result in an individual being eligible for medical assistance despite possessing assets in excess of the medical assistance criteria.

I respectfully request that the Committee gives this bill a DO NOT pass recommendation. I thank you for your time and consideration. I would be glad to answer any questions that you may have.

**HB 1281**

**By Rep. Gary Kreidt**

February 15, 2005

Good morning Chairman Lee and members of the Senate Human Services Committee.

I am Representative Gary Kreidt, District 33 from New Salem.

I am here to introduce HB 1281 and urge a do pass from this committee.

Today 56% of individuals in a nursing facility have Medicaid as a primary source of payment. There are a number of other individuals, who apply for Medicaid and are ineligible because of asset transfer issues. Currently facilities are carrying close to four million dollars in accounts receivable related to transfer of asset issues and no one is claiming responsibility or paying the bill. Many residents are at risk of eviction. However, there is no place to send them. Medicaid has determined funds should be available for care. However, the residents many times do not have access to their transferred assets. This bill does not deny the legal rights of all residents to transfer assets. However, it makes clear the legal right to have individuals pay for services that have been provided.

I urge a do pass on HB 1281 and would be happy to answer any questions.

Shelly Peterson of the NDLTC will explain the bill in greater detail.

Thank you,

Gary Kreidt  
State Representative  
District 33

**Testimony on HB 1281**  
**Senate Human Services Committee**  
**February 23, 2005**

Chairman Lee and members of the Senate Human Services Committee, thank you for the opportunity to testify on HB 1281. My name is Shelly Peterson, President of the North Dakota Long Term Care Association. I am here to testify in support of HB 1281.

I would like to provide some general comments and then Leslie Oliver with the Vogel Law Firm will address the specific provisions in HB 1281. Almost a year ago, our Association members began discussing this issue of non-payment and Medicaid ineligibility. We surveyed our members and with 60% reporting they identified \$3.8 million in current receivables related to residents "not having any money" to pay for their care and Medicaid refusing to pay the bill. In these cases, Medicaid had determined assets "should" be available for care and denied coverage.

Medicaid was created as a program for the poor. For those who have little or no money or who have spent all of their savings on their care. It's our society's ultimate safety net. Over time Medicaid has evolved into a program to cover the cost of long term care. Today, well over half of the individuals in North Dakota nursing homes are Medicaid recipients. Through trust and estate planning more and more Americans are applying for Medicaid and being served. We recognize estate planning is a legal process and we are not here to take away the legal right to spend down and transfer assets. We are here because we are getting caught in the nightmare of someone giving away assets and not having money available for their care. Medicaid, we assume is correct in denying coverage in these complex asset transferring and trust issues. We just want to provide the necessary care and have the resources to pay the caregivers who are providing the care.

We have outlined some solution in HB 1281 that we hope will lessen our receivable problem. Currently when a resident doesn't pay their monthly bill, our recourse is to evict them. Residents have received eviction notices, some have gone back home with children but many more are receiving care in our nursing homes and no one is paying the bill.

In December 2004 we invited the Department of Human Services and attorney's who specialize in estate planning to help us outline legislative solutions. We found facilities need to be more responsible and aggressive in up-front gathering of financial information from potential residents. HB 1281 strengthens our rights in this area.

I would like to emphasize that nothing we are proposing lessens an individual's rights and ability to transfer assets. Your consideration of our HB 1281 is deeply appreciated.

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

**Testimony on Engrossed House Bill 1281**  
**Senate Human Services Committee**  
**February 23, 2005**

Chairman Lee, Vice Chairman Dever and members of the Senate Human Services Committee, thank you for the opportunity to testify on Engrossed House Bill 1281. My name is Leslie Oliver, and I am counsel to the North Dakota Long Term Care Association. I am here to testify in favor of HB 1281.

I would like to provide some background information about this bill, and address the specific provisions of HB 1281.

Long-term care facilities admit new residents under stressful and often rushed circumstances; it is not unusual for a facility to admit residents that have applied, but not received approval for medical assistance benefits. If a new resident is later deemed ineligible for medical assistance based upon a disqualifying transfer, the facility is left with few choices. Federal law prohibits facilities from requiring a payment guarantee from anyone but the applicant. The facility must continue to provide care to the resident without payment, and consider initiating eviction proceedings.

Nursing facility evictions are regulated by federal law. These proceedings are complicated, expensive, time-consuming, and a last resort for nursing facilities for many reasons. Evicting a nursing facility resident requires a thirty-day written notice prior to the eviction. The resident has the right to a fair hearing challenging the eviction, the right to appeals to the District Court and the North Dakota Supreme Court. The eviction process may take a year or longer. In the end, even if the facility "wins", the facility cannot discharge a resident unless there is a suitable place for the resident to go. Facilities continue to provide care to evicted residents without compensation.

HB 1281, if passed, will establish a facility's right to obtain financial information from applicants to establish the ability to pay for nursing care. This includes the right to information concerning an applicant's assets, the transfer of assets, health insurance, medical assistance eligibility or information concerning a pending application for benefits. HB 1281 clarifies a facility's right to deny admission to anyone who cannot verify a payment source for the cost of care. HB 1281 does not give the facility the right to deny admission because the applicant has a pending medical assistance application or give the facility any authority or role in the medical assistance determination process.

HB 1281 addresses the specific circumstance where a nursing facility resident, or applicant, is determined ineligible for medical assistance due to a disqualifying transfer. A disqualifying transfer is a transfer of assets or income for less than fair market value. Such a transfer results in a period of ineligibility determined by the fair market value of the asset at the time of transfer.

For example: If an individual transfers an asset with a fair market value of \$600,000, to the individual's daughter, for a payment of \$100,000, the individual will not be eligible for medical assistance until he or she has incurred \$500,000 (\$600,000 - \$100,000 = \$500,000) in skilled nursing services.

According to medical assistance regulations, a transfer for less than fair market value is presumed to be disqualifying, or put another way, done purposefully to reduce income or assets in order to qualify for medical assistance benefits.

HB 1281 permits a nursing facility resident or applicant to avoid the period of ineligibility resulting from a disqualifying transfer if: 1) the asset or income determined disqualifying is transferred back to the resident, and the resident is otherwise eligible for medical assistance, or 2) compensation equal to the fair market value of the asset at the time of transfer is used to pay for care and services provided for the resident by the nursing facility, and the resident is otherwise eligible for medical assistance benefits.

HB 1281 does not cure all the problems created by medical assistance ineligibility generally or from disqualifying transfers. This bill acknowledges a significant problem facing our nursing facilities today, and offers a fair and reasonable means to obtain information concerning an applicant's ability to pay, and a means of avoiding medical assistance ineligibility caused by a disqualifying transfer.

Thank you.

Leslie Bakken Oliver  
Vogel Law Firm  
U.S. Bank Building  
200 N. 3<sup>rd</sup> St., Ste. 201  
Bismarck, ND 58501  
(701) 258-7899

**TESTIMONY BEFORE THE SENATE HUMAN SERVICES COMMITTEE**

**REGARDING HOUSE BILL 1281**

**FEBRUARY 23, 2005**

**Chairman Lee, members of the committee, I am David Zentner, Director of Medical Services for the Department of Human Services. I appear before you to provide information regarding this bill.**

**This amended bill creates two new subsections relating to eligibility for the North Dakota Medicaid program.**

**The first subsection allows nursing facilities to collect information regarding income and assets from applicants to admission. We have no problem with this subsection.**

**The second subsection permits individuals who have transferred assets, at less than fair market value, to obtain the assets from the transferee, and then become eligible for Medicaid if the transfer penalty would deprive the individual of nursing care services, and the provisions of this sub-section are met by the applicant or recipient. Initially the Department had expressed concern about this section because it did not follow federal Medicaid eligibility determination requirements. It has been amended and therefore we have no issue with the new language contained in this sub-section.**

**Under current policy, if a disqualifying transfer is returned before a Medicaid decision is made, the transfer is not considered when determining eligibility; however, the returned asset would be included in determining eligibility if the applicant was eligible for Medicaid. If the assets are returned after a Medicaid decision is made the transfer ends at**

that time, and the returned assets would be considered when determining if the individual qualified for the Medicaid program in future months. An individual can use those returned assets to pay for medical services including nursing facility services. This policy follows current federal law regarding the transfer of assets at less than fair market value. We are unable to deviate from this policy.

I would be happy to respond to any questions you may have.