

MICROFILM DIVIDER

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SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1436

2005 HOUSE HUMAN SERVICES

HB 1436

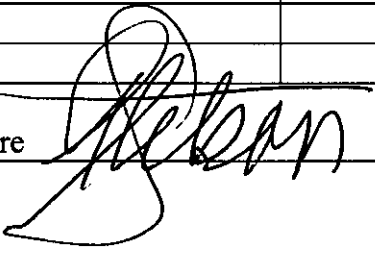
2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1436

House Human Services Committee

☐ Conference Committee

Hearing Date January 24, 2005

Tape Number	Side A	Side B	Meter #
#1	x		1032 -3011
Committee Clerk Signature 			

Minutes:

Chairman Price opened hearing. 12 members present.

Rep. Koppleman: This bill deals with DHS recovering for the estate of a person who has received medical assistance. Quantifies what current practices after lawsuits. We have a state law on the books that says that if someone is on medical assistance. Their estate is liable for the cost of that assistance, however DHS is not allowed to collect those dollars or even attempt to collect those dollars until after the death of a surviving spouse. This practice has been that the DHS does not notify the surviving spouse of that liability. Unfortunately in some cases, when the surviving spouse is not notified, and they live for a long period of time, when they do pass away. The heirs are presented with a large bill that could be mostly interest. The Dept. did have some law suits that did not go in their favor. So there is not really a law in ND, that can direct DHS how or how much interest they are allowed to charge.

Rep. Devlin: I am trying to think of a situation where a surviving spouse would not be aware of the debt to the DHS.

Rep. Koppleman: My understanding, DHS does not notify the family.

Rep. Kreidt: Should a provision that there would be interest charged?

Rep. Koppleman: Example: Dad is destitute and when estate is settled - the money owed is canceled.

Rep. Kreidt: They could send an awareness notice.

Rep. Koppleman: We should apply what the law says.

Rep. Potter: If someone is on public assistance for sometime, and they die and they do have property (personal or other wise) and have to pay back, I can see that would put the surviving spouse in somewhat of a turmoil and trying to figure out how to pay. I too, don't understand though, if one is on assistance, aren't they both on assistance?

Rep. Koppleman: Possible not.

John V. Emter: In 2001, my mom died, and there was a nursing home bill of \$6000.00. My dad did not have the money to pay for that. He went into the nursing home later and died shortly after that. But if he would have stayed longer, he would not have had an estate left. So I don't know what would have done about my mother's bill if there wouldn't have been an estate to pay for it. What happens then?

Blaine Nordwall, Director of Economic Assistance Policy, DHS.

MR# 2128

Chairman Price: What is the allowance right now for at home spouse.

B. Nordwall: If we have a spouse who isn't on Medicaid, she would be entitled to keep, in addition to, what we call exempt property, which is home, auto and personal property, a little over \$90,000 as a community spouse, half that allowance. In addition to that have income of approx. \$2,200 per month. If on assistance, same exempt property and \$3,000.

Rep. Nelson: What rate does the DHS charge?

B. Nordwall: 6%, the general statute. 47-14-05.

Rep. Potter: How can one be on public assistance and one not?

B. Nordwall: Medications, Medicare, also one will be at home and other in institution.

Rep. Weisz: Currently, when is interest charged?

B. Nordwall: Since last August, we are not charging interest during the lifetime of the community spouse. Before, we began to charge 6 months after the death of the spouse. There is a separate statute governing interest in estate procedures. What happens there is if a claim is allowed and payment is delayed more than 90 days after which claims are no longer be made, than interest begins to accrue under that separate statute. We have collected and continued to collect a smaller amount, usually that happens if there is litigation.

Rep. Nelson: It was mentioned in testimony, about a policy that the Dept. using that after the court case you were going back and repaying interest on some estates, how far back did you go, and was it true that the family requested it? Why wouldn't you give blanket refunds if that was the case.

B. Nordwall: There was a substantial amount of interest paid in summer of 2004. We discontinued collecting interest in Aug. 2004, received a request in Dec. 2004. We would not do

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House Human Services Committee
Bill/Resolution Number HB1436
Hearing Date January 24, 2005

a blanket refund because the refund would go to the estates and most generally the estates would all be closed. They would have to be reopened to distribute the moneys.

Rep. Nelson: Was that particular estate closed?

B. Normal: Yes, but the firm representing the estate did reopen it.

Close hearing on HB 1436.

Chairman Price: Reopened discussion.

Rep. Devlin: Motion Do Pass

Rep. Pietsch: Second

Vote: 12-0-0. **Carrier:** Rep. Potter

FISCAL NOTE
Requested by Legislative Council
01/18/2005

Bill/Resolution No.: HB 1436

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						
Expenditures						
Appropriations						

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

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

This bill eliminates the accrual of interest on Medicaid-related estate claims during the lifetime of a surviving spouse. The former practice of charging interest was discontinued by the Department of Human Services after the Department lost two separate court cases on the issue. Because the Department has discontinued charging interest on Medicaid-related estate collections this bill 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	Agency:	Human Services
Phone Number:	328-2397	Date Prepared:	01/21/2005

Date: 1/24/05

Roll Call Vote #: /

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1436

House Human Services Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By

Rep Devlin

Seconded By

Rep Pietsch

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

Total (12) Yes No 0

Absent 0

Floor Assignment

Rep Patten

on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
January 24, 2005 1:29 p.m.

Module No: HR-15-0931
Carrier: Potter
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1436: Human Services Committee (Rep. Price, Chairman) recommends DO PASS
(12 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1436 was placed on the
Eleventh order on the calendar.

2005 SENATE HUMAN SERVICES

HB 1436

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1436**

Senate Human Services

Business and Conference Committee

Hearing Date February 23, 2005

Tape Number	Side A	Side B	Meter #
1	x		0-1300
Committee Clerk Signature <i>Diana Davis for Beth Kinnaman</i> <i>cm</i>			

Chairman Lee opens the hearing on HB 1436

Relating to the accrual of interest on medical assistance of a deceased recipient.

Representative Koppelman - Sponsor - He said the law as it stands right now says you can't collect on a debt until the death of the spouse or surviving child that is totally disabled. He assumes this law is in place for ethical and for moral reasons as well as financial. For someone on medical assistance the surviving spouse probably doesn't have a lot of assets left. So it doesn't make sense to pursue that debt. Humanely you would let the person live out there lives. If there is anything left after the surviving spouse then Medicaid could make a claim. This is how current law reads. What happens in practice however is that interest is being charged at the death of the first spouse and because you can not collect from the surviving spouse they weren't notified.

He said maybe that works if the surviving spouse only lives a couple months but when they live many years interest accumulates a lot.

(meter #289)

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

See written testimony. Explained the reason the fiscal note shows no impact.

Senator Warner - Asked if he could give an idea of the scale of claims, the dollar amount that you were recovering every year.

Nordwall - Replied, in the year;

2000 - \$7,067.27

2001 - \$11,731.

2002 - \$18,022.38

2003 - \$34,046.16

2004 - \$19,876.96

Senator Warner - Asked what the legal basis for the court claims were.

Nordwall - Said the ND Supreme Court case involving the Developmental Center that specified in the event that someone applied for benefits that had a repayment provision that the consequence that would be a implied contract to repay. The general statute that they relied specifies that if the contract doesn't provide for a specific rate of interest that it will be 6%. No implied contract is ever going to have a specific rate of interest so that was the legal theory that they relied upon.

(meter #585)

Robert Odegard - See written testimony. He also read a letter that was written to Earl Pomeroy.

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Senate Human Services

Bill/Resolution Number **HB 1436**

Hearing Date February 23, 2005

Close the hearing on HB1436

(meter #1241)

Senator Lyson - Moved do pass

Senator Dever - Seconded

Passed

Senator Lyson will carry

(meter #1300)

Date: 2-23
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1436

Senate Human Services Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number HB 1436

Action Taken _____

Motion Made By Sen Lyson Seconded By Sen Dever

Senators	Yes	No	Senators	Yes	No
Sen. Judy Lee - Chairman	✓		Sen. John Warner	✓	
Sen. Dick Dever - Vice Chairman	✓				
Sen. Richard Brown	<u>Absent</u>				
Sen. Stanley Lyson	✓				

Total (Yes) 4 No 0

Absent 1

Floor Assignment Sen. Lyson

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

REPORT OF STANDING COMMITTEE (410)
February 23, 2005 12:51 p.m.

Module No: SR-33-3478
Carrier: Lyson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1436: Human Services Committee (Sen. J. Lee, Chairman) recommends DO PASS
(4 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1436 was placed on the
Fourteenth order on the calendar.

2005 TESTIMONY

HB 1436

#1

**TESTIMONY BEFORE THE
HOUSE HUMAN SERVICES COMMITTEE
REGARDING
HOUSE BILL NO. 1436
January 24, 2005**

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. We are responsible for pursuing claims in decedents' estates for Medicaid benefits furnished. I am here to provide some explanation of the impact of this bill, and of the fiscal note prepared by the department.

In August of 2004, the department discontinued the practice of accruing interest on the Medicaid claim during the lifetime to the surviving spouse of a deceased Medicaid recipient. That is essentially what this bill requires. For that reason the fiscal note shows no impact.

Prepared by:

**Blaine L. Nordwall
Director, Economic Assistance Policy Division
North Dakota Department of Human Services**

House Bill # 1436

Mr. Chairman, and members of the committee, my name is Robert Odegard, originally from West Fargo, ND, and I am in favor of this bill. To summarize why I am in favor I believe it would be best to read a copy of the letter that was sent to a number of our representatives and to Governor Hoeven on February 9th, 2004.

The total time spent to resolve the Human Services claim was almost a year: from November 2003 until October 2004. This included many trips to Fargo and back to Bismarck to meet with attorneys, many phone calls, and email correspondence.

The legal cost to contest the excessive interest on the Medicaid claim was \$11,667.63 total. This saved my Mother's estate \$23,789.22 net for almost a year of work.

The emotional impact is difficult to measure. You would have had to know my Father and Mother to understand. My Father was a carpenter by trade, a decorated WWII veteran, a very hard worker, very respected, and owed money to no one. He worked for Powers Construction for ~ 30 years which

was difficult and demanding work and yet I never heard my Father complain nor utter a swear word. When Parkinson's Disease finally forced him into a nursing home, my Mother went and took care of him every day and paid for his care until all her funds were exhausted. Finally, Medicaid started to pay the nursing home for my Dad's care, about 3 $\frac{1}{2}$ years. My Mother could have gradually given her remaining assets to me or my sister or signed over the house but that wouldn't have been "right". My folks would never do anything that they thought was unfair or against the law. Mom always said that she could live in the house that my Dad built but when she died the house would go to the state. Had she known about the excessive interest she would have been very upset because she would have thought it had to be paid and she wouldn't have had the money. The government is always right. That's just the way it is. Mom rarely spent money for anything for herself while Dad was still alive. She put 80,000 miles on her little 1986 Pontiac just driving back and forth between West Fargo and the Bethany Nursing Home in Fargo.....every day. She never took a vacation for the seven years my Dad was in that home. Had Mom not taken care of

him every day I know he would not have lived that long. They were devoted to each other. What little savings Mom had left when she passed away from cancer on August 16th, 2003, was to be left for my sister and me.

That \$23 thousand that we saved by contesting the Medicaid claim helped a good deal. But had we known this was all going to happen, maybe we could have found a way to put the house in my sister's name or mine. She would have loved to live back in the house she grew up in. My sister, Gloria, is a year younger than me, a severe diabetic, and an amputee. She lost a leg due to her diabetes shortly after Mom's funeral.

I thank you for your time and I hope that you vote in favor of House Bill # 1436.

cc

Mr. Earl Pomeroy
1110 Longworth House Office Building
United States House of Representatives
Washington, D.C. 20515

Re: North Dakota Department of Human Services

~~February 21, 2005~~

Feb 10, 2004

Dear Mr. Pomeroy:

I am writing regarding the estate of my mother, Ruth Odegard. She passed away on August 26, 2003. During the course of the estate administration, a claim was filed by the North Dakota Department of Human Services. The claim was for medical assistance paid on behalf of my father, Talbert Odegard, who passed away on October 30, 1997. The principal amount of the claim was \$114,428.79 and interest on the claim was \$37,601.19. 33%!

I do believe the amount of assistance is a valid debt and should be paid. However, I do not feel that interest should be accruing on a debt that is not even collectible until the death of the spouse. It would be reasonable to accrue interest after the death of the surviving spouse. There is definitely a problem with the current system of charging interest prior to the time the amount is due.

Because no probate proceeding was necessary at the time of my father's death, we were not aware of the claim. Had there been an estate proceeding, there is still a good chance that this claim would not have been presented to my mother as the Department cannot file a claim when there is a surviving spouse. It is only due and payable after the death of the survivor.

This brings us to the main point in my disputing the claim from the Department of Human Services. How is it ethical or legal that they begin accruing interest on a claim that is not even due or payable until the death of the surviving spouse? I have no problem paying the principal portion of the claim, however, I feel that the interest on the claim is ludicrous. We were not told of the claim from the Department when my father, the recipient, died, and therefore I do not feel that my mother's estate should be drained by interest on such a claim.

This occurs more often than I would have expected. We are dealing with the North Dakota Department of Human Services, a state agency, which has paid staff to deal with such issues.

February 9, 2004
Page 2

Many of the estates are drained by the claim itself and do not have the resources to pursue this problem, which needs to be addressed. Many of your taxpaying, voting citizens are paying interest on claims they never knew existed. This practice isn't fair.

When my attorney confronted the Department of Human Services about their authority to charge interest on the claim, they only presented evidence to support the interest rate on the claim. There was no supporting information on their ability to start accruing the interest six months after the recipient's death.

I would certainly appreciate your attention to this matter. I understand the need to repay the claim. However, the interest due on this amount is outrageous.

Sincerely yours,

Mr. Robert Odegard
3269 Montreal Street
Bismarck, ND 58503

**TESTIMONY BEFORE THE
SENATE HUMAN SERVICES COMMITTEE
REGARDING HOUSE BILL NO. 1436
February 23, 2005**

Chairman Lee and 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. We are responsible for pursuing claims in decedents' estates for Medicaid benefits furnished. I am here to provide some explanation of the impact of this bill, and of the fiscal note prepared by the department.

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**Prepared and presented by:
Blaine L. Nordwall, Director
Economic Assistance Policy Division
ND Department of Human Services**