

Testimony on HB 1319
House Human Services Committee
January 18, 2021

Good afternoon Chairman Weisz and members of the House Human Services Committee. My name is Shelly Peterson, President of the North Dakota Long Term Care Association. We represent 211 assisted living, basic care, and skilled nursing facilities in North Dakota. I am here in support of HB 1319.

Representative Klemin, the primary sponsor of HB 1319, is Chair of the House Judiciary Committee. He is unable to be here because of his responsibility within that committee and their hearing schedule this afternoon. He asked me to extend his regrets. We worked with Representative Klemin on this legislation before you. We deeply appreciate his leadership in helping us find a solution to a situation that emerged in the final days' of 2019 session.

For long term care, this legislation will nip what we see as an emerging problem.

Our issue relates to spousal debts and what we as spouses are liable for. Before I get to far in my testimony, joining through zoom is Megan Flom, an attorney, with Camrud, Maddock, Olson & Larson, LTD Law Firm in Grand Forks. Megan is an expert on this issue and has been deeply involved in a nursing home case dealing with the issue of marital debts. I would like to defer to her for any questions that could be best addressed by an attorney.

There is no mistake under laws adopted in North Dakota, a husband and wife are mutually and severally liable for each other's items of necessity. Items of necessity are defined as household supplies of food, clothing, and fuel, medical care, and for shelter for themselves and family, and for the education of their minor children. But what is not clear is what the responsibility is when a couple is living apart?

14-07-08. Separate and mutual rights and liabilities of husband and wife.

The separate and mutual rights and liabilities of a husband and a wife are as follows:

1. Neither the husband nor the wife as such is answerable for the acts of the other.
2. Except for necessary expenses as provided in subsection 3, the earnings of one spouse are not liable for the debts of the other spouse, and the earnings and accumulations of either spouse and of any minor children living with either spouse or in one spouse's custody, while the husband and wife are living separate from each other, are the separate property of each spouse.
3. The husband and wife are liable jointly and severally for any debts contracted by either, **while living together**, for necessary household supplies of food, clothing, and fuel, medical care, and for shelter for themselves and family, and for the education of their minor children.
4. The separate property of the husband or wife is not liable for the debts of the other spouse but each is liable for their own debts contracted before or after marriage.

While living together we as spouses are responsible for each other for our basic needs of food, shelter, clothing, and medical care. What does that mean when a couple is not living under the same roof because one selects and needs long term care?

Here presents our case. A resident passed away in a nursing home facility and at the time he was married and had a spouse living in the community. During his stay, his wife would pay a small portion of the bill each month, but upon his death she owed over \$80,000. The surviving spouse retained an attorney who sent a letter advising the facility that the community spouse was not liable for the debt accumulated by her late husband. The nursing home facility response, thru their attorney was, "The parties to a marriage are mutually liable to any person, who in good faith supplied either party with articles of necessity for their support."

NDCC 14-07-08(3) states, "The husband and wife are liable jointly and severely for any debts contracted by either, while living together, for necessary household supplies of food, clothing, and fuel, medical care, and for shelter for themselves and family, and for the education of their minor children."

The spouse continued to deny responsibility stating, "they had not lived together for over a year". We agree they were not living together, however, the decision to live separately was not due to marital discord but rather due to declining health and the need for skilled nursing care. They were very much a marital unit despite living separately. The wife signed the admission agreement on behalf of her husband. She signed the consent for hospice on his behalf. She continued to visit regularly after his admission and remained actively involved in both his care and finances.

A literal, plain reading of the statute would indicate this spouse may be correct, as they were not physically living under the same roof, (while living together), at the time that services were contracted for and for the duration of his continued stay in the nursing home. However, is this what legislators intended when they included the "while living together" language? Did they intend "while living together" to mean spouses who are truly married and living apart because one needs medical or long term care to no longer be responsible for each other's necessities?

Generally speaking, spouses have always been viewed as responsible to each other for basic support, food, shelter, clothing, and medical care. The only exception to this support obligation is abandonment by one spouse or the other. In that case, the abandoned spouse is not held liable for the support of the other.

The problem we are encountering with the statute is that with the reality of aging, spouses are not going to age equally. In reality one will need care, support and services before the other. Spouses care for years for each other but when it becomes too much, a very personal decision for each of us, and they select nursing home care and they are not physically able to live together, (by their choice), does that obligation to support each other suddenly end? The statute is being used to argue a spouse can not be held responsible for the medical bills of the other spouse if they are not physically living together. The bill before you will ensure that spouses are held liable for the necessary household supplies of food, clothing, fuel, medical care, and shelter for each other even in situations where the spouses are living apart solely because one is receiving medical or behavioral health treatment. Furthermore, the bill would clarify that an individual is not "abandoned" simply because his or her spouse resides elsewhere in order to receive medical or behavioral health treatment.

We ask for your support of HB 1319. This will help clarify spousal responsibility for medical and behavioral health care. I would be happy to answer any questions you may have.

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