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*Domena Ballarín*  
Operator's Signature

10/2/03  
Date

2003 HOUSE APPROPRIATIONS

HB 1200

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Deanna G. Hall  
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10/2/03  
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1200

House Appropriations Committee

Conference Committee

Hearing Date 02-13-03

Tape Number	Side A	Side B	Meter #
Committee Clerk Signature <i>Chris I. Nelson</i>			

Minutes:

**Chairman Svedjan** Opened HB 1200 for discussion. A quorum was present.

**Chairman Svedjan** What does the \$850,000 do?

**Rep. Devlin** It allows us to cover a gap of the legislative session.

**Shelly Peterson, President of North Dakota Long-term Care Association.** See written testimony.

**Rep. Delzer** Did this come about in December? Did the department cut their percentage?

**Peterson** Yes.

**Rep. Delzer** So this is to make up for that?

**Peterson** Yes.

**Chuck Stevans** A significant part of IGT dollars are provided for alternatives to nursing home care. We aren't anti-nursing home, we are pro-alternative home care. That is a better use of the money.

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*Danna Baller*  
Operator's Signature

*10/2/03*  
Date

Page 2  
House Appropriations Committee  
Bill/Resolution Number HB 1200  
Hearing Date 02-13-03

**Dave Zentner, Director of Medical Services for the Department of Human Services** Stood for questions.

**Rep. Delzer** I'm not against it, but how does the government have the authority to rescind that allotment?

**Zentner** We are asking the legislature for the authority so we can rescind it.

**Rep. Metcalf** How essential is the emergency clause?

**Zentner** We need the money for this biennium.

**Rep. Delzer** If you knew this, why add this money into the deficiency appropriation in SB 2025?

**Zentner** That is the only place to do it.

**Rep. Delzer** By agreement, then why add it on top of that?

**Zentner** We didn't know 1200 was going to be introduced.

**Rep. Delzer** We need to reconcile that with SB 2025.

**Rep. Koppleman** This bill ensures that we keep last session's priority list.

**Rep. Wald** I move a Do Pass. 2nd by Rep. Koppleman. Motion Carries 22-0-1. Rep.

**Delzer** will carry this to the floor.

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*Dorinda Bell*  
Operator's Signature

10/2/03  
Date

**REPORT OF STANDING COMMITTEE (410)**  
February 13, 2003 6:15 p.m.

**Module No: HR-28-2665**  
**Carrier: Delzer**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**  
**HB 1200: Appropriations Committee (Rep. Svedjan, Chairman) recommends DO PASS**  
**(22 YEAS, 000 NAYS, 1 ABSENT AND NOT VOTING). HB 1200 was placed on the**  
**Eleventh order on the calendar.**

(2) DESK, (3) COMM

Page No. 1

HR-28-2665

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*Dannan Hall*  
Operator's Signature

*10/2/03*  
Date

2003 SENATE APPROPRIATIONS

HB 1200

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Debra M. Hall  
Operator's Signature

10/2/03  
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1200

Senate Appropriations Committee

Conference Committee

Hearing Date 2-26-03

Tape Number	Side A	Side B	Meter #
1	X		0.0 - 9.1

Committee Clerk Signature *Sandra Davison*

Minutes: Chairman Holmberg called the hearing to order. Nursing facility medical assistance payments-emergency was issued.

**Testimony in Support of HB 1200**

Rep. Devlin - Dist 23, Introduced the bill. This is a deficiency appropriation for the long term care of the nursing home. Gave background (meter 1.1) and discussed why we need the bill now.

Sen. Holberg discussed this being a duplicate bill and we do not want to double appropriating with bill SB 2025. The first one to pass will be the one we go with.

Shelly Peterson - President of the ND Long term Care Association (meter 3) Testified in support of the deficiency appropriation. Discussed dollar amounts and its history.

David Zentner - Director of Medical Services for the Department of Human Services (meter 4.5)

Read Testimony - Exhibit #1.

Sen Holberg asked what the time line was. (meter 5.5)

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*Dorena Halbach*  
Operator's Signature

*10/2/03*  
Date

Page 2  
Senate Appropriations Committee  
Bill/Resolution Number HB 1200  
Hearing Date 02/26/03

Sen. Mathern discussed how would this mater be addressed if this \$850,000 is not approved in the end, how would this impact? It would be devastating and cost us twice as much (meter 6.5) It would effect only the Nursing home program.

Sen. Krauter wondered of the accuracy of the number via the re-projections of numbers we have discussed previously? Yes. This is based on 1% appropriated amount not on 1% of spenditure.

Sen. Tallackson asked how the Federal funding (meter 7.6) works with the state funding.

**Testimony in Opposition of HB 1200**

None

**Senator Ray Holmberg, Chairman, closed the hearing.**

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Deanna Holmberg  
Operator's Signature

10/2/03  
Date



2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1200 Vote

Senate Appropriations Committee

Conference Committee

Hearing Date March 20, 2003

Tape Number	Side A	Side B	Meter #
#1	x		0
Committee Clerk Signature <i>Jan Hendrickson</i>			

Minutes:

Meeting was called to order by **Senator Holmberg**, chair. Roll was called.

**Senator Holmberg** explained HB 1200.

Motion by **Senator Mathern**, seconded by **Senator Christmann** for a **DO PASS**.

Roll call vote was taken, which is attached. **13 y 0 n 1 absent and not voting**

**Motion carried.**

End (#217)

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*Doreen Ballman*  
Operator's Signature

*10/2/03*  
Date

Date: 3/20/03  
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1200

Senate Appropriations Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO PASS

Motion Made By Mathern Seconded By Christmann

Senators	Yes	No	Senators	Yes	No
Senator Holmberg, Chairman	✓				
Senator Bowman, Vice Chair	✓				
Senator Grindberg, Vice Chair					
Senator Andrist	✓				
Senator Christmann	✓				
Senator Kilzer	✓				
Senator Krauter	✓				
Senator Kringstad	✓				
Senator Lindaas	✓				
Senator Mathern	✓				
Senator Robinson	✓				
Senator Schobinger	✓				
Senator Tallackson	✓				
Senator Thane	✓				

Total (Yes) 13 No \_\_\_\_\_

Absent 1 absent.

Floor Assignment Andrist

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

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Deanna Tallackson Date 10/2/03  
Operator's Signature

**REPORT OF STANDING COMMITTEE (410)**  
March 20, 2003 8:45 a.m.

Module No: SR-50-5283  
Carrier: Andrist  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**  
**HB 1200: Appropriations Committee (Sen. Holmberg, Chairman) recommends DO PASS**  
(13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1200 was placed on the  
Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-50-5283

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*Domena Holmberg*  
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10/2/03  
Date

2003 TESTIMONY

HB 1200

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*Doreen Hall*  
Operator's Signature

10/2/03  
Date

**TESTIMONY BEFORE THE HOUSE APPROPRIATIONS COMMITTEE  
REGARDING HOUSE BILL 1200  
FEBRUARY 13, 2003**

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

**Senate Bill 2025 provides for a deficiency appropriation of up to \$16.3 million for the current biennium shortfall in the Medicaid Program. Included in the \$16.3 million is the \$850,000 designated to cover the 1% allotment for nursing facilities that was authorized by Governor Hoeven due to the revenue shortfall in the current biennium.**

**The Senate Appropriations Committee is in the process of discussing Senate Bill 2025. If the Senate decides to authorize the deficiency appropriation, the \$850,000 of state funds in this bill would be duplicated in Senate Bill 2025.**

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

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*David Zentner*  
Operator's Signature

*10/2/03*  
Date

**Testimony on HB 1200**  
**House Appropriations Committee**  
**February 13, 2003**

Chairman Svedjan and members of the House Appropriations Committee, thank you for the opportunity to testify on HB 1200 - the nursing facility portion of the Department of Human Services Deficiency Appropriation. My name is Shelly Peterson, I'm President of the North Dakota Long Term Care Association. I am here to testify on behalf of nursing facilities.

On September 25, 2002 the Department of Human Service announced a cut of \$850,000 to nursing facilities. That cut actually amounts to \$2.6 million cut because of the loss of federal funds. The Department, agreed to postpone the cut until after we had an opportunity to request a deficiency appropriation from the 2003 legislature. As you may be aware, former Senator Solberg, Representative Devlin and Representative Boucher agreed last fall to introduce legislation to avert this cut to nursing facilities. I'm here this afternoon to ask for your support of HB 1200.

As you maybe aware nursing facilities are not actually overspending. The 2001 legislature appropriated \$299 million for nursing facilities for this biennium and we will probably spend \$295 million. Although we will be about \$4 million under budget the Department indicates because of the change in the percentage of federal financial participation, we will run about \$850,000 short in state general funds. We think it is appropriate to take our share of the cut from the IGT Trust Fund.

As you are aware, the Department of Human Services is facing a significant deficit. This \$850,000 request is only one small part of their larger budget problems. SB 2025 contains their request of \$16.3 million to cover their projected operating deficit this biennium. Today we are before you addressing just this one need. Without this funding the Department will cut funds which are necessary to deliver care to nursing facility residents. Today we have 6,200 people in need of daily care in a nursing facility. They can't be here today. Each day they struggle with what we take for granted: eating, dressing, walking, bathing, toileting, and sometimes even visiting. We are here to advocate on their behalf.

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We support taking \$850,000 from the Trust Fund for the share of the nursing facility deficiency, not the full \$16.3 million as requested in SB 2025. We are taking this position because of where the Trust Fund dollars originate and because of the action of the 2001 legislature. Behind my testimony is an article on the Trust Fund called, "Caring for North Dakota's Greatest Generation." I would like to review that article at the conclusion of my testimony.

The legislature played a vital role in safeguarding and protecting the Trust Fund. If the Trust Fund is totally depleted this next biennium how will we continue the priorities you established in 2001?

We know you will have great difficulty in balancing and funding the states priorities. We believe one priority are those who are unable to care for themselves. Those that need more than in-home care, who don't have a primary caregiver or the caregiver can't give anymore. Some of the very people who built this state are in our nursing homes. Now they find themselves in a place none of us ever dream of being. It's our job to assure they get the care they need and deserve. Please find my attached article on the IGT Trust Fund. Another resource is a letter from CMS on the proper use of Trust Fund dollars.

Thank you for the opportunity to present testimony on HB 1200. I would be happy to answer any questions you may have.

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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*Deanna Holm*  
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10/2/03  
Date

# **"Caring for North Dakota's Greatest Generation"**

## **Intergovernmental Transfer and the Health Care Trust Fund**

### ***When was the Trust Fund Created?***

During the 1999 Legislative Session, lawmakers passed SB 2168 which established the Health Care Trust Fund.

The money for the trust fund comes from a funding mechanism called intergovernmental transfer.

### ***How Does North Dakota Qualify for this Funding?***

North Dakota qualifies for this unique funding source because we have two governmental nursing facilities located in Dunseith and McVille. The formula for calculating how much money North Dakota qualifies for is complex and is based upon the number of Medicaid resident days in all North Dakota nursing facilities. The total Medicaid resident days are then multiplied by the difference between our Medicare and Medicaid rates. Traditionally Medicare pays more for care than Medicaid.

After application of the formula, North Dakota applies for the Medicaid dollars, and the money is ultimately deposited in the North Dakota Health Care Trust Fund.



### ***How Have The Trust Fund Dollars Been Spent?***

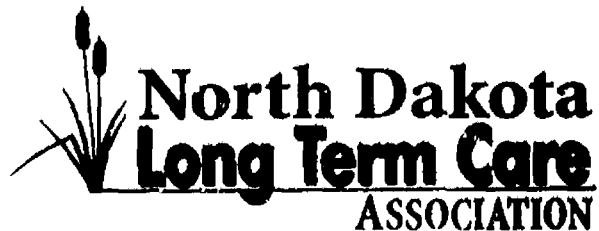
#### **1999-2001**

- ★ Service Payments to the Elderly and Disabled (SPED) - \$4.2 million
- ★ Development of assisted living and other alternatives to nursing facility care - approximately \$2 million

#### **2001-2003**

HB 1196 was comprehensive long term care legislation and directed how trust fund dollars were to be spent. Former Senator Solberg, Representative Devlin and Representative Boucher worked on HB 1196 nine months prior to it being introduced to the 2001 legislature. HB 1196 funded:

- ★ Salary and benefit enhancement to long term care staff - \$8.2 million
- ★ Increased personal needs money for nursing facility, basic care and developmentally disabled (DD) residents on assistance. Nursing facility and DD residents personal needs allowance increased from \$40 to \$50 per month. Basic care residents personal needs allowance increased from \$45 to \$60 per month.
- ★ Two percent loans to remodel nursing facilities, basic care facilities and assisted living facilities - \$12 million
- ★ Bed reduction / facility closure incentives - \$4 million
- ★ Update nursing facility limits to 1999.



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10/2/03  
Date



- ★ HIPAA compliance funds for Department of Human Services (DHS) - \$3 million
- ★ Scholarship and loan repayment grants to nursing facilities to recruit and retain nurses and student nurses - \$589,500
- ★ Service payments to the elderly and disabled (SPED) - \$6.8 million
- ★ Senior Citizens mill levy grants - \$250,000
- ★ Grant program to convert ambulances to quick response units - \$225,000
- ★ Long term care and nursing facility payment study - \$241,006
- ★ Train in-home caregivers - \$140,000
- ★ Targeted case management - \$338,530
- ★ Grants to developmentally-disabled (DD) independent living centers - \$100,000
- ★ \$500,000 each to McVile and Dunseith for transfers.

**Legislative Intent of 57<sup>th</sup> Legislative Assembly**

"It is the intent of the fifty-seventh legislative assembly that the June 30, 2003, unobligated balance in the North Dakota Health Care Trust Fund and any investment earnings on that amount during the 2003 - 2005 biennium not be appropriated but be retained in the fund to be used to continue, for periods subsequent to the 2003 - 2005 biennium, the increased funding levels authorized in HB 1196 for the 2001 - 2003 biennium." - HB 1196

**Current Status of the Fund**

The Hoeven Budget uses all the funds except \$616,902. Approximately \$18.1 million is in the budget for continuing the priorities established by the 2001 legislature. The remaining dollars are for the DHS 2001-2003 deficiency appropriation of \$16.3 million (SB 2025) and \$20 million (SB 2012) is to replace state funds previously used to fund nursing facilities.

**NDLTCA Position on the Trust Fund**

- ★ Keep the Trust Fund intact.
- ★ Support taking \$850,000 from the Trust Fund for the share of the nursing facility deficiency appropriation, not the full \$16.3 as requested in SB 2025.
- ★ Oppose taking \$20 million from the IGT Trust Fund to replace current nursing facility funding in the 2003/2005 budget (SB 2012).
- ★ Support money from the trust fund to adequately fund care to nursing facility residents during the 2003/2005 biennium.



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 Bismarck, ND 58501  
 (701) 222-0660  
 Fax: (701) 223-0977  
 Web Site: [www.ndltca.org](http://www.ndltca.org)  
 E-Mail: [shelly@ndltca.org](mailto:shelly@ndltca.org)  
 Shelly Peterson, President

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*Donna Baller*  
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10/2/03  
 Date

Health Care Financing Administration

Center for Medicaid and State Operations  
7500 Security Boulevard  
Baltimore, MD 21244-1850

July 26, 2000

Dear State Medicaid Director:

It has come to our attention that some States are using the flexibility in setting the maximum rates that can be paid under the Medicaid program (the so-called "upper payment limits") to pay government-owned facilities at a rate far exceeding their cost of serving Medicaid beneficiaries so that the States can gain Federal Medicaid matching payments without new State contributions.

I am writing to say that we intend to address this problem, and to outline our concerns and the process for addressing them.


**Background**

As you know, under current Federal regulations, States have great flexibility in setting the Medicaid rates that they pay to nursing homes and hospitals. These regulations do establish an overall maximum payment; States may pay facilities a total amount up to the level that Medicare would pay for the same services. However, it appears that some States are:

- calculating the maximum amount that, in theory, could be paid to each Medicaid facility (referred to as the "upper payment limit" or "UPL");
- adding these amounts together to create excessive payment rates to a few county or municipal facilities;
- claiming Federal matching dollars based on these excessive payment rates; and then
- directing these county or municipal facilities to transfer large portions of the excessive payments back to the State government.

It appears that many States allow their county-owned providers to keep only a small fraction of the Federal funds (less than five percent) that are used to provide these excessive "reimbursements." The practical outcome is that the States using this financing mechanism actually gain Federal matching payments without any new State financial contribution. This practice is not consistent with the intent of the Medicaid statute that specifies that provider payments must be economic and efficient. If a State requires facilities to refund its own Medicaid contribution, the practice also effectively undermines the requirement that a State share in the funding for its Medicaid program.

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10/2/03  
Date

Moreover, this practice appears to be creating rapid increases in Federal Medicaid spending, with no commensurate increase in Medicaid coverage, quality, or amount of services provided. There is preliminary evidence that this current practice has contributed to a spike in Federal Medicaid spending. The States' estimates of Federal Medicaid spending for FY 2000 have already increased by \$3.4 billion over earlier projections. We believe \$1.9 billion of this increase is likely due to the circulation of funds through the UPL loophole. The five-year cost of this growing State practice would be at least \$12 billion, and there is an influx of new State proposals. Currently, 17 States have approved plan amendments and another 11 have submitted amendments. This could have the long-term effect of undermining the core mission and the broad-based support for Medicaid, which guarantees critical health services to our most vulnerable populations: low-income children and families, people with disabilities, and the elderly.

The excess Federal Medicaid payments that are shared with State and local governments are put to any number of uses--both health- and non-health-related. It appears some States allow public hospitals to keep a portion of these funds to help pay for uncompensated care. While the Medicaid disproportionate share hospital (DSH) program was created to cover these costs and now accounts for more than \$14 billion annually in Medicaid spending, the DSH program has not always met the growing challenge of caring for the uninsured. Some States have, through the UPL arrangement, circumvented the statutory DSH limits--using indirect means to accomplish what the DSH statute does not allow.

Some States are using these payments to pay the statutory State share of Medicaid or of the State Children's Health Insurance Program (SCHIP). While Medicaid and SCHIP are Federal/State partnerships in which each partner pays a share established in statute, the UPL arrangements shift some portion of a State's share to the Federal government. The result is that Federal taxpayers in all States are forced to shoulder more than their fair share for Medicaid and SCHIP in a few States.

Some States are using the UPL arrangement to finance other health programs. This results in Medicaid funding being used for otherwise laudable health care purposes (such as providing community-based services for senior citizens or persons with disabilities) but for people and/or services not eligible for Medicaid coverage.

Other reports suggest that some States have gone so far as to use--or intend to use--the UPL arrangement for non-health purposes. Several States appear to have used it to fill budget gaps. Another State's local newspaper reported that Federal Medicaid funds would be used for State tax cuts or for reducing State debt. One State announced that it intended to use funds generated through the UPL system to pay for education programs. This practice, which is effectively general revenue sharing, is inconsistent with the Medicaid statute, Congressional intent, and Administration policy.

*Dennis G. Hallock*  
Operator's Signature

10/2/03  
Date

The HHS Office of Inspector General is conducting a review of UPL practices in a number of States and will be reporting on them soon. We are informed that the General Accounting Office may be investigating as well.

**Administration Actions**

The Administration is committed to supporting health care providers who serve the uninsured and chronically ill and to assuring that they can continue to do so. The President's budget includes more than \$100 billion over 10 years to expand health insurance to the uninsured. These funds would reduce the uncompensated care in public hospitals. It also includes a long-term care initiative and Medicare and Medicaid provider payment restoration initiative that explicitly target funding to nursing homes and hospitals, which will also help institutions directly. We have urged the Congress to pass this initiative this year and are developing a new, non-Medicaid program that would target money to public hospitals as part of our efforts to ensure access and quality of health care nationwide.

We are also committed to managing the Medicaid program efficiently under the current law so that it continues to serve Medicaid beneficiaries well and retain the confidence of the nation's taxpayers. The Administration is developing a proposal to ensure that Medicaid payments meet the statutory standard of efficiency and economy. We will publish a Notice of Proposed Rulemaking (NPRM) that modifies the current UPL within the next several weeks. As we work to develop this proposal we will continue to meet with you and representatives of consumers, public hospitals, nursing homes, labor, and others to hear concerns and suggestions. We will also explore the idea of legislation that puts an immediate end to paying States that file a UPL State plan amendment in the intervening period before any regulation takes effect.

Because a number of State health programs rely substantially on funds generated through this UPL loophole, our NPRM will include adequate transition provisions. We will be soliciting comments on our proposed changes to the UPL as well as the transition provisions. We understand that change will be difficult--just as it was in the early 1990's when the Federal/State financing relationship had to be re-adjusted because of now-illegal State funding mechanisms of donations and taxes. We will specifically solicit comments on proposed transitional periods to address this reliance.

The Medicaid program has been successful over the years in providing vital health care services to millions of low-income Americans. It will continue to be successful only to the extent that it adheres to that mission and ensures that the funds provided are used appropriately and that the

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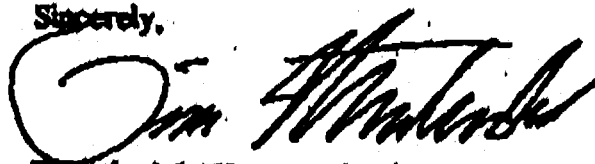
*Dorinda Hall*  
Operator's Signature

10/2/03  
Date

Page 4 - State Medicaid Director

program retains its integrity. The program will enjoy public support only if it maintains public trust. I look forward to working with you to preserve that.

Sincerely,



Timothy M. Westmoreland  
Director

cc:  
All HCFA Regional Administrators

All HCFA Associate Regional Administrators  
for Medicaid and State Operations

Lee Partridge  
Director, Health Policy Unit  
American Public Human Services Association

Joy Wilson  
Director, Health Committee  
National Conference of State Legislatures

Mr. t Salo  
Director, Health Legislation  
National Governors' Association

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Operator's Signature

10/2/03  
Date

*Exhibit 1*

**TESTIMONY BEFORE THE SENATE APPROPRIATIONS COMMITTEE  
REGARDING HOUSE BILL 1200  
FEBRUARY 26, 2003**

Chairman Holmberg, members of the committee, I am David Zentner, Director of Medical Services for the Department of Human Services. I appear to provide information on this bill.

As you are aware, Senate Bill 2025 provides for a deficiency appropriation of up to \$16.3 million for the current biennium shortfall in the Medicaid Program. Included in the \$16.3 million is the \$850,000 designated to cover the 1% allotment for nursing facilities that was authorized by Governor Hoeven due to the revenue shortfall in the current biennium. The Senate passed Senate Bill 2025 on February 20, 2003.

House Bill 1200 also contains a fiscal note for \$850,000 that is designated to cover the 1% allotment for nursing facilities. Since the Senate authorized the deficiency appropriation, the \$850,000 of state funds in this bill is duplicated in Senate Bill 2025.

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

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*David Zentner*  
Operator's Signature

*10/2/03*  
Date