

2019 SENATE HUMAN SERVICES

SB 2225

2019 SENATE STANDING COMMITTEE MINUTES

Human Services Committee Red River Room, State Capitol

SB 2225
1/22/2019
Job # 31207

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Florence Mayer for Justin Velez
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Explanation or reason for introduction of bill/resolution:

Relating to familial duty to support for health services, relating to familial duty to support for county welfare; to provide for application; and to declare an emergency.

Minutes:

Attachments #1 - 11

Chair Lee: Opens the hearing on SB 2225.

(00:55-04:43) Senator Dick Dever, District 32: The discussion on this bill at that time was to repeal a bill put in territorial statute in 1877. It required that parents and their children were responsible for each other's debts. I looked up debtors' prisons. In the 2005 session the long term care association testified at that time they didn't have any objection to the repeal. It was passed in the senate and then sent to the house. Generally, where it has been used, it is appropriate. We ought not use a bill written in 1877 for a different purpose, to apply to that purpose today. In prep of this testimony we thought it was important that the credibility of the people testifying, needed to have that credibility. Klemin will explain exactly what the bill does. What we attempted to do with the drafting of the bill, is to repeal the language from the old bill and then to apply to those circumstances under which it is appropriate. The primary thing is under Medicaid there's a 5 year look back. If there are any transfers of assets in those 5 years, then they are disqualified.

Senator Hogan: This section of law was used for things other than healthcare. Particularly I think of general assistance and burial costs. Did you cross reference those and would that responsibility go away for general assistance burials?

Senator Dever: We did not have any discussion on that. The only entities that have interest in preserving any part of this, is long term care. In my understanding in those circumstances, they would go away unless addressed elsewhere.

(05:40-16:37) Lawrence R. Klemin, Representative from District 47 and Speaker of the House: Testified in favor of SB 2225. Please see Attachment #1 for testimony. (Included in second half of the testimony, are statutes in the bill that would be repealed.)

(10:59) Senator Anderson: The bad faith thing, would they be illegal under the law? And is there be a statute of limitation that would be different than the 5 years?

Representative Klemin: The general rule for statute of limitation is 6 years for collection of a debt, I think. This could go back 5 years, though the definition of bad faith is a term that is easily found in court cases, it includes misusing or misdirecting funds of another person to prevent payment of necessary health services.

Senator Anderson: Bad faith isn't necessarily illegal? Is that what you're saying?

Representative Klemin: I don't think bad faith is necessarily illegal under this bill. It does say if someone has acted in bad faith, then the creditor could recover the money from the person who acted in bad faith.

Chair Lee: Let's put a face on this, if I were a Safari hunter and I inherited a bunch of money. Then spent it all on hunting trips and stuffed lots of big critters for the new addition to my house. That wouldn't be illegal, but I sure as heck used the assets and now they are gone. You wouldn't want the critters. I'm on the side of recovery of costs for the nursing home, but when we talk about income and assets. Give me an example or two of how that would work when you're talking about income or assets.

Representative Klemin: I'd like to get into that, but I believe Shelly Peterson will give you some examples.

(14:20) Representative Klemin: Continued with testimony.

(17:40-26:22) Shelly Peterson, President of the North Dakota Long Term Care Association: Testified in favor of SB 2225. Please see Attachment #2 for testimony. Also, please see Attachment #3, Sanford Health and The Evangelical Lutheran Good Samaritan Society absent testimony.

Senator Hogan: Shelly, do you think this will simplify eligibility in any way?

Shelly Peterson: Nothing will simplify eligibility. Hoping local zone control will help.

Senator Hogan: The other piece is disqualifying transfers, which is one of the biggest barriers.

Shelly Peterson: Disqualifying transfers, they are not illegal, we can give money to anyone. You don't know when you will have a heart attack. Then all of a sudden you don't have that income or asset. That is then the disqualifier. We won't qualify for Medicaid if we do that. Then they are in the facility and how are they going to pay the bill. AARP has been doing some education and we have encouraged them to look into this issue. Another huge issue, is the issue of if you pay a family member, but don't have a written contract, that will disqualify you. They changed the rule on that, but unfortunately a number of good families got caught in that.

(28:58-39:08) Shawn Stuhag, President and CEO of Bethany Retirement Living in Fargo: Testified in favor of SB 2225. Please see Attachment #4 for testimony.

Senator Anderson: Your statement says that you used the law as intended. Could you explain that? Originally it was intended we pay all the obligations intended.

Mr. Stuhag: We've used it to threaten a lawsuit against adult children who are purposefully acting in bad faith not to pay the bill.

Senator Roers: Do you feel like this will change the ability to make that threat?

Mr. Stuhag: I feel the amendment would take away the way of using this as a threat. We've used it to enforce when people turn in their paperwork to the county, getting applications started. The bill as written now allows us to only go after that disqualifying transfer amount once the application is submitted in. We've used it in 5 or 6 cases. One of them was up to \$100,000. We have people to care for and bills to pay. So when it's identified by the county or state that they have a disqualifying transfer, someone needs to pay us. It's not the skilled nursing homes that are coming up with this amount, we are just caught in the middle.

Chair Lee: My question has still not been answered if I'm the beneficiary of a disqualifying transfer, whether or not it was done honorably or being I shafted my parents, when it's talking about income only. Is that only the rental income, from the section of land I just got put into my name. Is it just the earning for the stock which has unfortunately dropped in value? Or can I go after the land and require it be sold? Or liquidation of some of the assets.

Mr. Stuhag: I won't speak to the legal side, but the way the nursing home does it. We have communication from the county, they tell us what the disqualifying transfer is. For example, we have one going on right now, where there's cash value life insurance policy. The accounting firm is telling the family they are going to take too much of a tax hit then it's worth. The county is saying you have to get rid of that because it's a countable asset to pay us. We are caught in the middle and need to be paid. When it's ruled by the people making the decision, that's what we're concerned about.

Chair Lee: I've heard examples of kids with their parents having to sell the lake place. All the kids and grandkids wanted it kept. Is it fair for other people to pay the cost of a primary residence and lake home. Why don't the kids just all buy it?

Mr. Stuhag: You made that comment earlier. We encourage people to take out a loan for the value of whatever is disqualifying, get us paid and then move on with their life.

Chair Lee: I'd like someone to answer me, and I know it's not you Shawn, whether the earnings if its farm land or an IRA and you only get the earnings from that asset.

Shelly Peterson: I don't know the specifics of how it was written. Our intent is access to the income and asset itself. As Medicaid disqualifies ½ Million dollars, and most of it is the land, that is what we go after.

Chair Lee: I want you to be able to do that. I'm questioning because it says income, but you didn't sell the grain this year, do you have any recourse against me?

Shelly Peterson: I asked Johnathan, and he said he didn't do Medicaid eligibility.

Chair Lee: The other thing, I don't remember who it was, I was being told that there are intentional delays taking place because Medicaid application, you don't have any reimbursement opportunities, you're on hold as a facility. It appears as though there may be some coaching going on from some places on how they can prolong the situation, so the risk is reduced to the individual who is the beneficiary of the disqualifier. I'd like to know how we can alleviate that problem as well.

(41:05) Joyce Johnson, Medicaid and Policy Director: You've indicated they have this land, are you indicating they've transferred the property?

Chair Lee: My parents own land; I now am the beneficiary. When our grandparents were dealing with this, they recognized the responsibility to take care of themselves as they aged. I get the expenses were way less, but the dollar was worth another number too. Now the whole idea is to let someone else pay for it. Our attitude about who's responsible is a big part of this. So with the land, it is now deemed a disqualifying transfer. So does a skilled care facility only have the right to the earnings from the land, like rental income or the crop, I think the intent in this discussion is that the facility has the right to the value of the entire asset. I want to make sure that's what it says in this bill. Help us think our way through this.

Joyce Johnson: If the family member gave away this huge amount of land to a child for less than fair market value, then we would look at the last five years, that would be a disqualifying transfer. If there's any income coming into that once the child has it, that would be the child's income. Technically there wouldn't be any income involved, we'd just be looking at the disqualifying transfer of the asset and value of that property.

Senator Anderson: It seems to me that if the transfer was made 4 years ago, which makes it a disqualifying transfer. So any income made during those 4 years would also be subject to recovery. So you would get both the assets and the income if it was made in less than the 5 years. The bill says the beneficial that accrue to you because of that transfer, the law actually says both the asset and income. Maybe no one ever goes after the income, I don't know.

Joyce Johnson: In addition to transferring the asset, they've transferred that stream of income. So in that respect, yes, it would be both the stream of income and the asset that would be a disqualification. Between the two, depending what the average cost of nursing home care is, the individual would be disqualified for that amount of time.

Senator Anderson: To speak to the coaching going on, if you have an attorney and you go to him to help you with your estate, if the attorney didn't present to you the options of if you make this transfer now, he wouldn't be doing his job for you. You'd expect the attorney to coach you on what's the proper way. The trust issue comes up with the land placed in trusts. In that case only the income is accessible, not the trust itself.

Chair Lee: I have absolutely no disagreement with the fact the attorney should be giving appropriate and accurate advice. The coaching which I refer to, sounds as if it's from individuals who might be representing they're there to further the best interest of the person. It's frustrating when this process is prolonged when someone in a semiofficial position, is saying "ya know if you waited a little longer and did this you could delay it even long and then time it all out". That is where my frustration is. I am bothered by someone who says they are assisting, but is delaying the process.

Senator Hogan: This is an area that many of us get complaints about. The process of determining what's a disqualifying transfer, is that made by the eligibility worker in the county or the state? The timing of this is sometimes really long.

Joyce Johnson: It is routinely made by the eligibility worker in the county. If there are issues with making that determination, they then forward the info on to our state office. But they start with the regional rep.

Senator Hogan: How long do you take to get a hit on those? I've had complaints of 6 months.

Joyce Johnson: Some of the delay there is do they have a trust due. Eligibility workers find that as they are bringing in info, they are finding more and more. It's so layered which makes it complicated.

Senator Anderson: The eligibility worker doesn't have subpoena power to ask for information, they never find out about it or how does that work?

Joyce Johnson: Sometimes we find it because of the IRS. We have NDRIN where we can see if they do have any assets attached to their name. Also the Asset Verification System where we can put a social security number in and search within a 200-mile radius.

Chair Lee: What if I own a condo in the Bahamas?

Joyce Johnson: Those are assets that we will have a hard time finding. Sometimes we use bank statements.

(51:23-57:14) Wayne Papke, Citizen Lobbyist: Testified in favor of SB 2225. Please see Attachment #5 for testimony.

(57:24-1:00:37) Garth Rydland, President and CEO of Valley Memorial Homes: Testified in favor of SB 2225. Please see Attachment #6 for testimony.

Chair Lee: If I'm in your facility and totally competent. Are there privacy laws requiring you to not be discussing this with my children?

Mr. Rydland: If you are the primary decision making and totally competent, I am not allowed to go to your children. At the point where you stop paying and there might be a questioning of competence, we will start talking with the children. We have asked for the rent check in the dispute. We did ask for that income.

(1:00:00-1:03:57) Daniel Kelly, CEO of the McKenzie County Healthcare Systems Inc.: Testified in favor of SB 2225. Please see Attachment #7 for testimony.

Chair Lee: And you can't discharge me for nonpayment? That was confirmed.

(1:05:30-1:09:15) Trevor Tompkins, CEO and Administrator of the Lutheran Sunset Home: Testified in favor of SB 2225. Please see Attachment #8 for testimony.

Senator Anderson: This bill really isn't going to change the situation with that lady. Except it limits it to 5 years.

Mr. Tompkins: No, it wouldn't change anything. But it does gives us that tool to refer to. Rather have something rather than nothing.

Chair Lee: If that daughter had not had power of attorney, but was a signatory on mom's checkbook. Would you of gone after her in the same way?

Mr. Tompkins: With the statute we could. As far as it goes otherwise, that's a good question for one of our lawyers. Without tools to prosecute or go after those funds, we don't have much.

Senator Anderson: I think that this bill was meant to be written for Mr. Papke, not for you. On the other hand, it does make it easier with Medicaid where they can't take you back 30 years, only 5. The bill was written for Mr. Papke so you can't go after him.

(1:16:18-1:17:22) Margaret Rennecke of Mandan: Testified in favor of SB 2225. Please see Attachment #9 for testimony.

(1:18:13-1:21:56) Rebecca Pedersen from Bismarck: Testified in favor of SB 2225. Please see Attachment #10 for testimony.

(1:22:40-1:00:00) Steve Leibel, Attorney in Bismarck: Testified in favor of SB 2225. Please see Attachment #11 for testimony.

(1:26:35) Senator Anderson: It seems to me that it knowingly puts quite a burden on the proof. In both of the cases the we heard today, it seems to me since they didn't get anything from the parent they are already excluded and wouldn't be liable for anything. I'm not sure adding the "knowingly" makes a difference besides making it harder to prove.

Mr. Leibel: Part of what my concern is, the way the language is, a child who acted in bad faith, by misappropriating, diverting or misusing, it could be said by a court those things are already bad faith. I don't know that any of those mean it's bad faith. It means mom or dad made a transfer that is now disqualifying.

Chair Lee: The grandchild or the nephew or the kid says gees mom my car is falling apart any chance you could help me buy a new car. That is diverting and they know it's her money. She may want to do everything she can to help. Yes, it's her money, but it inhibits the ability

to take care of herself. It's a complicated question. Not everyone is trying to avoid paying for the care, but some are.

Mr. Leibel: I agree. But the bill as written had no limitation on the amount of recovery. If you can make these allegations, you suddenly get to open that cap in subsection 2. I am asking if we're going to go uncapped. It should be a higher burden.

Senator Anderson: It seems to me that the language as written limits the money and the benefits that they got. It seems like the bill is limiting it to what they got in assets or income.

Mr. Leibel: I believe that's correct for subsection two; however, the bill SB 2225 says "except as provided in subsection 3". Subsection 3 as written has no limit.

(1:32:30-1:00:00) Jonathan Alm, Attorney with the Department of Human Services: Testified neutral on SB 2225. Believes there is a citation error on page 1 line 20. It should be 50 24.102 instead of 50 24.102.8. Leave out the 8. Fair market value in section 3 on page 2, but on page one the wording fair market gain is used. There is nothing in the century code. Then page 2 line 6, its talking about the bad faith action occurred in 5 years from receipt, the department said you should use 5 years from the date of application. That would be inconsistent of what Medicaid uses. I can provide language you might use for that.

Senator Anderson: In that case that really extends the 5 years considerably. Explain that to me.

Mr. Alm: If we are looking at an application that someone transferred 10 years ago, and they come in today. We won't be concerned about that from 10 years ago, because it is outside the lookback period. So they could be eligible for Medicaid.

Senator Clemens: We were talking about bad faith. In the definition in bad faith it includes intentionally not honest. For what it's worth.

Chair Lee: Closed the hearing on SB 2225.

2019 SENATE STANDING COMMITTEE MINUTES

Human Services Committee Red River Room, State Capitol

SB 2225
1/29/2019
Job # 31662

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Justin Velez

Explanation or reason for introduction of bill/resolution:

Relating to familial duty to support for health services, relating to familial duty to support for county welfare; to provide for application; and to declare an emergency.

Minutes:

No Attachments

Madam Chair Lee opens the discussion on SB 2225.

Madam Chair Lee: We had a correction on page 1 line 20, where an inaccurate code reference was. 50-24.1-02.8 should be 50-24.1-02 and without the .8 on it. If we move to page 2, remove "from a parent or adult child who acted in bad faith". On page 2 I do not have the phrase deleted, I still have "a" on my sheet.

Senator Hogan: I think this is trying to get to the issue of you have to prove the bad faith before you get to the recovery so that was the concern because sometimes someone will inadvertently think they have the right to use someone resources and the proving of bad faith was the concern.

Madam Chair Lee: I think it's important for us to mention bad faith before we get to section B because that's taking for granted that there has been something said about bad faith.

Senator Hogan: Well, again if you look in section B there is a proposal that recovery is who acted in bad faith. So they are moving section A to section B.

Madam Chair Lee: I have "recoveries limited to the amount of the assets of the income of fair market value of the assets misappropriated or misused or diverted".

Senator K. Roers: When I do this literal, it would now say "a creditor may recover under this duty to support if the A: recovery is sought by a creditor for the furnishing of necessary health services which may include medical or long term care services" then "the recovery sought is from a parent or adult child who acted in bad faith by misappropriating, misusing, or diverting", but then it only is deleting out the words "the bad" so then now you ended that sentence with "for necessary health services; faith action occurred within"

Senator Hogan: The language isn't correct.

Madam Chair Lee: Im looking at Representative Klemin's testimony and he is as careful about language and these kinds of things of anybody I know because of his years of law and being on the Uniform Law Commission. He hasn't said a thing about removing 1, he was talking about adding section C.

Senator K. Roers: I think that came from a combination of that Steve Liebel and a little bit from Jonathan Alm.

Senator Hogan: We added the fair market gain.

Madam Chair Lee: If my land is worth less today than it was last year, but two years ago it was worth more than the year before that. Im not comfortable with gain at all.

Senator K. Roers: I think Jonathan Alm wanted it to say fair market value.

Senator Anderson: It might be that if you bought it for a dollar and its worth 100 dollars we are talking about the 99 dollars, but that's not really clear because now in your interpretation is increasing the value over time, so that's a whole different issue. Also, I think Jonathan Alm suggested on page 1 line 20 to delete that .8 on that last reference.

Madam Chair Lee: Yes, we did that already.

Senator Hogan: Its not on this one but we talked about it already.

Senator Anderson: So Jonathan Alm wanted to say fair market value not gain.

Senator Hogan: Im ok with that.

Madam Chair Lee: Steve Liebel is the one who wanted gain.

Senator Anderson: There are two things that you can talk about there. One is, if they bought it for a discounted price then you are only talking about the difference between the discounted price and the current value. If you are talking about buying it for full value and getting gain later, that is a different issue. I think we need to clear that up, what they are talking about here because the fair market value, if I payed 10 dollars for it and now it is worth 20 they shouldn't be able to recover all the 20 because I paid 10 dollars for it, that is the difference I think.

Madam Chair Lee: I think that if the fair market value is 100,000 dollars and someone in bad faith has misused those dollars and they took 10,000 dollars I think they should take the whole thing even though there hasn't been any gain on the land.

Senator K. Roers: It didn't make sense to me that you would say "the bad" and you wouldn't take out the rest of that sentence but that becomes part of what is now section D.

Madam Chair Lee: Page 2 line 6, but then we just have two loose words.

Senator K. Roers: It looks like that but once you continue to put in; when you look at section D, then the word “bad”, then you finish “faith action occurred”.

Madam Chair Lee: We are really renumbering

Senator K. Roers: Right.

Madam Chair Lee: Have we fully considered Representative Klemin’s suggested amendment then? Which is on page 2 of his testimony to have subsection 3B amended by adding a new subdivision C. I’m trying to make it make sense to me and I’m having a little bit of a struggle. It is worded differently and is not the same as what Representative Klemin had suggested. Our vote options are equally important here but how do we...

Senator K. Roers: I think part of it is we also learned a little bit more after he left.

Madam Chair Lee: I was uncomfortable with the income part of it because, if I’m getting rent which is modest but the value of the land is significant, I think that the land should be subject to recapture if the dollars have been misappropriated.

Senator K. Roers: Jonathan Alm also had something about within five years of the receipt, and he wanted it to be from the date of application and that he was going to provide language.

Madam Chair Lee: Yeah, on line 6. He asked for application fee instead of receipt because, one could apply for Medicaid services significantly before having received those services also. They are kind of looking at the whole look back thing in a way, that’s the whole deal. It is a five year look back and that is the law so there's not much that we can fuss with on that area because that is what the feds tell us.

Senator Anderson: I think what Mr. Alm was indicating that the five year look back could be from a different time from when it actually occurs. We changed “occurs” on page 2 line 10 to “becomes final” and it might be that he had some language about where the feds allow them to extend that if its been in process or something so I think we need to get that clear on what he was talking about there.

Senator Hogan: I have a friend who applied in May it wasn’t determined eligible until January. The look back was five years from May but, the actual Medicaid coverage didn’t begin until October because of the three month. There was that three months of where the person was paying out of pocket all of those costs so that kind of in between time is the thing.

Madam Chair Lee: We need Jonathan Alm to come and help us with this.

Senator Hogan: And have him look at the Legislative Council amendment so I want him to see all of that.

Madam Chair Lee: If we can visit with Jonathan Alm about the application fee because I think that is federal.

Senator O. Larsen: When there was testimony about that guy who said that the bill was accumulating and they were never mentioned about the bill and it turned out to be a 43,000-dollar bill. Will this bill address that now?

Madam Chair Lee: Not if the person does not have a guardian or has not been declared incompetent, if she is running her own business she doesn't have to talk to the family members about it and they may have been coming to visit with her regularly but apparently no one had asked about what was going on with the finances. The facilities have to recognize the privacy of their client who in this case is still responsible for her own business.

Senator Anderson: To answer Senator O. Larsen's question I think the language on page 1 there is intended to talk about those things. For example, on line 19 section B "From a parent of child who received a direct benefit". Those are the only cases that you are going to be able recover now and in those peoples case they won't receive any direct benefit from it because they didn't get any money.

Senator O. Larsen: So they won't be held on the hook on that bill? Ok, that is what I wanted clarification on. On the legislation of the long-term care facility then will be able to go back to those folks if they did in fact get a new jet ski or whatever from their parents thing and find out about that. How do they find out about that?

Madam Chair Lee: Somebody tells them.

Senator Anderson: What long-term care is really after, as long as they have the responsibility to preceede against those kids who might have some money then the person is not eligible for Medicaid and so that holds up the Medicaid application. Once that cut-off date comes then, the long-term care facility makes the person eligible for Medicaid then they get the bill paid. Medicaid wont approve because they say these kids should be paying.

Madam Chair Lee: I can think of an example, I did get a call and there is still a very disabled child who is one of twins or triplets or something but she was the only one to survive. Severely disabled, is cared for at home, and now is old enough that she should be in school in special services but the family said that she will never learn anything anyways. So she is at home in a darkened room with the television on all day, its just terrible. So this relative has been trying to intervene here and get the parents and the grandmother to recognize how these other things are important to the well being of this child and in the meantime they are depleting grandma's resources because they are getting grandma to help them buy a boat and satalite dishes at the lake where they have a camper. The woman who was telling me about it was a relative, and she saw what was going on and how it was adversely affecting the grandmother and her resources and the child who was not getting care and the immediate family did not care. I did report it and I don't know what ever happened. We will wait to see if we can talk to Jonathan Alm and have him clarify the questions we have had.

Madam Chair Lee closes the discussion on SB 2225.

2019 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

SB 2225
1/29/2019
Job # 31702

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Justin Velez

Explanation or reason for introduction of bill/resolution:

Relating to familial duty to support for health services, relating to familial duty to support for county welfare; to provide for application; and to declare an emergency.

Minutes:

Attachments #1-2

Madam Chair Lee opens the discussion on SB 2225

(00:12-08:38) Jonathan Alm, Attorney with the Department of Human Services gives an overview of proposed amendments from the Department of Human Services and from Legislative Council with the committee. Please see **Attachment #1** for Department of Human Services proposed amendments and **Attachment #2** for Legislative Councils proposed amendments. While going over the departments proposed amendments Mr. Alm points out that on page 1, line 23 should be line 24 and Senator K. Roers points out that the amendment for page 1 line 24 should remove the second "and" not the first.

Madam Chair Lee: Any further questions?

Senator Hogan: Could you make this into a Christmas tree bill of everything that we have talked about.

Jonathan Alm: Of course. Would you like me then to utilize what Legislative Council has prepared and insert a couple of those little statements that I made as far as what we see?

Madam Chair Lee: Why don't you put them both together.

Jonathan Alm: I will do that.

Madam Chair Lee closes the discussion on SB 2225

2019 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

SB 2225
1/30/2019
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☐ Subcommittee
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Committee Clerk: Justin Velez

Explanation or reason for introduction of bill/resolution:

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Minutes:

Attachment #1

Madam Chair Lee opens the discussion on SB 2225.

(01:08) Jonathan Alm, Attorney with the Department of Human Services: What you have before you are the proposed amendments to SB 2225 and our mark up (**Attachment #1**) on how the amendments would look once legislative council incorporates everything and does their official mark-up. What I was able to do is I took the amendments that Senator Hogan had and the amendments that we had and they actually merged together very nicely. I didn't see any conflict that occurred, the difference in our language before I had "application to Medicaid" I changed it to "medical assistance" because that is normally how we have used that in the past so that has been amended. I can definitely go through the colored version.

(02:08-04:15) Jonathan Alm goes over the Christmas tree bill mark up with the committee.

Senator Anderson: I'll move to **ADOPT AMENDMENTS** on SB 2225.
Seconded by Senator O. Larsen

ROLL CALL VOTE TAKEN
6 YEA, 0 NAY, 0 ABSENT
MOTION CARRIES TO ADOPT AMENDMENTS

Madam Chair Lee: We have the amended bill in front of us.

Senator Anderson: Ill move a **DO PASS, AS AMENDED.**
Seconded by Senator O. Larsen

Madam Chair Lee: Any discussion on the amended bill?

Senator O. Larsen: I found it interesting that people that I didn't think would e-mail me knew of this bill and was discussing it with me that they had no idea that they would be on the hook for this stuff and the testimony that people were coming forward with was pretty alarming. I also found it interesting that if that many people came forward I wonder how many people just payed it not knowing that I guess this is just the bill that we are supposed to pay.

Madam Chair Lee: I'm confused.

Senator O. Larsen: So these folks, the gals that came forward, they couldn't believe that they were holding the bill on it and I had people calling me on this bill that they couldn't believe that they would be stuck with the bill. They didn't know that we had to fix this that this was out there. I don't know if the newspaper picked it up and said it was coming through the thing and how long it had been there. It got me thinking I wonder how many people get the bill and never come forward and just pay it. I think in my case, I would be the one in my family who would be stuck with bill.

Madam Chair Lee: The flip side of that is that my mom and dad paid for years for my grandmother who died three months short of 100 of having living several years with my folks. She was in the nursing home with no independent assets at all. My folks paid for that cost of care for years, even though there were other family members perfectly capable of putting money in also. It isn't an unusual situation unfortunately and you just have to let it go. I didn't like that much either and they were relatives that I really cared about but they saw no responsibility in providing that because they figured my dad could afford it. I don't think that is the way this is supposed to work. Any further discussion on the **DO PASS, AS AMENDED** motion?

ROLL CALL VOTE TAKEN

6 YEA, 0 NAY, 0 ABSENT

MOTION CARRIES DO PASS, AS AMENDED.

Senator Anderson will carry SB 2225 to the floor.

Madam Chair Lee closes the discussion on SB 2225.

January 30, 2019

8/18/1

PROPOSED AMENDMENTS TO SENATE BILL NO. 2225

Page 1, line 20, replace "50-24.1-02.8" with "50-24.1-02"

Page 1, line 22, after "market" insert "value, including any"

Page 1, line 22, after "gain" insert an underscored comma

Page 1, line 24, after "services" insert "or application for medical assistance"

Page 2, line 2, remove "from a parent or adult child who acted in bad faith by"

Page 2, remove line 3

Page 2, line 4, replace "prevent or avoid payment for" with "by a creditor for the furnishing of"

Page 2, line 5, remove the second "and"

Page 2, line 6, replace "The bad" with "Recovery is sought from a parent or adult child who acted in bad faith by misappropriating, misusing, or diverting income or assets of the other adult to prevent or avoid payment for necessary health services;"

c. Recovery being sought from the parent or adult child does not exceed the fair market value, including any gain, resulting from the disqualifying transfer; and

d. Bad"

Page 2, line 10, replace "occurs" with "becomes final"

Renumber accordingly

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2225

Senate Human Services Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
 Other Actions: ☐ Reconsider ☐ _____

Motion Made By Sen. Anderson Seconded By Sen. O. Larsen

Senators	Yes	No	Senators	Yes	No
Sen. Judy Lee	X		Sen. Kathy Hogan	X	
Sen. Oley Larsen	X				
Sen. Howard C. Anderson	X				
Sen. David Clemens	X				
Sen. Kristin Roers	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

Amendment intent listed on the back of this page →

Page 1, Line 20 replace "50-24.1-02.6" with "50-24.1-02"

Page 1, Line 22 after "market" insert "value, including any"

Page 1, Line 22 after "gain" insert an underscored comma

Page 1, Line 24 after "Services" insert "or application for medical assistance"

Page 2, Line 2, remove "from a parent or adult child who acted in bad faith by"

Page 2, remove line 3

Page 2, Line 4 replace "prevent or avoid payment for" with "by a creditor for the furnishing of"

Page 2, Line 5, remove the second "and".

Page 2, Line 6, replace "the bad" with "Recovery is sought from a parent or adult child who acted in bad faith by misappropriating, misusing, or diverting income or assets of the other adult to prevent or avoid payment for necessary health services;

new subsection C. Recovery being sought by the parent or the adult child does not exceed the fair market value, including any gain, resulting from the disqualifying transfer; and

D. Bad "

Page 2, Line 10, replace "Occurs" with "Becomes final"

Date: 1/30/19
Roll Call Vote #: 2

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2225

Senate Human Services Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Sen. Anderson Seconded By Sen. O. Larsen

Senators	Yes	No	Senators	Yes	No
Sen. Judy Lee	X		Sen. Kathy Hogan	X	
Sen. Oley Larsen	X				
Sen. Howard C. Anderson	X				
Sen. David Clemens	X				
Sen. Kristin Roers	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Anderson

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

REPORT OF STANDING COMMITTEE

SB 2225: Human Services Committee (Sen. J. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2225 was placed on the Sixth order on the calendar.

Page 1, line 20, replace "50-24.1-02.8" with "50-24.1-02"

Page 1, line 22, after "market" insert "value, including any"

Page 1, line 22, after "gain" insert an underscored comma

Page 1, line 24, after "services" insert "or application for medical assistance"

Page 2, line 2, remove "from a parent or adult child who acted in bad faith by"

Page 2, remove line 3

Page 2, line 4, replace "prevent or avoid payment for" with "by a creditor for the furnishing of"

Page 2, line 5, remove the second "and"

Page 2, line 6, replace "The bad" with "Recovery is sought from a parent or adult child who acted in bad faith by misappropriating, misusing, or diverting income or assets of the other adult to prevent or avoid payment for necessary health services:

c. Recovery being sought from the parent or adult child does not exceed the fair market value, including any gain, resulting from the disqualifying transfer, and

d. Bad"

Page 2, line 10, replace "occurs" with "becomes final"

Renumber accordingly

2019 HOUSE HUMAN SERVICES

SB 2225

2019 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee Fort Union Room, State Capitol

SB 2225
3/4/2019
33167

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Nicole Klamann

Explanation or reason for introduction of bill/resolution:

Relating to familial duty to support for health services relating to familial duty to support for county welfare; to provide for application and to declare an emergency

Minutes:

7

Senator Dick Dever, District 32, Bismarck: In support, The current bill was introduced before statehood when debtor's prison still existed in the country. Parents and adult children are responsible for each other's debts. In 2005, the concern of the Long Term Care Association was in those circumstances and when they have cause to go after the children the law should allow for that. We repealed the law from 1877 and addressed the concerns of the nursing home. Here is my understanding of what happens; Someone goes into the nursing home as private pay. After a period of time, like most, they submit an application for Medicaid. It is then through the application process they discover a disqualifying transfer under federal Medicaid rules within the last 5 years. Medicaid says they will not begin paying for the care facility until the disqualifying amount has been paid by someone. So the care facility may end up "eating that" until that amount is exhausted. The concern being whether the children received money they should not have received, then they should be liable. We agree with that and the bill allows for that. So it provides for that shared indebtedness only under health services and only for long term care services.

Sub section 2 section 1, provides four reasons why the care facilities are able to collect from the children. All four of these have to apply in order for any collection.

Sub section 2 and sub section 3, you will see the language is very similar. Subsection 3 was amended to the original bill at the suggestion of Human Services.

Speaker of the House, Lawrence Klemin, Introduced SB 2225 and proposed amendments, see **attachment 1**.

The statute we are dealing with is 14-09-10. Reciprocal duty of support-Support of the poor. It is the duty of the father, the mother, and every child of any person who is unable to support oneself, to maintain that person to the extent of the ability of each. The promise of an adult child to pay for necessities (undefined) furnished to the child's parent is binding. This liability may be enforced by any person furnishing necessities to the person.

Section 1 amends Section 14-09-10 to specify the circumstances under which a creditor can sue an adult child of a parent to recover for the furnishing of necessities.

Subsection 2, sets out the four requirements, all of which must be met, before a creditor can recover under the duty of support.

1. Liability is limited to the furnishing of necessary health services, which may include medical and long term care services.
2. Recovery by a creditor cannot occur unless the recovery is sought from a parent or adult child who received a direct benefit from a disqualifying transfer of an asset.
3. Recovery sought cannot exceed the fair market value, including any gain resulting from the disqualifying transfer.
4. The disqualifying transfer must have occurred within 5 years of the receipt of the necessary health services.

Subsection 3, section 1, page 2 of the bill provides another circumstance under which a creditor can recover under the duty of support, the “bad actor” situation. This is a person who acted in bad faith by misappropriating, misusing, or diverting income or assets to prevent or avoid payment for necessary health services. The county is covered among the types of creditors covered by Section 1 of SB 2225, therefore Section 50-01-19 is no longer needed.

Section 3 provides that this Act applies to a collection action which becomes final on or after the effective date of the Act.

Section 4, declares the Act to be an emergency measure. If passed by 2/3 vote in House and Senate it will become effective when signed by the Governor and filed with the Secretary of State.

Chairman Weisz: Do you believe we should eliminate section 3?

Mr. Speaker Klemin: I don’t know that I would eliminate it, I would either leave it the way it is or spin it back to what it was. I would say instead, “which is commenced on or after the effective date.”

Shelly Peterson, President of Long term Care Association: In support, written testimony provided **attachment 2**.

In 1877 before statehood and long before Medicaid was in existence. This statute was modeled on the Elizabethan Poor Relief Act of 1601 from England. The 2005 federal Deficit Reduction Act made it harder for the elderly and disabled to qualify for Medicaid. In order to qualify, the individual’s assets may not exceed \$3,000.00 or \$6,000.00 for two person unit. You can have \$6,000 per person in a preneed funeral account. This bill appropriately updates the 142 year old statute, telling adult children if you have not misappropriated, misused or diverted income or assets of your parent, you will not be pursued for payment for long term care needs under this statute.

(0:24:37)

Tim Kennedy, Administrator of Parkside Lutheran Home, Lisbon ND: In support written testimony provided, see **attachment 3**. Provided examples of outstanding bills accrued due to non-payment or Medicaid denials. Denials due to a disqualifying transfer.

(0:30:46)

Janessa Vogel, Administrator at Elm Crest manor in New Salem: in support, written testimony **attachment 4**.

(0:34:09)

Margaret Rennecke, citizen: In support written testimony, see **attachment 5**. Family was sued by Long term care to pay for father's end of life expenses.

Rebecca Pedersen, Bismarck citizen: In support, Her and siblings sued for father's long term care bill. See **attachment 6**.

Steve Leibel, attorney, in support. See **attachment 7**. In support, represented the children of ND nursing home residents being sued in some recent lawsuits for their parent's unpaid nursing home bills.

(0:46:49)

April Fairfield Dolap, Citizen: In support. Mother denied Medicaid because of a disqualifying transfer. That being unrealized income was disqualifying.

(0:55:36)

Opposition: None

Chairman Weisz: Closed hearing

2019 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee Fort Union Room, State Capitol

SB 2225
3/6/2019
33307

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Nicole Klamann

Explanation or reason for introduction of bill/resolution:

Relating to familial duty to support for health services relating to familial duty to support for county welfare; to provide for application and to declare an emergency

Minutes:

Chairman Weisz: Opened Meeting

Representative Todd Porter: I was disappointed to say the least because this bill has been in front of us before and we were told on at least one occasion that it never be used for the way that it was presented yesterday. It was disappointing to find out that a long term care facility was using it in a way we were told they would not.

Rep. Porter: Move Do Pass
Rep. M. Ruby: Second

Chairman Weisz: Yes it appears some of them were even somewhat aggressive in utilizing this tool. And I believe the language does make it clear in regard to disqualifying transfers.

Roll Call Vote Yes 14 No 0 Absent 0

Motion Carries, Do Pass on SB 2225

Chairman Weisz: Closes meeting

Date: 3-5-19
Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL SB 2225

House Human Services Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Porter Seconded By Rep. Ruby

Representatives	Yes	No	Representatives	Yes	No
Robin Weisz - Chairman	X		Gretchen Dobervich	X	
Karen M. Rohr - Vice Chairman	X		Mary Schneider	X	
Dick Anderson	X				
Chuck Damschen	X				
Bill Devlin	X				
Clayton Fegley	X				
Dwight Kiefert	X				
Todd Porter	X				
Matthew Ruby	X				
Bill Tveit	X				
Greg Westlind	X				
Kathy Skroch	X				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Rohr

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

REPORT OF STANDING COMMITTEE

SB 2225, as engrossed: Human Services Committee (Rep. Weisz, Chairman)
recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed SB 2225 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

SB 2225



NORTH DAKOTA HOUSE OF REPRESENTATIVES

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



Representative Lawrence R. Klemin

District 47
3929 Valley Drive
Bismarck, ND 58503-1729

R: 701-222-2577
lklemin@nd.gov

Speaker of the House

TESTIMONY OF REP. LAWRENCE R. KLEMIN SENATE BILL NO. 2225 SENATE HUMAN SERVICES COMMITTEE JANUARY 22, 2019

Madam Chairman and members of the Senate Human Services Committee. I am Lawrence R. Klemin, Representative from District 47 in Bismarck, I am here today to testify in support of Senate Bill 2225, relating to the familial duty of support.

Senate Bill 2225 amends the current law in Section 14-09-10 of the North Dakota Century Code, which provides as follows:

14-09-10. Reciprocal duty of support — Support of poor.

It is the duty of the father, the mother, and every child of any person who is unable to support oneself, to maintain that person to the extent of the ability of each. **This liability may be enforced by any person furnishing necessities to the person.** The promise of an adult child to pay for necessities furnished to the child's parent is binding.

Section 1 of Senate Bill 2225 amends Section 14-09-10 to specify the circumstances under which a creditor can sue a parent of an "adult child" or can sue an "adult child" of a parent to recover for the furnishing of necessities. Children under the age of 18 are not covered here because liability for their support is covered by Section 14-08.1-08. See the attached list of statutes.

Subsection 2 sets out four requirements, **all of which must be met** before a creditor can recover under the duty of support:

First, the liability is limited to the furnishing of necessary health services, which may include medical and long-term care services.

Second, recovery by a creditor cannot occur unless the recovery is sought from a person who received a direct benefit from a disqualifying transfer of an asset under either Section 50-06.2-07 (defines "disqualifying transfers" for purposes of comprehensive human service programs) or Section 50-24.1-02.8 (describes "transfers involving annuities" for purposes of medical assistance for needy persons).

Third, the recovery sought cannot exceed the fair market gain resulting from the disqualifying transfer.

AND Fourth, the disqualifying transfer must have occurred within 5 years of the receipt of the necessary health services. This is the same 5 year look back period for disqualifying transfers for Medicaid purposes. #1 pg. 2

Subsection 3 of Section 1 page 2 of the bill provides another circumstance under which a creditor can recover under the duty of support. This is the "bad actor" situation. A creditor may recover from a person who acted in **bad faith** by misappropriating, misusing, or diverting income or assets to prevent or avoid payment for necessary health services to a creditor, provided the bad faith action occurred within 5 years of the receipt of the necessary health services.

I recommend that subsection 3 be amended by adding a new subdivision c as follows:

c. Recovery is limited to the amount of the income or fair market value of the assets misappropriated, misused, or diverted.

Section 2 of the bill repeals Section 50-01-19, relating to the right of a county to recover from a parent or adult child for necessities furnished to an indigent person. The county is among the types creditors covered by Section 1 of Senate Bill 2225. Therefore, Section 50-01-19 is no longer needed.

Section 3 of the bill provides that this Act applies to a collection action which occurs on or after the effective date of the Act. This bill does not apply to collection actions that have been commenced in court prior to the effective date. Those actions will continue to be governed by the existing law. This Act is not retroactive.

Section 4 of the bill declares the Act to be an emergency measure, which means that if the Act is passed by a 2/3 vote in the House and Senate, then it becomes effective when signed by the Governor and filed with the Secretary of State.

The courts have interpreted the existing statute to mean that an adult child has a secondary liability to a creditor which has furnished "necessaries" to a parent, when the parent's ability to pay for the "necessaries" has been exhausted. The liability of an adult child for the debt of a parent for "necessaries" is imposed solely because of the familial relationship of those parties. The term "necessaries" is not defined in the existing statute. It has been interpreted to include healthcare services and long-term care services, which can result in significant obligations. It could also include many other things, such as food, shelter, clothing, and education. These obligations can be imposed regardless of the status of the relationship between those parties and can result in inequities.

For example, a parent has several children, one of whom is a nonresident who used the parent's assets while the parent received "necessaries" which went unpaid. A creditor can sue any or all of those children to collect on the debt without regard for the equities. The adult child that used the parent's assets lives out of state and the other children live in North Dakota. It is easier for a creditor to sue the resident children who didn't use their parent's assets, than it is to pursue the nonresident adult child who is a bad actor. This results in unfair treatment under the existing statute.

Another example. Parents get divorced when children are minors. The father leaves the mother and children and doesn't provide for their support. The children never see

their father again. Many years later the father is admitted to a hospital or nursing home and is financially unable to pay for his care. Under the existing statute, the hospital or nursing home can track down the adult children and sue them for their absent father's care. This also is unfair. #1 ps. 3

There are likely many other unfair circumstances which could arise. Senate Bill 2225 corrects the unfairness while allowing a creditor the ability to recover for the furnishing of healthcare and long-term care services under the circumstances described in the bill.

I urge your support for Senate Bill 2225. Thank you.

STATUTES CITED IN KLEMIN TESTIMONY ON SB 2225

14-08.1-01. Liability for support.

A person legally responsible for the support of a child under the age of eighteen years who is not subject to any subsisting court order for the support of the child and who fails to provide support, subsistence, education, or other necessary care for the child, regardless of whether the child is not or was not in destitute circumstances, is liable for the reasonable value of physical and custodial care or support which has been furnished to the child by any person, institution, agency, or county social service board. Any payment of public assistance money made to or for the benefit of any dependent child creates a presumption that such payment equals the reasonable value of physical and custodial care or support.

50-01-19. Duty of relative to aid — Right of recovery by county.

The father, the mother, and every child of any person who is eligible for county general assistance and who is unable to work to support oneself shall maintain that person to the extent of the ability of each. The county may recover for necessities furnished to an indigent person from that person's father, mother, or adult children.

50-06.2-07. Disqualifying transfers.

An individual is not eligible to receive benefits under this chapter if, at any time before or after making application, the individual or the individual's spouse has made any assignment or transfer of any asset for the purpose of making that individual eligible for the benefits. Assignment or transfer includes any action or failure to act that effects a transfer, renunciation, or disclaimer of any asset or interest in an asset that the individual might otherwise assert or have asserted, or which serves to reduce the amount that an individual might otherwise claim from a decedent's estate, a trust or similar device, or another individual obligated by law to furnish support.

50-24.1-02.8. Transfers involving annuities.

1. For purposes of this section, "annuity" means a policy, certificate, contract, or other arrangement between two or more parties under which one party pays money or other valuable consideration to the other party in return for the right to receive payments in the future.

2. An annuity purchased before August 1, 2005, is an available asset and its purchase is an uncompensated assignment or transfer of assets under section 50-24.1-02, resulting in a penalty under the applicable rules established by the department of human services unless the following criteria are met:

a. The annuity is a single premium immediate annuity or an annuity in which a settlement option has been selected, is irrevocable, and cannot be assigned to another person.

b. The annuity is purchased from an insurance company or other commercial company that sells annuities as part of the normal course of business.

c. The annuity provides substantially equal monthly payments of principal and interest and does not have a balloon or deferred payment of principal or interest. Payments will be considered substantially equal if the total annual payment in any year varies by five percent or less from the payment in the previous year.

d. The annuity will return the full principal and interest within the purchaser's life expectancy as determined by the life expectancy tables published by the centers for Medicare and Medicaid services.

e. The monthly payments from the annuity, unless specifically ordered otherwise by a court of competent jurisdiction, do not exceed the maximum monthly income amount allowed for a community spouse as determined under 42 U.S.C. 1396r-5.

3. Unless done in compliance with subsection 4, a provision in an annuity that purports to preclude assignment or transfer of any interest in the annuity is void as against public policy upon application of the purchaser, the purchaser's spouse, the annuitant, or the annuitant's spouse for benefits under this chapter. This subsection applies only to an annuity for which a payment option has been irrevocably selected after July 31, 2005.

4. An annuity, purchased after July 31, 2005, and before February 8, 2006, is not an available asset and the expenditure of funds to purchase such an annuity, instrument, or other arrangement may not be considered to be a disqualifying transfer of an asset for purposes of this chapter if:

a. The annuity is purchased from an insurance company or other commercial company that sells annuities as part of the normal course of business;

b. The annuity is irrevocable and neither the annuity nor payments due under the annuity may be assigned or transferred;

c. The monthly payments from all annuities owned by the purchaser that comply with this subsection may not exceed the minimum monthly maintenance needs allowance for a community spouse as determined by the department pursuant to 42 U.S.C. 1396r-5 and, when combined with the purchaser's other monthly income, at the time of application of the purchaser, the purchaser's spouse, the annuitant, or the annuitant's spouse, for benefits under this chapter, do not exceed one hundred fifty percent of the minimum monthly maintenance needs allowance allowed for a community spouse as determined by the department pursuant to 42 U.S.C. 1396r-5;

d. The annuity provides substantially equal monthly payments of principal and interest and does not have a balloon or deferred payment of principal or interest. Payments will be considered substantially equal if the total annual payment in any year varies by five percent or less from the payment in the previous year;

e. The annuity will return the full principal and has a guaranteed period that is equal to at least eighty-five percent of the purchaser's life expectancy as determined by the life expectancy tables used by the department of human services; and

f. The annuity does not include any provision that limits the effect of subsection 5.

5. Before benefits under this chapter may be provided to an otherwise eligible applicant who is fifty-five years of age or older, the department of human services, or the successor of that department, must be irrevocably named on each annuity owned by that applicant, or by the spouse of that applicant, that complies with subsection 4, as primary beneficiary for payment of amounts due following the death of the applicant and the applicant's spouse, if any, not to exceed the amount of benefits paid under this chapter on behalf of that applicant after age fifty-five, plus interest on that amount at the legal rate from six months after the applicant's death. If the department receives notice within ninety days of the death of the applicant or the applicant's spouse that reliably demonstrates that the applicant is survived by a minor child who resided and was supported financially by the deceased or by a permanently and totally disabled child, the department shall remit any payments made to the department under this section to those survivors in equal shares. When the obligations to the minor child or children who resided and were supported financially by the deceased or the permanently and totally disabled child or children and the department are fulfilled, the department shall remit any future payments made to the department under this section to the contingent beneficiaries selected by the annuitant regarding each annuity owned by the applicant or by the spouse of the applicant.

6. The purchase of an annuity on or after February 8, 2006, or the selection or alteration on or after February 8, 2006, of a payment option for an annuity purchased at any time, is a disqualifying transfer of an asset for purposes of this chapter unless:

a. The state is named as the remainder beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the annuitant or the state is named in the second position after the community spouse or minor or disabled child and is named in the first position if the community spouse or a representative of the minor or disabled child disposes of any remainder for less than fair market value;

b. The annuity is purchased from an insurance company or other commercial company that sells annuities as part of the normal course of business;

c. The annuity is irrevocable and neither the annuity nor payments due under the annuity may be assigned or transferred;

d. The annuity provides substantially equal monthly payments of principal and interest and does not have a balloon or deferred payment of principal or interest. Payments will be considered substantially equal if the total annual payment in any year varies by five percent or less from the payment in the previous year; and

e. The annuity will return the full principal and interest within the purchaser's life expectancy as determined in accordance with actuarial publications of the office of the chief actuary of the social security administration.

7. An annuity purchased on or after February 8, 2006, or a payment option selected or altered on or after February 8, 2006, with respect to an annuity purchased at any time is an asset for purposes of this chapter unless:

a. The annuity meets all of the requirements of subsection 6;

b. The monthly payments from all annuities owned by the purchaser that comply with this subsection do not exceed the minimum monthly maintenance needs allowance for a community spouse of the maximum amount allowed pursuant to 42 U.S.C. 1396r-5 and, at the time of application for benefits under this chapter, the total combined income from all sources of the purchaser and the purchaser's spouse, or the annuitant and the annuitant's spouse, does not exceed one hundred fifty percent of the minimum monthly maintenance needs allowance allowed for a community spouse of the maximum amount allowed pursuant to 42 U.S.C. 1396r-5; and "statutes annotated">

c. The annuity will return the full principal and has a guaranteed period that is equal to at least eighty-five percent of the purchaser's life expectancy as determined by the life expectancy tables used by the department of human services.

8. Except for the provision in subdivision a of subsection 6, this section does not apply to:

a. An annuity described in subsection b or q of section 408 of the Internal Revenue Code of 1986;

b. An annuity purchased with proceeds from an account or trust described in subsection a, c, or p of section 408 of the Internal Revenue Code of 1986;

c. A simplified employee pension within the meaning of subsection k of section 408 of the Internal Revenue Code of 1986; or

d. A Roth IRA described in section 408A of the Internal Revenue Code of 1986.

Testimony on SB 2225
House Human Services Committee
January 22, 2019

Good morning Chairman Lee and members of the Senate Human Services Committee. My name is Shelly Peterson, President of the North Dakota Long Term Care Association. We represent 214 basic care, assisted living and nursing facilities across North Dakota. I am here to testify on SB 2225 and ask for your support.

We appreciate the bill sponsors for including us in updating the statute and targeting those who act in bad faith potentially leaving their parents without the means to support or care for themselves. We are not interested in punishing adult children who are innocent in this situation.

I am going to briefly give an overview of the history on this statute, a little bit on Medicaid eligibility and then have some nursing facility providers share with you some examples of the cases they have been involved with.

North Dakota enacted its familial law in 1877, before statehood and long before Medicaid came into existence. The statute is modeled on the Elizabethan Poor Relief Act of 1601 from England.

North Dakota is one of 29 US states that have this type of statute, which addressed the responsibility of one person or a group of people to pay for the necessities of family members.

Though on the books in many states for decades, it is only in the last decade that we have seen much activity on it. The 2005 federal Deficit Reduction Act made it harder for the elderly and disabled to qualify for Medicaid. In order for an individual to qualify for Medicaid and receive coverage for nursing facility care, their assets may not exceed \$3,000 for a one-person unit or \$6,000 for a two-person unit. You can also have up to \$6,000 per person in a preneed funeral account.

Part of the Deficit Reduction Act was designed to prevent prospective Medicaid residents from diverting their assets to family members to appear as insolvent in order to qualify for government payment, Medicaid, for their long term care.

The law extended from three years to five years the “look back” period in which assets of a prospective Medicaid recipient could not be transferred to a family member without a penalty or delay before Medicaid payments kick in. You can transfer and give your money/assets to anyone, however, you can’t expect to do so and then try to qualify for Medicaid.

One of the ways we get caught in the middle on this issue, a person gives assets to a child or a child takes assets and within 5 years, mom or dad need care. They complete the application to Medicaid and Medicaid determines a “disqualifying transfer” has occurred. Almost two-thirds of individuals completing an application to a North Dakota nursing facility are admitted after a hospital stay, (62%). Many families are unprepared and unaware of how they are going to pay for their care. Some think health insurance covers their long term care and many still think Medicare will pay the bill. In 2018, Medicare covered only 7.6% of nursing facility stays in North Dakota. Medicare was never intended to be a primary payor source for someone’s long term care needs.

The reality is, each one of us needs to plan and think about when you will need care how will you pay for it? (Look at page 18 of the Facts & Figures booklet).

When families/individuals are considering long term care, nursing facility staff will visit with them about payment. A number of years ago, we developed a nursing facility intake form to help nursing facilities gather important payment information and help individuals understand their obligations, (Attachment A). Unfortunately, more often than not, a person is in the hospital, discharged within days or within hours, and initially the person may qualify for Medicare. To be covered by Medicare, you must first have a 3 day inpatient hospital stay and meet skilled nursing facility criteria. So they are admitted with Medicare as the interim payment source, then within days, or weeks, or 100 days, if you're very lucky, Medicare quits paying. Some individuals aren't ready for discharge and it becomes their choice to remain in the nursing home facility. At this point, we've already engaged in communication of "how are you going to pay for your care". Some individuals are without capacity so the conversation occurs with the family, or both. During these conversations we strive to help families understand payment options and strive to understand who the responsible party is.

The federal regulations on this issue state:

§ 483.15 Admission, transfer, and discharge rights.

(a) Admissions policy.

(3) The facility must not request or require a third party guarantee of payment to the facility as a condition of admission or expedited admission, or continued stay in the facility. However, the facility may request and require a resident representative who has legal access to a resident's income or resources available to pay for facility care to sign a

contract, without incurring personal financial liability, to provide facility payment from the resident's income or resources.

This is important, we don't and can't expect adult children to pay the bill as their personal financial liability, but we can expect that person to provide facility payment from the resident's income or resources.

In a one year period ending June 30, 2018, nursing facilities reported \$2,271,659 in bad debt. Of the 36 nursing facilities (46% of all nursing facilities) the bad debt ranged from \$769 to \$415,502 per facility. To be reported on the cost report it must be determined to be uncollectible with no likelihood of future recovery. Attached is the best practice standard on collections, developed by facility members and supported by the Department of Human Services. As you will see, you must take aggressive action to secure payment. In the recent past, DHS has not allowed us to claim bad debt unless we assured all aspects of NDCC 14-09-10 were pursued.

Of the \$2.2 million submitted by nursing facilities this past year, DHS has disallowed \$1,116,664 because it was their determination that nursing facilities did not pursue all avenues of bad debt collection.

Bad debt is harming many facilities, further DHS is proposing in SB 2012, to further limit or disallow the bad debt of over one-third of all nursing facilities.

Current NDCC 50-10.2-1(3) allows a long term care nursing facility to discharge a person for non-payment of one's rent or fee's. However the federal regulations require us to name the safe discharge location we are discharging the person to. When someone is not paying the bill, trying to

secure a safe location that meets their needs is very challenging. Most often no one will consider them for admission, if current obligations are not being met.

We believe SB 2225 appropriately updates a 142 year old statute, telling adult children if you have not misappropriated, misused or diverted income or assets of your parent, that they need for medical or long term care services, you will not be pursued for payment under this statute. SB 2225 doesn't cover all of our issues we are experiencing in non-payment, but it certainly protects adult children who should not be held responsible for their parent's medical bills.

We have a number of nursing facility providers present today that would like to share with you their experiences in this area.

Thank you for listening to my testimony and considering our perspective.

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

NURSING HOME INTAKE QUESTIONNAIRE

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~122/19
#2 B.L

Please complete this form in its entirety and return it to the receptionist.

Last name, First Name, Middle Initial:																																				
Date of Birth:		Social Security Number:																																		
Mailing Address:		City, State, Zip:																																		
Phone Number:	Cell Phone Number:	Best Method and Time to Reach You:																																		
Spouse's Last name, First Name, Middle Initial:																																				
Spouse's Date of Birth:		Spouse's Social Security Number:																																		
Spouse's Mailing Address:		City, State, Zip:																																		
Spouse's Phone Number:	Spouse's Cell Phone Number:	Spouse's Work Number:	Spouse's Fax Number:																																	
Spouse's E-mail Address:		Best Method and Time to Reach Your Spouse:																																		
Contact Person's Name:		Contact's Address, City, State, Zip:																																		
Contact's Phone Number:	Contact's Cell Phone Number:	Contact's Work Number:	Contact's Fax Number:																																	
<p>1. Except for personal effects, list all assets owned by you and your spouse, including the cash surrender value of life insurance, stocks, bonds, vehicles, life estates, antiques, collectibles, and pensions, with the value as of the date of admission into the nursing home. (Attach additional pages if needed.)</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 25%;">Owner of Asset</th> <th style="width: 55%;">Description of Asset</th> <th style="width: 20%;">Value of Asset</th> </tr> </thead> <tbody> <tr><td>a.</td><td></td><td></td></tr> <tr><td>b.</td><td></td><td></td></tr> <tr><td>c.</td><td></td><td></td></tr> <tr><td>c.</td><td></td><td></td></tr> <tr><td>e.</td><td></td><td></td></tr> <tr><td>f.</td><td></td><td></td></tr> <tr><td>g.</td><td></td><td></td></tr> <tr><td>h.</td><td></td><td></td></tr> <tr><td>i.</td><td></td><td></td></tr> <tr><td></td><td></td><td></td></tr> </tbody> </table>				Owner of Asset	Description of Asset	Value of Asset	a.			b.			c.			c.			e.			f.			g.			h.			i.					
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List all debts owed by you and your spouse, with values as of the date of admission into the nursing home.

Debtor	Description of Debt	Amount of Debt
a.		
b.		
c.		

3. List all transfers or gifts of assets within the past five years by you and your spouse, including transfers of a remainder interest in real property.

Date of Transfer	Description of Asset	Recipient	Value of Asset
a.			
b.			
c.			
d.			
e.			

List all pre-paid burial contracts, burial accounts, and pre-paid burial or funeral items owned by you or your spouse or by a third party for the benefit of you or your spouse.

Description	Owner	Value
a.		
b.		
c.		
d.		
e.		

5. List all sources of income for you and your spouse, including but not limited to rental payments, CRP income, long-term care insurance benefits, Social Security benefits, veteran's benefits, and employment income.

Description of Income	Date or Frequency of Payment	Amount of Payment
a.		
b.		
c.		
e.		
f.		

List all health and pharmacy insurance for you and your spouse.

Name of Insured	Name of Insurer	Description of Insurance	Monthly Premium Amount
a.			
b.			
c.			
d.			
e.			
f.			

7. Identify your agent under your financial power of attorney. (Please attach a copy hereto.)

Name, address, and telephone number:

8. Identify your agent under your health care power of attorney. (Please attach a copy hereto.)

Name, address, and telephone number:

9. Did the agent or attorney-in-fact listed under your financial power of attorney assist you with making any of the transfers or gifts referenced in section number 3 above, or benefit or receive any of the assets transferred or gifted? If yes, please explain.

10. Were any of the assets described in section number 3 above transferred or gifted to or from a trust? If yes, explain the nature of the transaction and identify the trust involved.

11. Have you previously applied for Medicaid? If yes, provide the date and county in which application was made.

12. Do you or your spouse reside on a farm?

13. Are you actively engaged in farming or any other trade or business? If yes, describe the nature of the business.

14. Are you or your spouse employed by another or self-employed? If yes, provide the name of the employer or the nature of the self-employment, the hours worked, and the wage or salary earned.

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Are you or your spouse the beneficiary of any trust?

16. Do you have any pending legal action from which you may receive money or medical benefits, including inheritance? If yes, describe.

This questionnaire complies with section 50-24.1-22 of the North Dakota Century Code. By my signature below, I hereby authorize the nursing home to contact the county social services for information regarding my Medicaid application and eligibility, and I hereby release and authorize the county social services to release any information to the nursing home. I also authorize the nursing home to contact any and all of the above-identified financial institutions to obtain information regarding my assets and income, and I hereby release and authorize the financial institutions to release any information to the nursing home. I further authorize the nursing home to release to its attorneys any information regarding my application for admission.

I understand that providing false information could result in discharge and/or denial of my application. The answers provided herein are true and correct to the best of my knowledge and information.

Signature: _____ Date: _____

Bad Debt Collection Best Practices

Account Balances < \$1,500:

- Timely follow-up on past due balances utilizing consistent, progressive collection action. The timeline in the example listed below may vary by facility and by circumstances of a specific account:
 - 15 days past due: Past due notice sent. Include notice to D/C phone, cable, private room if applicable.
 - 25 days past due: Collection phone call – multiple attempts if needed.
Email contact if available (note HIPAA security requirements)
Business Manager formal collection letter sent requesting payment in full or contact to establish payment plan.
 - 35 days past due: Collection phone call – multiple attempts if needed.
Email contact if available (note HIPAA security requirements)
Administrator formal collection letter sent, outlining consequences for failure to respond.
 - 45 days past due: Current resident: Initiate planning D/C for Nonpayment if no contact was made to establish a plan for payment.
Former resident: Depending on balance and previous communication, additional calls/letter.
Utilize collection agency for further collection action.

- After the facility has exhausted all reasonable collection efforts internally, and the collection agency has attempted to collect on a debt for at least six months, the account may be written off.
 - Collection efforts will be documented throughout the process, and summarized on an authorization form, and routed to the facility Administrator for approval.
 - Authorization form will summarize all key information required for Schedule T on the Medicaid C/R, and will be submitted at time of filing the C/R, along with supporting documentation.
 - Authorization form will include certification by the facility Administrator that all reasonable collection efforts have been exhausted, including appropriate internal and external resources, and there is no likelihood of future recovery.
 - Unanticipated bad debt recoveries will be reported on the Medicaid C/R, reducing claimed bad debt expenses for the C/R period.

Bad Debt Collection Best Practices

Account Balances \$1,500 or greater:

- Timely follow-up on past due balances utilizing consistent, progressive collection action. The timeline in the example listed below may vary by facility and by circumstances of a specific account:
 - 15 days past due: Past due notice sent. Include notice to D/C phone, cable, private room if applicable.
 - 25 days past due: Collection phone call – multiple attempts if needed.
Email contact if available (note HIPAA security requirements)
Business Manager formal collection letter sent requesting payment in full or contact to establish payment plan.
 - 35 days past due: Collection phone call – multiple attempts if needed.
Email contact if available (note HIPAA security requirements)
Administrator formal collection letter sent, outlining consequences for failure to respond.
 - 45 days past due: Current resident: Initiate planning D/C for Nonpayment if no contact was made to establish a plan for payment.
Former resident: Depending on balance and previous communication, additional calls/letter.
Utilize attorney for further collection action.
- Legal action will vary by circumstances involved with delinquent accounts, and may include:
 - Collection demand notice
 - Mortgage or lawsuit to obtain judgment to secure lien on property
 - Action against AR guarantor and/or children if account involves failure to pay outstanding charges with available assets, or failure to provide information for insurance coverage or Medicaid eligibility
 - If account involves a disqualifying transfer, action to secure payment from the transferee, or action for a transfer in fraud of creditors
- After the facility has exhausted all reasonable collection efforts internally, and the facility has worked with their attorney to pursue reasonable efforts to collect on a debt, the account may be written off.
 - Collection efforts will be documented throughout the process, and summarized on an authorization form that will be routed to the facility Administrator for approval.
 - Authorization form will summarize all key information required for Schedule T on the Medicaid C/R, and will be submitted at time of filing the C/R, along with supporting documentation.
 - Authorization form will include certification by the facility Administrator that all reasonable collection efforts have been exhausted, including appropriate internal and external resources, and there is no likelihood of future recovery.
 - Unanticipated bad debt recoveries will be reported on the Medicaid C/R, reducing claimed bad debt expenses for the C/R period.

Bad Debt Collection Best Practices

Special Circumstances:

There may be situations when it would not be appropriate to involve collection agencies or attorneys in collection efforts initiated for past due accounts. The following examples are not intended to be a comprehensive list. Providers will exhaust all appropriate and reasonable collection efforts in these circumstances before writing off an account balance.

➤ **Current or Former Resident Filing for Bankruptcy**

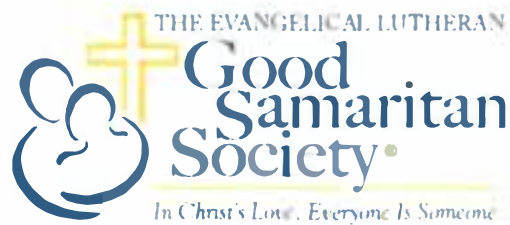
- If a provider receives a notice of bankruptcy, they should file a Proof of Claim form with the bankruptcy court. Providers may submit this form without needing to involve an attorney. Health care providers are considered “unsecured” creditors and may not be a priority creditor, but filing the Proof of Claim ensures that if funds are available, payment or partial payment may be secured. A link to obtain the form follows:
www.uscourts.gov/forms/bankruptcy-forms/proof-claim-0
- A provider’s outstanding balance after distribution of funds from the bankruptcy proceeding may be written off as uncollectible.

➤ **Former Residents with an Approved Medical Allowance**

- If a Medical Allowance had been approved for collection of a Medicaid resident’s past due charges, and the individual expires or discharges prior to collection of the full amount due, it is likely that write-off of the remaining account balance will be necessary.
 - Providers should attempt to collect payment from funds available, and should request proof that funds were exhausted.
 - In situations involving expired individuals, providers should contact ND DHS to see if funds were recovered by the state and may be available to pay/partially pay the outstanding balance.
- If a Medical Allowance had been approved for collection of a Medicaid resident’s past due charges, and the individual transfers to another facility prior to collection of the full amount due, the provider should work with the new facility and county to continue collection via Medical Allowance.

➤ **Account Write-off & Documentation**

- Collection efforts will be documented throughout the process, and summarized on an authorization form, and routed to the facility Administrator for approval.
- Authorization form will summarize all key information required for Schedule T on the Medicaid C/R, and will be submitted at time of filing the C/R, along with supporting documentation.
- Authorization form will include certification by the facility Administrator that all reasonable collection efforts have been exhausted, including appropriate internal and external resources, and there is no likelihood of future recovery.
- Unanticipated bad debt recoveries will be reported on the Medicaid C/R, reducing claimed bad debt expenses for the C/R period.



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Sanford Health and The Evangelical Lutheran Good Samaritan Society officially combined on Jan. 1, 2019. Sanford Health, one of the largest health systems in the United States, is dedicated to the integrated delivery of health care, genomic medicine, senior care and services, global clinics, research and affordable insurance. Headquartered in Sioux Falls, South Dakota, the organization includes 44 hospitals, 1,400 physicians and more than 200 Good Samaritan Society senior care facilities in 26 states and nine countries. The Good Samaritan Society has 15 senior care campuses in North Dakota.

The Society works closely with prospective residents as they consider their long term care needs, preferred services and other options and available amenities at any of our centers. In many cases the residents that are receiving long term care services will have an adult child whom either assists with or legally manages their parent's financial affairs. This includes submitting payment for the care and services their parent is receiving in a long term care location and applying for long term care Medicaid on their behalf.

In some instances, the adult children (child) will be negligent in their duties of assisting or legally managing their parent's financial affairs, by failing to use their parent's income, asset and resources to pay for the care and services. In addition, the adult child who is assisting or legally managing their parent's financial affairs may fail to submit a long term care Medicaid application on time and/or submit the necessary documents to Medicaid timely, resulting in the Medicaid application being denied. This results in the Society's locations not having a pay source for the care and services that are being provided.

As identified in this Bill, the adult child may fraudulently transfer their parent's assets, sell them for less than fair market value or receive assets as a gift from their parent. All of these actions result in the Society's locations not receiving payment for the care services we are providing and will also result in a denied long term care Medicaid application.

We currently have resident accounts with past due balances in excess of \$100,000 due to these circumstances. We generally only invoke the ND Filial law when we have a large past due balance and we suspect the adult child or children have been negligent in their duties, acted in bad faith, received a transfer of assets, and/or misappropriated resources. In some cases, this is only discovered through a legal discovery process.

Since our locations need to be paid for the care services that are provided, we strongly believe this Bill needs to be enacted so adult children can be held accountable for their actions. The Society is committed to sustaining affordable long term care services and prevents unnecessary increases in cost due to the negligence of a select few individuals. Long term care providers need appropriate remedies in order to be reimbursed or seek reimbursement for the care and services that are provided. Increasing the rates on all residents for the actions of a few is not the best approach.

**Testimony on SB 2225
Senate Human Services Committee
January 22nd, 2019**

Good morning Chairman Lee and members of the Senate Human Services Committee. My name is Shawn Stuhau, President and CEO of Bethany Retirement Living in Fargo. Bethany has 288 skilled care beds, 77 basic care beds, 96 assisted living apartments and 58 senior apartments. I am here to testify in support of SB 2225.

In today's world, navigating through the healthcare system is complicated for patients and residents. In our skilled care facilities we try to make the process as easy as we can. Upon admission, a resident and their representative is given documents that explain Medicare Part A, Medicare co-insurance, Medicare Part B, Medicaid, paying a bill privately and how to apply for Medical Assistance.

If a resident has applied for Medical Assistance and is waiting for notification of eligibility, Bethany will monitor progress with the County Social Services Office and/or Veteran's Administration if applicable. The responsible party must be actively attempting to meet all requirements for eligibility and keep a representative of Bethany informed.

The majority of Bethany's skilled care admissions come from the hospital. Residents that are admitted from the hospital typically qualify for Medicare Part A and they usually have Part A co-insurance. The average resident qualifies for Medicare A for about 30 days. After a resident no longer

qualifies for Medicare A, they transition to one of four payor sources. 1) Private Pay. 2) Private Insurance. 3) VA or 4) Medicaid.

The majority of collection issues happen when a resident transitions from Medicare A to private pay and then applies for Medicaid. During the transition from Medicare Part A, Bethany's social service and business office staff are actively working with the resident and their representative to encourage application for medical assistance if they feel they do not have the financial resources to pay the bill. Many times the resident may not have the capacity to manage this process themselves so they rely on their child or children to start and complete the Medicaid application for them.

Most adult children act in the best interest of their parent and the process goes smoothly. Occasionally, there are children who know there has been a disqualifying asset transfer or they have been intermingling their parent's funds with their own, so they do their best to delay starting the Medicaid application process. If they do start the MA application process for their parent, they delay bringing in additional support information the county may request until ultimately the county closes the application and rules that they are not eligible.

Due to these intentional or negligent delays, the unpaid bill may now be 6-8 months old with a balance of \$40,000-\$60,000 depending on the length of time the county has taken to review the application. A skilled nursing facility cannot issue a discharge notice to a resident for an unpaid bill during the Medicaid application process, so the intentional or negligent delays by the child, acting in bad faith, only increase the outstanding bill amount.

Once it is clear to us that a child is acting in bad faith, we pursue emergency conservatorship or guardianship to allow someone access to the paperwork needed for the Medicaid application, but these processes take time and financial and legal resources. By the time we work through all of the options a resident's bill may be 8-10 months old.

This is the type of situation when we use the filial law statute. We have used the statute as a threat to encourage a child to work with the county to get the MA application done or to pay the amount ruled as a disqualifying transfer. To this point, we have been successful in getting resolution without following through with formal legal action. We have not used the law to simply sue a child, who acted in good faith, for an outstanding bill. We only consider legal action if (1) the adult child received funds determined by the county or state to be a DQ transfer, or (2) the adult child is intentionally or negligently not following through with submission of information needed for a Medical Assistance application.

Currently, we have three (3) active cases using the filial law:

- 1) \$13,000 outstanding for a resident who has now expired. Son continually stated he would start an MA application for his dad. Multiple times, he would pick up an application, meet with the county case worker and then wouldn't follow-through.
- 2) \$71,000 outstanding. Daughter intentionally failed to follow-through on MA application. We are petitioning for emergency conservatorship

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3) \$39,500 outstanding. MA application started, but Daughter refuses to put father's house up for sale, sell multiple cars and we recently learned of possible land that will hold up the MA application.

Bethany would like the law to stay as it is currently written because we have used the law as it was intended. SB 2225 is a much better alternative than an all-out repeal of the filial law.

Thank you for the opportunity to testify in support of SB 2225. I would be happy to answer any questions.

Shawn Stuhaug, President/CEO
Bethany Retirement Living
201 S. University Dr.
Fargo, ND 58103
(701)-239-3000
E-mail: [sstuhaug@bethanynd.org](mailto:ssstuhaug@bethanynd.org)

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January 22, 2019

SB 2225 Testimony – **In favor of**

Wayne Papke – citizen lobbyist

Madame chairman Lee and members of Senate Human Services committee;

My name is Wayne Papke, Mandan, ND. I have been doing testimony for 25 years on property tax reform but this is my first time in front of your committee and I'm honored and I thank you for this opportunity.

I have a real life story which in part, led to the creation of this bill. My wife Christi, was listed on the Good Samaritan of Bismarck (now known as Augusta Place/Prospera), application for long term care as her mother's (Betty's) Power of Attorney and her primary contact person. However, the Power of Attorney was never implemented as up until her 95th birthday, she had a lot of dignity and she ran her own business affairs, managed all her payments and income and only involved my wife, on a nominal basis, in deposits to her "house" spending account. She received all her monthly bills from Good Samaritan, we did not get duplicates or original copies.

My mother in law here was fully competent as was validated in that Good Samaritan conducted formal monthly competency tests for all long term care patients. In every month up until her 95th birthday and far past this events occurrence, she received a 100% score on her monthly competency. The incident I am sharing with you took place largely in 2015 and 2016 during which time she was formally deemed 100% competent. She solely ran her own personal business affairs and used in house social services to communicate with her Medicaid source at Burleigh county social services. She was not a woman of means. She went on Medicaid immediately upon entering skilled long term care.

In early 2015, Betty apparently ran into a problem with her social worker and her social worker failed to file her annual financial and net worth report. Well, since we were out of the loop and my mother in law as too proud to explain to us that she was late in her room payments, she did not get this Medicaid reporting problem fixed until it was more than 6 months late at which time no appeals process existed with Medicaid. So her bill grew to \$ 130,000. Now, she is a Medicaid case, so where is the long term care facility going to get \$ 130,000 owed to them from a Medicaid person even though it was their social worker who got her to this overdue position to start with.

On a side note to help you understand long term care administration in most of my experiences. An interesting event didn't occur -During this overdue buildup, my wife and I saw the administrator and business manager of Good Samaritan at least 2 -3 times per week, but not once did any of them corner me or my wife and convey the situation, thus the bill grew.

What a dilemma that Good Samaritan got itself into – they knew that they could not collect from a 93 year old Medicaid recipient so where do they look? Answer: They used the current filial law and sued my wife and I.

We were notified by a summons where Good Samaritan was suing us for \$ 130,000. By this time, we got the Medicaid reimbursement situation remedied including 6 months of past due receipts so her new monthly costs were being covered. It was just the 12 months where she was over the Medicaid appeal period that she owed the \$ 130,000 for.

Following 3 years of legal wrangling with Good Samaritan, we finally settled out of court for \$ 30,000 plus \$ 12,000 in attorney fees or \$ 42,000 total for which I wrote a check for. Now, I just wrote a check out my personal savings account which affected my retirement and other assets for something that I felt I never owed anything toward. Do you all pay your families bills? I think not. My mother in Law Betty passed away September 18, 2018.

This was all possible because of the current filial law on our books which gives long term care facilities the power to sue children of their residents for the cost of their parents care and medical.

I have a lot of years of personal experience with long term care facilities. My mother was in skilled care for 8 years, then we had 1 year break following her death and then my mother in law was in for the next 8 years. These two ladies lived in 5 different facilities total. So I had experience. One thing I have learned is that administratively – long term care facilities management and operations people are the poorest business people in any industry in my opinion.

Also interesting is that in our region, there have now been about 5 total cases like mine, some not settled yet, but in every case, it has only been one facility and one management group that has been behind every law suit – that is the Augusta Place/Prospera/Sanford partnership. So it is clear that they are using this law in lieu of responsible management and friendly policies. Even the long term care ombudsman statement along with almost every long term care facilities mission statements state that they will NOT sue or pursue 3rd parties for financial support. This includes Augusta place, but they did not even follow their own mission statement or business policies. They obviously didn't even follow the State Ombudsman policy in effect.

In my 16 years of long term skilled care experience, I have never seen an organization stoop to these levels just to cover and accommodate their own poor business practices. We need to stop the madness as the more these skilled long term care facilities have the loophole to go after the children's money for the parents long term care costs, they will continue to pursue it. It will become a much bigger, well known, topic if we don't stop it in its tracks. I ask you to approve SB 2225 to stop the madness and unfair liabilities placed on non responsible parties

Wayne Papke, 1612 River Dr NE, Mandan, ND 58554 Tel. (701)226-2739 (cell)

Testimony on SB 2225
Senate Human Services Committee
January 22, 2019

Good morning Chairman Lee and members of the Senate Human Services Committee. My name is Garth Rydland and I am President/CEO of Valley Memorial Homes. We are a long term care provider who employs about 800 people and provides housing and services for 550 people each day on our three campuses in Grand Forks. I am here to testify on SB 2225 to support the amendment of Section 14-09-10 of the North Dakota Century Code and the repeal of section 50-01-19 of the North Dakota Century Code.

First, I would like to thank Senators Dever and Oban and Representatives Keiser, Klemin, Kreidt, and Longmuir for sponsoring the revisions to this antiquated bill. In the 1930s, we had a very simple bilingual (English and Norwegian) application for living in our nursing home which included the question – If you have no means yourself, are the children able to pay for you?

Times have long since changed and this legislation seeks to clarify current practice. Every year I receive calls from members of the public asking if they as adult children could be financially responsible for their parents' nursing home care. My reply is always, "If you have been responsible in managing your parent's funds, you should not have a problem." Senate Bill 2225 seeks to clarify the familial duty to support health services.

Unfortunately, financial exploitation of seniors is on the rise in North Dakota. In Senate Appropriations last week, Nancy Nikolas Maier, Director of Aging Services, testified that there were 176 substantiated allegations involving financial exploitation which was an increase of 35 percent from FY 2017 (130 cases) and an increase of over 300 percent since FY 2013 (51 cases). SB 2225 is an important tool which gives health service providers the ability to pursue a civil action against those who have made their family member ineligible for Medical Assistance through their actions. This is necessary because quite often criminal charges are not filed in these cases unless they are extremely egregious in nature.

Most people are not acting in a criminal manner. They are making legal transactions within the last five years that make them ineligible for Medical

Assistance. This area of asset transfer is a little harder for people to understand, but it is simple from this perspective: we as taxpayers don't have to pay for your healthcare just because you gave away your assets to others within the last five years. We know the extremes of these transactions when we see them: farmland transferred to children for pennies on the dollar, lake homes given for no consideration, children who write themselves and their siblings \$10,000 checks for Christmas gifts, and extravagant vacations for the entire extended family paid by Grandma (but Grandma was in the nursing home and was unable to go).

Not all cases are so clear cut. I've seen cases in which grandparents are paying to support their grandchildren's expenses such as college or buying them a car. Without the money, that person wouldn't have been able to attend college or afford a car. These transfers make you ineligible for Medical Assistance as well.

Finally, there are rare cases in which we as long term care providers are required to make collection efforts for items that we do not agree with that disqualify people from Medical Assistance benefits. Quite often these result when family members have paid themselves small amounts of money each month to reimburse themselves for taking care of their parent, but they did not establish a contract in writing for those services.

While we can't change federal eligibility requirements for obtaining Medical Assistance, we can do something so that health providers are not required to pursue collection efforts against good people. Section 3 of this legislation will allow us to claim some of these actions as a bad debt without having to pursue collection efforts against those individuals.

We need a system that holds people accountable to manage their assets for their own use but doesn't penalize those who are trying to do the right thing. Please support SB 2225 which clarifies the responsibility of family members in cases in which their actions have led to ineligibility for Medical Assistance. Thank you for the opportunity to testify in support of this bill.

Garth Rydland
President/CEO, Valley Memorial Homes
2900 14 Ave S / Grand Forks, ND 58201
grydland@valleymemorial.org
(701)787-7905

Testimony on SB 2225
Duty to Support Parents
Senate Human Services Committee
January 22, 2019

Chairman Lee, members of Senate Human Services Committee, my name is Daniel Kelly. I am the CEO of the McKenzie County Healthcare Systems, Inc., in Watford City, North Dakota. I am here to provide testimony related to Senate Bill 2225.

The McKenzie County Healthcare Systems, Inc. has not been placed in the position where we have brought legal action based on section 14-09-10 of the North Dakota Century Code. However, having this law has been beneficial. We did have an incident where a family member was not cooperating with the Department of Human Services in providing the necessary documentation to establish eligibility for Medicaid coverage for one of our residents. Telling them that should they continue to be uncooperative with the Department of Human Services could ultimately result in their being financially responsible for the nursing home care was the motivating factor that secured their cooperation.

As an adult and as a nursing home administrator I do not believe that in the routine course of business an adult child should be held financially responsible for the care of their independent adult parent. However, I do strongly support the concept that if some form of financial impropriety has occurred on the part of the adult child that precludes the payment for nursing home care for the adult parent; that the nursing home should have the option of securing legal recourse.

It is for the above reasons that I support SB 2225 as a better option than having no bill at all to address these types of situations.

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

Daniel Kelly, CEO
McKenzie County Healthcare Systems, Inc.
516 North Main Street
Watford City, North Dakota 58854
Email: dkelly@mchsnd.org

SB 2225
1/22/19
#8 pg.1

Testimony on SB 2225
Senate Human Services Committee
January 22, 2019

Good morning Chairman Lee and members of the Senate Human Services Committee. My name is Trevor Tompkins and I am the Administrator/CEO of the Lutheran Sunset Home, a 91 bed skilled nursing facility with an attached 26 unit assisted living facility in Grafton, ND. I am here today to testify in support of SB 2225 and express why I feel that a filial law is needed in North Dakota.

In 2013 a woman was admitted to our facility with a diagnosis of dementia, her family claiming that they were no longer capable of caring for her at home. The woman, no longer able to handle her financial obligations, had entrusted her daughter to manage these for her. Months passed and our facility had received no payment for her care. The daughter claimed that her mother's money had run out but was uncooperative in filling out paperwork in order for her mother to qualify for Medicaid. Her mother's outstanding bill got as high as \$93,955.25.

As it turns out, while her mother resided at our facility with dementia, her daughter had been out spending her money on items like a new boat and trailer, new camper, new vehicle, a snowmobile, Minnesota Twins tickets, and various other personal expenses. All of these amounted to disqualifying transfers which prevented her mother from qualifying for Medicaid and having her care paid for.

In order for this resident to qualify for Medicaid, we needed a promissory note from the daughter offering to make continual payments to our facility until the outstanding debt was paid off. Essentially, the debt had to be removed from the resident and taken over by her daughter who was responsible for misappropriating the funds. Today, over five years later, there is still an outstanding account of \$69,148.92 and at the current pace it will be paid off in approximately twelve

years. In total, we have spent \$13,465.98 in legal fees as well as dedicating countless hours of staff time associated with cleaning up this account.

I understand that this situation is likely more of an extreme case than the norm when it comes to disqualifying transfers, but it also shows that these situations do in fact happen. By having a filial statute in place, it ensures that the financial obligation in situations like this stay in the right place, which is with the person responsible for misappropriating the funds rather than falling on the taxpayers or the other private pay. There are numerous occasions where residents are admitted to facilities with no power of attorney and without this statute, there is little to ensure that facilities have a case when people mismanage their parent's finances.

I agree that changes were necessary and I am in support of the amendments to the North Dakota Century Code as it pertains to this matter. This will provide protection for family members that are innocent of wrongdoing while also allowing facilities to pursue collection efforts in hopes of reducing the vast amounts of bad debt that currently plague our industry.

Thank you so much for your time and consideration in this matter.

Trevor Tompkins

Administrator/CEO, Lutheran Sunset Home/Leisure Estates

333 Eastern Ave

Grafton, ND 58237

701-352-1901

Senate Human Services Committee

Date: January 22, 2019 at 10:45 a.m.

Margaret Rennecke, Mandan

Senate Bill 2225

Good morning Madam Chairman and members of the committee. I am Margaret Rennecke of Mandan, representing myself and my family and many other concerned citizens of our community who have contacted me concerning Section 14-09-10 of the NDCC. Thank you for giving me this opportunity to discuss this proposed bill and answer any of your questions. I am here to testify in support of SB 2225, with minor modifications to proposed 14-09-10.3.

My dad Phil Shook passed away on January 31, 2017 after a long stay in a nursing home. We had to clean out the last of his belongings from his small room at the nursing home, and as anyone who has lost a loved one knows-how emotionally drained you are already, but yet how tough it is to pack up the last of their belongings-the last of their things. Less than 6 months after he died, we received a certified letter with a summons and complaint demanding that we pay \$43,000 for his nursing home bill. This is the first time I learned that the nursing home had not been paid. My mother is very private about her finances, and I did not ever see a bill for the nursing home bill. I did not sign the nursing home

contract, and I was not my dad's power of attorney. I did not receive anything from my dad other than some of his personal things that were in his nursing home room.

We hired an attorney to represent my brother and sisters and I. At the first meeting with the attorney, he told us how the 14-09-10 worked. We were all shocked and scared. He also told us that the judge could divide up the \$43,000 between the four of us depending on who makes the most money. This meant that if my husband and I wanted to pay less, my sisters and brother and their families would have to pay more. The idea that our families were pitted against each other was a terrible feeling that caused us all a lot of tears. However, we decided to stick together, and took extra jobs and extra shifts to pay for legal bills.

During the case, each of us had to give affidavits stating that we received nothing of value from my dad's estate to the nursing home attorney and we provided all of our financial information including bills, income taxes, bank account statements and paychecks to our lawyer. However, even after the nursing home saw we had received nothing from dad's estate, they were not only still pursuing us, but they asked for information about our spouses and their incomes also. In the newspaper article, some people said that the nursing homes only pursue people that they think took their parent's assets. I don't know what

the nursing home thought when they sued me. However, I know that the nursing home did not dismiss the case against us even after they knew we got nothing from my dad. Instead, it was about how much money we could pay. It was terribly stressful to go through a lawsuit like this.

I work as a respiratory therapist, and often comfort families who are dealing with end of life circumstances. Since the Bismarck Tribune published the article about what happened to my family, I have been approached by many people asking how they can help. I miss my dad every day and I helped him and loved him when he was sick and dying. However, I am not an insurance company, and I know that my dad never wanted any of us kids to be burdened with his bills! That is why he never allowed any of us kids to be POA or involved with any of their finances.

Please help us change the wording of this NDCC law for the future of everyone in our community including all of our families, children & grandchildren, so no one else has to go through this horrible experience that myself, my siblings & others in this community are already going through.

We ask for a few minor word changes to 14-09-10.3 to prevent some possible legal misinterpretation of SB 2225 regarding recoverable amount limits & the use of “creditor” to protect our families in our community.

Finally, thank You to all that are involved and have worked very hard to put this very important bill together! I respectfully request that after the minor word changes are included for 14-09-10.3, that the Committee support this bill with a DO PASS recommendation. Thank you, Madam Chairman for listening to me today and I would be happy to answer any questions.

SENATE HUMAN SERVICES COMMITTEE

Date: January 22, 2019 at 10:45 a.m.

Rebecca Pedersen, Bismarck

Senate Bill 2225

Good morning, Madam Chairman and members of the committee. I'm Rebecca Pedersen from Bismarck, representing myself and my siblings. Thank you for giving me the opportunity to discuss this proposed bill and answer any questions. I am here to testify in support of SB 2225, with minor modifications to proposed 14-09-10.3.

I would like to provide some general comments and then attorney Steven Leibel will address the specific minor wording modifications to improve SB 2225.

In 2005, this same NDCC was brought up to legislature for repeal because there was fear that this broadly-written law from the 1800's could be used to make children of any age responsible for any debts of their parents. The North Dakota Long Term Care Association testified before both the House and Senate Standing Committees in 2005 that they do use this law as a debt collection tool. They also testified, "*We....only use it if we know someone is responsible for a person's care and they have control of the trust or assets that Medicaid has deemed available for their care. We would never tell children they are responsible for the care of their parents – whether they have the means or not.*"

The repeal of this NDCC passed in the Senate standing committee, but not the House standing committee. The final decision made was that this NDCC was an important collection tool needed for the health services industry and that it would be looked at and changed in the next session. It was never brought up again for changes - until now 14 years later.

I am standing before you today as proof that the fear of too much flexibility in this old NDCC law was well warranted, and this law needs to be changed!

Almost two years ago, my father passed away while in a nursing home. After his death, my sister and I cleaned out his room and reclaimed any items we had purchased for him including small mementos like his Bible he read every day. We received nothing additional of his from him or his estate— no money, etc.

Anyone who has lost a parent knows it is incredibly tough and emotional. What made it even more difficult for us children, however, was receiving a summons and complaint from the nursing home's law firm stating that myself and my 3 siblings were responsible for an over \$43,000 bill, because of this NDCC law.

We were not PR or POA for our father. In fact, we were never allowed to be involved in any financial or care decisions for him. Our estranged mother was responsible for him and his financial matters, and never discussed those subjects with us. We received no prior notice from her or the nursing home of any outstanding bills – no phone calls or billing letters. Our only notice was the summons and complaint we received by certified mail – which was sent less than 6 months from the day he died.

Even after receiving affidavits from us that we received nothing of value from my father's estate, the nursing home's law firm still pursued us children, claiming that the way this NDCC is written supports recovery of the outstanding debt from us, and is the legislative purpose of the law.

We were never allowed to be involved in our parents' financial decisions, including how they spent their money or any planning for later in life. Therefore, just because we are their children should not mean that we have the cost of their unknown debts hanging over us. The proposed amendments to the NDCC in SB 2225 would prevent most of what we had to legally go through from happening to others in North Dakota with similar situations. I don't want you, your children or grandchildren to ever have to experience what myself and my siblings did.

SB 2225 is not perfect, but it does provide better protection to ND citizens. At the same time it gives a fair and reasonable means of recovery for payment of health services being sought from those adults who may have received a direct benefit from a disqualifying transfer of an asset. With a few minor wording tweaks to 14-09-10, we can prevent some possible legal misinterpretations of the NDCC regarding recoverable amount limits and the use of "creditor."

Thank you to everyone who worked diligently to put this important bill together. I respectfully request after including the minor modifications to 14-09-10, that the Committee support this bill with a DO PASS recommendation.

Thank you, Madam Chairman, I would be happy to answer any questions.

Copied from 2005 Senate Standing Committee Minutes:

Page 2

Senate Human Services Committee

Bill/Resolution Number SB 2048

Hearing Date January 11, 2005

amend that law to state "if you've received a transferred asset and Medicaid has determined that that asset should be available for your care, then whoever received that transferred asset would be responsible for the person's care- if we had an ineligible person for Medicaid. Right now, the only option we have if a person isn't paying their bill, is to discharge them. We have many at any given time in the process of eviction. But we have nowhere to send them. So we have growing accounts because no one is able to take them in, i.e., children or another facility. Another facility won't step up because they've been flagged as not being able to pay. The facility follows through with the eviction up to the last minute, but does not evict because there's no place to send them. A lot of time at the eleventh hour, the person handling the trust will bring in some funds so we won't evict them.

We've quoted this law in the administrative process and only use it if we know someone is responsible for a person's care and they have control of the trust or assets that Medicaid has deemed available for their care. We would never tell children they are responsible for the care of their parents-whether they have the means or not. If you do appropriate estate planning and you transfer your assets according to the Medicaid rules, we don't have problems.

The legislation we're proposing in the House has taken a long time to complete because lawyers on both sides of the issue are coming from different viewpoints.

Chairman Lee: Would the repeal of this section create any problems for you? Would you like us to look at passing this legislation and it not affecting you, or do you want us to amend it so that it doesn't conflict what you're doing in House?

Peterson: I don't have a problem with you repealing this, because I'm hoping with the solutions we're coming up with will better address this issue.

Copied from 2005 House Standing Committee Minutes:

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House Human Services Committee

Bill/Resolution Number SB 2048

Hearing Date 16 Mar 05

couple of years ago when we did some research on this an attorney recommended that when a child has controlling interest in a trust, you might want to use this statute upon which you go after the child to pay for the nursing home bill because of that trust. That's the only instance we have ever used it because it's not our position, in a general sense, that children should support their parents. We don't ever go after them just because of that. We have been successful in the last two years in using this statute to go after those instances when a trust exists where the children have controlling interests. Just last Monday when the family was pleading poverty, Medicaid had denied them, it was scheduled to go to court Monday morning. Monday morning they came to the nursing facility with a \$98,000 check. In that instance it was very helpful otherwise we don't think we would have every seen the \$98,000. There's another case pending in Fargo. They wanted to know where this legislation was because they wanted to hurry and use the statute. The adult child is a physician in Fargo and has control of measurable assets but will not pay the nursing home bill. The mother has been deemed ineligible for Medicaid and all they owe is \$6500. They want to use the statute to get the child to pay that bill. As we shared with you in the past we have \$3.8 million owed. Under this bill we have more strength to go after the assets. We ask that you keep this on the books a few years longer. It has been helpful. Again I assure you we have never used it for the normal child/parent relationship where assets haven't been purposely transferred.

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Senate Human Services Committee
Senator Judy Lee, Chairperson
Date: January 22, 2019 at 10:45 a.m.
Steve Leibel, Bismarck
Senate Bill 2225

Chairperson Lee and members of the Human Services Committee. My name is Steve Leibel, and I am an attorney in Bismarck. I have represented the children of North Dakota nursing home residents being sued in some recent lawsuits for their parents' unpaid nursing home bills. I am writing to express my support for Senate Bill 2225. I am also asking that the Committee consider some changes to the bill.

A. The need addressed by SB 2225.

The legal duty on the part of adult children to support his or her indigent parents is called "filial support." This duty exists only by statute, and North Dakota is one of only a handful of States that currently have a filial support statute that allows enforcement by third party creditors. The current version of North Dakota's filial support statute which has been largely intact since 1877, N.D.C.C. § 14-09-10, may be enforced by any person providing "necessaries" to an indigent adult. A creditor is only required to prove (1) the kinship of the parties, (2) the financial ability of the person sought to be charged, (3) the indigence of the person to whom relief was furnished, (4) the reasonable value of the services, and (5) that such relief was an immediate necessity.

The current version of N.D.C.C. § 14-09-10 should be changed for three reasons. First, it is subject to abuse. N.D.C.C. § 14-09-10 does not define the word "necessaries." A child would have a hard time arguing that things like medical bills,

food, and lodging are not a “necessary.” However, there are many other types of expenses that could qualify as a “necessary.” Second, there is no requirement that the child ever be notified about the debt or have any role in incurring the debt. Finally, it unfairly singles out North Dakota residents. Filial support is being used in European countries to help fund socialized medicine. It is my understanding that business in other states—and even other countries—are evaluating filial support statutes in the individual states as a way to recover bad debts. The amendments address some of these problems by limiting the “creditors” to persons providing health care expenses and limiting the extent of the obligation to accepting a benefit that caused the indigent adult to be disqualified from public assistance. This should help take the target off the back of North Dakota residents.

B. Requested changes to SB 2225.

I have three requested changes to SB 2225, all to Section 3. First, I believe that the words “furnishing necessary health services” should be inserted behind the word “creditor” to ensure that a creditor seeking relief under Section 3 is subject to the same limitations as Section 2. Second, I believe that there should be a cap on recovery under Section 3 to avoid imposing a \$250,000 filial support obligation over \$10,000 in assets. Finally, I would request that the Committee consider adding the word “knowingly” to Section 3(a) when describing when “misappropriating, misusing, or diverting” assets can qualify as “bad faith.” My concern is that due to Medicaid claw-back statutes and the wording of Section 3, it is possible that a disqualifying diversion of a parent’s assets can occur up to five (5) years before the medical bills are

incurred. Thus, the language of SB 2225 suggests that “misappropriating, misusing, or diverting” assets constitutes “bad faith” even when it occurs without any knowledge that a potential liability is being incurred. This is unfair. I also believe that inserting the word “knowingly” would incentivize health care providers to notify children, in writing, that his or her actions could create an obligation under the amended § 14-09-10. My requested revision to Section 3, with my suggested changes in **Bold and Underlined**, are as follows:

3. A creditor **furnishing necessary health services** may recover **the full cost of the necessary health services or three times the fair market gain resulting from the disqualifying transfer, whichever is less,** if the:
 - a. Recovery is sought from a parent or adult child who acted in bad faith by **knowingly** misappropriating, misusing, or diverting income or assets of the other adult to prevent or avoid payment for necessary health services, which may include medical and long-term care services; and
 - b. The bad faith action occurred within five years of the receipt of the necessary health services.

I am very grateful for the members of the legislature who have been willing to talk with me regarding this matter, including Senators Oban and Dever and Representatives Klemin, Martinson, and Karls. I am happy to answer any questions by the Committee.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2225

Page 1, line 20, replace "50-24.1-02.8" with "50-24.1-02"

Page 1, line 22, after "market" insert "value, including any"

Page 1, line 22, after "gain" insert an underscored comma

Page 1, line 24, after "services" insert "or application for Medicaid"

Page 2, line 5, remove "~~and~~" *the second "and"*

Page 2, line 7, replace the underscored period with "or application for Medicaid; and

c. Recovery being sought does not exceed the fair market value, including any gain, resulting from the disqualifying transfer.

4. For the purpose of this section, the department of human services is not considered a creditor."

Renumber accordingly

January 28, 2019

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PROPOSED AMENDMENTS TO SENATE BILL NO. 2225

Page 2, line 2, remove "from a parent or adult child who acted in bad faith by"

Page 2, remove line 3

Page 2, line 4, replace "prevent or avoid payment for" with "by a creditor for the furnishing of"

Page 2, line 5, remove the second "and"

Page 2, line 6, replace "The bad" with "Recovery sought is from a parent or adult child who acted in bad faith by misappropriating, misusing, or diverting income or assets of the other adult to prevent or avoid payment for the necessary health services:"

c. Recovery being sought from this parent or adult child does not exceed the fair market gain resulting from the disqualifying transfer; and

d. Bad"

Page 2, line 10, replace "occurs" with "becomes final"

Renumber accordingly

pg. 1 line 20. "50-24.1-02" striking "50-24.1-08"

**Senate Bill No. 2225 Amendment Markup
Department of Human Services**

A BILL for an Act to amend and reenact section 14-09-10 of the North Dakota Century Code, relating to familial duty to support for health services; to repeal section 50-01-19 of the North Dakota Century Code, relating to familial duty to support for county welfare; to provide for application; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-09-10 of the North Dakota Century Code is amended and reenacted as follows:

14-09-10. Reciprocal duty of support for health services - Support of poor.

It is the duty of the father, the mother,

1. Each parent and every adult child of any person an adult who is unable to support oneself, to shall maintain that person adult to the extent of the ability of each. This liability may be enforced by any person furnishing necessities to the person. The promise of an adult child to pay for necessities furnished to the child's parent is binding.
2. Except as provided under subsection 3, a creditor may not recover under this duty of support unless the:
 - a. Recovery sought by a creditor is for the furnishing of necessary health services, which may include medical and long-term care services;
 - b. Recovery sought is from a parent or adult child who received a direct benefit from a disqualifying transfer of an asset under section 50-06.2-07 or ~~50-24.1-02.8~~50-24.1-02;
 - c. Recovery being sought from this parent or adult child does not exceed the fair market value, including any gain, resulting from the disqualifying transfer; and
 - d. Disqualifying transfer occurred within five years of the receipt of the necessary health services or application for medical assistance.
3. A creditor may recover under this duty to support if the:
 - a. Recovery is sought ~~from a parent or adult child who acted in bad faith by misappropriating, misusing, or diverting income or assets of the other~~

adult to prevent or avoid payment for by a creditor for the furnishing of necessary health services, which may include medical and long-term care services; and

- b. The bad Recovery sought is from a parent or adult child who acted in bad faith by misappropriating, misusing, or diverting income or assets of the other adult to prevent or avoid payment for the necessary health services;
- c. Recovery being sought from this parent or adult child does not exceed the fair market value, including any gain, resulting from the disqualifying transfer; and
- d. Bad faith action occurred within five years of the receipt of the necessary health services or application for medical assistance.

4. For the purpose of this section, the department of human services is not considered a creditor.

SECTION 2. REPEAL. Section 50-01-19 of the North Dakota Century Code is repealed.

SECTION 3. APPLICATION. This Act applies to a collection action to enforce liability for furnishing necessities which occurs becomes final on and after the effective date of this Act.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2225

Page 1, line 20, replace "50-24.1-02.8" with "50-24.1-02"

Page 1, line 22, after "market" insert "value, including any"

Page 1, line 22, after "gain" insert an underscored comma

Page 1, line 24, after "services" insert "or application for medical assistance"

Page 2, line 2, remove "from a parent or adult child who acted in bad faith by"

Page 2, remove line 3

Page 2, line 4, replace "prevent or avoid payment for" with "by a creditor for the furnishing of"

Page 2, line 5, remove the second "and"

Page 2, line 6, replace "The bad" with "Recovery sought is from a parent or adult child who acted in bad faith by misappropriating, misusing, or diverting income or assets of the other adult to prevent or avoid payment for the necessary health services;

c. Recovery being sought from this parent or adult child does not exceed the fair market value, including any gain, resulting from the disqualifying transfer; and

d. Bad"

Page 2, line 7, after "services" insert "or application for medial assistance"

Page 2, after line 7 insert:

"4. For the purpose of this section, the department of human services is not considered a creditor."

Page 2, line 10, replace "occurs" with "becomes final"

Renumber accordingly



NORTH DAKOTA HOUSE OF REPRESENTATIVES

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



#1
SB 2225
3/4/19
Pg. 1

Representative Lawrence R. Klemin

District 47
3929 Valley Drive
Bismarck, ND 58503-1729

R: 701-222-2577
lklemin@nd.gov

Speaker of the House

TESTIMONY OF REP. LAWRENCE R. KLEMIN SENATE BILL NO. 2225 HOUSE HUMAN SERVICES COMMITTEE MARCH 4, 2019

Mr. Chairman and members of the House Human Services Committee. I am Lawrence R. Klemin, Representative from District 47 in Bismarck, I am here today to testify in support of Senate Bill 2225, relating to the familial duty of support.

Senate Bill 2225 amends the current law in Section 14-09-10 of the North Dakota Century Code, which provides as follows:

14-09-10. Reciprocal duty of support — Support of poor.

It is the duty of the father, the mother, and every child of any person who is unable to support oneself, to maintain that person to the extent of the ability of each. **This liability may be enforced by any person furnishing necessities to the person.** The promise of an adult child to pay for necessities furnished to the child's parent is binding.

Section 1 of Senate Bill 2225 amends Section 14-09-10 to specify the circumstances under which a creditor can sue a parent of an "adult child" or can sue an "adult child" of a parent to recover for the furnishing of necessities. Children under the age of 18 are not covered here because liability for their support is covered by Section 14-08.1-08. See the attached list of statutes.

Subsection 2 sets out four requirements, **all of which must be met** before a creditor can recover under the duty of support:

First, the liability is limited to the furnishing of necessary health services, which may include medical and long-term care services.

Second, recovery by a creditor cannot occur unless the recovery is sought from a parent or adult child who received a direct benefit from a disqualifying transfer of an asset under either Section 50-06.2-07 (defines "disqualifying transfers" for purposes of comprehensive human service programs) or Section 50-24.1-02 (describes who is eligible for medical assistance).

Third, the recovery sought cannot exceed the fair market value, including any gain resulting from the disqualifying transfer.

AND Fourth, the disqualifying transfer must have occurred within 5 years of the receipt of the necessary health services. This is the same 5 year look back period for disqualifying transfers for Medicaid purposes.

Subsection 3 of Section 1 page 2 of the bill provides another circumstance under which a creditor can recover under the duty of support. This is the "bad actor" situation. A creditor may recover from a person who acted in **bad faith** by misappropriating, misusing, or diverting income or assets to prevent or avoid payment for necessary health services to a creditor, provided the bad faith action occurred within 5 years of the receipt of the necessary health services. Again, the recovery is limited to the fair market value, including any gain resulting from the disqualifying transfer.

Section 2 of the bill repeals Section 50-01-19, relating to the right of a county to recover from a parent or adult child for necessities furnished to an indigent person. The county is among the types creditors covered by Section 1 of Senate Bill 2225. Therefore, Section 50-01-19 is no longer needed.

Section 3 of the bill provides that this Act applies to a collection action which becomes final on or after the effective date of the Act.

Section 4 of the bill declares the Act to be an emergency measure, which means that if the Act is passed by a 2/3 vote in the House and Senate, then it becomes effective when signed by the Governor and filed with the Secretary of State. SB 2225 passed by a vote of 46 to 0 in the Senate, so the emergency clause carried in the Senate.

The courts have interpreted the existing statute to mean that an adult child has a secondary liability to a creditor which has furnished "necessaries" to a parent, when the parent's ability to pay for the "necessaries" has been exhausted. The liability of an adult child for the debt of a parent for "necessaries" is imposed solely because of the familial relationship of those parties. The term "necessaries" is not defined in the existing statute. It has been interpreted to include healthcare services and long-term care services, which can result in significant obligations. It could also include many other things, such as food, shelter, clothing, and education. These obligations can be imposed regardless of the status of the relationship between those parties and can result in unfair treatment.

Senate Bill 2225 corrects the unfairness while allowing a creditor the ability to recover for the furnishing of healthcare and long-term care services under the circumstances described in the bill.

There are representatives from the North Dakota Long Term Care Association here today to testify on this bill, as well as interested parties who have been personally affected by the unfairness of the current law.

I urge your support for Senate Bill 2225. Thank you.

STATUTES CITED IN KLEMIN TESTIMONY ON SB 2225

14-08.1-01. Liability for support.

A person legally responsible for the support of a child under the age of eighteen years who is not subject to any subsisting court order for the support of the child and who fails to provide support, subsistence, education, or other necessary care for the child, regardless of whether the child is not or was not in destitute circumstances, is liable for the reasonable value of physical and custodial care or support which has been furnished to the child by any person, institution, agency, or county social service board. Any payment of public assistance money made to or for the benefit of any dependent child creates a presumption that such payment equals the reasonable value of physical and custodial care or support.

14-09-10. Reciprocal duty of support -- Support of poor.

It is the duty of the father, the mother, and every child of any person who is unable to support oneself, to maintain that person to the extent of the ability of each. This liability may be enforced by any person furnishing necessities to the person. The promise of an adult child to pay for necessities furnished to the child's parent is binding.

50-01-19. Duty of relative to aid — Right of recovery by county.

The father, the mother, and every child of any person who is eligible for county general assistance and who is unable to work to support oneself shall maintain that person to the extent of the ability of each. The county may recover for necessities furnished to an indigent person from that person's father, mother, or adult children.

50-06.2-07. Disqualifying transfers.

An individual is not eligible to receive benefits under this chapter if, at any time before or after making application, the individual or the individual's spouse has made any assignment or transfer of any asset for the purpose of making that individual eligible for the benefits. Assignment or transfer includes any action or failure to act that effects a transfer, renunciation, or disclaimer of any asset or interest in an asset that the individual might otherwise assert or have asserted, or which serves to reduce the amount that an individual might otherwise claim from a decedent's estate, a trust or similar device, or another individual obligated by law to furnish support.

50-24.1-02. Eligibility.

Within the limits of legislative appropriations, medical assistance may be paid for any person who either has income and resources insufficient to meet the costs of necessary medical care and services or is eligible for or receiving financial assistance under chapter 50-09 or title XVI of the Social Security Act, as amended, and:

1. Has not at any time before or after making application for medical assistance made an assignment or transfer of property for the purpose of rendering that person eligible for assistance under this chapter. For the purposes of making any determination or

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redetermination of eligibility, the phrase assignment or transfer includes actions or failures to act which effect a renunciation or disclaimer of any interest which the applicant or recipient might otherwise assert or have asserted, or which serve to reduce the amounts which an applicant or recipient might otherwise claim from a decedent's estate, a trust or similar device, or a person obligated by law to furnish support to the applicant or recipient.

2. Has applied or agrees to apply all proceeds received or receivable by that person or that person's eligible spouse from automobile accident medical benefits coverage and private health care coverage to the costs of medical care for that person and that person's eligible spouse and children. The department of human services may require from any applicant or recipient of medical assistance the assignment of any rights accruing under automobile medical benefits coverage or private health care coverage. Any rights or amounts so assigned must be applied against the cost of medical care paid on behalf of the recipient under this chapter. The assignment is not effective as to any carrier before the receipt of notice of assignment by such carrier.

3. Is eligible under rules and regulations established by the department of human services.

Testimony on SB 2225
House Human Services Committee
March 4, 2019

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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 214 basic care, assisted living and nursing facilities across North Dakota. I am here to testify on SB 2225 and ask for your support.

We appreciate the bill sponsors for including us in updating the statute and targeting those who act in bad faith potentially leaving their parents without the means to support or care for themselves. We are not interested in punishing adult children who are innocent in this situation.

I am going to briefly give an overview of the history on this statute, a little bit on Medicaid eligibility and then have some nursing facility providers share with you some examples of the cases they have been involved with.

North Dakota enacted its familial law in 1877, before statehood and long before Medicaid came into existence. The statute is modeled on the Elizabethan Poor Relief Act of 1601 from England.

North Dakota is one of 29 US states that have this type of statute, which addressed the responsibility of one person or a group of people to pay for the necessities of family members.

Though on the books in many states for decades, it is only in the last decade that we have seen much activity on it. The 2005 federal Deficit Reduction Act made it harder for the elderly and disabled to qualify for Medicaid. In order for an individual to qualify for Medicaid and receive coverage for nursing facility care, their assets may not exceed \$3,000 for a one-person unit or \$6,000 for a two-person unit. You can also have up to \$6,000 per person in a preneed funeral account.

Part of the Deficit Reduction Act was designed to prevent prospective Medicaid residents from diverting their assets to family members to appear as insolvent in order to qualify for government payment, Medicaid, for their long term care.

The law extended from three years to five years the “look back” period in which assets of a prospective Medicaid recipient could not be transferred to a family member without a penalty or delay before Medicaid payments kick in. You can transfer and give your money/assets to anyone, however, you can’t expect to do so and then try to qualify for Medicaid.

One of the ways we get caught in the middle on this issue, a person gives assets to a child or a child takes assets and within 5 years, mom or dad need care. They complete the application to Medicaid and Medicaid determines a “disqualifying transfer” has occurred. Almost two-thirds of individuals completing an application to a North Dakota nursing facility are admitted after a hospital stay, (62%). Many families are unprepared and unaware of how they are going to pay for their care. Some think health insurance covers their long term care and many still think Medicare will pay the bill. In 2018, Medicare covered only 7.6% of nursing facility stays in North Dakota. Medicare was never intended to be a primary payor source for someone’s long term care needs.

The reality is, each one of us needs to plan and think about when you will need care how will you pay for it?

When families/individuals are considering long term care, nursing facility staff will visit with them about payment. A number of years ago, we developed a nursing facility intake form to help nursing facilities gather important payment information and help individuals understand their obligations, (Attachment A). Unfortunately, more often than not, a person is in the hospital, discharged within days or within hours, and initially the person may qualify for Medicare. To be covered by Medicare, you must first have a 3 day inpatient hospital stay and meet skilled nursing facility criteria. So they are admitted with Medicare as the interim payment source, then within days, or weeks, or 100 days, if you're very lucky, Medicare quits paying. Some individuals aren't ready for discharge and it becomes their choice to remain in the nursing home facility. At this point, we've already engaged in communication of "how are you going to pay for your care". Some individuals are without capacity so the conversation occurs with the family, or both. During these conversations we strive to help families understand payment options and strive to understand who the responsible party is.

The federal regulations on this issue state:

§ 483.15 Admission, transfer, and discharge rights.

(a) Admissions policy.

(3) The facility must not request or require a third party guarantee of payment to the facility as a condition of admission or expedited admission, or continued stay in the facility. However, the facility may request and require a resident representative who has legal access to a resident's income or resources available to pay for facility care to sign a

contract, without incurring personal financial liability, to provide facility payment from the resident's income or resources.

This is important, we don't and can't expect adult children to pay the bill as their personal financial liability, but we can expect that person to provide facility payment from the resident's income or resources.

In a one year period ending June 30, 2018, nursing facilities reported \$2,271,659 in bad debt. Of the 36 nursing facilities (46% of all nursing facilities) the bad debt ranged from \$769 to \$415,502 per facility. To be reported on the cost report it must be determined to be uncollectible with no likelihood of future recovery. Attached is the best practice standard on collections, developed by facility members and supported by the Department of Human Services. As you will see, you must take aggressive action to secure payment. In the recent past, DHS has not allowed us to claim bad debt unless we assured all aspects of NDCC 14-09-10 were pursued.

Of the \$2.2 million submitted by nursing facilities this past year, DHS has disallowed \$1,116,664 because it was their determination that nursing facilities did not pursue all avenues of bad debt collection. Bad debt is harming many facilities.

Current NDCC 50-10.2-1(3) allows a long term care nursing facility to discharge a person for non-payment of one's rent or fee's. However the federal regulations require us to name the safe discharge location we are discharging the person to. When someone is not paying the bill, trying to secure a safe location that meets their needs is very challenging. Most often no one will consider them for admission, if current obligations are not being met.

We believe SB 2225 appropriately updates a 142 year old statute, telling adult children if you have not misappropriated, misused or diverted income or assets of your parent, that they need long term care services, you will not be pursued for payment under this statute. SB 2225 doesn't cover all of our issues we are experiencing in non-payment, but it certainly protects adult children who should not be held responsible for their parent's medical bills.

Thank you for listening to my testimony and considering our perspective. I have two administrators, Janessa Vogel with Elm Crest Manor in New Salem, and Tim Kennedy with Parkside Lutheran Home in Lisbon who would very briefly like to address some of the challenging payment issues.

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

NURSING HOME INTAKE QUESTIONNAIRE

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Please complete this form in its entirety and return it to the receptionist.

Last name, First Name, Middle Initial:																																				
Date of Birth:		Social Security Number:																																		
Mailing Address:		City, State, Zip:																																		
Phone Number:	Cell Phone Number:	Best Method and Time to Reach You:																																		
Spouse's Last name, First Name, Middle Initial:																																				
Spouse's Date of Birth:		Spouse's Social Security Number:																																		
Spouse's Mailing Address:		City, State, Zip:																																		
Spouse's Phone Number:	Spouse's Cell Phone Number:	Spouse's Work Number:	Spouse's Fax Number:																																	
Spouse's E-mail Address:		Best Method and Time to Reach Your Spouse:																																		
Contact Person's Name:		Contact's Address, City, State, Zip:																																		
Contact's Phone Number:	Contact's Cell Phone Number:	Contact's Work Number:	Contact's Fax Number:																																	
<p>1. Except for personal effects, list all assets owned by you and your spouse, including the cash surrender value of life insurance, stocks, bonds, vehicles, life estates, antiques, collectibles, and pensions, with the value as of the date of admission into the nursing home. (Attach additional pages if needed.)</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 25%;">Owner of Asset</th> <th style="width: 55%;">Description of Asset</th> <th style="width: 20%;">Value of Asset</th> </tr> </thead> <tbody> <tr><td>a.</td><td></td><td></td></tr> <tr><td>b.</td><td></td><td></td></tr> <tr><td>c.</td><td></td><td></td></tr> <tr><td>c.</td><td></td><td></td></tr> <tr><td>e.</td><td></td><td></td></tr> <tr><td>f.</td><td></td><td></td></tr> <tr><td>g.</td><td></td><td></td></tr> <tr><td>h.</td><td></td><td></td></tr> <tr><td>i.</td><td></td><td></td></tr> <tr><td>j.</td><td></td><td></td></tr> </tbody> </table>				Owner of Asset	Description of Asset	Value of Asset	a.			b.			c.			c.			e.			f.			g.			h.			i.			j.		
Owner of Asset	Description of Asset	Value of Asset																																		
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2. List all debts owed by you and your spouse, with values as of the date of admission into the nursing home.

Debtor	Description of Debt	Amount of Debt
a.		
b.		
c.		

3. List all transfers or gifts of assets within the past five years by you and your spouse, including transfers of a remainder interest in real property.

Date of Transfer	Description of Asset	Recipient	Value of Asset
a.			
b.			
c.			
d.			
e.			
f.			

4. List all pre-paid burial contracts, burial accounts, and pre-paid burial or funeral items owned by you or your spouse or by a third party for the benefit of you or your spouse.

Description	Owner	Value
a.		
b.		
c.		
d.		
e.		

5. List all sources of income for you and your spouse, including but not limited to rental payments, CRP income, long-term care insurance benefits, Social Security benefits, veteran's benefits, and employment income.

Description of Income	Date or Frequency of Payment	Amount of Payment
a.		
b.		
c.		
d.		
e.		
f.		

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6. List all health and pharmacy insurance for you and your spouse.

Name of Insured	Name of Insurer	Description of Insurance	Monthly Premium Amount
a.			
b.			
c.			
d.			
e.			
f.			

7. Identify your agent under your financial power of attorney. (Please attach a copy hereto.)

Name, address, and telephone number:

8. Identify your agent under your health care power of attorney. (Please attach a copy hereto.)

Name, address, and telephone number:

9. Did the agent or attorney-in-fact listed under your financial power of attorney assist you with making any of the transfers or gifts referenced in section number 3 above, or benefit or receive any of the assets transferred or gifted? If yes, please explain.

10. Were any of the assets described in section number 3 above transferred or gifted to or from a trust? If yes, explain the nature of the transaction and identify the trust involved.

11. Have you previously applied for Medicaid? If yes, provide the date and county in which application was made.

12. Do you or your spouse reside on a farm?

13. Are you actively engaged in farming or any other trade or business? If yes, describe the nature of the business.

14. Are you or your spouse employed by another or self-employed? If yes, provide the name of the employer or the nature of the self-employment, the hours worked, and the wage or salary earned.

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15. Are you or your spouse the beneficiary of any trust?

16. Do you have any pending legal action from which you may receive money or medical benefits, including inheritance? If yes, describe.

This questionnaire complies with section 50-24.1-22 of the North Dakota Century Code. By my signature below, I hereby authorize the nursing home to contact the county social services for information regarding my Medicaid application and eligibility, and I hereby release and authorize the county social services to release any information to the nursing home. I also authorize the nursing home to contact any and all of the above-identified financial institutions to obtain information regarding my assets and income, and I hereby release and authorize the financial institutions to release any information to the nursing home. I further authorize the nursing home to release to its attorneys any information regarding my application for admission.

I understand that providing false information could result in discharge and/or denial of my application. The answers provided herein are true and correct to the best of my knowledge and information.

Signature: _____ Date: _____

Bad Debt Collection Best Practices

Account Balances < \$1,500:

- Timely follow-up on past due balances utilizing consistent, progressive collection action. The timeline in the example listed below may vary by facility and by circumstances of a specific account:
 - 15 days past due: Past due notice sent. Include notice to D/C phone, cable, private room if applicable.
 - 25 days past due: Collection phone call – multiple attempts if needed.
Email contact if available (note HIPAA security requirements)
Business Manager formal collection letter sent requesting payment in full or contact to establish payment plan.
 - 35 days past due: Collection phone call – multiple attempts if needed.
Email contact if available (note HIPAA security requirements)
Administrator formal collection letter sent, outlining consequences for failure to respond.
 - 45 days past due: Current resident: Initiate planning D/C for Nonpayment if no contact was made to establish a plan for payment.
Former resident: Depending on balance and previous communication, additional calls/letter.
Utilize collection agency for further collection action.
- After the facility has exhausted all reasonable collection efforts internally, and the collection agency has attempted to collect on a debt for at least six months, the account may be written off.
 - Collection efforts will be documented throughout the process, and summarized on an authorization form, and routed to the facility Administrator for approval.
 - Authorization form will summarize all key information required for Schedule T on the Medicaid C/R, and will be submitted at time of filing the C/R, along with supporting documentation.
 - Authorization form will include certification by the facility Administrator that all reasonable collection efforts have been exhausted, including appropriate internal and external resources, and there is no likelihood of future recovery.
 - Unanticipated bad debt recoveries will be reported on the Medicaid C/R, reducing claimed bad debt expenses for the C/R period.

Bad Debt Collection Best Practices

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Account Balances \$1,500 or greater:

- Timely follow-up on past due balances utilizing consistent, progressive collection action. The timeline in the example listed below may vary by facility and by circumstances of a specific account. pg. 11
- 15 days past due: Past due notice sent. Include notice to D/C phone, cable, private room if applicable.
 - 25 days past due: Collection phone call – multiple attempts if needed.
Email contact if available (note HIPAA security requirements)
Business Manager formal collection letter sent requesting payment in full or contact to establish payment plan.
 - 35 days past due: Collection phone call – multiple attempts if needed.
Email contact if available (note HIPAA security requirements)
Administrator formal collection letter sent, outlining consequences for failure to respond.
 - 45 days past due: Current resident: Initiate planning D/C for Nonpayment if no contact was made to establish a plan for payment.
Former resident: Depending on balance and previous communication, additional calls/letter.
Utilize attorney for further collection action.
- Legal action will vary by circumstances involved with delinquent accounts, and may include:
- Collection demand notice
 - Mortgage or lawsuit to obtain judgment to secure lien on property
 - Action against AR guarantor and/or children if account involves failure to pay outstanding charges with available assets, or failure to provide information for insurance coverage or Medicaid eligibility
 - If account involves a disqualifying transfer, action to secure payment from the transferee, or action for a transfer in fraud of creditors
- After the facility has exhausted all reasonable collection efforts internally, and the facility has worked with their attorney to pursue reasonable efforts to collect on a debt, the account may be written off.
- Collection efforts will be documented throughout the process, and summarized on an authorization form that will be routed to the facility Administrator for approval.
 - Authorization form will summarize all key information required for Schedule T on the Medicaid C/R, and will be submitted at time of filing the C/R, along with supporting documentation.
 - Authorization form will include certification by the facility Administrator that all reasonable collection efforts have been exhausted, including appropriate internal and external resources, and there is no likelihood of future recovery.
 - Unanticipated bad debt recoveries will be reported on the Medicaid C/R, reducing claimed bad debt expenses for the C/R period.

Bad Debt Collection Best Practices

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Special Circumstances:

There may be situations when it would not be appropriate to involve collection agencies or attorneys in collection efforts initiated for past due accounts. The following examples are not intended to be a comprehensive list. Providers will exhaust all appropriate and reasonable collection efforts in these circumstances before writing off an account balance.

➤ Current or Former Resident Filing for Bankruptcy

- If a provider receives a notice of bankruptcy, they should file a Proof of Claim form with the bankruptcy court. Providers may submit this form without needing to involve an attorney. Health care providers are considered “unsecured” creditors and may not be a priority creditor, but filing the Proof of Claim ensures that if funds are available, payment or partial payment may be secured. A link to obtain the form follows:
www.uscourts.gov/forms/bankruptcy-forms/proof-claim-0
- A provider’s outstanding balance after distribution of funds from the bankruptcy proceeding may be written off as uncollectible.

➤ Former Residents with an Approved Medical Allowance

- If a Medical Allowance had been approved for collection of a Medicaid resident’s past due charges, and the individual expires or discharges prior to collection of the full amount due, it is likely that write-off of the remaining account balance will be necessary.
 - Providers should attempt to collect payment from funds available, and should request proof that funds were exhausted.
 - In situations involving expired individuals, providers should contact ND DHS to see if funds were recovered by the state and may be available to pay/partially pay the outstanding balance.
- If a Medical Allowance had been approved for collection of a Medicaid resident’s past due charges, and the individual transfers to another facility prior to collection of the full amount due, the provider should work with the new facility and county to continue collection via Medical Allowance.

➤ Account Write-off & Documentation

- Collection efforts will be documented throughout the process, and summarized on an authorization form, and routed to the facility Administrator for approval.
- Authorization form will summarize all key information required for Schedule T on the Medicaid C/R, and will be submitted at time of filing the C/R, along with supporting documentation.
- Authorization form will include certification by the facility Administrator that all reasonable collection efforts have been exhausted, including appropriate internal and external resources, and there is no likelihood of future recovery.
- Unanticipated bad debt recoveries will be reported on the Medicaid C/R, reducing claimed bad debt expenses for the C/R period.

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Testimony SB 2225

Tim Kennedy, Administrator

Parkside Lutheran Home

Lisbon, ND

Good afternoon Mr. Chairman and members of the Committee.

I am Tim Kennedy, the Administrator of Parkside Lutheran Home, in Lisbon, ND. We are a 40 skilled bed and 10 basic care bed facility serving Lisbon and the surrounding area.

I want to emphasize the importance of having some avenue to collect outstanding bills that accrue due to nonpayment or Medicaid denials. In particular, denials that are a result of a disqualifying transfer of a former owned asset.

Very often we admit a resident to the facility in good faith based upon the family's word and that the Medicaid Application process has been started at the county Social Services office. Some of these applications take several weeks, even months, to be processed, and all of this time we are providing care and services to the resident.

I would like to share with you 3 examples of how we have found ourselves with substantial claims in just the past 4 years.

Case number one: We admitted a long-time Lisbon resident to Parkside on November 13, 2017. The family told us that the Medicaid application process had begun. The resident was at our facility for 4 months prior to her death in March. We had been in contact with our local Social Services office and the family numerous times and had been informed that the file had been forwarded to the regional office for review because the resident had a small trust account. It was not until November, 8 months after the resident was deceased, that the determination was made, and the application was denied. This denial was based upon the resident's assets exceeding the allowable asset amount by \$1,700 at the time of the initial application. Following the resident's death, the family used what assets she did have to pay for funeral expenses and other bills while assuming that the Medicaid application would be approved. Because of the \$1,700 excess at the time of application, the entire stay was not covered. Hence, we have an outstanding bill in the amount of \$28,000. This money alone would have allowed us to give every full-time and part-time employee an additional \$650.00 for the year.

Case number two: We had an area resident move into the facility following a brief hospitalization. The daughter of the resident was living with her mother at the time of the admission. Upon admission, the daughter began the Medicaid application process. After 6 months it was determined that the resident was not eligible for Medicaid due to exceeding her

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asset limit. The daughter made the decision that she had to try to take care of her mother at home, and the resident was discharged to her care. During the resident's stay, we received \$500 from the resident and/or her daughter, while her bill grew to \$43,087. Numerous attempts to contact and make a payment arrangement were made with the resident and her family with no response. We had no alternative but to pursue the matter through the court system. First, the resident was served with a summons and complaint followed by litigation and ultimately a judgement. However, in this case, while we have a judgement and a lien on her property, she may be judgment proof due to an existing mortgage that will have to be paid first at the time of any land sale. While this is not a bad debt, it is an account receivable that we may have to carry on our books for up to 10 years.

Case number three: This occurred less than two years ago when we admitted an area resident to the facility, and her Granddaughter informed us that she had POA and had begun the application process. For several months we waited and communicated with the granddaughter and the local Social Services office. It was not until the resident's bill had grown in excess of \$50,000, being strung along, and lied to about the status of the application, and the appeal we pressed for further information. Due to confidentiality concerns we could get very little information from the local Social Services office other than the resident was not eligible for Medicaid. We were forced to retain counsel, and our initial complaint was against the resident, the granddaughter, and a grandson both of whom had check writing authority on the resident's checking account. Through litigation and before elder abuse charges or exploitation charges were pursued, another grandson stepped forward to become the POA. The father of this third grandson (an uncle to the previously mentioned grandchildren) was also added into the lawsuit based upon the current law, holding children responsible for their parents' care. This son who had been the beneficiary of several acres of agricultural land being given to him by his mother did make payment prior to a scheduled hearing, and our other cases against the grandchildren were dropped.

As I hope you can see, that even as a relatively small facility, we can very quickly accrue rather large account receivables, and this along with the reduced funding we have incurred the past 3 years has been devastating to your financial well-being. Thus I ask for your support of SB2225.

I would be happy to answer any questions.

Sincerely,

Tim Kennedy

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March 4, 2019

Good afternoon members of the House Human Services Committee. My name is Janessa Vogel. I am the Administrator at Elm Crest Manor in New Salem. I am testifying today in support of SB 2225. Throughout my years at Elm Crest Manor we unfortunately have had to deal with situations where a resident's resources and assets were misused by their children or the legal representative did not fully cooperate with the county social services on the Medicaid application and so applications were denied while the monthly bill of care continued to rise. I can give some examples. One situation we had was a private pay resident whose adult son was living for free in her home and was also keeping her social security checks to pay for his living expenses such as his cell phone. In this instance I was able to obtain temporary guardianship of this resident until Guardian and Protective Services could become involved and I was able to have him removed from the home and worked with an agent to sell the home, down spend the assets and get her onto Medicaid. The private pay bill had accrued to over \$50,000.00 by that time. A current situation I am working on is a daughter of a resident was keeping the social security checks so she could use it to fix up her mother's home to rent it out for a higher dollar amount. Myself and the county case worker continually connected with the daughter to explain that the Social security was for her Recipient liability and the income from the house would also be added to that amount and needed to be handed over to the nursing home each month. She was educated on this almost monthly basis yet a year passed before we received a single payment from her on the Recipient liability. At this time the amount owed is over \$18,000.00 that we are trying to collect on. This particular case actually went as far as the Attorney Generals office which originated from a call by myself to the local Vulnerable Adults Agency. At times I feel that my position is more as a collections agency than anything else and I would much rather spend my time elsewhere than collecting money but when nursing facilities have sometimes over \$1000,000.00 of aged accounts collecting what are we supposed to do. We all have vendors that we need to pay and of course we must make our payroll for our valuable employees.

Thank you for listening to my statement and I would be happy to answer any questions the committee may have.

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House Human Services Committee

Date: March 4th, 2019 at 3:15 p.m.

Margaret Rennecke, Mandan

Senate Bill 2225

Good morning Mr. Chairman and members of the committee. I am Margaret Rennecke of Mandan, representing myself and my family and many other concerned citizens of our community who have contacted me concerning Section 14-09-10 of the NDCC. Thank you for giving me this opportunity to discuss this proposed bill and answer any of your questions. I am here to testify in support of SB 2225.

My dad Phil Shook passed away on January 31, 2017 after a long stay in a nursing home. We had to clean out the last of his belongings from his small room at the nursing home, and as anyone who has lost a loved one knows-how emotionally drained you are already, but yet how tough it is to pack up the last of their belongings-the last of their things. Less than 6 months after he died, we received a certified letter with a summons and complaint demanding that we pay \$43,000 for his nursing home bill. This is the first time I learned that the nursing home had not been paid. My mother is very private about her finances, and I did not ever see a bill for the nursing home bill. I did not sign the nursing home

contract, and I was not my dad's power of attorney. I did not receive anything from my dad other than some of his personal things that were in his nursing home room.

We hired an attorney to represent my brother and sisters and I. At the first meeting with the attorney, he told us how the NDCC 14-09-10 worked. We were all shocked and scared. He also told us that the judge could divide up the \$43,000 between the four of us depending on who makes the most money. This meant that if my husband and I wanted to pay less, my sisters and brother and their families would have to pay more. The idea that our families were pitted against each other was a terrible feeling that caused us all a lot of tears. However, we decided to stick together, and took extra jobs and extra shifts to pay for legal bills.

During the case, each of us had to give affidavits stating that we received nothing of value from my dad's estate to the nursing home attorney and we provided all of our financial information including bills, income taxes, bank account statements and paychecks to our lawyer. In the newspaper article, some people said that the nursing homes only pursue people that they think took their assets. I don't know what the nursing home thought when they sued us. However, I know that the nursing home did not dismiss the case against us even after they knew we got nothing from my dad. Even after the nursing home saw

that we had received nothing from dad's estate, they were not only still pursuing us, but they then asked for information about our spouses assets and their incomes also. Instead, it was about how much money we could pay. It was terribly stressful to go through a lawsuit like this.

I work as a respiratory therapist, and often comfort families who are dealing with end of life circumstances. Since the Bismarck Tribune published the article about what happened to my family, I have been approached by many people asking how they can help. I miss my dad every day and I helped him and loved him when he was sick and dying. I know that my dad never wanted any of us kids to be burdened with his bills! That is why he never allowed any of us kids to be POA or involved with any of their finances.

Please help us pass this SB 2225 for the future of everyone in our community including all of our families, children & grandchildren, so no one else has to go through this horrible experience that myself, my siblings & others in this community are already going through.

Finally, Thank You to all that are involved and have worked very hard to put this very important bill together! I respectfully request that the Committee support

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this bill with a DO PASS recommendation. Thank you, Mr. Chairman for listening to me today and I would be happy to answer any questions.

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HOUSE HUMAN SERVICES COMMITTEE

Date: March 4th, 2019 at 3:15 p.m.

Rebecca Pedersen, Bismarck

Senate Bill 2225

Good morning, Mr. Chairman and members of the committee. I'm Rebecca Pedersen from Bismarck, representing myself and my siblings. Thank you for giving me the opportunity to discuss this proposed bill and answer any questions. I am here to testify in support of SB 2225.

In 2005, this same NDCC was brought up to legislature for repeal because there was fear that this broadly-written law from the 1800's could be used to make children of any age responsible for any debts of their parents. The North Dakota Long Term Care Association testified before both the House and Senate Standing Committees in 2005 that they do use this law as a debt collection tool. They also testified, *"We....only use it if we know someone is responsible for a person's care and they have control of the trust or assets that Medicaid has deemed available for their care. We would never tell children they are responsible for the care of their parents – whether they have the means or not."*

The repeal of this NDCC passed in the Senate standing committee, but not the House standing committee. The final decision made was that this NDCC was an important collection tool needed for the health services industry and that it would be looked at and changed in the next session. It was never brought up again for changes - until now 14 years later.

I am standing before you today as proof that the fear of too much flexibility in this old NDCC law was well warranted, and this law needs to be changed!

Almost two years ago, my father passed away while in a nursing home. After his death, my sister and I cleaned out his room and reclaimed any items we had purchased for him including small mementos like his Bible he read every day. We received nothing additional of his from him or his estate— no money, etc. We were not PR or POA for our father. In fact, we were never allowed to be involved in any financial or care decisions for him.

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Anyone who has lost a parent knows it is incredibly tough and emotional. What made it even more difficult for us children, however, was receiving a summons and complaint from the nursing home's law firm stating that myself and my 3 siblings were responsible for an over \$43,000 bill, because of this old NDCC law.

We received no prior notice from the nursing home of any outstanding bills – no phone calls or billing letters. We were there visiting him quite often – including around the clock the last 4 days before his passing – but not one person stopped in to tell us that payments had not been made. Our only notice of the nursing home not getting paid was the summons and complaint we received by certified mail – which was sent less than 6 months from the day he died.

Even after receiving affidavits from us that we received nothing of value from my father's estate, the nursing home's law firm still pursued us children, claiming that the way this NDCC is written supports recovery of the outstanding debt from us, and is the legislative purpose of the law.

We were never allowed to be involved in our parents' financial decisions, including how they spent their money or any planning for later in life. Just because we are their children, why should that mean that we are responsible for their unknown debts? The updates to the law proposed in SB 2225 would prevent most of what we had to legally go through from happening to others in North Dakota with similar situations.

I don't want you, your children or your grandchildren to ever have to experience what myself and my siblings did. The money spent to legally defend ourselves should have gone toward our children's education, our 401K's or life insurance policies - preparing for the future.

SB 2225 is not perfect, but it does provide better protection to ND citizens. At the same time, it gives a fair and reasonable means of recovery for payment of health services being sought from those adults who may have received a direct benefit from a disqualifying transfer of an asset.

Thank you to everyone who worked diligently to put this important bill together. I respectfully request that the Committee support this bill with a DO PASS recommendation.

Thank you, Mr. Chairman, I would be happy to answer any questions.

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amend that law to state "if you've received a transferred asset and Medicaid has determined that that asset should be available for your care, then whoever received that transferred asset would be responsible for the person's care- if we had an ineligible person for Medicaid. Right now, the only option we have if a person isn't paying their bill, is to discharge them. We have many at any given time in the process of eviction. But we have nowhere to send them. So we have growing accounts because no one is able to take them in, i.e., children or another facility. Another facility won't step up because they've been flagged as not being able to pay. The facility follows through with the eviction up to the last minute, but does not evict because there's no place to send them. A lot of time at the eleventh hour, the person handling the trust will bring in some funds so we won't evict them.

We've quoted this law in the administrative process and only use it if we know someone is responsible for a person's care and they have control of the trust or assets that Medicaid has deemed available for their care. We would never tell children they are responsible for the care of their parents-whether they have the means or not. If you do appropriate estate planning and you transfer your assets according to the Medicaid rules, we don't have problems.

The legislation we're proposing in the House has taken a long time to complete because lawyers on both sides of the issue are coming from different viewpoints.

Chairman Lee: Would the repeal of this section create any problems for you? Would you like us to look at passing this legislation and it not affecting you, or do you want us to amend it so that it doesn't conflict what you're doing in House?

Peterson: I don't have a problem with you repealing this, because I'm hoping with the solutions we're coming up with will better address this issue.

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couple of years ago when we did some research on this an attorney recommended that when a child has controlling interest in a trust, you might want to use this statute upon which you go after the child to pay for the nursing home bill because of that trust. That's the only instance we have ever used it because it's not our position, in a general sense, that children should support their parents. We don't ever go after them just because of that. We have been successful in the last two years in using this statute to go after those instances when a trust exists where the children have controlling interests. Just last Monday when the family was pleading poverty, Medicaid had denied them, it was scheduled to go to court Monday morning. Monday morning they came to the nursing facility with a \$98,000 check. In that instance it was very helpful otherwise we don't think we would have every seen the \$98,000. There's another case pending in Fargo. They wanted to know where this legislation was because they wanted to hurry and use the statute. The adult child is a physician in Fargo and has control of measurable assets but will not pay the nursing home bill. The mother has been deemed ineligible for Medicaid and all they owe is \$6500. They want to use the statute to get the child to pay that bill. As we shared with you in the past we have \$3.8 million owed. Under this bill we have more strength to go after the assets. We ask that you keep this on the books a few years longer. It has been helpful. Again I assure you we have never used it for the normal child/parent relationship where assets haven't been purposely transferred.

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House Human Services Committee
Rep. Robin Weisz, Chairman
Date: March 4, 2019 at 3:15 p.m.
Steve Leibel, Bismarck
Senate Bill 2225

Chairman Weisz and members of the Human Services Committee. My name is Steve Leibel, and I am an attorney in Bismarck. I have represented the children of North Dakota nursing home residents being sued in some recent lawsuits for their parents' unpaid nursing home bills. I am writing to express my support for Senate Bill 2225.

A. The need addressed by SB 2225.

The legal duty on the part of adult children to support his or her indigent parents is called "filial support." This duty exists only by statute, and North Dakota is one of only a handful of States that currently have a filial support statute that allows enforcement by third party creditors. The current version of North Dakota's filial support statute which has been largely intact since 1877, N.D.C.C. § 14-09-10, may be enforced by any person providing "necessaries" to an indigent adult. A creditor is only required to prove (1) the kinship of the parties, (2) the financial ability of the person sought to be charged, (3) the indigence of the person to whom relief was furnished, (4) the reasonable value of the services, and (5) that such relief was an immediate necessity.

I believe this amendment should be passed for three (3) reasons. First, the current version of N.D.C.C. § 14-09-10 is arbitrary. Currently, there is no requirement that a child ever receive notice of the debt, or that the child benefitted

by money or property from his parents, or that the child even be eighteen (18) years old. Second, as the law is currently written, “necessaries” is not defined by the statute or in North Dakota caselaw, but it has been argued recently in a case where I was a party that this word included room, board, medication, and medical care. I believe if this amendment is not passed, what qualifies as a necessary is limited only by the creativity of the lawyer or claimant and will eventually be expanded far beyond how it is currently used. Finally, SB 2225 fixes the main problems. It limits the responsible party to an adult, limits a “necessary” to a medical or long term care expense, limits the amount of the recovery to the amount of the gain gained by the child, and requires that the child or parent intend to get around payment of a medical bill. While there are still potential situations where the amended SB 2225 could lead to an unfair result, I believe this is a very important step to begin this process.