

**Sixtieth Legislative Assembly of North Dakota
In Regular Session Commencing Wednesday, January 3, 2007**

SENATE BILL NO. 2124
(Human Services Committee)
(At the request of the Department of Human Services)

AN ACT to amend and reenact sections 50-24.1-02.5 and 50-24.1-07 of the North Dakota Century Code, relating to implementing federal medical assistance provisions; to repeal sections 50-24.1-02.9 and 50-24.1-21 of the North Dakota Century Code, relating to long-term care insurance and medical assistance waiver provisions inconsistent with federal law; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-24.1-02.5 of the North Dakota Century Code is amended and reenacted as follows:

50-24.1-02.5. Effect of purchase of insurance on disqualifying transfer.

1. An individual who secures and maintains insurance that covers the cost of substantially all necessary medical care, including necessary care in a nursing home and necessary care for an individual who qualifies for admission to a nursing home but receives care elsewhere, for at least thirty-six months after the date an asset is disposed of, may demonstrate that the asset was disposed of exclusively for a purpose other than to qualify for medical assistance by providing proof of that insurance.
2. If purchased after July 31, 2003, the insurance coverage under this section must include home health care coverage, assisted living coverage, basic care coverage, and skilled nursing facility coverage. The coverage required under this subsection must include a daily benefit equal to at least one and fifty-seven hundredths times the average daily cost of nursing care for the year in which the policy was issued and an aggregate benefit equal to at least one thousand ninety-five times that daily benefit.
3. This section applies only to policies purchased before the effective date of an approved amendment to the state plan for medical assistance that provides for a qualified state long-term care insurance partnership under section 1917(b) of the Social Security Act [42 U.S.C. 1396p].
4. The department of human services shall certify to the legislative council the effective date described in subsection 3.

SECTION 2. AMENDMENT. Section 50-24.1-07 of the North Dakota Century Code is amended and reenacted as follows:

50-24.1-07. Recovery from estate of medical assistance recipient.

1. On the death of any recipient of medical assistance who was fifty-five years of age or older when the recipient received the assistance, and on the death of the spouse of the deceased recipient, the total amount of medical assistance paid on behalf of the recipient following the recipient's fifty-fifth birthday must be allowed as a preferred claim against the decedent's estate after payment, in the following order, of:
 - a. Funeral expenses not in excess of three thousand dollars;
 - b. Expenses of last illness;

- c. Expenses of administering the estate, including attorney's fees approved by the court;
 - d. Claims made under chapter 50-01;
 - e. Claims made under chapter 50-24.5; ~~and~~
 - f. Claims made under chapter 50-06.3 and on behalf of the state hospital; and
 - g. Claims made under subsection 4.
2. A claim may not be required to be paid nor may interest begin to accrue during the lifetime of the decedent's surviving spouse, if any, nor while there is a surviving child who is under the age of twenty-one years or is blind or permanently and totally disabled, but no timely filed claim may be disallowed because of the provisions of this section.
 3. Every personal representative, upon the granting of letters of administration or testamentary shall forward to the department of human services a copy of the petition or application commencing probate, heirship proceedings, or joint tenancy tax clearance proceedings in the respective district court, together with a list of the names of the legatees, devisees, surviving joint tenants, and heirs at law of the estate. Unless a properly filed claim of the department of human services is paid in full, the personal representative shall provide to the department a statement of assets and disbursements in the estate.
 4.
 - a. The department of human services shall, after September thirtieth of each year, divide the average amount required to be paid each month under 42 U.S.C. 1396u-5(c)(1)(A), or a substantially similar federal law, during the twelve months preceding that September thirtieth, by the average number of full-benefit dual-eligibles each month during the same period.
 - b. In each calendar year following determination of an amount under subdivision a, the claims of the department of human services made against the decedent's estate of a recipient of medical assistance, or against the decedent's estate of the spouse of a deceased recipient of medical assistance, must include a claim for amount equal to the amount determined under subdivision a multiplied times the number of full or partial months during which the deceased recipient received medical assistance under this chapter.
 5. All assets in the decedent's estate of the spouse of a deceased medical assistance recipient are presumed to be assets in which that recipient had an interest at the time of the recipient's death.
 6. To the extent a claim for repayment of medical assistance arises for services provided in months during which the department of human services has in effect an approved state plan amendment that provides for the disregard of assets in an amount equal to the insurance benefit payments that are made to or on behalf of an individual who is a beneficiary of an insurance policy under a qualified state long-term care insurance partnership, the department's claim need not be paid out of assets of the decedent's estate of a recipient of medical assistance, or assets of the decedent's estate of the spouse of such a recipient, of a value equal to an amount the estate demonstrates was paid for long-term care provided to the recipient of medical assistance during those months by that insurance policy.
 7. For purposes of this section:
 - a. "Full-benefit dual-eligible" has the meaning provided in 42 U.S.C. 1396u-5; and
 - b. "Qualified state long-term care insurance partnership" has the meaning provided in 42 U.S.C. 1396p(b).

SECTION 3. REPEAL. Sections 50-24.1-02.9 and 50-24.1-21 of the North Dakota Century Code are repealed.

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

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixtieth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2124 and that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 42 Nays 3 Absent 2

President of the Senate

Secretary of the Senate

This certifies that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 89 Nays 0 Absent 5

Speaker of the House

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2007.

Approved at _____ M. on _____, 2007.

Governor

Filed in this office this _____ day of _____, 2007,

at ___ o'clock _____ M.

Secretary of State