

**TESTIMONY BEFORE THE
SENATE HUMAN SERVICES COMMITTEE
REGARDING ENGROSSED HOUSE BILL NO. 1351
March 19, 2007**

Chairman Lee and members of the Senate Human Services Committee, my name is Blaine Nordwall. I am Director of Economic Assistance Policy for the Department of Human Services. I am here not to support or oppose this bill, but to request that this committee consider an amendment.

Since 1982, federal Medicaid law, at 42 U.S.C. § 1396p(b)(1) (A), has required that all state Medicaid agencies seek to recover from Medicaid recipients' estates "In the case of an individual described in . . . [42 U.S.C. § 1396p(a)] (1)(B)." In all of that time, department staff understood this to mean individuals subject to liens, known informally as "TEFRA" liens, after the 1982 law that established this requirement. North Dakota has never imposed such liens.

We learned this understanding was incorrect via a January 24 posting on a national list-serve for workers in Medicaid estate recovery. That was, unfortunately, two days after the last deadline for bills to be introduced in this Legislative Assembly. We are, therefore, seeking amendments to Engrossed House Bill No. 1351 because it has a suitable title, and seeks to amend the North Dakota Century Code section that currently prevents us from complying with this federal requirement.

An individual described in 42 U.S.C. § 1396p(a)(1)(B) is one:

- (i) who is an inpatient in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution . . . , and
- (ii) with respect to whom the State determines . . . that cannot reasonably be expected to be discharged from the medical institution and to return home.

The proposed amendments would incorporate those federal requirements into subsection 1 of North Dakota Century Code section 50-24.1-07. If adopted, the amendments would require the department to pursue estate recovery in cases involving individuals who die before reaching age fifty-five, and to increase the amounts of its claims in estates of individuals who die after reaching age fifty-five, but who are earlier determined to be permanently institutionalized.

Theoretically, these amendments, if adopted, would produce additional revenue, but we cannot accurately predict the amount. We have been able to learn from the state of Iowa, which has long followed this federal requirement, that these cases currently amount to less than 2% of their estate recovery cases and about two-tenths of one percent of their total estate recoveries.

These amendments would not in any way affect the change in payment priorities sought by Engrossed House Bill 1351. I will try to answer any questions the committee members may have.