Testimony
House Bill 1299 – Department of Human Services
House Human Services Committee
Representative Robin Weisz, Chairman
January 20, 2009

Chairman Weisz, members of the Human Services Committee, I am Curtis Volesky, Director of Medicaid Eligibility for the Department of Human Services. The Department is here today to provide information on House Bill 1299.

In order to receive federal funding for the Medicaid program, the state is required to follow federal policy, including policy relating to transfers between spouses. That policy, found at 42 U.S.C. 1396p(c)(2)(B), and which is required to be followed by Medicaid, already allows unlimited transfers between spouses in most cases. The exception is for spousal impoverishment situations, where transfers from a spouse receiving long-term care services are limited.

Spousal impoverishment policy is based on federal statute at 42 U.S.C. 1396r-5 which provides specific rules for determining eligibility for an individual receiving long-term care that has a spouse that resides in the community. Spousal impoverishment allows the community spouse to keep a higher amount of income and assets, but does establish some limits. Section 42 U.S.C. 1396r-5 supersedes any other Medicaid statute that is inconsistent with it, including the above mentioned 42 U.S.C. 1396p(c)(2)(B) which allows unlimited transfers between spouses.

Subsection (f) of 42 U.S.C. 1396r-5 addresses transfers that are permitted between spouses, and limits those transfers to an amount equal to the community spouse resource allowance. It also allows additional time to

complete the transfer after Medicaid eligibility is determined.

The community spouse resource allowance is specifically defined and limited in the statute (42 U.S.C. 1396r-5(f)(1)). In determining eligibility in spousal impoverishment cases, a spousal share is determined as of the date one spouse begins receiving long-term care services. The spousal share is equal to one-half of all countable assets owned by the couple. The community spouse is allowed to keep this spousal share; however, if the amount is above the maximum allowed under federal law, $109,560 for 2009, the community spouse must spend down the excess. If the community spouse's share is below $21,912 (the minimum for 2009), he or she can keep more than their share so they have at least this minimum amount. It does not matter which spouse actually owns the assets. At the point eligibility is established, if the community spouse does not have the total amount of assets that the community spouse can keep listed in his or her name, the institutionalized spouse can transfer assets to the community spouse to bring the community spouse up to that amount. The amount that can be transferred is called the community spouse resource allowance.

Example:

- Spousal share is $125,000.
- This is above the maximum, so the community spouse can keep $109,560.
- Only $30,000 is in the community spouse's name.
- The community spouse resource allowance is $79,560 ($109,560 - $30,000 = $79,560). Which means the community spouse can receive $79,560 of assets via transfer from the institutionalized spouse, without a disqualifying transfer penalty.

This transfer between spouses is not disqualifying, but transfers in excess of

this amount are subject to the disqualifying transfer provisions. Couples are allowed up to one year after Medicaid eligibility is determined to transfer the assets to the community spouse.

House Bill 1299 does not align with federal Medicaid law, and may negatively impact applicants and recipients of Medicaid. The statutes at N.D.C.C. 50-24.1-02 apply to applications for Medicaid. Institutionalized spouses who anticipate future Medicaid coverage may make transfers based on this statute, believing that there are no limits, but if they then apply for Medicaid under the spousal impoverishment provisions, they could be subject to a penalty period.

I would be happy to address any questions that you may have.