Testimony
House Bill 1323 – Department of Human Services
House Human Services Committee
Representative Robin Weisz, Chairman
January 24, 2011

Chairman Weisz, members of the Human Services Committee, I am LeeAnn Thiel, Administrator of Medicaid Payment and Reimbursement Services of the Medical Services Division for the Department of Human Services.

I am here today to provide information on House Bill 1323, about the estimated cost increase and the Medicaid Upper Payment Limit.

Section 2 of House Bill 1323 provides for an appropriation from the health care trust fund. The estimated impact to the Medicaid program if the health care trust fund is not used for the changes proposed in House Bill 1323 would be $332,465 of which $148,280 is general funds. The estimated impact to costs for private pay individuals is $284,997. Both estimates are for 18 months as nursing facility rates would be affected beginning January 1, 2012.

The federal Medicaid regulations contain a requirement that Medicaid payments to institutional providers, including nursing facilities, in the aggregate, cannot exceed what Medicare would pay, in the aggregate, for the same care. This is known as the Upper Payment Limit (UPL). The Upper Payment Limit must be calculated yearly for each type of facility: private; state-government owned, and non-state government owned. Historically, the gap between the Medicaid payments and the Upper Payment Limit has been large enough, where this has not been an issue or something the Department needed to bring to your attention. However, the increases

provided by the 2009 Legislature, have resulted in North Dakota approaching the Upper Payment Limit for the private facilities, and actually, for 2011, exceeding the Upper Payment Limit for the non-state government owned facilities. The proposed increase to the Medicaid payments for nursing facilities in House Bill 1323 will directly impact the UPL for all three types of nursing facilities because an incentive payment is not an allowable cost under Medicare reasonable cost principles. If this bill and/or the cumulative impact of legislation passed during the 2011 Legislative Assembly results in the UPL being exceeded for one or more of the facility types, the Department will need to reduce the Medicaid rates to comply the Upper Payment Limit. Subsequently, because of equalized rates, the rates for the private pay would be reduced as well. If the Department were to reduce rates, we would need guidance from the Legislature about the use of non-federal funds to pay for the portion of costs associated with approved nursing facility rate increases, which exceed the UPL.

Finally, if the intent of this new section is that the rural nursing incentive payment be based on resident days, clarifying language should be added similar to N.D.C.C. 50-24.4-10(5). Attached to my testimony is the century code reference.

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

ND Century Code 50-24.4-10(5)

The efficiency incentives to be established by the department pursuant to subsection 3 for a facility with an actual rate below the limit rate for indirect care costs must include the lesser of two dollars and sixty cents per resident day or the amount determined by multiplying seventy percent times the difference between the actual rate, exclusive of inflation rates, and the limit rate, exclusive of current inflation rates. The efficiency incentive must be included as a part of the indirect care cost rate.