

**Testimony**  
**House Bill 1458 – Department Of Human Services**  
**House Judiciary Committee**  
**Representative Duane DeKrey, Chairman**  
**February 3, 2009**

Chairman DeKrey, members of the House Judiciary Committee, I am Julie Leer, Director of the Legal Advisory Unit for the Department of Human Services. I am here today to offer testimony in support of House Bill No. 1458; specifically, changes being proposed under sections 2 and 4 of the bill.

The Department of Human Services requested the language in subdivision c of subsection 1 of section 59-16-13, set forth in section 2 of the bill at the bottom of page 1. This language would require a trustee to inform a person who has been identified as a qualified beneficiary of a revocable trust of what the trust may provide to that beneficiary if the qualified beneficiary is required to provide that information so that eligibility for benefits under title 50 may be determined. Title 50 is the title of the Century Code under which medical assistance, temporary assistance for needy families, supplemental nutrition assistance (formerly known as "food stamps"), home and community based services, and service payments for the elderly and disabled are administered. Any of these programs may require an applicant, in proving eligibility for benefits, to provide information about benefits the applicant may be able to receive under a trust. Without the specific permission provided under the new subdivision c to subsection 1, a trustee of a revocable trust would be prohibited from providing that information to the qualified beneficiary. If that were to happen, it would impact a program's ability to determine benefits because they would be unable to gather all required information.

The second change the Department requested in this bill is the reinstatement of the presumption against a trustee that the trustee has acted without sufficient consideration and with undue influence in certain circumstances. Similar language existed in North Dakota Trust Law since 1877 until it was repealed in 2007. The Department considers this language to be important to the protection of the vulnerable populations it serves. The language proposed in section 4 of the bill has been narrowed so the presumption only applies if the transaction in question contributes to the trust's beneficiary becoming ineligible for support under a program of assistance under title 50.

Thank you. I would be happy to try to answer any questions you might have.