

Testimony
House Bill No. 1300 – Department Of Human Services
House Industry, Business and Labor Committee
Representative George Keiser, Chairman
January 20, 2009

Chairman Keiser, members of the Industry, Business and Labor Committee, I am Julie Leer, an attorney with the Legal Advisory Unit for the Department of Human Services. I am here today to provide information on House Bill No. 1300.

House Bill No. 1300 provides that an irrevocable trust modified under section 59-12-11 continues to be an irrevocable trust. The Department understands that this is, at least in part, an effort to ensure that the Department treats a modified irrevocable trust as irrevocable after its terms have been changed under section 59-12-11.

The Department reviews trusts to determine the trust's impact on a person's eligibility for Medicaid. Part of the review is to determine whether a trust is revocable or irrevocable since the nature of the trust impacts how it is treated for purposes of determining eligibility. North Dakota Administrative Code section 75-02-02.1-31(3) specifies conditions under which a trust identified as irrevocable must be considered to be revocable for purposes of determining Medicaid eligibility. Specifically, that subsection reads:

Trusts may be categorized in many ways, but the revocability of a trust is a fundamental characteristic. A revocable trust is a trust that the grantor, or someone acting at the request, direction, or influence of the grantor, has the power to revoke, remove from, or

otherwise end the trust. An irrevocable trust is a trust that may not be revoked in any way by the grantor or anyone acting at the request, direction, or influence of the grantor. The determination of trust revocability is not based solely on trust terms stating the trust is irrevocable. A trust is treated as revocable, regardless of its terms, if:

- a. The trust reserves a power to amend to the grantor, or grants a power to amend to some other person, unless the power to amend is limited to authority to terminate the trust for impossibility of administration, and the trust also provides for distribution of the trust assets to the primary beneficiary, free of trust;
- b. The grantor and the beneficiaries consent to the revocation;
- c. The grantor is also the sole beneficiary of the trust;
- d. The grantor of a trust and all trust beneficiaries are part of a medicaid unit;
- e. The grantor is a parent, and beneficiaries of the trust include only the grantor, the grantor's spouse, or the grantor's minor children;
- f. The trust has been amended subsequent to its establishment;
- g. The trust provides for termination and disbursement to the grantor upon conditions relating to the grantor during the grantor's lifetime; or
- h. The trust provides for revocation or amendment only upon order of a court.

The Department expects to make some modifications to this rule to reflect changes made under House Bill No. 1300. The amendment appears to apply to a relatively narrow subset of trusts. No fiscal note

has been requested of the Department. If a request were made, we would expect it to say that we are unable to determine the impact. As with any change that has the potential to increase the number of people eligible for Medicaid, however, the change also may result in a need for a comparable increase in Medicaid funding.

I will try to answer any questions you may have. Thank you.