Jim Poolman
Commissioner of Insurance

DEPARTMENT OF INSURANCE
STATE OF NORTH DAKOTA

IMPLEMENTATION GUIDELINES

LONG TERM CARE PARTNERSHIP PROGRAM

AUGUST 3, 2007

The guidelines herein provide guidance regarding the implementation of the North Dakota Long Term Care Partnership Program. This Partnership Program operates under the direction of the North Dakota Human Services in consultation with the North Dakota Insurance Department and these guidelines have been jointly issued by these Departments. Federal enabling legislation pertaining to the Long Term Care Partnership Program is set forth in the Deficit Reduction Act of 2005, Pub. L. 109-171 (the "DRA"), and implementing procedures are described in guidance issued by the Centers for Medicare and Medicaid Services ("CMS"). See State Medicaid Director's Letter (SMDL #06- 019) dated July 27, 2006, issued by CMS.

Under the Long Term Care Partnership Program of North Dakota, individuals who purchase long-term care insurance policies that meet certain requirements specified by the DRA ('Partnership Policies") can apply for Medicaid under special rules for determining financial eligibility and estate recoveries. (In the case of group insurance, each certificate that meets the DRA's requirements constitutes a Partnership Policy.) These special rules generally allow the individual to protect assets equal to the insurance benefits received from a Partnership Policy so that such assets will not be taken into account in determining financial eligibility for Medicaid and will not subsequently be subject to Medicaid liens and recoveries.

The North Dakota Long Term Care Partnership Program is effective on January 1, 2007.

A. **Asset Protection Provided.** Under the North Dakota Long Term Care Partnership Program, the asset eligibility, adjustment, and recovery provisions of the state's Medicaid plan are applied by disregarding an amount of assets, above and beyond the asset disregard or allowance otherwise provided under the Medicaid plan, equal to the amount of insurance benefits received from a Partnership Policy. (This disregard of assets is referred to herein as the "Asset Disregard.")

The Asset Disregard applies to all insurance benefits received from a Partnership Policy. Thus, for example, the Asset Disregard applies to insurance benefits paid on a reimbursement, cash benefit basis, indemnity insurance basis, or on a "per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate" (within the meaning of Section 7702B(b)(2)(A) of the Internal Revenue Code of 1986 (26 U.S.C. 7702B(b)(2)(A))). Similarly, the Asset Disregard applies to all insurance benefits received from a Partnership Policy regardless of whether such insurance benefits are in respect of costs for long-term care that would not be covered by Medicaid. The Asset Disregard as of any date equals the insurance benefit that have been received to that date from a Partnership Policy, even if additional insurance benefits may be received in the future from such Partnership Policy.

If a policy is received after the effective date of the North Dakota Long Term Care Partnership Program in exchange for a policy issued before such date, and the new policy qualifies as a Partnership Policy, the Asset Disregard will apply only with respect to insurance benefits received under such new Partnership Policy and thus will not include insurance benefits, if any, received under the predecessor policy.

Partnership Policies that cover more than one insured are treated as separate Partnership Policies, each of which covers a single insured. With respect to each such insured, the Asset Disregard equals the insurance benefits received from the Partnership Policy on account of such insured having become a chronically ill individual (within the meaning of Section 7702B(c)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 7702B(c)(2)).

The Asset Disregard does not include return of premium payments made upon the termination of a Partnership Policy (due to cancellation or death) since such payments do not represent insurance benefits.

Eligibility for benefits under Medicaid is subject to other eligibility requirements, such as applicable income limitations and home equity limitations.

B. **Partnership Policies.** A Partnership Policy is a qualified long-term care insurance policy (including a certificate issued under a group insurance contract) that satisfies all of the following requirements:

1. **Qualified under federal tax law.** The policy must be a qualified long-term care insurance contract, as defined in Section 7702B(b) of the Internal Revenue Code of 1986 (26 U.S.C. 7702B(b)). Thus, a qualified long-term care insurance contract that provides insurance benefits on a reimbursement, cash benefit basis, indemnity insurance basis, or on a "per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate," within the meaning of

Section 7702B(b)(2)(A) of the Internal Revenue Code of 1986 (26 U.S.C. 7702B(b)(2)(A)), will be a Partnership Policy if it satisfies the DRA's other requirements applicable to Partnership Policies, as described herein. Similarly, a long-term care insurance rider or other provision of an insurance contract (such as a rider to a life insurance contract or, after December 31, 2009, a rider to an annuity contract) that constitutes a qualified long-term care insurance contract under Section 7702B(e) of the Internal Revenue Code of 1986 (26 U.S.C. 7702B(e)) will be a Partnership Policy if it satisfies the DRA's other requirements applicable to Partnership Policies, as described herein.

2. **Issue date.** The policy must be issued not earlier than January 1, 2007, the effective date of the North Dakota Long Term Care Partnership Program. The issue date is the effective date of coverage under the policy. Thus, for example, in the case of a certificate issued under a group insurance contract, the effective date of coverage with respect to such certificate is the issue date of the certificate.

   A policy received in an exchange after the effective date of the North Dakota Long Term Care Partnership Program is treated as newly issued and thus is eligible for Partnership Policy status. The addition of a rider, endorsement, or change in schedule page, for the purpose of meeting Long Term Care Partnership requirements, for a policy issued prior to the effective date of the North Dakota Long Term Care Partnership Program, may be treated as giving rise to an exchange.

3. **State of residence.** The policy must cover an insured who was a resident of the state when coverage first became effective under the policy. In the case of an exchange, this requirement shall be applied based on the coverage of the first long-term care insurance policy that was exchanged.

   A certificate covering an insured who is a resident of North Dakota may qualify as a Partnership Policy even if the situs of the group insurance contract under which such certificate is issued is in another state.

4. **Consumer protection requirements.** The Federal consumer protection requirements of Section 191 7(b)(1)(C)(iii)(III) of the Social Security Act (42 U.S.C. 1396p(b)(1)(C)(iii)(IH)) must be met with respect to the policy. (See also the certification process with respect to this requirement described in C below.)

5. **Inflation protection.** With respect to inflation protection: (i) if the policy is sold to an individual who has not attained age 61 as of the date of purchase, the policy must provide compound annual inflation protection; (ii) if the policy is sold to an individual who has attained age 61 but has not

attained age 76 as of the date of purchase, the policy must provide some level of inflation protection; and (iii) if the policy is sold to an individual who has attained age 76 as of the date of purchase, no inflation protection is required.

For purposes of applying this inflation requirement, the date of purchase means the effective date of coverage under the policy. Thus, for example, the date of purchase of a certificate issued under a group insurance contract means the effective date of coverage under such certificate. In the case of an exchange, the date of purchase is the effective date of coverage under the new policy, i.e., the determination is made without regard to any predecessor policy. If the insured and the policyholder or certificateholder under a policy are different, the insured should be considered the individual to whom a policy is sold for purposes of applying the inflation protection requirements.

C. **Certification Process.** Pursuant to Section 1917(b)(5)(B)(iii) of the Social Security Act (42 U.S.C. 1396p(b)(5)(B)(iii)), a qualified long-term care insurance policy shall be deemed to meet the consumer protection requirements of Section 191 7(b)(I)(C)(iii)(III) of the Social Security Act (42 U.S.C. 1396p(b)(1)(C)(iii)(III)) if the plan amendment provides that the North Dakota Insurance Commissioner certifies, in a manner satisfactory to the Secretary of the U.S. Department of Health & Human Services (the "Secretary"), that the policy meets such requirements. In addition, the State Medicaid Director's Letter (SMDL #06-0 19) dated July 27, 2006, issued by CMS, provides that the North Dakota Insurance Commissioner, or other appropriate state official, must certify that a policy meets these consumer protection requirements in order for a policy to be a Partnership Policy.

In accordance with the safe harbor procedure specified in Section 1917(b)(5)(B)(iii) of the Social Security Act (42 U.S.C. 1396p(b)(5)(B)(iii)) and subject to any guidance from the Secretary that may be issued providing otherwise, policies shall be considered certified pursuant to Section 191 7(b)(5)(B)(iii) of the Social Security Act (42 U.S.C. 1396p(b)(5)(B)(iii)) and, therefore, will be deemed to meet such consumer protection requirements if the issuer: (i) identifies the policy forms on which such policies are issued, and (ii) certifies that the consumer protection requirements of Section I9I7(b)(1)(C)(iii)(III) of the Social Security Act (42 U.S.C. 1396p(b)(1)(C)(iii)(III)) are met by such policies. An issuer's identification and certification of policies must be made to the North Dakota Insurance Commissioner using the **North Dakota Issuer Certification Form** as appropriate, the North Dakota Insurance Commissioner shall, in turn, certify to the Secretary the compliance of such policies with such consumer protection requirements using the **North Dakota State Certification Form**.

An issuer and the North Dakota Insurance Commissioner may submit supplemental **North Dakota Issuer Certification Forms** and **North Dakota State Certification Forms**, respectively, that identify additional policy forms on which policies are issued that satisfy the consumer protection requirements of section 1917(b)(1)(C)(iii)(III) of the Social Security Act (42 U.S.C. 1396p(b)(1)(C)(iii)(III)). Copies of the North Dakota Insurance Commissioner's certifications to the Secretary shall be provided to the North Dakota State Medicaid agency.

If there is a change made by the Secretary, pursuant to Section 1917(b)(5)(C) of the Social Security Act (42 U.S.C. 1396p(b)(5)(C)), in the provisions of the National Association of Insurance Commissioners' Long-Term Care Insurance Model Act or Regulation that apply to new policies covered by Qualified Partnerships, appropriate modifications will be made to the **North Dakota Issuer Certification Form** to reflect the new requirements.

D. **Notice of Partnership Policy Status.** The issuer shall provide the Notice Regarding Long-Term Care Insurance Partnership Status, to the insured at the issuance of a policy that is intended to be a Partnership Policy. Thus, in the case of a group insurance contract, such Notice must be provided to the insured under a certificate upon the issuance of the certificate.

In determining whether to provide the Notice Regarding Long-Term Care Insurance Partnership Status with respect to a policy, the issuer of the policy may rely upon a statement by the policyholder, certificateholder or insured that the insured is a resident of North Dakota.

A template for the Notice can be found in the North Dakota Insurance Department website: http://www.state.nd.us/ndins.

E. **Limitation on Partnership Policy Specific Rules.** In accordance with Section 1917(b)(l)(C)(iii)(VII) of the Social Security Act (42 U.S.C. 1396p(b)(l)(C)(iii)(VII)), apart from the requirements described in B above that are specified by the DRA, no requirement affecting the terms or benefits of a Partnership Policy may be imposed unless such requirement is imposed on long-term care insurance policies without regard to whether the policy is a Partnership Policy. This limitation does not affect the state of North Dakota's ability to generally regulate the terms and sale of long-term care insurance policies where the state of North Dakota imposes requirements without regard to whether policies are Partnership Policies.

F. **Interim Reporting Requirements.** Pursuant to Section 19l7(b)(l)(C)(iii)(VI) and (v) of the Social Security Act (42 U.S.C. 1396p(b)(l)(C)(iii)(VI) and (v), respectively), issuers of Partnership Policies must provide regular reports to the Secretary in accordance with any regulations of the Secretary. Until the effective

date of final regulations or other applicable guidance from the Secretary, issuers of policies must provide (a) notification regarding when insurance benefits provided under Partnership Policies have been paid and the amount of such benefits paid, and (b) notification regarding when such policies terminate. Such notifications must be provided within 60 days of the end of each calendar year with respect to benefits paid and terminations during such year (or, in the case of terminations resulting from death, within the later of 60 days after the end of the calendar year of death or 120 days after notification of death has been received by the issuer of the policy). Pursuant to Section 1917(b)(1)(C)(v) of the Social Security Act (42 U.S.C. 1396p(b)(l)(C)(v)), the Secretary, as appropriate, will provide copies of the reports to the state of North Dakota.

Upon the issuance of guidance by the Secretary (including upon the issuance of guidance specifying a federal uniform minimum data set) pursuant to Section 1917(b)(1)(C)(iii)(VI), (v) and (vi)) of the Social Security Act (42 U.S.C. 1396p(b)(1)(C)(iii)(VI), (v) and (vi)), appropriate modifications shall be made to these interim reporting requirements to reflect the availability of information from the Secretary.

As described above, Partnership Policies that cover more than one insured are treated as separate Partnership Policies, each of which covers a single insured. Thus, the reporting requirements described herein apply with respect to each such separate Partnership Policy.

G. **Coordination Between State Departments.** North Dakota State Medicaid agency, within the meaning of Section 1902(a)(5) of the Social Security Act (42 U.S.C. 1396a(a)(5))] must provide information and technical assistance to the North Dakota Insurance Department on the Insurance Department's role of assuring that any individual who sells a Partnership Policy receives training and demonstrates evidence of an understanding of such policies and how they relate to other public and private coverage of long-term care.

An individual shall be considered to have received appropriate training and to have demonstrated evidence of an understanding of such policies and how they relate to other public and private coverage of long-term care if such individual satisfies the requirements specified in the Bulletin 2007 - regarding Producer Training — Policies Issued Under the North Dakota Long Term Care Partnership Program.

H. **Reciprocity.** Pending the issuance of guidance by the Secretary pursuant to Section 6021(b) of the DRA, the North Dakota Long Term Care Partnership Program shall provide reciprocity with respect to long-term care insurance policies covered under other state long-term care insurance partnerships.

With reciprocity, the amount of the Asset Disregard provided with respect to a policy purchased under the state long-term care insurance partnership of another state shall equal the Asset Disregard that would apply to a Partnership Policy covered directly by the Long Term Care Partnership Program of North Dakota. Such reciprocity shall be provided to all states that maintain a state long-term care insurance partnership that provides similar reciprocity for Partnership Policies issued under the North Dakota Long Term Care Partnership Program. The provision of reciprocity under the North Dakota Long Term Care Partnership Program does not affect eligibility requirements for Medicaid benefits that apply apart from those pertaining to permissible assets and resources.

After the issuance of guidance by the Secretary pursuant to Section 6021(b) of the DRA, the North Dakota State Medicaid Agency, if it elects to be exempt from such standards, shall notify the Secretary in writing of such election within the period of time prescribed under such guidance.

I. **Federal Long-Term Care Insurance Program.** It is recognized that the enabling law for the creation of the Federal Long-Term Care Insurance Program ("FLTCIP") set forth at 5 U.S.C. 9001-9009 provides for the preemption of state laws with respect to this program. Therefore, where the Director of the U.S. Office of Personnel Management has certified that a certificate issued pursuant to the FLTCIP meets the requirements of Section 1917(b)(1)(C)(iii) of the Social Security Act (42 U.S.C. 1396p(b)(1)(C)(iii)), such certificate shall be deemed to qualify for the Asset Disregard.