**BEFORE THE
ADMINISTRATIVE RULES COMMITTEE
OF THE
NORTH DAKOTA LEGISLATIVE COUNCIL**

N.D. Admin. Code Chapter 75-02-02.1, Eligibility for Medicaid, and 75-02-02.2, Children's Health Insurance Program (Pages 135-224))))))	**REPORT OF THE DEPT. OF HUMAN SERVICES March 12, 2008**

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For its report, the North Dakota Department of Human Services states:

1. The proposed amendments to N.D. Admin. Code Chapter 75-02-02.1 and 75-02-02.2 arose, in part, out of 2007 Senate Bill No. 2326, relating to medical assistance for families of disabled children and 2007 Senate Bill No. 2069, relating to determination of self-employment income for eligibility for the Children's Health Insurance Program.

2. These proposed rules are related to changes required by the federal Deficit Reduction Act of 2005.

3. The Department of Human Services uses direct and electronic mail as the preferred ways of notifying interested persons of proposed rulemaking. The Department uses a basic mailing list for each rulemaking project that includes the county social service boards, the regional human service centers, Legal Services offices in North Dakota, all persons who have asked to be on the basic list, and internal circulation within the Department. Additionally, the Department constructs relevant mailing lists for specific rulemaking.

The Department also places public announcements in all county newspapers advising generally of the content of the rulemaking, of over 50 locations throughout the state where the proposed rulemaking documents may be reviewed, and stating the location, date, and time of the public hearing.

The Department conducts public hearings on all substantive rule-making. Oral comments are recorded. Oral comments, as well as any written comments that have been received, are summarized and presented to the Department's executive director, together with any response to the comments that may seem appropriate and a re-drafted rule incorporating any change occasioned by the comments.

4. Comments were received at the public hearing held in Bismarck on December 7, 2007. The record was held open until December 20, 2007, to allow written comments to be submitted. None were received. A summary of comments is attached to this report.

5. The cost of giving public notice, holding a hearing, and the cost (not including staff time) of developing and adopting the rules was $1946.96.

6. The rules were amended to comply with the requirements of the federal Deficit Reduction Act of 2005, and with the requirements of 2007 Senate Bill No. 2326 and 2007 Senate Bill No. 2069. The following specific changes were made:

Section 75-02-02.1-01. This section contains two changes to defined terms in subsections 22 and 23.

Section 75-02-02.1-04. This section is amended to clarify the types of services subject to screening requirements.

Section 75-02-02.1-05. This section is amended to add children with disabilities as a coverage group.

Section 75-02-02.1-11. This section is amended to clarify how need is established for a medically needy Medicaid applicant or recipient.

Section 75-02-02.1-14. This section is amended to clarify when the state review team may determine blindness or disability.

Section 75-02-02.1-19.1. This section is amended to delete a reference to repealed section 75-02-02.1-36 and add a reference to section 75-02-02.1-38.2 as applying to the family coverage group.

Section 75-02-02.1-24. This section is amended to clarify how assets must be counted in determining spousal impoverishment and to add reference to the newly-created section 75-02-02.1-33.2 to the determination of disqualifying transfers.

Section 75-02-02.1-24.2. This section is amended to add disability determined by the social security administration or by the state review team to the list of criteria for enrollment as a member of the workers with disabilities coverage and to delete the section relating to a plan for achieving self-support.

Section 75-02-02.1-24.3. This section is created to define eligibility for children with disabilities.

Section 75-02-02.1-27. This section is amended to identify exempt assets for determining eligibility of an individual with respect to skilled nursing services, swing bed, or home and community based benefits and to identify how long term care insurance may impact Medicaid eligibility.

Section 75-02-02.1-28. This section is amended to clarify when an income tax refund, an earned income tax credit refund, or an advance payment of earned income tax credit may be excluded in determining medicaid eligibility.

Section 75-02-02.1-28.1. This section is amended to clarify when assets described in other administrative code sections may be excluded in determining medicare savings programs, qualified disabled and working individuals, and spousal impoverishment prevention.

Section 75-02-02.1-31. This section adds a reference to the newly-created section 75-02-02.1-33.2 for determining a disqualifying transfer relative to a revocable trust.

Section 75-02-02.1-31.1. This section adds references to the newly-created section 75-02-02.1-33.2 for determining a disqualifying transfer relative to revocable and irrevocable trusts established by Medicaid applicants, recipients, or their spouses after August 10, 1993.

Section 75-02-02.1-32. This section is amended to clarify the method for valuing, for purposes of determining Medicaid eligibility, contractual rights to receive money payments.

Section 75-02-02.1-33.1. This section is amended to reflect the criteria for determining disqualifying transfers made before the effective date of the federal Deficit Reduction Act of 2005, to identify the types of services for which a disqualifying transfer would result in a period of ineligibility, to clarify the treatment of annuities, and to clarify the provisions of the look-back date.

Section 75-02-02.1-33.2. This section is created to set forth the criteria for determining disqualifying transfers made on or after the effective date of the federal Deficit Reduction Act of 2005.

Section 75-02-02.1-38.1. This section is amended to add an exception to the post-eligibility treatment of income for determining eligibility for workers with disabilities and children with disabilities.

Section 75-02-02.1-38.2. This section is amended to add workers with disabilities coverage and children with disabilities coverage to those who may disregard certain income in determining Medicaid eligibility.

Section 75-02-02.1-39. This section is amended to add the appropriate income deductions for workers with disabilities coverage and children with disabilities coverage.

Section 75-02-02.1-40. This section is amended to add the income level for workers with disabilities and children with disabilities and to clarify how to determine the appropriate income level for workers with disabilities and children with disabilities.

Section 75-02-02.1-41. This section related to deeming income, is amended to add a section relating to determining income for workers with disabilities and children with disabilities.

Section 75-02-02.2-12. This section is amended to identify the types of income that must be disregarded in determining eligibility for Children's Health Insurance Plan coverage.

Section 75-02-02.2-13. This section is amended to clarify how self-employment income must be calculated for purposes of determining household income under the Children's Health Insurance Plan.

Section 75-02-02.2-13.1. This section is amended to clarify and add deductions that may be subtracted from monthly income to determine adjusted gross income for purposes of establishing eligibility under the Children's Health Insurance Program.

7. No written requests for regulatory analysis have been filed by the Governor or by any agency. The rule amendments are expected to have an impact on the regulated community in excess of $50,000. A regulatory analysis was prepared and is attached to this report.

8. A small entity regulatory analysis and small entity economic impact statement were prepared and are attached to this report.

9. A constitutional takings assessment was prepared and is attached to this report.

10. These rules were not adopted as emergency (interim final) rules.

Prepared by:

Julie Leer
Legal Advisory Unit
North Dakota Department of Human Services
March 12, 2008

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SUMMARY OF COMMENTS RECEIVED REGARDING PROPOSED AMENDMENTS TO N.D. ADMIN. CODE CHAPTER 75-02-02.1, ELIGIBILITY FOR MEDICAID AND CHAPTER 75-02-02.2, CHILDREN'S HEALTH INSURANCE PROGRAM

The North Dakota Department of Human Services (the Department) held a public hearing on December 7, 2007, in Bismarck, ND, concerning proposed amendments to N.D. Administrative Code Chapter 75-02-02.1, Eligibility for Medicaid and Chapter 75-02-02.2, Children's Health Insurance Program. The Department also allowed time for interested persons to submit written comments on these proposed rules. No one attended or provided comments at the public hearing. No written comments were received within the comment period.

SUMMARY OF COMMENTS

CHAPTER 75-02-02.1 – ELIGIBILITY FOR MEDICAID
CHAPTER 75-02-02.2 – CHILDREN'S HEALTH INSURANCE PROGRAM

No comments were received.

Prepared by:

Julie Leer

Julie Leer, Director
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N.D. Dept. of Human Services

January 28, 2008

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October 4, 2006

MEMORANDUM

TO: Melissa Hauer, Legal Advisory Unit

FROM: Curtis Volesky, Director, Medicaid Eligibility Policy

SUBJECT: Regulatory Analysis for N.D. Admin. Code ch. 75-02-02.1, Eligibility for Medicaid

To fulfill the requirements of N.D.C.C. § 28-32-08, the following regulatory analysis of proposed N.D. Administrative Code chapter 75-02-02.1, Eligibility for Medicaid is provided. The impacts of the proposed amendments are expected to exceed $50,000.

Purpose:

The proposed rules implement Medicaid policy that is required by the Deficit Reduction Act of 2005 (DRA) (Pub.L.No. 109-171).

The proposed rules potentially affect the eligibility of individuals currently in receipt of benefits and of those who may consider applying in the future. While some of the rule changes have little or no effect, some of the changes benefit individuals, and some potentially limit future Medicaid eligibility.

Classes of persons affected:

- Recipients that enter nursing care for a temporary period of six months or less who have a home in which they have more than $500,000 equity;
- Single recipients who receive Home and Community Based Services (HCBS) in a home that they own and in which they have more than $500,000 equity;
- Individuals who purchase nursing care insurance;
- Individuals who purchase annuities;
- Individuals who need nursing care services and have transferred income or assets;

Probable Impact:

The following list identifies those changes that may have an impact and describes the impact:

- Home Equity. The DRA prohibits Medicaid coverage of nursing care services for individuals who have more than $500,000 in equity in a home that they own. The provision does not apply if a community spouse or minor or disabled child resides in the home. While single individuals in a nursing facility are not normally allowed an exempt home, a Medicaid provision does allow an exempt home if the individual is expected to reside in the nursing facility for less than six months. The change could affect coverage of nursing care services to such individuals who have more than $500,000 equity in that home. The change could also affect a single individual who is receiving HCBS in his or her home if the individual has more than $500,000 equity in that home. Because of the high equity limit, the options available to individuals to reduce equity in the home, and the limited number of individuals this change could affect, any impact on individuals or the Medicaid program will be minimal.

- Long Term Care (LTC) Partnership. The DRA allows states to submit state plan amendments to create a LTC Partnership program. North Dakota intends to submit such a state plan amendment. A LTC Partnership program would allow a disregard of assets for an individual, or a couple, equal to LTC insurance benefits paid. The assets would be disregarded when establishing Medicaid eligibility, and would not be subject to Medicaid estate recovery. Since individuals who need nursing care services will have LTC coverage, which will save Medicaid funding, and since individuals will be able to maintain and protect their assets from Medicaid estate recovery, there should be no negative impact on recipients or the Medicaid program.

- Valuation of assets.
  - The way contractual rights to receive money payments are valued is changed to be consistent with how the DRA values contractual rights for transfer purposes. This simplifies the process, as well as allows for more timely determinations of eligibility. While there is a potential for some contractual rights to have a slightly higher valuation, any affect is likely to be minimal.
  - The DRA also requires contractual rights to receive money payments to be considered as disqualifying transfers for Medicaid nursing care services if the contract is not actuarially sound, if the contract provides for other than equal payments or for any balloon or deferred payment, or if the contract provides for any payment to be diminished after the contract payee's

death. The amount of the transfer is equal to the remaining payments due on the contract. It is unknown what terms individuals will establish for contracts, so it is possible that the potential impact of this change could exceed $50,000.

- Transfer Provisions.
  - As required by the DRA, the look back date has been changed from 36 months for non-trust related transfers made on or after February 8, 2006, to 60 months. The amount of transfers without adequate compensation that individuals will make is unknown, so it is possible that the potential impact of this change could exceed $50,000.
  - The penalty start date for disqualifying transfers made on or after February 8, 2006 was changed by the DRA to begin the later of the month of the transfer or the month the individual is otherwise eligible for Medicaid. The impact on individuals who make disqualifying transfers is limited to the uncompensated amount of the transfer. The impact on the regulated community is likely to exceed $50,000.
  - The purchase of a life estate interest in another person's home will be considered a disqualifying transfer unless the purchaser resides in the home for at least one year (DRA). A life estate interest affords the life tenant the right to any income produced by the property, so if the individual moves out of the home, they are entitled to any income that can be generated by the property. Accordingly, individuals who purchase life estate interests would likely do so if they intend to remain in the home. There is no expected impact.
  - The hardship provision has been changed to follow requirements of the DRA. Hardship exceptions can be requested on behalf of an individual by a nursing care facility if they have the consent of the individual. The hardship provision will allow a penalty period, or portion of a penalty period, to be disregarded only in cases where a true hardship is shown. Awarding hardship exceptions will likely be rare, but there is a potential for the impact to the Medicaid program to exceed $50,000.
  - Purchasing or changing an annuity on or after February 8, 2006 is considered a disqualifying transfer by the DRA unless the state is named as a beneficiary, and the annuity meets specific criteria. Many annuities previously had to meet similar criteria under state law, and no annuity beneficiary payments would be payable to the state as long as the recipient, their community spouse or minor or disabled children survive. Accordingly, while there is a potential impact to recipients, or the Medicaid program, actual impact is expected to be minimal.

Probable costs and savings:

The various transfer related provisions have the potential to impact individuals who make disqualifying transfers by preventing them from qualifying for Medicaid coverage of their nursing care expenses. This impact is expected to exceed $50,000.

Similarly, the Medicaid program is likely to save money through denial of benefits of individuals who make disqualifying transfers and through deterrence. Those savings are expected to exceed $50,000.

The LTC partnership program is expected to save money for individuals and the Medicaid program. Third party insurance will cover some of the nursing care costs for individuals, those individuals will be able to retain their assets, and the Medicaid program will be paying for fewer nursing care costs. The savings are expected to exceed $50,000.

Alternative methods:

Alternative methods were considered wherever possible. Those that were unworkable, were too costly, inappropriately affected vulnerable applicants and recipients, or that did not fit with federal or state law were disregarded.

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ol K. Olson, Executive Director

MEMORANDUM

TO: Melissa Hauer, Director, Legal Advisory Unit

FROM: Curtis Volesky, Director, Medicaid Eligibility

DATE: October 4, 2006

SUBJECT: Small Entity Regulatory Analysis Regarding Proposed Amendments to N.D. Admin. Code ch. 75-02-02.1, Eligibility for Medicaid

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The purpose of this small entity regulatory analysis is to fulfill the requirements of N.D.C.C. § 28-32-08.1. This regulatory analysis pertains to proposed amendments to N.D. Admin. Code ch. 75-02-02.1. The proposed rules are designed to ensure that North Dakota's Medicaid program complies with recent changes made to federal law by the Deficit Reduction Act of 2005 (Pub.L.No. 109-171).

Consistent with public health, safety, and welfare, the Department has considered using regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small entities. For this analysis, the Department has considered the following methods for reducing the rules' impact on small entities:

1. Establishment of Less Stringent Compliance or Reporting Requirements

The only small entities affected by this proposed amendment are small political subdivisions consisting of the County Social Service Boards of counties with populations with less than five thousand. Like all other County Social Service Boards in North Dakota, County Social Service Boards of counties with populations with less than five thousand are responsible for locally administered economic assistance programs, including Medicaid. N.D.C.C. § 50-01.2-03.2(1)(a). The County Social Service Boards must meet, or assist the North Dakota Department of Human Services to meet, compliance and reporting requirements imposed by federal and state laws. Those requirements must be uniformly applied throughout the state. See 42 U.S.C. § 1396a(a)(1), which requires that a state plan for medical assistance (Medicaid) must "provide that it shall be in effect in all political subdivisions of the state, and, if administered by them, be mandatory upon them." The proposed amendment will not alter in any material way any required compliance or reporting requirement of County Social Service Boards. For these reasons, establishment of less stringent compliance or reporting requirements for these small entities was not considered.

2. Establishment of Less Stringent Schedules or Deadlines for Compliance or Reporting Requirements for Small Entities

The proposed amendments will not alter in any material way any required schedules or deadlines for compliance or reporting requirement of County Social Service Boards. For this reason, and because federal law requires the Medicaid program to be uniformly applied throughout the state, the establishment of less stringent schedules or deadlines for compliance or reporting requirements for these small entities was not considered.

3. Consolidation or Simplification of Compliance or Reporting Requirements for Small Entities

The proposed amendments will not alter in any material way any required compliance or reporting requirement of County Social Service Boards. For this reason, and because federal law requires the Medicaid program to be uniformly applied throughout the state, neither consolidation nor simplification of compliance or reporting requirements for these small entities was considered.

4. Establishment of Performance Standards for Small Entities to Replace Design or Operational Standards Required in the Proposed Rules

The County Social Service Boards are responsible to meet performance standards as well as operational standards imposed by federal and state law. The proposed amendments do not impose any design standards or impose any additional operational standards, and will not alter in any material way any required performance standards or operational standards for County Social Service Boards. For this reason, and because federal law requires the Medicaid program to be uniformly applied throughout the state, establishment of new performance standards to replace operational standards were not considered.

5. Exemption of Small Entities From All or Any Part of the Requirements Contained in the Proposed Rules

Because federal law requires the Medicaid program to be uniformly applied throughout the state, the proposed rules do not exempt County Social Service Boards of counties with populations with less than five thousand from all or any part of the requirements contained in the proposed rules.

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MEMORANDUM

TO: Melissa Hauer, Director, Legal Advisory Unit

FROM: Curtis Volesky, Director, Medicaid Eligibility Curtis

DATE: October 4, 2006

SUBJECT: Small Entity Economic Impact Statement Regarding Proposed Amendments to N.D. Admin. Code ch. 75-02-02.1, Eligibility for Medicaid

The purpose of this small entity economic impact statement is to fulfill the requirements of N.D.C.C. § 28-32-08.1. This impact statement pertains to proposed amendments to N.D. Admin. Code ch. 75-02-02.1. The proposed rules are designed to ensure that North Dakota's Medicaid program complies with recent changes in federal law made by the Deficit Reduction Act of 2005 (Pub.L.No. 109-171). The proposed rules are not anticipated to have an adverse economic impact on small entities.

1. Small Entities Subject to the Proposed Rules

The small entities that are subject to the proposed amended rules are: The only small entities affected by this proposed amendment are small political subdivisions consisting of the County Social Service Boards of counties with populations with less than five thousand. Like all other County Social Service Boards in North Dakota, County Social Service Boards of counties with populations with less than five thousand are responsible for locally administered economic assistance programs, including Medicaid. N.D.C.C. § 50-01.2-03.2(1)(a). Medicaid policies and practices must be uniformly applied throughout the state. See 42 U.S.C. § 1396a(a)(1), which requires that a state plan for medical assistance (Medicaid) must "provide that it shall be in effect in all political subdivisions of the state, and, if administered by them, be mandatory upon them."

The following small entities may also be subject to the rule: None.

2. Costs For Compliance

The administrative and other costs required for compliance with the proposed rule are expected to be: No additional administrative or other costs will be incurred by County Social Service Boards due to these proposed amendments. These proposed amendments affect Medicaid eligibility for some individuals and families.

3. Costs and Benefits

The probable cost to private persons and consumers who are affected by the proposed rule: Single individuals who need Medicaid coverage of nursing care expenses and have more than $500,000 equity in their home, will be required to reduce their equity to under $500,000 before they are entitled to the Medicaid coverage. Individuals who make disqualifying transfers within the look-back period will not be eligible for coverage of their nursing care during the penalty period. The penalty period, however, will only begin, for transfers made on or after February 8, 2006, when the individual is in receipt of nursing care services and is otherwise eligible for Medicaid. Individuals who purchase annuities that do not meet specific criteria, and that do not name the state as a beneficiary, will be considered to have made a disqualifying transfer that will prevent Medicaid from covering their nursing care costs during the transfer penalty period.

The probable benefit to private persons and consumers who are affected by the proposed rule: The Long Term Care (LTC) Partnership program will benefit individuals and couples that purchase LTC insurance. The insurance will provide coverage of their nursing care costs and the individual may not need assistance from the Medicaid program. If the individual's insurance ends and Medicaid coverage is needed, the individual can qualify for Medicaid without spending their protected assets. Those assets will also be protected from Medicaid estate recovery.

4. Probable Effect on State Revenue

The probable effect of the proposed rule on state revenues is expected to be: The LTC Partnership program, the transfer provisions, and the annuity provisions are likely to save state revenue. Because it is unknown how many individuals who would need Medicaid nursing care coverage will purchase LTC insurance, or how many will be ineligible due to disqualifying transfers, or will avoid making such transfers, the amount of savings is unknown at this time.

The Changes to the hardship provision, which allows individuals who made a disqualifying transfer, to be excused from the penalty period, potentially will cost the Medicaid program. The number of hardships that will be allowed, or the length of the penalty period that will be excused, is unknown at this time, so the potential cost of this provision is also unknown.

5. Alternative Methods

The Deficit Reduction Act of 2005 (Pub.L.No. 109-171) required the majority of the changes that were made and there was little room for alternatives. Where state options or flexibility was permitted, options were considered and choices made to provide for the most effective policy while being the least intrusive or costly to small entities.

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TAKINGS ASSESSMENT

concerning proposed amendments to N.D. Admin. Code Chapter 75-02-02.1, Eligibility for Medicaid and Chapter 75-02-02.2, Children's Health Insurance Program.

This document constitutes the written assessment of the constitutional takings implications of this proposed rulemaking as required by N.D.C.C. § 28-32-09.

1. This proposed rulemaking does not appear to cause a taking of private real property by government action which requires compensation to the owner of that property by the Fifth or Fourteenth Amendment to the Constitution of the United States or N.D. Const. art. I, § 16. This proposed rulemaking does not appear to reduce the value of any real property by more than fifty percent and is thus not a "regulatory taking" as that term is used in N.D.C.C. § 28-32-09. The likelihood that the proposed rules may result in a taking or regulatory taking is nil.

2. The purpose of this proposed rule is clearly and specifically identified in the public notice of proposed rulemaking which is by reference incorporated in this assessment.

3. The reasons this proposed rule is necessary to substantially advance that purpose are described in the regulatory analysis which is by reference incorporated in this assessment.

4. The potential cost to the government if a court determines that this proposed rulemaking constitutes a taking or regulatory taking cannot be reliably estimated to be greater than $0. The agency is unable to identify any application of the proposed rulemaking that could conceivably constitute a taking or a regulatory taking. Until an adversely impacted landowner identifies the land allegedly impacted, no basis exists for an estimate of potential compensation costs greater than $0.

5. There is no fund identified in the agency's current appropriation as a source of payment for any compensation that may be ordered.

6. I certify that the benefits of the proposed rulemaking exceed the estimated compensation costs.

Dated this 4th day of October, 2006.

by Julie Leer
N.D. Dept. of Human Services

March 12, 2008

MEMORANDUM

TO: Julie Leer, Legal Advisory Unit

FROM: Curtis Volesky, Director, Medicaid Eligibility Policy

SUBJECT: Supplemental Regulatory Analysis for N.D. Admin. Code ch. 75-02-02.1, Eligibility for Medicaid, and 75-02-02.2, Children's Health Insurance Program

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To fulfill the requirements of N.D.C.C. § 28-32-08, the following regulatory analysis of proposed N.D. Administrative Code chapters 75-02-02.1, Eligibility for Medicaid, and 75-02-02.2, Children's Health Insurance Program, are provided. The impacts of the proposed amendments are expected to exceed $50,000.

Purpose:

The proposed rules implement Medicaid coverage to allow children with disabilities to buy in to Medicaid. This coverage group was created by the Deficit Reduction Act of 2005, and authorized through 2007 North Dakota Senate Bill 2326. The coverage is known as the Children with Disabilities coverage. The proposed rules also implement State Children's Health Insurance Program (SCHIP) policy changes regarding income disregards and deductions allowed through 2007 North Dakota Senate Bill 2012, and treatment of self-employment income as required by 2007 North Dakota Senate Bill 2069.

The proposed rules potentially affect the eligibility of individuals currently in receipt of Medicaid benefits by offering a less costly alternative to coverage of disabled children. The SCHIP changes allow additional disregards and deductions from income which will allow more children to qualify for coverage. The SCHIP self-employment change provides more flexibility to families in verifying self-employment income, and changes to that income, especially in situations where tax returns have not been filed, and in situations in which there is a substantial change to the self-employment business.

Classes of persons affected:

- Children who are disabled; and
- Children who apply for and receive SCHIP.

Probable Impact:

The following list identifies those changes that may have an impact and describes the impact:

- Medicaid coverage for disabled children. Some disabled children are currently eligible for Medicaid, but have a large recipient liability that they must apply monthly toward their cost of care. The Children with Disabilities (CWD) coverage allows them an alternative to buy-in to Medicaid, which is typically much less costly to the family. Some disabled children have not been eligible for Medicaid coverage because of family assets above the Medicaid levels, or family income causing recipient liabilities that are above the child's monthly medical need. The CWD coverage does not consider assets, allowing new children to qualify for coverage, and the reasonable premium to buy in to Medicaid eliminates the high recipient liability. The expected impact to the Medicaid program is an increase in expenditures that is partially offset by the premiums collected. The estimated impact is approximately $1,365,000 per year.
- SCHIP income disregards and deductions. Disregards of income include the first $50 in child support benefits received by a family, interest and dividend income, and additional military pay as a result of deployment in a combat zone. Deductions from income include a $30 work/training allowance to defray costs to the family, and deductions for health insurance premiums and other medically necessary expenses the family incurs for members in the family who are not eligible for SCHIP. The estimated impact to the SCHIP program is $780,000 per year.
- SCHIP self-employment. The result of this change is to allow more flexibility for families and eligibility staff in determining SCHIP eligibility. Any impact is unknown, but is expected to be minimal.

Probable costs:

The changes implemented by these rule changes are for the benefit of individuals who seek coverage and should have no negative fiscal impact on them. The changes provide additional coverage and allow additional children to be eligible, so there are fiscal impacts to the Medicaid and SCHIP programs. The expected annual impact to the Medicaid program is $1,365,000. The expected annual impact to the SCHIP program is $780,000.

Alternative methods:

The most cost effective and user friendly were utilized wherever possible to implement these changes.

MEMORANDUM

TO: Julie Leer, Director, Legal Advisory Unit

FROM: Curtis Volesky, Director, Medicaid Eligibility

DATE: March 12, 2008

SUBJECT: Supplemental Small Entity Regulatory Analysis Regarding Proposed Amendments to N.D. Admin. Code ch. 75-02-02.1, Eligibility for Medicaid and 75-02-02.2, Children's Health Insurance Program

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The purpose of this small entity regulatory analysis is to fulfill the requirements of N.D.C.C. § 28-32-08.1. This regulatory analysis pertains to proposed amendments to N.D. Admin. Code ch. 75-02-02.1 and 75-02-02.2. The proposed rules are designed to implement changes authorized during the 2007 legislative session.

Consistent with public health, safety, and welfare, the Department has considered using regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small entities. For this analysis, the Department has considered the following methods for reducing the rules' impact on small entities:

1. Establishment of Less Stringent Compliance or Reporting Requirements

The only small entities affected by this proposed amendment are small political subdivisions consisting of the County Social Service Boards of counties with populations of less than five thousand. Like all other County Social Service Boards in North Dakota, County Social Service Boards of counties with populations of less than five thousand are responsible for locally administered economic assistance programs, including Medicaid and SCHIP. N.D.C.C. § 50-01.2-03.2(1)(a). The County Social Service Boards must meet, or assist the North Dakota Department of Human Services to meet, compliance and reporting requirements imposed by federal and state laws. Those requirements must be uniformly applied throughout the state. See 42 U.S.C. § 1396a(a)(1), which requires that a state plan for medical assistance (Medicaid) must "provide that it shall be in effect in all political subdivisions of the state, and, if administered by them, be mandatory upon them." The proposed amendment will not alter in any material way any required compliance or reporting requirement of County Social Service Boards. For these reasons, establishment of less stringent compliance or reporting requirements for these small entities was not considered.

2. Establishment of Less Stringent Schedules or Deadlines for Compliance or Reporting Requirements for Small Entities

The proposed amendments will not alter in any material way any required schedules or deadlines for compliance or reporting requirement of County Social Service Boards. For this reason, and because federal law requires the Medicaid program to be uniformly applied throughout the state, the establishment of less stringent schedules or deadlines for compliance or reporting requirements for these small entities was not considered.

3. Consolidation or Simplification of Compliance or Reporting Requirements for Small Entities

The proposed amendments will not alter in any material way any required compliance or reporting requirement of County Social Service Boards. For this reason, and because federal law requires the Medicaid program to be uniformly applied throughout the state, neither consolidation nor simplification of compliance or reporting requirements for these small entities was considered.

4. Establishment of Performance Standards for Small Entities to Replace Design or Operational Standards Required in the Proposed Rules

The County Social Service Boards are responsible to meet performance standards as well as operational standards imposed by federal and state law. The proposed amendments do not impose any design standards or impose any additional operational standards, and will not alter in any material way any required performance standards or operational standards for County Social Service Boards. For this reason, and because federal law requires the Medicaid program to be uniformly applied throughout the state, establishment of new performance standards to replace operational standards were not considered.

5. Exemption of Small Entities From All or Any Part of the Requirements Contained in the Proposed Rules

Because federal law requires the Medicaid program to be uniformly applied throughout the state, the proposed rules do not exempt County Social Service Boards of counties with populations with less than five thousand from all or any part of the requirements contained in the proposed rules.

MEMORANDUM

TO: Julie Leer, Director, Legal Advisory Unit

FROM: Curtis Volesky, Director, Medicaid Eligibility

DATE: March 12, 2008

SUBJECT: Supplemental Small Entity Economic Impact Statement Regarding Proposed Amendments to N.D. Admin. Code ch. 75-02-02.1, Eligibility for Medicaid and 75-02-02.2, Children's Health Insurance Program

The purpose of this small entity economic impact statement is to fulfill the requirements of N.D.C.C. § 28-32-08.1. This impact statement pertains to proposed amendments to N.D. Admin. Code ch. 75-02-02.1 and 75-02-02.2. The proposed rules are designed to implement changes authorized during the 2007 legislative session. The proposed rules are not anticipated to have an adverse economic impact on small entities.

<u>1. Small Entities Subject to the Proposed Rules</u>

The small entities that are subject to the proposed amended rules are: The only small entities affected by this proposed amendment are small political subdivisions consisting of the County Social Service Boards of counties with populations with less than five thousand. Like all other County Social Service Boards in North Dakota, County Social Service Boards of counties with populations with less than five thousand are responsible for locally administered economic assistance programs, including Medicaid and SCHIP. N.D.C.C. § 50-01.2-03.2(1)(a). Medicaid policies and practices must be uniformly applied throughout the state. See 42 U.S.C. § 1396a(a)(1), which requires that a state plan for medical assistance (Medicaid) must "provide that it shall be in effect in all political subdivisions of the state, and, if administered by them, be mandatory upon them."

The following small entities may also be subject to the rule: None.

2. Costs For Compliance

The administrative and other costs required for compliance with the proposed rule are expected to be: While additional applications may be received and require processing, no additional administrative or other costs will be incurred by County Social Service Boards due to these proposed amendments. These proposed amendments are not expected increase the workload to the extent that additional staff are needed.

3. Costs and Benefits

The probable cost to private persons and consumers who are affected by the proposed rule: None.

The probable benefit to private persons and consumers who are affected by the proposed rule: The CWD coverage will benefit families with disabled children. It will allow continued Medicaid coverage for some at a lower cost. For others who are not currently eligible, it will allow them to buy in to Medicaid to obtain health coverage for their disabled children. With regard to the SCHIP changes, families that previously have not qualified because of countable income, may now qualify as their countable income will be reduced through the income disregards, or by allowed deductions from income for expenses they are actually incurring. The self-employment income change will also allow families to more accurately estimate their income and it will make it easier for some to provide verifications of income.

4. Probable Effect on State Revenue

The probable effect of the proposed rule on state revenues is expected to be: The CWD coverage is a new coverage group and the SCHIP changes allow additional individuals to be eligible. Accordingly, there will be increased costs to the Medicaid and SCHIP programs. The costs to the Medicaid program are reduced by the premiums collected from eligible individuals. The total costs to the Medicaid program are estimated to be $1,365,000 per year, of which approximately $530,000 are state funds. The total costs to the SCHIP program are estimated at $780,000 per year, of which approximately $393,000 are state funds.

5. Alternative Methods

The Deficit Reduction Act of 2005 (Pub.L.No. 109-171) required specific criteria for some of the CWD coverage changes. Where state options or flexibility was permitted for that coverage, options were considered and choices made to provide for the most effective policy while being the least intrusive or costly to small entities. For SCHIP, the choices made actually make the process simpler.