NORTH DAKOTA DEPARTMENT OF HUMAN SERVICES
BISMARCK, NORTH DAKOTA
March 18, 2008

IM 5031

TO: County Social Service Directors
Economic Assistance Policy Regional Representatives
Economic Assistance Policy Quality Control Reviewers

FROM: Maggie Anderson, Director, Medical Services

SUBJECT: **Long Term Care Partnership Program**

PROGRAMS: Medicaid

EFFECTIVE: January 1, 2007

RETENTION: Until Manualized

SECTIONS AFFECTED: **This is a new Provision**

The Deficit Reduction Act of 2005 authorized implementation of Long Term Care Partnership Programs. The North Dakota Long Term Care Partnership Program became effective on January 1, 2007 and is a partnership between North Dakota and private insurers of long-term care insurance policies.

Under the Long Term Care Partnership Program, 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. 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 estate recoveries.

Applications for coverage of long-term care expenses for individuals with a Partnership Policy may not be received for quite some time. It is necessary, however, that this information be made available so that questions regarding the provision can be addressed and eligibility determined when an application is received.

Following are guidelines regarding the implementation of the North Dakota Long Term Care Partnership Program.

Asset Protection Provided: Long-term care insurance is an important tool that helps individuals prepare for future long-term care needs. Partnership Policies provide an additional level of protection by allowing individuals to protect additional assets if assistance under Medicaid is ever needed. Specifically, the Medicaid asset eligibility and estate recovery provisions are applied by disregarding an additional amount of assets which is equal to the amount of insurance benefits received from a Partnership Policy.

> For example: If an individual receives $200,000 of insurance benefits from a Partnership Policy, the individual generally would be able to retain $200,000 of assets above and beyond the amount of assets normally permitted for Medicaid eligibility. An equal amount of assets are also protected from Medicaid estate recovery.

The asset disregard applies to all insurance benefits received from a Partnership Policy, regardless of whether the insurance benefits are for long-term care related costs that would not be covered by Medicaid (i.e. benefits paid for assisted living). The asset disregard as of any date equals the insurance benefits that have been received to that date, or are due but not yet paid from a Partnership Policy, even if additional insurance benefits may be received in the future from the Partnership Policy. (The asset disregard, however, 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.)

With regard to married individuals, the asset disregard applies to both spouses, regardless of which spouse actually received the insurance benefits.

> Example 1: Mr. and Mrs. Smith have a joint Partnership Policy that will pay up to $200,000 in benefits for either of them. Mrs. Smith enters long-term care and uses up $180,000 in benefits before she passes away. Eventually, Mr. Smith enters long-term care. His care is covered by the Partnership Policy for another $20,000. The policy then ends because it has paid a total of $200,000 in benefits. When Mr. Smith applies for Medicaid, he is allowed a disregard of $200,000 in assets in addition to his $3,000 asset level.

In the above example, if the Partnership Policy only covered Mrs. Smith (Mr. Smith was not covered under the policy), the disregard would still be allowed for Mr. Smith, but the disregard would only be $180,000 as that was all that was paid by the policy.

Example 2: Mr. and Mrs. Brown each have their own Partnership Policy that will pay up to $200,000 in benefits. Mrs. Brown enters long-term care and uses up $150,000 in benefits from her Partnership Policy before she passes away. Eventually, Mr. Brown enters long-term care. His care is covered by his own Partnership Policy up to the maximum $200,000 his policy provides. The policy then ends and Mr. Brown applies for Medicaid. He is allowed a total disregard of $350,000 in assets in addition to his $3,000 asset level ($200,000 from his policy and $150,000 for Mrs. Brown's policy).

Medicaid Estate Recovery: As indicated above, assets protected by a Partnership Policy are also protected from Medicaid estate recovery unless benefits were received through fraud or an overpayment is due. The protected assets are subject to other non-Medicaid claims against the estate, including other state or county claims.

Application of Other Medicaid Provisions: Eligibility for benefits under Medicaid is subject to all other eligibility provisions, such as the disqualifying transfer provision and home equity limitation. For instance, the individual can become Medicaid eligible while retaining the assets, but if the assets are given away without receipt of adequate compensation, this may be considered a disqualifying transfer and the individual may be ineligible for coverage of long-term care costs.

For example: Mr. White had a Partnership Policy that paid $180,000 in benefits before it ended. He is still in the nursing home so applies for Medicaid to further assist with his expenses. He had farmland worth $120,000 and $62,000 in liquid assets, for total countable assets of $182,000. During the application process he transferred ownership of his farmland to his children without receiving adequate compensation. This was a disqualifying transfer that causes him to be ineligible for coverage of nursing care services. If he had not made the transfer, he would have been eligible for Medicaid as $180,000 was protected, and the remaining $2000 in countable assets was within the $3000 asset limit. His penalty period begins in the month of the transfer because he was otherwise eligible for Medicaid at that time.

With regard to annuities or special needs trusts, the requirement to name the Department of Human Services as a primary beneficiary still applies.

Partnership Policies: In order for a long-term care insurance policy to be considered a Partnership Policy (including a certificate issued under a group insurance contract) the policy must satisfy all of the following requirements:

1. The policy must be a qualified long-term care insurance contract, as defined in the Internal Revenue Code of 1986. The majority of all long-term care policies legally sold in North Dakota already meet this requirement.

2. The policy must be issued on or after January 1, 2007 which is the effective date of the North Dakota Long Term Care Partnership Program. A policy issued prior to January 1, 2007 is treated as newly issued and eligible for Partnership Policy status <u>only</u> if it is reissued or exchanged on or after January 1, 2007. The addition of a rider, endorsement, or change in the schedule page to policies issued prior to January 1, 2007, may be treated as an exchange for the purpose of meeting the Long Term Care Partnership requirements.

3. The policy must cover an insured individual who was a resident of the state when coverage first became effective under the policy.

4. The Federal consumer protection requirements of the Social Security Act must be met with respect to the policy. The majority of all long-term care policies legally sold in North Dakota already meet this requirement.

5. The policy must include the proper inflation protection based on the insured individual's age at the time the coverage became effective.

   a. If the policy was sold to an individual who was under age 61 on the date of purchase, the policy must provide compound annual inflation protection. There is no set minimum percentage level. Compound inflation protection must continue on the policy and may only end when the policy doubles, or when the insured individual reaches age 76, whichever occurs first;
   b. If the policy was sold to an individual who was age 61 but had not attained age 76 as of the date of purchase, the

policy must provide some level of inflation protection. There is no set minimum percentage level. Inflation protection, which can include simple interest inflation protection, must continue on the policy and may only end when the policy doubles, or when the insured individual reaches age 76, whichever occurs first; and

c. If the policy was sold to an individual who had attained age 76 as of the date of purchase, no inflation protection is required.

Partnership Policies issued in North Dakota will be identified by a notice to the policy holder that certifies it as a Partnership Policy at the time the policy is issued. The notice will be issued if the policy meets all of the above criteria, including the inflation protection requirements. Because policies may be changed after they are issued, when an individual applies for Medicaid, they will need to obtain and provide a current notice from the Partnership Policy indicating whether it continues to meet the Partnership Policy requirements, and if so, to identify the amount of benefits paid while meeting those requirements.

Reciprocity: The North Dakota Long Term Care Partnership Program will provide reciprocity with respect to long-term care insurance policies covered under other state long-term care insurance partnerships. This will allow individuals who purchase a Partnership Policy in one state to move to another state with a Long Term Care Partnership program without losing the asset protection. This protection will only be available between states that offer reciprocity. A federal database is being developed to identify states that agree to reciprocity, and to identify Partnership Policies from those states. More information will be provided once the database is available.

System Changes: Information regarding system changes to identify the amount of assets that are protected through a Partnership Policy will be provided when those changes are made. If an application with a Partnership Policy is received before those changes are completed, contact the Medicaid Eligibility unit for assistance.