

Department of Health & Human Services
Centers for Medicare & Medicaid Services
61 Forsyth St., Suite 4T20
Atlanta, Georgia 30303-8909



May 19, 2010

Craigan Gray, MD, MBA, JD
Director
Division of Medical Assistance
North Carolina Department of Health and Human Services
2501 Mail Service Center
Raleigh, North Carolina 27699-2501

Attention: Teresa Smith

RE: North Carolina Title XIX State Plan Amendment, Transmittal #05-006

Dear Dr. Gray:

We have reviewed the proposed amendment to the North Carolina Medicaid State Plan that was submitted under transmittal number 05-006 and received in the Regional Office on May 23, 2005. This amendment proposed to change the term "domiciliary facility" to "adult care home" and to identify specifics of personal care services coverage within the adult care home. The SPA was reviewed for the description of Personal Care Services in Adult Care Homes and whether the service violated comparability, freedom of choice of provider, and provider qualification requirements. It was also reviewed for the impact to the hospice benefit available in the Adult care Home and in the private home and whether the State program violated comparability.

During the corresponding page review of reimbursement for North Carolina 05-006, North Carolina end dated their current payment methodology as of May 10, 2010 and implemented the fee schedule process effective May 11, 2010.

Based on the information provided, we are pleased to inform you that Medicaid State Plan Amendment 05-006 was approved on May 18, 2010. The effective date of this amendment is April 1, 2005. We are enclosing the approved form HCFA-179 and plan pages.

If you have any questions or need any further assistance, please contact Elaine Elmore at (404) 562-7408.

Sincerely,

//s//

Jackie Glaze
Acting Associate Regional Administrator
Division of Medicaid & Children's Health Operations

Department of Health & Human Services
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Director
Division of Medical Assistance
North Carolina Department of Health and Human Services
2501 Mail Service Center
Raleigh, North Carolina 27699-2501

Dear Dr. Gray:

This letter is being sent as a companion to our approval of North Carolina State Plan Amendment (SPA) 05-006 that sought to change the term “domiciliary facility to “adult care home” (ACH) in applicable eligibility, and personal care services pages. It also allows Medicaid recipients to elect hospice while in the ACH. Our review of this SPA included an analysis of private duty nursing, personal care services, and hospice. Based on that review, it was determined that pages 19 of 3.1-A.1 is not in compliance with current regulations, statute, and CMS guidance.

Section 1902(a) of the Social Security Act (the Act) requires that States have a State plan for medical assistance that meets certain federal requirements that set out a framework for the State program. Implementing regulations at 42 CFR 430.10 require that the State plan be a comprehensive written statement describing the nature and scope of the State’s Medicaid program and that it contain all information necessary for CMS to determine whether the plan can be approved to serve as the basis for Federal financial participation (FFP) in the State program. Regulations at 42 CFR 440.167 establish requirements for PCS, including the requirement that PCS are “provided by an individual who is qualified to provide such services and who is not a member of the individual’s family.” Accordingly, the State must add to the plan on page 19 of Attachment 3.1-A.1 the State’s qualifications for the practitioner who will furnish PCS in the home and in the ACH.

Please respond to this letter within 90 days (August 18, 2010) with a corrective action plan describing How you will resolve the issues identified above. During the 90-day period, we are happy to provide any technical assistance that you need. State plans that are not in compliance with requirements at 42 CFR 430.10 and 42 CFR 440.167 are grounds for initiating a formal compliance process.

If you have any questions or need any further assistance, please contact Elaine Elmore at (404) 562-7408.

Sincerely,

//s//

Jackie Glaze
Acting Associate Regional Administrator
Division of Medicaid & Children's Health Operations

**TRANSMITTAL AND NOTICE OF APPROVAL OF
STATE PLAN MATERIAL**

1. TRANSMITTAL NUMBER: 05-006	2. STATE NC
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FOR: HEALTH CARE FINANCING ADMINISTRATION

3. PROGRAM IDENTIFICATION: TITLE XIX OF THE
SOCIAL SECURITY ACT (MEDICAID)

TO: REGIONAL ADMINISTRATOR
HEALTH CARE FINANCING ADMINISTRATION
DEPARTMENT OF HEALTH AND HUMAN SERVICES

4. PROPOSED EFFECTIVE DATE

April 1, 2005

5. TYPE OF PLAN MATERIAL (*Check One*):

- NEW STATE PLAN AMENDMENT TO BE CONSIDERED AS NEW PLAN AMENDMENT

COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (*Separate Transmittal for each amendment*)

6. FEDERAL STATUTE/REGULATION CITATION:

42 CFR 440.167

7. FEDERAL BUDGET IMPACT:
a. FFY **2004-05** \$55,841
b. FFY **2005-06** \$174,223

8. PAGE NUMBER OF THE PLAN SECTION OR
ATTACHMENT:

**Attachment 2.2-A, Page 16;
Attachment 2.2-A, Page 18;
Attachment 3.1-A.1, Page 13b; and
Attachment 3.1-A.1, Page 19**

9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION
OR ATTACHMENT (*If Applicable*):

**Attachment 2.2-A, Page 16;
Attachment 2.2-A, Page 18;
Attachment 3.1-A.1, Page 13b; and
Attachment 3.1-A.1, Page 19**

10. SUBJECT OF AMENDMENT:
Adult Care Home - Hospice

11. GOVERNOR'S REVIEW (*Check One*):

- GOVERNOR'S OFFICE REPORTED NO COMMENT
 COMMENTS OF GOVERNOR'S OFFICE ENCLOSED
 NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

OTHER, AS SPECIFIED:

12. SIGNATURE OF STATE AGENCY OFFICIAL:
//s//

13. TYPED NAME:
Lanier M. Cansler

14. TITLE: Secretary

15. DATE SUBMITTED: 05-10-09

16. RETURN TO:
Office of the Secretary
Department of Health and Human Services
2001 Mail Service Center
Raleigh, NC 27699-20014

FOR REGIONAL OFFICE USE ONLY

17. DATE RECEIVED:
05-23-05

18. DATE APPROVED: 05-18-10

PLAN APPROVED – ONE COPY ATTACHED

19. EFFECTIVE DATE OF APPROVED MATERIAL:
04-01-05

20. SIGNATURE OF REGIONAL OFFICIAL:
//s//

21. TYPED NAME:
Jackie Glaze

22. TITLE: Acting Associate Regional Administrator
Division of Medicaid & Children Health Opns

23. REMARKS: Approved with following changes as authorize by state agency on email dated 05/06/10, 05/14/10 and 05/18/10:
Block #8 Attachment 2.2-A, page 16; Attachment 2.2-A page 18; Attachment 3.1-A.1 page 19, Attachment 4.19-B Section 23, page 6,
Attachment 4.19-B Section 23, page 6a and 6b, Block # 9 Attachment 2.2-A, page 16; Attachment 2.2-A page 18; Attachment 3.1-A.1 page
19, Attachment 4.19-B Section 23, page 6a and 6. Block #8 Remove Attachment 3.1-A.1, page 13b and Block #9 Remove Attachment
3.1-A.1, page 13b.
Block #7 Changed to read 2004-2005 \$55,841 Hospice related only; 2005-2006 \$174,223 Hospice-related only; 2006-2007 \$0; 2007-2008
\$0; 2008-2009 \$0 and 2010-2011\$0.

23.f Personal Care Services

- a. The number of hours of personal care services received by a Medicaid beneficiary may not exceed 3.5 hours per day and sixty (60) hours per calendar month. If a Medicaid beneficiary demonstrates the need for personal care services in excess of the 60-hour monthly limit, nurse case managers employed or contracted by the State may authorize up to 20 additional hours per month for each eligible beneficiary. The 3.5 hour per day restriction does not apply to Medicaid recipients receiving hours above the 60-hour/month limit.
- b. Licensed home care agencies are enrolled for Personal Care Services rendered in private residential settings. Personal Care Services may only be rendered outside of private residential settings in order to assist eligible individuals with obtaining and maintaining competitive employment. The agency must be a State licensed home care agency that is approved in its license to provide in-home aide services within the State. Licensed home care agencies are required to perform the following activities to comply with state laws:
 1. Complete background checks on all employees,
 2. Conduct in-home aide competency evaluations and trainings,
 3. Monitor quality of care,
 4. Handle Workers' Compensation,
 5. Manage the payment of income and Social Security taxes, and
 6. Ensure that in-home aides work under the supervision of a Register Nurse.
- c. Adult Care Homes
 1. Licensed Adult Care Homes
 2. Adult Care Homes are enrolled with the Division of Medical Assistance to provide Basic Adult Care Home Personal Care and Enhanced Adult Care Home personal care to all qualified Medicaid beneficiaries. Beneficiaries qualify for this enhanced care according to policies as published in Medicaid Clinical Coverage Policies on the NC Division of Medical Assistance website (www.dhhs.state.nc.us/dma/mp/mpindex.htm)
 3. A Medicaid recipient, residing in an Adult Care Home is not required to waive Medicaid coverage for Adult Care Home personal care providing the following criteria are met:
 - a. The interdisciplinary team determines the recipient needs Adult Care Home Personal Care at the basic or enhanced level and this personal care is more extensive than that provided by the hospice services;
 - b. That such care is documented in the hospice plan of care; and
 - c. The Adult Care Home Personal Care does not duplicate the services provided by hospice.

State: North Carolina

Agency*	Citation(s)	Groups Covered
	B.	<u>Optional Groups Other Than the Medically Needy</u> (Continued)
	<u>X</u>	(4) Aged individuals in adult care homes or other group living arrangements as defined under SSI.
42 CFR 435.230	<u>X</u>	(5) Blind individuals in adult care homes or other group living arrangements as defined under SSI.
	<u>X</u>	(6) Disabled individuals in adult care homes or other group living arrangements as defined under SSI.
	—	(7) Individuals receiving a Federally administered optional State supplement that meets the conditions specified in 42 CFR 435.230.
	—	(8) Individuals receiving a State administered optional State supplement that meets the conditions specified in 42 CFR 435.230.
	—	(9) Individuals in additional classifications approved by the Secretary as follows:

State: North Carolina

Agency*	Citation(s)	Groups Covered
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B. Optional Groups Other Than the Medically Needy
(Continued)

- (4) Aged individuals in adult care homes or other group living arrangements as defined under SSI.
- (5) Blind individuals in adult care homes or other group living arrangements as defined under SSI.
- (6) Disabled individuals in adult care homes or other group living arrangements as defined under SSI.
- __ (7) Individuals receiving federally administered optional State supplement that meets the conditions specified in 42 CFR 435.230.
- __ (8) Individuals receiving a State administered optional State supplement that meets the conditions specified in 42 CFR 435.230.
- __ (9) Individuals in additional classifications approved by the Secretary as follows:

MEDICAL ASSISTANCE
STATE NORTH CAROLINA

PAYMENTS FOR MEDICAL AND REMEDIAL CARE AND SERVICES

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23. Any other Medical Care and any other type of remedial care recognized under State law, specified by the Secretary.

PERSONAL CARE SERVICES

A. Provided as Community Based Services

This service is provided in private residences when prescribed in accordance with a plan of treatment and provided by a qualified person under supervision of a registered nurse.

Payment is based on provision of service in fifteen (15) minute increments of care as defined by State Plan, Attachment 3.1-A.1, Page 19.

Notwithstanding any other provision, if specified, these rates will be adjusted as shown in Supplement 1, page 1b to the 4.19-B section of the State Plan.

Except as otherwise noted in the plan, state-developed fee schedule rates are the same for both governmental and private providers of Personal Care Services. The agency's fee schedule rate was set as of February 1, 2005 and is effective for services provided on or after that date. All rates are published <http://www.ncdhhs.gov/dma/fee/index.htm>.

MEDICAL ASSISTANCE
STATE NORTH CAROLINA

PAYMENTS FOR MEDICAL AND REMEDIAL CARE AND SERVICES

Provided in an Adult Care Home

The Division of Medical Assistance shall enter into agreements with adult care home providers in accordance with 42 CFR 431.107 for the provision of personal care services for State/County Special Assistance clients and those clients described in 42 CFR §435.135 residing in public and private adult care homes.

Reimbursement is determined by the Division of Medical Assistance based on a review of industry costs and determination of reasonable costs with annual inflation adjustments. The initial basic fee was based on service per resident day. The initial basic fee was computed by determining the estimated salary, fringes, direct supervision and allowable overhead. Effective January 1, 2000 the cost of medication administration and personal care services direct supervision were added to the basic rate.

Additional payments are made utilizing the basic fee as a factor for a Medicaid eligible resident that has a demonstrated need for additional care. The enhanced rates include eating, toileting, ambulation/locomotion or special care units (Alzheimer's) which are added to the initial basic rate.

The agency's fee schedule rate was set as of October 1, 2004 and is effective for services provided on or after that date. All rates are published <http://www.ncdhhs.gov/dma/fee/index.htm>.

The rates were calculated from a cost reporting period selected by the state thereby developing the established fee schedule. The fees are reviewed annually and adjusted using the Medicare Home Health index, not to exceed that amount allowed by the North Carolina General Assembly. Notwithstanding any other provision, if specified these rates will be adjusted as shown on Supplement 2, page 1 to the 4.19-B section of the state plan.

Effective January 1, 2000, payments to providers were cost settled with any overpayment repaid to the Division of Medical Assistance. The first cost settlement period was for the nine months ended September 30, 2000. Subsequently, the annual cost settlement period shall be the twelve months ending September 30. No additional payment will be made due to cost settlement. Through review of annual provider cost reports, any provider receiving payments in excess of cost would have monies recouped and returned to the North Carolina Department of Health & Human Services (NCDHHS) Controller's Office with the federal share returned via the CMS 64 cost report. Methodology listed above will be end dated effective May 9, 2010, all payments for cost reporting periods ending on and after December 31, 2009 shall be prospective and not subject to cost settlement.

Effective May 10, 2010, except as otherwise noted in the plan, state-developed fee schedule rates are the same for both governmental and private providers of personal care services in Adult Care Homes. The agency's fee schedule rate was set as of October 1, 2009. All rates are published at <http://www.ncdhhs.gov/dma/fee/index.htm>.

MEDICAL ASSISTANCE
STATE NORTH CAROLINA

PAYMENTS FOR MEDICAL AND REMEDIAL CARE AND SERVICES

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B. Provided in Adult Care Homes (continued)

The initial basic fee was based on 1.1 hours of service per resident day. The initial basic fee was computed by determining the estimated salary, fringes, direct supervision, cost of medication administration, and allowable overhead. Reimbursement does not include room and board in the rate. Additional payments are made utilizing the basic fee as a factor for a Medicaid eligible resident that has a demonstrated need for additional care. The enhanced rates include eating, toileting, ambulation/locomotion or special care units (Alzheimer's) billed in addition to the initial basic using the appropriate published HCPCS code for the enhanced service rendered.

TN. No. 05-006
Supersedes
TN. No. NEW

Approval Date: 05-18-10

Eff. Date: 04/01/2005