

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



April 18, 2011

Craigian Gray, M.D., M.B.A., J.D.
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 # NC10-031

Dear Dr. Gray:

We have reviewed the proposed amendment to the North Carolina Medicaid State Plan Amendment (SPA) NC 10-031 that was received in the Regional Office on October 25, 2010. The amendment was submitted as a result of a change to the State Law that discontinued the Personal Care Service (PCS) and Personal Care Service Plus (PCS-Plus) and established two new In-Home Personal Care Services (PCS), one for adults and one for children. It also establishes new eligibility criteria for receipt of In-Home PCS. Both coverage and reimbursement of these PCS for individuals living in a private residence, as well as PCS furnished in an Adult Care Home, Family Care Home, or a Supervised Living Home will cease on February 29, 2012 when the State intends to cover all PCS under the authority of section 1915(i) of the Social Security Act.

The State has indicated its intent to move the coverage of PCS to Section 1915(i) of the Social Security Act. Under 1915(i), Home and Community Based Service (HCBS) as a State Plan Option, the State must ensure that all services are provided in a setting that is home and community based in nature, and meet all other requirements for that authority.

CMS further reminds the State that Federal Financial Participation (FFP) under any Medicaid authority is not available for services to individuals residing in institutions for mental disease (IMDs).

The financial page review reflects the changes to the payment methodology for Section 23) In Home Care Services A) Provided as Community Based Services located at 4.19B, Section 23, Page 6 and the removal of the supplemental adjustments noted at 4.19B, Supplement 1, Page 1B.

The approval of this State Plan Amendment relates solely to the availability of FFP for Medicaid covered services. This action does not in any way address the State's independent obligations under the Americans with Disabilities Act or the Supreme Court's Olmstead decision.

Furthermore, the State has assured CMS that each PCS and PCS-Plus recipient who is determined not to qualify for the new In-Home PCS, or for whom there is a reduction in service, will receive a due process notice that explains the reason(s) and informs the recipient of appeal rights and procedures for appealing the adverse decision. These recipients will be entitled to a hearing and maintenance of services throughout the pendency of the appeal.

Based on the information provided, we are now ready to approve the Medicaid State Plan Amendment NC 10-031. This SPA was approved on April 15, 2011. The effective date of this amendment is January 1, 2011. We are enclosing the approved form HCFA-179 and plan pages.

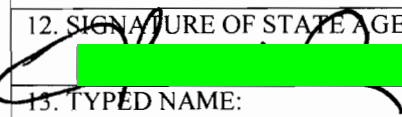
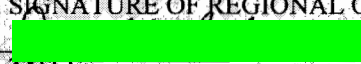
If you have any questions or need any further assistance, please contact Elaine Elmore at (404) 562-7408 or Yvette Moore at (404) 562-7327.

Sincerely,

/s/

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

Enclosures

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL FOR: HEALTH CARE FINANCING ADMINISTRATION		1. TRANSMITTAL NUMBER: 10-031	2. STATE NC
		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 January 1, 2011	
5. TYPE OF PLAN MATERIAL (Check One): <input type="checkbox"/> NEW STATE PLAN <input type="checkbox"/> AMENDMENT TO BE CONSIDERED AS NEW PLAN <input checked="" type="checkbox"/> AMENDMENT			
COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (Separate Transmittal for each amendment)			
6. FEDERAL STATUTE/REGULATION CITATION: CFR 440.167		7. FEDERAL BUDGET IMPACT: a. FFY 2011 (\$ 76,539,557) b. FFY 2012 (\$145,631,706)	
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: Attachment 3.1-A.1, Page 19; Attachment 3.1-B, Page 8, Attachment 3.1-B, Page 9; Attachment 4.19-B, Section 23, page 6; and Attachment 4.19-B, Supplement 1, Page 1b		9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable): Attachment 3.1-A.1, Page 19; Attachment 3.1-B, Page 8, Attachment 3.1-B, Page 9; Attachment 4.19-B, Section 23, page 6; and Attachment 4.19-B, Supplement 1, Page 1b	
10. SUBJECT OF AMENDMENT: Discontinuing Personal Care Services			
11. GOVERNOR'S REVIEW (Check One): <input type="checkbox"/> GOVERNOR'S OFFICE REPORTED NO COMMENT <input checked="" type="checkbox"/> OTHER, AS SPECIFIED: SECRETARY <input type="checkbox"/> COMMENTS OF GOVERNOR'S OFFICE ENCLOSED <input type="checkbox"/> NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL			
12. SIGNATURE OF STATE AGENCY OFFICIAL: 		16. RETURN TO: Office of the Secretary Department of Health and Human Services 2001 Mail Service Center Raleigh, North Carolina 27699-2001	
13. TYPED NAME: Lanier M. Cansler			
14. TITLE: Secretary			
15. DATE SUBMITTED: 10/22/10			
FOR REGIONAL OFFICE USE ONLY			
17. DATE RECEIVED: 10/25/10		18. DATE APPROVED: 04/15/11	
PLAN APPROVED - ONE COPY ATTACHED			
19. EFFECTIVE DATE OF APPROVED MATERIAL: 01/01/11		20. SIGNATURE OF REGIONAL OFFICIAL: 	
21. TYPED NAME: Jackie Glaze		22. TITLE: Associate Regional Administrator Division of Medicaid & Children's Health Opns	
23. REMARKS: Approved with the following changes to items 8 and 9 as authorized by State Agency on emails dated 3/16/11 and 04/06/11. Block #8 Changed to read: Attachment 3.1-A.1 Pages 19 thru 26, pages 27 thru 31; Attachment 4.19-B, Section 23 page 6 and Attachment 4.19-B Supplement 1 page 1b. Block #9 Changed to read: Attachment 3.1-A.1 Pages 19 thru 26; Attachment 4.19-B, Section 23 page 6 and Attachment 4.19-B Supplement 1 page 1b.			

State Plan Under Title XIX of the Social Security Act
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State: North Carolina

Payments for Medical and Remedial Care and Services

Payment for In-Home Care Services for Adults and Children:

Reference: Attachment 4.19-B, Section 23, Page 6

TN No: 10-031
Supersedes
TN No: 09-011

Approval Date: 04-15-11

Eff. Date: 01/01/2011

State Plan Under Title XIX of the Social Security Act
Medial Assistance Program
State: NORTH CAROLINA

24f. Personal Care Services (cont.):

Coverage for PCS for individuals living in an Adult Care Home, Family Care Homes, a Supervised Living Home, and in the recipient's private residence will cease on February 29, 2012 when the State will cover all PCS under section 1915(i) of the Social Security Act.

Settings and Providers:

Personal Care Services are provided in residential settings and in the recipient's private residence, as described below.

PERSONAL CARE SERVICES PROVIDED IN RESIDENTIAL SETTINGS

Personal Care Services are provided in Adult Care Homes, Family Care Homes, and Supervised Living Homes, as defined below.

- a. **Adult Care Homes (ACH):** Adult Care Homes are assisted living residences having seven or more beds. The ACH provides 24-hour scheduled and unscheduled personal care services to all residents. Adult Care Homes are licensed under North Carolina General Statute G.S. 131-D and North Carolina Administrative Code 10A NCAC Subchapters 13F and 13G.
- b. **Family Care Homes (FCH):** Family Care Homes are assisted living residences having two to six beds. The FCH provides 24-hour scheduled and unscheduled personal care services to all residents. Family Care Homes are licensed under G.S. 131-D and North Carolina Administrative Code 10A NCAC Subchapters 13F and 13G.
- c. **Supervised Living Homes (SLH):** Supervised Living Homes are group homes of under seven beds that provide a 24-hour living environment in a non-hospital setting that includes room, board, supervision, and personal assistance for individuals receiving short-term transitional services for mental illnesses, or developmental disabilities. Supervised Living Homes are licensed under North Carolina General Statute G.S. 122-C and North Carolina Administrative Code 10A NCAC 27G.5600.

Services

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 contained in Medicaid Clinical Coverage Policies. Basic Personal Care is for persons needing limited assistance with ADLs. Enhanced Personal Care is provided to individuals needing extensive ADL assistance, particularly with eating, toileting and/or ambulation/locomotion. Services also include supervision of individuals with physical disabilities and cognitive impairments and medication management.

TN No. 10-031
Supersedes
TN. No. 10-026

Approved Date:04-15-11

Eff. Date 01/01/2011

**State Plan Under Title XIX of the Social Security Act
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24f. Personal Care Services (cont.):

Personal care services provided in residential settings include:

- a. Twenty-four hour, seven-day-per-week supervision;
- b. Unscheduled personal care for residents who require assistance to accomplish tasks that they would ordinarily do for themselves if they were not disabled. Qualified activities of daily living for these programs include toileting, eating, ambulation, bathing, personal hygiene, dressing, and transfer; and.
- c. Assistance with medication administration

Eligibility

An individual is eligible for personal care services in adult care homes, family care homes, and supervised living homes when:

- a. An assessment indicates that the individual:
 1. Has a cognitive disorder, chronic or progressive medical condition, or physical disability that impedes his or her ability to self-perform common activities of daily living; and
 2. Is subject to health, safety, and security risks because there is no capable and willing caregiver to assure that his/her health and welfare needs are met in a private residence.
- b. The individual requires at least two of the following:
 1. Ongoing supervision;
 2. Medication administration or assistance;
 3. Assistance with at least two of the following seven ADLs at the limited, extensive, or full dependency level: toileting, eating, ambulation, bathing, personal hygiene, dressing, and transferring;
 4. Assistance with instrumental activities of daily (IADLs), including light housework, meal preparation, shopping, errands, use of telephone, money management, and use of technology.
- c. Individuals residing in Supervised Living Homes must also meet one of the following additional criteria;
 1. Have an Axis I or II mental illness diagnosis or a condition defined as a developmental disability; or
 2. Require ongoing supervision in a licensed residential home for adults with a mental illness or developmental disability.

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24f. **Personal Care Services (cont.):**

- d. Residents of Adult Care Homes, Family Care Homes, and Supervised Living Homes are not required to waive Medicaid coverage for personal care services to receive hospice services when the following criteria are met:
 - 1. An interdisciplinary team determines the recipient needs ACH personal care at the basic or enhanced level and this personal care is more extensive than that provided under hospice services;
 - 2. Such care is documented on the hospice plan of care; and
 - 3. The ACH personal care does not duplicate the services provided by hospice.

North Carolina assures that personal care services do not include and FFP is not available for services to individuals residing in institutions for mental disease (IMDs).

Professional Qualifications for PCS Providers in the Residential Settings

Personal Care Services in Adult Care Homes are provided by ACH paraprofessional aides who qualify as a Personal Care Aide, Nurse Aide I, or Nurse Aide II.

- a. **Personal Care Aide:** Personal Care Aides providing services in the Adult Care Home, Family Care Homes, and Supervised Living Homes setting must meet the staff orientation, training, competency, and continuing education requirements specified in 10A NCAC 13F .0502.

The 80-hour training specified in Rule .0501 of this Section shall consist of at least 34 hours of classroom instruction or and at least 34 hours of supervised practical experience. Competency evaluation shall be conducted in each of the following areas:

- (1) observation and documentation;
- (2) basic nursing skills, including special health-related tasks;
- (3) personal care skills;
- (4) cognitive, behavioral and social care for all residents and, including interventions to reduce behavioral problems for residents with mental disabilities;
- (5) basic restorative services; and
- (6) residents' rights as established by G.S. 131D-21.

- b. **Nurse Aide I:** Nurse Aides at this level must meet the requirements specified 10A NCAC 13D.2001 that defines “nurse aide” as a person who is listed on the North Carolina Nurse Aide Registry and is in compliance with 42 CFR Part 483. North Carolina Administrative Code 21 NCAC 36.0403 further specifies that a Nurse Aide I shall perform basic nursing skills and personal care activities only after successfully completing an approved Nurse Aide I training program and competency evaluation, or competency evaluation program. The licensed nurse shall

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24f. **Personal Care Services (cont.):**

delegate activities to a Nurse Aide I based on the knowledge, skill, training, and competence of the individual aide according to the variables defined in 21 NCAC 36.0401. Pursuant to G.S. 90-171.55, as of April 1, 1992, no individual may function as a Nurse Aide I, regardless of title, to provide nursing care activities, as identified in 21 NCAC 36.0401(a) to residents until the individual has:

1. Successfully completed, in addition to an orientation program specific to the employing facility, a state-approved Nurse Aide I training and competency evaluation program, or its equivalent, or a state-approved competency evaluation program and the employing facility has verified listing on the Division of Health Services Regulation Nurse Aide Registry.
2. The employing agency or facility has assured that the individual is enrolled in a state-approved Nurse Aide I training and competency evaluation program that the individual shall successfully complete within four months of employment date. During the four month period, the individual shall be assigned only tasks for which he or she has demonstrated competence and performs under supervision.

c. **Nurse Aide II:** Nurse aides at this level are authorized to perform more complex nursing skills with emphasis on sterile technique in elimination, oxygenation, and nutrition, after successful completion of state-approved Nurse Aide II training program and competency evaluation program. The licensed nurse shall delegate activities to a Nurse Aide II based on the knowledge, skill, training, and competence of the individual aide according to the variables defined in 21 NCAC 36.0401. Pursuant to G.S. 90-171.55, as of January 1, 1991 no individual may function as a Nurse Aide II until:

1. The facility or agency has verified that each aide providing personal care services has no substantiated findings listed on the North Carolina Health Care Personnel Registry according to G.S 131E-256; and
2. A criminal background check has been conducted in accordance with North Carolina General Statutes G.S. 114-19.10 and G.S. 131D-40.

d. Personal Care Aides, Nurse Aides I, and Nurse Aides II providing services to individuals who need extensive or total assistance with eating, toileting, and/or locomotion/mobility must complete a 25-hour training course with at least 15 hours of classroom instruction and supervised practical experience. This course must include a competency evaluation in the areas of personal care skills; cognitive, behavioral, and social care for all residents, including interventions to reduce behavioral problems; and complying with residential rights as established by G.S. 131D-21.

Each individual who provides or directly supervises Personal Care Aides, Nurse Aides I, and Nurse Aides II that provide personal care services to residents of an adult care home must successfully complete an 80-hour personal care training program and competency evaluation established by the North Carolina Department of Health and Human Services. Training must be successfully completed within six months after hiring. Documentation of the successful

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24f. Personal Care Services (cont.):

- e. completion of the 80-hour training program and competency evaluation must be maintained in the facility and available for review. The following staff are exempt form the 80-hour training program and competency evaluation:
 - 1. Licensed health professionals;
 - 2. Individuals listed on the Nurse Aide Registry;
 - 3. Individuals with documented successful completion of 40-45 hour or 75-80 hour training program or competency evaluation program approved by the Department since January 1, 1996 in accordance with 10A NCAC 13F.0502; or
 - 4. Personal care staffs of family care homes that are licensed for no more than six beds and do not care for individuals with extensive or full dependency needs and have completed a state-approved 25-hour training and competency evaluation program.

Recipient Choice

Recipients receiving PCS in adult care homes, Family Care Homes, and Supervised Living Homes are allowed to choose which home will provide services and, if the aide providing services is not acceptable, the recipient may request another aide to perform the personal care services.

PERSONAL CARE SERVICES PROVIDED IN THE PRIVATE RESIDENCE

Setting

Personal Care Services are provided to qualified individuals living in a private residence. A private residence is defined as a home or apartment privately owned or privately rented by the recipient, his or her family, or unrelated individual who is providing a home for the recipient. For the purposes of In-Home PCS, a private residence does not include any facility, group home, or other living arrangement that provides room and board and other services under any public assistance program. In-Home PCS is not available to individuals who are residents of nursing homes, acute care or rehabilitation facilities; adult care homes; or group homes for individuals who are developmentally disabled or mentally ill.

Services

- a. In-Home PCS include a range of hands-on human assistance provided to persons of all ages with disabilities and chronic conditions to enable them to accomplish tasks that they would ordinarily do for themselves if they were not disabled. These PCS are primarily intended to provide person-to-person, hands on assistance by a paraprofessional aide in the recipient's home with common activities of daily living that, for this program are eating, dressing, bathing, toileting, and mobility.
- b. Assistance with instrumental activities of daily living (IADLs), such as light housekeeping tasks, when directly related to the approved ADLs and the assistance is specified in the recipient's plan of care.

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24f. Personal Care Services (cont.):

- c. In addition to the specified assistance with ADLs and IADLs, qualified PCS Aides may also provide Nurse Aide I and Nurse Aide II tasks as specified on page 21 and 22 pursuant to the North Carolina Board of Nursing as described in 21 NCAC 36.0403 and as specified in the recipient's approved plan of care.

Eligibility

- a. To qualify for In-Home PCS, an adult or child must:
1. Be referred for PCS by his or her primary care or attending physician;
 2. Be medically stable; and
 3. Not require monitoring, supervision, or ongoing care from a licensed health care professional.
- b. Require hands-on assistance with at least:
1. Three of the five qualifying ADLs at the limited level; or
 2. Two of the five qualifying ADLs, one of which is at the extensive level; or
 3. Two of the five qualifying ADLs, one of which is at the full dependency level.
- c. Service Limitations:
1. Up to 80 hours per month for adults with no limits on children; and
 2. Services levels must be re-assessed and re-authorized at least annually.
- d. Service Exclusions:
1. Services provided in an unauthorized location;
 2. Services provided by unauthorized individuals or providers;
 3. The recipient's primary need is housekeeping or homemaking;
 4. The IADLs performed are not directly related to the approved ADLs or as specified in the recipient's plan of care;
 5. Services provided in the month that exceed the authorized monthly limit;
 6. The services provided are not in accordance with the approved plan of care;
 7. There are willing and able family members or other informal caregivers available to provide the assistance;
 8. Companion sitting or leisure time activities;
 9. Medical and non-medical transportation;
 10. Continuous monitoring or ongoing recipient supervision;
 11. Money management;

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24f. **Personal Care Services (cont.):**

12. Non-essential errands;
13. Personal care or home management tasks for other residents of the household; and
14. Cueing, prompting, and coaching for adult recipients.

Professional Qualifications of Aides Providing In-Home PCS

In-Home Personal Care Services are provided by home care agencies licensed under 10A NCAC 13J. Each home care agency approved to provide in-home PCS must be licensed in the county where it is providing services and enrolled with Medicaid as an in-home PCS provider.

- a. Licensed home care agencies are required to perform the following activities to comply with state laws and rules:
 1. Complete background checks on all employees;
 2. Conduct in-home aide competency evaluations and trainings;
 3. Monitor quality of care;
 4. Ensure that in-home aides work under the supervision of a Registered Nurse;
 5. Ensure that In-Home Aides hired are not listed on the North Carolina Health Care Registry as being under investigation or as having a substantiated finding of previous client abuse or neglect, misappropriation of client property, diversion of client or facility/program drugs, or fraud as an employee of one of the reporting health facility types. In-Home Aides under investigation for any of these reasons may not work with recipients until the investigation is completed and the individual is cleared of any crime or misconduct; and
 6. If the client's plan of care requires the in-home aide to provide extensive assistance the in-home aide shall be listed on the Nurse Aide Registry in accordance with North Carolina General Statute G.S. 131E-255. Extensive assistance means a client is totally dependent or requires weight-bearing support more than half the time while performing part of an activity, such as guiding or maneuvering of limbs, and meets one of the following criteria:
 - (a) Requires extensive assistance in more than two activities of daily living; or needs an in-home aide to perform at least one task at the nurse aide II level; or
 - (b) Requires extensive assistance in more than one ADL and has a medical or cognitive impairment. If an individual requires "extensive" assistance the aide must be listed on the Nurse Aide Registry.
- b. Home care agencies are authorized to employ three levels of paraprofessional aide services: Personal Care Aide, Nurse Aide 1, and Nurse Aide II employed by licensed home care agencies as follows:

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24f. Personal Care Services (cont.):

1. Personal Care Aides not listed on the nurse aide registry with documented verification from a supervising nurse that the individual has demonstrated the core competencies for personal care that include the following skills:
 - (a) Assisting with mobility including ambulation, transfers, and bed mobility;
 - (b) Assisting with bath/shower; assisting with toileting; assisting with dressing; assisting with eating; and
 - (c) Assisting with continence needs.
2. Nurse Aide I, as described under Residential PCS above.
3. Nurse Aide II, as described under Residential PCS above.
- c. The home care agency is required to conduct and maintain comprehensive records of the following staff development and training activities:
 1. A new employee orientation for all new aides;
 2. An ongoing staff development and training program appropriate to the job responsibilities of agency staff; and,
 3. Evaluation of the required competencies for In-Home Aides at least annually.
- d. The home care agency shall ensure that agency directors, administrative personnel, RN supervisors, and other agency personnel with management responsibilities attend regional training programs conducted by the Division of Medical Assistance or its designee.
- e. If the client's plan of care requires the in-home aide to provide extensive assistance the in-home aide shall be listed on the Nurse Aide Registry pursuant to North Carolina General Statute 131E-255. Extensive assistance means a recipient is totally dependent or requires weight-bearing support more than half the time while performing part of an activity, such as guiding or maneuvering of limbs, and meets one of the following criteria:
 1. Requires extensive assistance in more than two activities of daily living; or needs an in-home aide to perform at least one task at the nurse aide II level; or
 2. Requires extensive assistance in more than one ADL and has a medical or cognitive impairment. If an individual requires extensive assistance the aide must be listed on the Nurse Aide Registry.
- f. If the client's plan of care requires the in-home aide to provide only limited assistance the in-home aide is not required to be listed on the Nurse Aide Registry. Limited Assistance means care to a client who requires hands-on care involving guided maneuvering of limbs with eating, toileting, bathing, dressing, personal hygiene, self monitoring of medications or other tasks assigned that require weight bearing assistance half the time or less during the activity and does not meet the definition of extensive assistance.

Provider Choice

When the assessment confirms the need for In-Home PCS, the recipient may choose a home care provider from a list of agencies that serve his or her county of residence, or are located within 90 minutes of his or her residence.