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**State/Territory Name:** North Dakota

**State Plan Amendment (SPA) #:** ND-09-011

This file contains the following documents in the order listed:

- 1) Approval Letter
- 2) 179
- 3) Approved SPA Pages

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard, Mail Stop S2-26-12  
Baltimore, Maryland 21244-1850



**Center for Medicaid , CHIP, and Survey & Certification**

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Maggie D. Anderson, Director  
Division of Medical Services  
Department of Human Services  
600 East Boulevard Avenue  
Department 325  
Bismarck, ND 58505-0250

AUG 25 2010

Re: North Dakota 09-011

Dear Ms. Anderson:

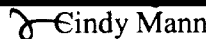
We have reviewed the proposed amendment to Attachment 4.19-D of your Medicaid State plan submitted under transmittal number (TN) 09-011. Effective for services on or after January 1, 2010, this amendment modifies the reimbursement methodology to North Dakota's nursing facility reimbursement section. Specifically, this amendment incorporates legislatively approved increases to the bad debt allowance and education costs.

We conducted our review of your submittal according to the statutory requirements at sections 1902(a)(2), 1902(a)(13), 1902(a)(30), and 1903(a) of the Social Security Act and the implementing Federal regulations at 42 CFR 447 Subpart C. We are pleased to inform you that Medicaid State plan amendment TN 09-011 is approved effective January 1, 2010. The HCFA-179 and the amended plan pages are attached.

If you have any questions, please contact Christine Storey at (303) 844-7044.

Sincerely,

A solid black rectangular box redacting the signature area of the letter.

 Cindy Mann  
Director, CMCS

<b>TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL</b>  <b>FOR: HEALTH CARE FINANCING ADMINISTRATION</b>		1. TRANSMITTAL NUMBER: <b>09-011</b>	2. STATE <b>North Dakota</b>
		3. PROGRAM IDENTIFICATION: <b>TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)</b>	
TO: REGIONAL ADMINISTRATOR HEALTH CARE FINANCING ADMINISTRATION DEPARTMENT OF HEALTH AND HUMAN SERVICES		4. PROPOSED EFFECTIVE DATE <b>January 1, 2010</b>	
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:  <b>42 CR Subpart B 483.1</b>		7. FEDERAL BUDGET IMPACT: a. FFY <u>2010</u> \$ <u>78,829</u> b. FFY <u>2011</u> \$ <u>348,719</u> <b>REVISED 12-7-09</b>	
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:  Attachment 4.19-D, Subsection 1, Page 18 Attachment 4.19-D, Subsection 1, Page 26 & 27 Attachment 4.19-D, Subsection 1, Page 29 Attachment 4.19-D, Subsection 1, Page 33		9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable):  Attachment 4.19-D, Subsection 1, Page 18 Attachment 4.19-D, Subsection 1, Page 26 & 27 Attachment 4.19-D, Subsection 1, Page 29 Attachment 4.19-D, Subsection 1, Page 33	
10. SUBJECT OF AMENDMENT: <b>To amend the State Plan to include bad debt expense and education expense as allowable costs within the nursing facility rate methodology.</b>			
11. GOVERNOR'S REVIEW (Check One): <input type="checkbox"/> GOVERNOR'S OFFICE REPORTED NO COMMENT <input checked="" type="checkbox"/> OTHER, AS SPECIFIED: <input type="checkbox"/> COMMENTS OF GOVERNOR'S OFFICE ENCLOSED <u>Maggie D. Anderson, Director,</u> <input type="checkbox"/> NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL <u>Medical Services Division</u>			
12. SIGNATURE: [Redacted]		16. RETURN TO:  <b>Maggie D. Anderson, Director</b> <b>Division of Medical Services</b> <b>ND Department of Human Services</b> <b>600 East Boulevard Avenue Dept 325</b> <b>Bismarck ND 58505-0250</b>	
13. TYPED NAME: <b>Maggie D. Anderson</b>			
14. TITLE: <b>Director, Division of Medical Services</b>			
15. DATE SUBMITTED: <b>June 22, 2009      REVISED 12-7-09</b>			
<b>FOR REGIONAL OFFICE USE ONLY</b>			
17. DATE RECEIVED:		18. DATE APPROVED: <b>8-25-10</b>	
<b>PLAN APPROVED - ONE COPY ATTACHED</b>			
19. EFFECTIVE DATE OF APPROVED MATERIAL: <b>JAN - 1 2010</b>		20. SIGNATURE OF REGIONAL OFFICIAL: [Redacted]	
21. TYPED NAME: <b>William Lasowski</b>		22. TITLE: <b>Deputy Director, CMCS</b>	
23. REMARKS:			

**Section 10 – Property Costs**

Property related costs and other pass through costs include only those costs identified in this section.

1. Depreciation;
2. Interest expense on capital debt.
3. Property taxes including special assessments as provided for in Section 20 – Taxes.
4. Lease and rental costs.
5. Start up costs.
6. Reasonable legal and related expenses:
  - a. Incurred or as a result of a successful challenge to a decision by a governmental agency, made on or after January 1, 1990, regarding a rate year beginning on or after January 1, 1990.
  - b. Related to legal services furnished on or after January 1, 1990; and
  - c. In the case of a partially successful challenge, not in excess of an amount determined by developing a ratio of total amounts claimed successfully to total amounts claimed in the partially successful challenge and applying that ratio to the total legal and related expenses paid.
7. Allowable Bad Debts expense under Section 17.2 in the report year in which the bad debt is determined to be uncollectable with no likelihood of future recovery.
8. Education expense allowed under Section 12.35 in the report year in which it is expended.

STATE: North Dakota

Attachment 4.19-D  
Subsection 1

32. The following taxes:

- a. Federal income and excess profit taxes, including any interest or penalties paid thereon;
- b. State or local income and excess profit taxes;
- c. Taxes in connection with financing, refinancing, refunding, or refunding operation, such as taxes in the issuance of bonds, property transfers, issuance or transfer of stocks, etc., which are generally either amortized over the life of the securities or depreciated over the life of the asset, but not recognized as tax expense;
- d. Taxes such as real estate and sales tax for which exemptions are available to the provider;
- e. Taxes on property not used in the provision of covered services;
- f. Taxes, such as sales taxes, levied against the residents and collected and remitted by the provider.
- g. Self-employment (FICA) taxes applicable to individual proprietors, partners, members of a joint venture;

33. The unvested portion of a facility's accrual for sick or annual leave;

34. The cost, including depreciation, of equipment or items purchased with funds received from a local or state agency, exclusive of any federal funds;

35. Hair care, other than routine hair care, furnished by the facility;

36. The cost of education unless:

- a. The education was provided by an accredited academic or technical educational facility;
- b. The expenses were for materials, books, or tuition;
- c. The facility claims the cost of the education expense, annually, in an amount not to exceed the lesser of one-half of the individual's education expense or three-thousand-seven-hundred-fifty dollars; and

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TN No: 09-011  
Supersedes  
TN No: 94-001

Approval Date AUG 25 2010 Effective Date: 01-01-2010

STATE: North Dakota

Attachment 4.19-D  
Subsection 1

- d. The amount of education expense claimed for an individual does not exceed fifteen-thousand dollars in the aggregate;
  - e. The facility has a contract with the individual which stipulates a minimum commitment to work for the facility of one-thousand-six-hundred-sixty-four hours of employment for each year education assistance was provided, as well as a repayment plan if the individual does not fulfill the contract obligations.
37. Vacated
38. Employment benefits associated with salary costs are not includable in a rate set under this plan.
39. Increased lease costs of a provider unless:
- a. The lessor incurs increased costs related to the ownership of the facility or a resident-related asset;
  - b. The increased costs related to the ownership are charged to the lessee; and
  - c. The increased costs related to the ownership would be allowable had the costs been incurred directly by the lessee;
40. The direct and indirect costs of providing therapy services to nonresidents or Medicare Part B therapy services, including purchase costs related to providing therapy services if the provider does not want therapy income offset under Section 13.1.k.
41. Costs associated with or paid for the acquisition of licensed nursing facility capacity.
42. Goodwill; and
43. Lease costs in excess of the amount allocable to the leased space as reported on the Medicare Cost Report by a lessor who provides services to recipients of benefits under Title XVIII or Title XIX of the Social Security Act.

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TN No: 09-011  
Supersedes  
TN No: 99-001

Approval Date AUG 25 2010 Effective Date: 01-01-2010

- i. "Rentals of facility space income". Revenues received from outside sources for the use of facility space and equipment will be offset to property costs.
  - j. "Telegraph and telephone income". Revenues received from residents, guests, or employees will be offset to administration costs. Income from emergency answering services need not be offset.
  - k. "Therapy income." Except for income from Medicare Part A, income from therapy services, including Medicare Part B income, must be offset to therapy costs unless the provider chooses to make therapy costs non-allowable under subsection 40 of section 12.
  - l. "Bad Debt Recovery." Income for bad debts which have been previously claimed must be offset to property costs in total in the year of recovery.
  - m. "Other cost-related income." Miscellaneous income, including amounts generated through the sale of a previously expensed item, e.g., supplies or equipment, or amounts generated from default of contractual obligations related to education expense, must be offset to the cost category where the item was expensed.
2. Purchase discounts, allowances, refunds, and rebates are reductions of the cost of whatever was purchased.
3. Payments to a provider by its vendor will ordinarily be treated as purchase discounts, allowances, refunds, or rebates in determining allowable costs even though these payments may be treated as "contributions" or "unrestricted grants" by the provider and the vendor. However, such payments may represent a true donation or grant. Examples include, but are not limited to, when: (1) they are made by a vendor in response to building or other fund raising campaigns in which communitywide contributions are solicited; (2) the volume or value of purchases is so nominal that no relationship to the contribution can be inferred. The provider must provide verification, satisfactory to the department, to support a claim that a payment represents a true donation.
4. Where an owner or other official of a provider directly receives from a vendor monetary payments or goods or services for the owner's or official's own personal use as a result of the provider's purchases from the vendor, the value of such payments, goods, or services constitutes a type of refund or rebate and must be applied as a reduction of the provider's costs for goods or services purchased from the vendor.

**Section 17 – Bad Debts**

1. Bad debts for charges incurred on or after January 1, 1990, and fees paid for the collection of those bad debts are allowable provided that:
  - a. The bad debt results from nonpayment of the payment rate or part of the payment rate.
  - b. The facility documents that reasonable collection efforts have been made, the debt was uncollectible, and there is no likelihood of future recovery. Reasonable collection efforts include pursuing all avenues of collection available to the facility including liens and judgments. In instances where the bad debt is owed by a person determined to have made a disqualifying transfer or assignment of property for the purpose of securing eligibility for medical assistance benefits, the facility shall document that it has made all reasonable efforts to secure payment from the transferee, including the bringing of an action for a transfer in fraud of creditors.
  - c. The collection fee does not exceed the amount of the bad debt.
  - d. The bad debt does not result from the facility's failure to comply with Federal and State laws, State Rules, and Federal Regulations.
  - e. The bad debt does not result from non payment of a private room rate in excess of the established rate, charges for special services, not included in the established rates, or charges for bed hold days not billable to the medical assistance program.
  - f. The facility has an aggressive policy of avoiding bad debt expense which will limit potential bad debts. The facility must document that they will limit potential bad debts. The facility must document that they have taken action to limit bad debts for individuals who refuse to make payment. In no instances may allowable bad debt expense exceed 180 days of resident care per year or an aggregate of three-hundred-sixty-days (360 days) of resident care for any one individual.
2. Finance charges on bad debts which are allowed in subsection 1 are allowable if the finance charges have been offset as interest income in prior years.