

**REVISED 12-8-2010**

<b>TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL</b>		1. TRANSMITTAL NUMBER: <b>10-008</b>	2. STATE <b>North Dakota</b>
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 <b>October 1, 2010 July 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>SSA § 1917(b); 42 CFR § 433.36</b>		7. FEDERAL BUDGET IMPACT: a. FFY <u>2010</u> \$ <u>2,556.00</u> b. FFY <u>2011</u> \$ <u>2,466.00</u>	
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: <b>Section 4, Page 53a Section 4, Page 53a-1 (new) Attachment 4.17-A, Pages 1, 2 &amp; 3</b>		9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable): <b>Section 4, Page 53a Attachment 4.17-A, Pages 1, 2 &amp; 3</b>	
10. SUBJECT OF AMENDMENT: <b>Amends the ND State Plan to update Medicaid Estate Recoveries to conform to MIPPA Section 115 and ARRA Section 5006(c).</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 OF STATE AGENCY OFFICIAL:		16. RETURN TO:	
13. TYPED NAME: <u>Maggie D. Anderson</u>		<b>Maggie D. Anderson, Director Division of Medical Services ND Department of Human Services 600 East Boulevard Avenue Dept 325 Bismarck ND 58505-0250</b>	
14. TITLE: <b>Director, Division of Medical Services</b>			
15. DATE SUBMITTED: <u>9/14/10</u> <b>REVISED 12-8-2010</b>			
<b>FOR REGIONAL OFFICE USE ONLY</b>			
17. DATE RECEIVED: <u>9/14/10</u>		18. DATE APPROVED: <u>12/13/10</u>	
<b>PLAN APPROVED - ONE COPY ATTACHED</b>			
19. EFFECTIVE DATE OF APPROVED MATERIAL: <u>7/1/10</u>		20. SIGNATURE OF REGIONAL OFFICIAL:	
21. TYPED NAME: <u>Richard C. Allen</u>		22. TITLE: <u>ARA, DMICHO</u>	
23. REMARKS:			

Revision HCFA-PM-95-3 (MB)  
May 1995

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: North Dakota

(b) Adjustments or Recoveries (continued)

3. (Continued)

Limitations on Estate Recovery - Medicare Cost Sharing:

- (i) Medical assistance for Medicare cost sharing is protected from estate recovery for the following categories of dual eligibles: QMB, SLMB, QI, QDWI, QMB+, SLMB+. This protection extends to medical assistance for four Medicare cost sharing benefits: (Part A and B premiums, deductibles, coinsurance, co-payments) with dates of service on or after January 1, 2010. The date of service for deductibles, coinsurance, and co-payments is the date the request for payment is received by the State Medicaid Agency. The date of service for premiums is the date the State Medicaid Agency paid the premium.
- (ii) In addition to being a qualified dual eligible the individual must also be age 55 or over. The above protection from estate recovery for Medicare cost sharing benefits (premiums, deductibles, coinsurance, co-payments) applies to approved mandatory (i.e., nursing facility, home and community-based services, and related prescription drugs and hospital services) as well as optional Medicaid services identified in the State plan, which are applicable to the categories of duals referenced above.

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TN No.: 10-008  
Supersedes  
TN No.: NEW

Approval Date: 12/13/10

Effective Date: 7-01-2010

Revision: HCFA-PM-2010 (MB)  
July 2010

## STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: NORTH DAKOTA

## LIENS AND ADJUSTMENTS OR RECOVERIES

1. The State uses the following process for determining that an institutionalized individual cannot reasonably be expected to be discharged from the medical institution and return home.

North Dakota provides written notice to each Medicaid recipient residing in a medical institution that the resident cannot reasonably be expected to be discharged from the medical institution and return home if, before reaching age 55, he or she began residing in a medical institution, resided there continuously for at least six months and did not subsequently reside in other than a medical institution for at least 30 consecutive days. North Dakota thereafter treats that Medicaid recipient as "permanently institutionalized", subject to rights of appeal, and subject to the Medicaid recipient subsequently residing in other than a medical institution for a least 30 consecutive days.

2. The following criteria are used for establishing that a permanently institutionalized individual's son or daughter provided care as specified under regulations at 42 CFR §433.36(f):

Not applicable because North Dakota does not use TEFRA liens.

3. The State defines the terms below as follows:

- Estate – North Dakota defines the estate as those assets which are, under state law, that part of the decedent's probate estate or that part of the decedent's surviving spouse's probate estate which is subject to the claims of creditors.
- Individual's home
- Equity interest in the home
- Residing in the home for at least one or two years on a continuous basis, and
- Lawfully residing.
- Discharge from the medical institution and return home.

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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
State: NORTH DAKOTA  
LIENS AND ADJUSTMENTS OR RECOVERIES (continued)

4. The State defines undue hardship as follows:

State law provides that a surviving spouse and, in specified circumstances children of the decedent, may claim a specified value of property, a family allowance (for living expenses), and a homestead as exempt from the claims of any creditor. North Dakota defines an undue hardship to exist when a proper person claims an exemption (North Dakota does apply federally specified recovery limitations.)

A "proper person" is a commonsense expression recognizing that a minor child, an individual with disabilities, or an elder affected by infirmity, may be unable to act in his or her behalf and so have to rely upon a fiduciary. The term includes a guardian, custodian, or attorney-in-fact under a power of attorney.

5. The following standards and procedures are used by the State for waiving estate recoveries when recovery would cause an undue hardship, and when recovery is not cost-effective:

The probate court determines the entitlement of persons claiming undue hardship and whether other heirs have rights superior to a Medicaid estate claim. Notice to heirs is accomplished by presenting a claim; the court-appointed personal representative is responsible to notice heirs. North Dakota will compromise and settle claims or defer payment of claims in instances in which the action would better serve the taxpayers.

A compromise, settlement or deferral would:

- "Better serve taxpayers" if to do so would, or likely would, produce a greater net return of public funds, considering the possible costs of litigation and the amounts known to be potentially available for collection (essentially, a cost-benefit analysis);
- Be decided by the staff of the Medicaid agency, usually in considering the recommendations of the staff involved in attempting collection.

An undue hardship may exist if the decedent's surviving spouse or, in specific circumstances, the decedent's child or children, requests up to \$15,000 in estate personal property, a family allowance (for living expenses) of not more than \$2,250 per month, or a total of \$27,000, and a homestead not exceeding \$100,000 in values; The probate court would determine whether the claimant is a surviving spouse or child as claimed, whether the value of the claimed property and homestead is within the limits, and whether the requested family allowance is reasonable.

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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: NORTH DAKOTA

LIENS AND ADJUSTMENTS OR RECOVERIES (continued)

6. The State defines cost-effective as follows (include methodology/thresholds used to determine cost-effectiveness):

North Dakota does not initiate recovery in instance in which the estimated costs of recovery together with the estimated total of other claims with preference over the Medicaid claim exceeds or nearly exceeds the assets in the decedent's estate.

The cost of submitting or litigating an estate claim can be estimated but not known with certainty. The phrase "nearly exceeds" recognizes that uncertainty and allows a claim to be forgone or abandoned if the estimated gain is disproportionately small. It is not a number that can be quantified except on a case-by-case basis.

Informal estate recovery is limited to estates that have a total asset value of no more than \$50,000, include no real property, and involve no person who could assert a hardship claim. In such estates, North Dakota statutes permit the Medicaid Agency to act as the decedent's "successor", and to collect the decedent's personal property by providing an affidavit to anyone in possession of that property. The primary sources of informal collections are bank accounts in very small estates. More rarely, motor vehicles or other valuable personal property may be collected and liquidated.

The State uses the following collection procedures (including specific elements contained in the advance notice requirement, the method for applying for a waiver, hearing and appeals procedures, and time frames involved):

North Dakota pursues recovery both formally and informally. Notice to heirs (whether for undue hardship or simply because we have presented a claim) is accomplished by the presenting of a claim. The probate court determines the entitlement of persons claiming undue hardship and whether others have rights superior to our Medicaid claim(s). The court-appointed personal representative is responsible to notice heirs. The time for filing claims, the order of payment of claims, and appeal to the court are established in State law.

7. American Indian and Alaskan Native income, resources, and property that were exempt from estate recovery as of April 1, 2003, under Federal instructions in the State Medicaid Manual, remains exempt from Medicaid estate recovery pursuant to section 1917(b)(3)(B) of the Act.
8. Estate recoveries are conducted by North Dakota's Economic Assistance Division.

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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: NORTH DAKOTA

LIENS AND ADJUSTMENTS OR RECOVERIES (continued)

9. North Dakota defines the estate as those assets which are, under State law, that part of the decedent's probate estate or that part of the decedent's surviving spouse's probate estate which is subject to the claims of creditors. State law determines the priority of claims.
10. North Dakota exempts from estate recovery all Medicare Savings Program cost sharing benefits with dates of service on or after January 1, 2010 for qualified dual eligibles age 55 and over, but otherwise pursues estate recovery for all Medicaid expenditures made for persons over the age of 65, and, beginning October 1, 1993, for all Medicaid expenditures made for persons between ages of 55 and 65. There is otherwise no distinction made between the services or items provided to the recipient. Federally specified recovery limitations are applied. North Dakota does not use TEFRA liens.
11. State law requires that the Department of Human Services be furnished a copy of an application or petition for appointment of a personal representative in every estate, and thus the estate has a responsibility to inform the Department of any probate action. County social service board personnel monitor cases closed because a recipient has died, and follow up to determine whether recovery action is appropriate or necessary. Formal claims are presented directly to the court by the Department.
12. North Dakota pursues recovery both formally and informally. Notice to heirs (whether for undue hardship or simply because we have presented a claim) is accomplished in North Dakota by the presenting of a claim. The probate court determines the entitlement of persons claiming undue hardship and whether other heirs have rights superior to our Medicaid claim(s). The court-appointed personal representative is responsible to recognize heirs.

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