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**State/Territory Name:** North Dakota

**State Plan Amendment (SPA) #:** ND-15-0004

This file contains the following documents in the order listed:

- 1) Approval Letter
- 2) CMS 179 Form/Summary Form (with 179-like data)
- 3) Approved SPA Pages

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
1961 Stout Street, Room 08-148  
Denver, CO 80294



**Region VIII**

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October 29, 2015

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

RE: North Dakota #15-0004

Dear Ms. Anderson:

We have reviewed the proposed State Plan Amendment (SPA) submitted under transmittal number (TN) 15-0004. This amendment will update Medicaid Estate Recoveries to conform to MIPPA Section 115 and ARRA Section 5006(c), primarily to exclude the Medicaid Expansion population from Estate Recovery.

Please be informed that this State Plan Amendment was approved today with an effective date of August 1, 2015. We are enclosing the CMS-179 and the amended plan page(s).


If you have any questions concerning this amendment, please contact Kirstin Michel at (303) 844-7036.

Sincerely,

/s/

Richard C. Allen  
Associate Regional Administrator  
Division for Medicaid and Children's Health Operations

CC: Maggie Anderson, ND  
Kathy Rodin, ND

<b>TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL</b>		1. TRANSMITTAL NUMBER: <b>15-0004</b>	2. STATE <b>North Dakota</b>
<b>FOR: CENTERS FOR MEDICARE AND MEDICAID SERVICES</b>		3. PROGRAM IDENTIFICATION: <b>TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)</b>	
TO: REGIONAL ADMINISTRATOR CENTERS FOR MEDICARE AND MEDICAID SERVICES DEPARTMENT OF HEALTH AND HUMAN SERVICES		4. PROPOSED EFFECTIVE DATE <b>August 1, 2015</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>2015</u> \$ <u>not able to determine</u> b. FFY <u>2016</u> \$ <u>not able to determine</u>	
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: <b>Section 4, Page 53a and 53d Attachment 4.17-A, Pages 1, 2, 3 &amp; 4</b>		9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable): <b>Section 4, Page 53a and 53d Attachment 4.17-A, Pages 1, 2, 3 &amp; 4</b>	
10. SUBJECT OF AMENDMENT: <b>Amends the ND State Plan to update Medicaid Estate Recovery provisions.</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, Executive Director,</u> <input type="checkbox"/> NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL <u>Department of Human Services</u>			
12. SIGNATURE: 	16. RETURN TO: <b>Maggie D. Anderson, Executive Director ND Department of Human Services 600 East Boulevard Avenue Dept 325 Bismarck ND 58505-0250</b>		
13. TYPED NAME: <b>Maggie D. Anderson</b>			
14. TITLE: <b>Executive Director, Department of Human Services</b>			
15. DATE SUBMITTED: <b>Submitted 8-10-2015</b>			
<b>FOR REGIONAL OFFICE USE ONLY</b>			
17. DATE RECEIVED: <b>8/10/15</b>	18. DATE APPROVED: <b>10/29/15</b>		
<b>PLAN APPROVED - ONE COPY ATTACHED</b>			
19. EFFECTIVE DATE OF APPROVED MATERIAL: <b>8/1/15</b>	20. SIGNATURE OF REGIONAL OFFICIAL: <i>/s/</i>		
21. TYPED NAME: <b>Richard C. Allen</b>	22. TITLE: <b>ARA, DMCHO</b>		
23. REMARKS:			

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 "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.

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TN No.: 15-0004  
Supersedes  
TN No.: 10-008

Approval Date: 10/29/15

Effective Date: 8-1-2015

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 (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 or allowance (North Dakota does apply federally specified recovery limitations.)

A proper person is a person who was, for a substantial period of time during decedent's lifetime and after decedent's death remains, dependent upon the decedent's assets for life's necessities (food, clothing, shelter, etc.)

A "proper person" may be a representative and 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.

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TN No.: 15-0004  
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July 2010

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 and 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 the Department's Legal Advisory Unit.

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TN No.: 15-0004  
Supersedes  
TN No.: 10-008

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Effective Date: 8-1-2015

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 (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. Effective August 1, 2015, except for the portion of the payment made to a private carrier for nursing facility services, home and community-based services, and related hospital and pharmacy services, exempts from estate recovery payments made on behalf of recipients eligible for Medicaid Expansion who receive coverage through a private carrier.
12. 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.
13. 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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TN No.: 15-0004  
Supersedes  
TN No.: 10-008

Approval Date: 10/29/15

Effective Date: 8-1-2015

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

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: NORTH DAKOTA

(b) Adjustments or Recoveries

The State complies with the requirements of section 1917(b) of the Act and regulations at 42 CFR 433.36(h)-(i).

Adjustments or recoveries for Medicaid claims correctly paid are as follows:

- (1) For permanently institutionalized individuals, adjustments or recoveries are made from the individual's estate or upon sale of the property subject to a lien imposed because of medical assistance paid on behalf of the individual for services provided in a nursing facility, ICF/MR, or other medical institution.

X Adjustments or recoveries are made for all other medical assistance paid on behalf of the individual.

- (2) X The State determines "permanent institutional status" of individuals under the age of 55 other than those with respect to whom it imposes liens on real property under §1917(a)(1)(B) (even if it does not impose those liens).

- (3) Recovers for all services, for recipients age 55 and over, except for Medicare Cost Sharing as identified in Section 4.17(b)(3 – continued).

X In addition to adjustments or recovery of payments for services listed above, payments are adjusted or recovered for other services under the State plan as listed below:

North Dakota exempts from estate recovery all Medicare Savings Program benefits with dates of service on or after January 1, 2010, 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 55 and 65. There is otherwise no distinction made between the services or items provided to the recipient.

Effective August 1, 2015, except for the portion of the payment made to a private carrier for nursing facility services, home and community-based services, and related hospital and pharmacy services, exempts from estate recovery, payments made on behalf of recipients eligible for Medicaid Expansion who receive coverage through a private carrier.

TN No.: 15-0004  
Supersedes  
TN No.: 10-008

Approval Date: 10/29/15

Effective Date: 8-1-2015



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

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: NORTH DAKOTA

(d) ATTACHMENT 4.17-A

- (1) Specifies the procedures for determining that an institutionalized individual cannot reasonably be expected to be discharged from the medical institution and return home. The description of the procedure meets the requirements of 42 CFR 433.36(d).
- (2) Specifies the criteria by which a son or a daughter can establish that he or she has been providing care, as specified under 42 CFR 433.36(f).
- (3) Defines "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.

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TN No.: 15-0004  
Supersedes  
TN No.: 95-016

Approval Date: 10/29/15

Effective Date: 08/01/2015