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State/Territory Name: North Dakota

State Plan Amendment (SPA) #: 18-0015

This file contains the following documents in the order listed:

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

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



REGION VIII – DENVER

October 1, 2018

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

RE: North Dakota #18-0015

Dear Ms. Anderson:

We have reviewed the proposed State Plan Amendment (SPA) submitted under transmittal number (TN) 18-0015. This amendment adds the eligibility group described at section 1902(a)(10)(A)(ii)(VI) of the Social Security Act and implemented at 42 CFR 435.217 of the regulations to North Dakota Medicaid's State Plan. The SPA also allows parental resources to be disregarded from consideration in determining eligibility for children under that group.

During the review of this state plan, CMS identified language pertaining to annuities that did not comply with federal requirements. During a conversation between CMS and the state of North Dakota on August 31, 2018, it was agreed that CMS would issue a companion letter along with the approval of the SPA. That letter is included as part of this approval package.

Please note that this State Plan Amendment, ND-18-0015, was approved on September 28, 2018 and has an effective date of July 1, 2018. Enclosed with this approval package are the CMS-179, the approved pages, and the companion letter.

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

Sincerely,



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

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



REGION VIII - DENVER

October 1, 2018

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

Dear Ms. Anderson:

This letter is being sent as a companion to the Centers for Medicare and Medicaid Services' (CMS) approval of North Dakota's State Plan Amendment (SPA) 18-0015, which proposed to add the eligibility group described at section 1902(a)(10)(A)(ii)(VI) of the Social Security Act ("Act") and implemented at 42 CFR §435.217 of the regulations to North Dakota Medicaid's State Plan. This SPA also proposed, under the authority of section 1902(r)(2) of the Act, to disregard parental resources from consideration in determining eligibility for children under that eligibility group.

As part of its review of North Dakota's SPA, CMS found state plan pages containing material that is inconsistent with federal law. On supplement 8b to attachment 2.6-A, pages 5-7, North Dakota lists several requirements for the treatment of annuities which must be met in order to exempt annuities from being considered as an available resource in a Medicaid eligibility determination.

Separate from the evaluation of whether a purchased annuity is an asset transfer for less than fair market value is the determination of whether the annuity is a source of income or a countable resource. For individuals who seek eligibility on the basis of being 65 years old or older, or having blindness or disability, this would be determined, as required by sections 1902(a)(17) and 1902(r)(2) of the Act, based on the financial eligibility methodologies of the supplemental security income (SSI) program, unless North Dakota has received approval to apply a more restrictive methodology relating to annuities that was in North Dakota's 1972 state plan under section 1902(f) of the Act. Generally, while the income stream provided by a financial instrument such as an annuity is appropriately considered income, under SSI methodologies, a financial instrument is only a resource when an individual has an ownership interest in the instrument and has the authority to convert its corpus to cash and use the cash for his or her maintenance needs. Ordinarily, an individual who purchases an annuity has surrendered the funds used for the purchase in exchange for periodic payments. It appears, however, that the annuity policy described on supplement 8b to attachment 2.6-A, pages 5-7, of North Dakota's state plan deems the funds used to purchase an annuity as available to an individual who purchases the annuity, without regard to whether the corpus of the annuity is actually available to the individual under SSI rules. It further does not appear that the annuity policy described on these pages is a policy that was part of North Dakota's 1972 state plan.



CMS discussed its concerns with the state regarding its treatment of annuities on August 31, 2018. This letter follows that conversation. North Dakota could either revise pages 5-7 of Supplement 8b to Attachment 2.6-A to remove paragraph 9 (“The value of an annuity that meets the following criteria is excluded”) or revise paragraph 9 to only count the corpus of annuities as an available resource when the corpus is available to the annuitant.

Please respond within 90 days of receipt of this letter with either an explanation of why North Dakota’s treatment of annuities is consistent with sections 1902(a)(17) and 1902(r)(2) of the Act or submit a SPA to bring the state plan into compliance. During this 90-day period, CMS welcomes the opportunity to work with you and your staff. Should you or your staff have any questions, please contact Stephanie Kaminsky, Director, Division of Medicaid Eligibility and Policy at Stephanie.Kaminsky@cms.hhs.gov.

Sincerely,



Richard C. Allen
Associate Regional Administrator
Division of Medicaid & Children’s Health Operations

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL		1. TRANSMITTAL NUMBER: 18-0015	2. STATE North Dakota
FOR: CENTERS FOR MEDICARE AND MEDICAID SERVICES		3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)	
TO: REGIONAL ADMINISTRATOR CENTERS FOR MEDICARE AND MEDICAID SERVICES DEPARTMENT OF HEALTH AND HUMAN SERVICES		4. PROPOSED EFFECTIVE DATE July 1, 2018	
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: 42 CFR 435 217; Sec 1902(r)(2) SSA (allowing for disregards)		7. FEDERAL BUDGET IMPACT: a. FFY <u>2018</u> SNONE b. FFY <u>2019</u> SNONE	
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: Attachment 2.2-A Page 11 Supplement 8b to Attachment 2.6-A Page 9		9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable): Attachment 2.2-A Page 11	
10. SUBJECT OF AMENDMENT: This amendment adds eligibility to the state plan pursuant to 42 CFR §435.217 and allows for the exclusion of resources of parents of children who receive home and community based resources under this eligibility group.			
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 REGIONAL OFFICIAL: 		16. RETURN TO: Maggie D. Anderson, Director Medical Services Division ND Department of Human Services 600 East Boulevard Avenue Dept 325 Bismarck ND 58505-0250	
13. TYPED NAME: Maggie D. Anderson			
14. TITLE: Director, Medical Services Division			
15. DATE SUBMITTED: 8-14-18			
FOR REGIONAL OFFICE USE ONLY			
17. DATE RECEIVED: August 14, 2018		18. DATE APPROVED: September 28, 2018	
PLAN APPROVED - ONE COPY ATTACHED			
19. EFFECTIVE DATE OF APPROVED MATERIAL: July 1, 2018		20. SIGNATURE OF REGIONAL OFFICIAL: 	
21. TYPED NAME: Richard C. Allen		22. TITLE: Associate Regional Administrator	
23. REMARKS:			

State/Territory North Dakota

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

42 CFR 435.217

- X 4. A group or groups of individuals who would be eligible for Medicaid under the plan if they were in a NF or an ICF/MR, who but for the provision of home and community-based services under a waiver granted under 42 CFR Part 441, Subpart G would require institutionalization, and who will receive home and community-based services under the waiver. The group or groups covered are listed in the waiver request. This option is effective on the effective date of the State's section 1915(c) waiver under which this group(s) is covered. In the event an existing 1915(c) waiver is amended to cover this group(s), this option is effective on the effective date of the amendment.

*Agency that determines eligibility for coverage. ND Dept. of Human Services.

TN No. 18-0015
Supersedes
TN No. 94-004

Approval Date 9/28/18

Effective Date 07/01/2018

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: NORTH DAKOTA

MORE LIBERAL METHODS OF TREATING RESOURCES
UNDER SECTION 1902(r)(2) OF THE ACT*

X Section 1902(f) State _____ Non-Section 1902(f) State

11. The State disregards parental assets (resources) for children who are eligible for Medicaid under 42 CFR 435.217.