

COVID-19 Section 1115(a) Demonstration Application Template

The State of North Dakota, Department of Human Services proposes emergency relief as an affected state, through the use of section 1115(a) demonstration authority as outlined in the Social Security Act (the Act), to address the multi-faceted effects of the novel coronavirus (COVID-19) on the state's Medicaid program.

I. DEMONSTRATION GOAL AND OBJECTIVES

Effective retroactively to March 1, 2020, the State of North Dakota, seeks section 1115(a) demonstration authority to operate its Medicaid program without regard to the specific statutory or regulatory provisions (or related policy guidance) described below, in order to furnish medical assistance in a manner intended to protect, to the greatest extent possible, the health, safety, and welfare of individuals and providers who may be affected by COVID-19. Specifically, this demonstration action tests whether, in the context of the current COVID-19 public health emergency (PHE), an exemption from the regulatory prohibition in 42 C.F.R. § 438.6(b)(1) promotes the objectives of Medicaid. CMS will investigate how relaxing this regulatory requirement to permit retroactive risk sharing results in either increased or decreased payments to plans, given the significant fluctuations in utilization that may occur during a pandemic. In addition, CMS will evaluate whether payments under the retroactive risk mitigation arrangements are developed in accordance with all applicable requirements in 42 C.F.R. § 438, including §§ 438.4 and 438.5, and generally accepted actuarial principles and practices. CMS will ascertain whether the harms contemplated by the 2020 managed care final rule, i.e., the implementation of risk mitigation after the start of the rating period may not truly reflect shared risk, are outweighed by the harms of not allowing retroactive risk sharing during a public health emergency, i.e., substantially inaccurate or inequitable payments, given the severe disruption in utilization. In addition, CMS will analyze what the state and managed care plans ultimately negotiate as a result of the implementation of retroactive risk sharing, and this analysis will inform future rulemaking about potential exceptions to retroactive risk mitigation including guardrails that will be required in such agreements.

To that end, the expenditure authority is expected to support the state with making appropriate, equitable payments during the PHE to help maintain beneficiary access to care, and to facilitate meeting any alternative or additional objectives specified by the state in its requests for the demonstration authority. This exemption allows the state to enter into a risk mitigation arrangement with a Medicaid managed care plan after the applicable contract period has begun, provided that the contract and rating period begin or end during the COVID-19 PHE.

This authority is effective regardless of whether the state substantially complied with the regulation by, for example, submitting unsigned contracts and rate certification documents for CMS review either before or after the effective date of the new regulation but before the start of the rating period.

II. DEMONSTRATION DELIVERY SYSTEM PROJECT FEATURES

A. Delivery System:

Check to Apply	Delivery System Description
X	The health care delivery system for the provision of services under this demonstration will be implemented in the same manner as under the state's current state plan.
	Other as described here: <i>[state to insert description]</i>

III. ENROLLMENT AND EXPENDITURE PROJECTIONS

- A. **Enrollment and Enrollment Impact.** This demonstration will not impact the eligibility, enrollment, or coverage of Medicaid beneficiaries. The state projects that the Medicaid managed care plans impacted by this demonstration will continue to provide coverage for approximately 22,200 individuals for the CY20 period of the demonstration and 28,700 individuals for the CY21 period of the demonstration.
- B. **Expenditure Projection.** The state projects that the total aggregate expenditures associated with this section 1115 demonstration will be \$292,194,944 for the CY20 period and \$387,190,697 for the CY21 period.

In light of the unprecedented emergency circumstances associated with the COVID-19 pandemic and consistent with the President's proclamation that the COVID-19 outbreak constitutes a national emergency consistent with section 1135 of the Act, and the time-limited nature of demonstrations that would be approved under this opportunity, the Department will not require the state to submit budget neutrality calculations for section 1115 demonstration projects designed to combat and respond to the spread of COVID-19. In general, CMS has determined that the costs to the Federal Government are likely to have otherwise been incurred and allowable. The state will still be required to monitor and descriptively evaluate the effectiveness of the risk mitigation arrangements

implemented as part of the state's response to the public health emergency through this opportunity. Due to the COVID-19 public health emergency (PHE), this demonstration is deemed budget neutral.

IV. EXPENDITURE AUTHORITY

The only authority available under this section 1115 demonstration opportunity is the expenditure authority provided below. Note: Any requests for waiver or expenditure authorities in addition to those identified in this template will not be considered.

Expenditure Authority

Pursuant to section 1115(a)(2) of the Act, the state is requesting the following expenditure authority:

Permit North Dakota to add or modify risk sharing mechanisms such as reinsurance, risk corridors, or stop-loss limits after the start of a rating period provided that the contract and rating period(s) begin or end during the COVID-19 PHE. This expenditure authority exempts the state from compliance with the requirements under 42 C.F.R. § 438.6(b)(1) and allows [STATE] to add or modify the risk sharing mechanism(s) after the start of the rating period as specified in the state's contracts with its Medicaid managed care plans. The authority would exempt, as necessary, states from compliance with the current requirements in section 438.6(b)(1), until the end of the PHE. The authority would allow one or more retroactive risk mitigation arrangements to remain in place even if the state and the managed care plan had agreed to these arrangements after the requirements in section 438.6(b)(1) became effective. This authority is effective regardless of whether the state substantially complied with the regulation by, for example, submitting unsigned contracts and rate certification documents for CMS review either before or after the effective date of the new regulation but before the start of the rating period. This authority lasts only for the duration of the PHE.

More specifically, if the contract and rating period(s) begin or end during the COVID-19 PHE and the contract was signed prior to the last day of the PHE, the state can retroactively implement one or more risk sharing arrangements for the full duration of the rating period. If the rating period(s) ended on or after March 1, 2020 and ended prior to the last day of the PHE, the state can retroactively implement one or more risk sharing arrangements for the full duration of the rating period. If the rating period began after March 1, 2020, and prior to the last day of the PHE, the state can retroactively implement one or more risk sharing arrangements for the full duration of the rating period. A state can only retroactively implement risk sharing arrangements for multiple rating periods if the contract signature criteria as well as the rating period beginning and ending criteria are met for each rating period.

V. PUBLIC NOTICE

Pursuant to 42 C.F.R. § 431.416(g), the state is exempt from conducting a state public notice and input process as set forth in 42 C.F.R. § 431.408 to expedite a decision on this section 1115 demonstration that addresses the COVID-19 public health emergency.

VI. EVALUATION REQUIREMENTS

A. Evaluation Hypotheses and Design Parameters. The demonstration will test how the expenditure authority permitting retroactive risk mitigation arrangements with Medicaid managed care plans support the state with making appropriate, equitable payments during the course of the COVID-19 public health emergency to help maintain beneficiary access to care. The parameters of the state’s Evaluation Design, which will be expected no later than 180 calendar days after the approval of the demonstration, will support an evaluation that will advance CMS’s understanding of the successes and challenges in implementing potential exceptions to retroactive risk mitigation through future rulemaking.

CMS will provide further guidance on appropriate evaluation questions for the Evaluation Design.

B. Final Report. The state is required to prepare and submit a Final Report, that will consolidate the monitoring and evaluation reporting requirements for this section 1115 demonstration authority. The draft Final Report will be due to CMS 12 months after the expiration of the demonstration approval period. The Final Report should provide analysis and discussion of qualitative and descriptive data to address evaluation questions that support understanding the successes, challenges, and lessons learned in implementing the demonstration. Per 42 C.F.R. § 431.428, the Final Report will also capture all *applicable* requirements stipulated for an annual report (e.g., incidence and results of any audits, investigations or lawsuits, or any state legislative developments that may impact the demonstration). CMS will provide further guidance on the scope, structure, and content of the Final Report.

In the event that the demonstration authority is approved in the 60 days after the end of the federal PHE, CMS will coordinate with the state to establish a reasonable timeline for the due dates of the Evaluation Design and the Final Report.

VII. STATE CONTACT AND SIGNATURE

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Authorizing Official (Signature): 

Date: 3/9/2022

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