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State/Territory Name: North Dakota

State Plan Amendment (SPA) #: 21-0014

This file contains the following documents in the order listed:

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

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
601 E. 12th Street, Suite 355
Kansas City, MO 64106



Medicaid & CHIP Operations Group

September 9, 2021

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

RE: North Dakota State Plan Amendment (SPA) 21-0014

Dear Ms. Knapp:

We have reviewed the State Plan Amendment (SPA) submitted under transmittal number 21-0014. This SPA amends the State Plan to update the language on advance directives to coincide with state law changes.

Please be informed that this SPA was approved on September 9, 2021, with an effective date of July 1, 2021. Enclosed are the CMS-179 and SPA pages.

Should you have any questions about this amendment, please contact Curtis Volesky at (303) 844-7033.

Sincerely,



A black rectangular redaction box covers the signature area of the letter.

Digitally signed by James
G. Scott -5
Date: 2021.09.09 15:45:26
-05'00'

James G. Scott, Director
Division of Program Operations

Enclosures

cc: Krista Fremming, krfremming@nd.gov
Stacey Koehly, skoehly@nd.gov
LeeAnn Thiel, lthiel@nd.gov

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL FOR: CENTERS FOR MEDICARE AND MEDICAID SERVICES		1. TRANSMITTAL NUMBER: 21-0014	2. STATE North Dakota
		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, 2021	
5. TYPE OF PLAN MATERIAL (<i>Check One</i>): <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 (<i>Separate Transmittal for each amendment</i>)			
6. FEDERAL STATUTE/REGULATION CITATION: 1902(a)(58) and 1902(w) of the Act		7. FEDERAL BUDGET IMPACT: a. FFY <u>2021</u> \$ <u>0</u> b. FFY <u>2022</u> \$ <u>0</u>	
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: Pages 45(a) and 45(b) Attachment 4.34-A, Pages 1-3		9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (<i>If Applicable</i>): Pages 45(a) and 45(b) (TN 03-018) Attachment 4.34-A, Pages 1-21 (TN 92-02)	
10. SUBJECT OF AMENDMENT: Amends the State Plan to update the language regarding state law regarding advance directives.			
11. GOVERNOR'S REVIEW (<i>Check One</i>): <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>Caprice Knapp, 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: Caprice Knapp, Director Medical Services Division ND Department of Human Services 600 East Boulevard Avenue Dept 325 Bismarck ND 58505-0250	
13. TYPED NAME: Caprice Knapp			
14. TITLE: Director, Medical Services Division			
15. DATE SUBMITTED: July 23, 2021			
FOR REGIONAL OFFICE USE ONLY			
17. DATE RECEIVED: July 23, 2021		18. DATE APPROVED: September 9, 2021	
PLAN APPROVED – ONE COPY ATTACHED			
19. EFFECTIVE DATE OF APPROVED MATERIAL: July 1, 2021		I. OFFICIAL:  Digitally signed by James G. Scott -S Date: 2021.09.09 15:46:04 -05'00'	
21. TYPED NAME: James G. Scott		22. TITLE: Director, Division of Program Operations	
23. REMARKS: State approved change to add superseded TNs in box 9.			

Revision: HCFA-PM-91-9
October 1991

State/Territory: North Dakota

Citation

1902 (a)(58)

1902(w)

4.13

(e)

For each provider receiving funds under the plan, all the requirements for advance directives of section 1902(w) are met:

- (1) Hospitals, nursing facilities, providers of home health care or personal care services, hospice programs, managed care organizations, prepaid inpatient health plans, prepaid ambulatory health plans (unless the PAHP excludes providers in 42 CFR 489.102), and health insuring organizations are required to do the following:
 - (a) Maintain written policies and procedures with respect to all adult individuals receiving medical care by or through the provider or organization about their rights under State law to make decisions concerning medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives.
 - (b) Provide written information to all adult individuals on their policies concerning implementation of such rights;
 - (c) Document in the individual's medical records whether or not the individual has executed an advance directive;
 - (d) Not condition the provision of care or otherwise discriminate against an individual based on whether or not the individual has executed an advance directive;
 - (e) Ensure compliance with requirements of State Law (whether

Revision: HCFA-PM-91-9
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statutory or recognized by the courts) concerning advance directives; and

(f) Provide (individually or with others) for education for staff and the community on issues concerning advance directives.

(2) Providers will furnish the written information described in paragraph (1)(a) to all adult individuals at the time specified below:

(a) Hospitals at the time an individual is admitted as an inpatient.

(b) Nursing facilities when the individual is admitted as a resident.

(c) Providers of home health care or personal care services before the individual comes under the care of the provider;

(d) Hospice program at the time of initial receipt of hospice care by the individual from the program; and

(e) Managed care organizations, health insuring organizations, prepaid inpatient health plans, and prepaid ambulatory health plans (as applicable) at the time of enrollment of the individual with the organization.

(3) Attachment 4.34-A describes law of the State (whether statutory or as recognized by the courts of the State) concerning advance directives.

_____ Not applicable. No State law or court decision exist regarding advance directives.

Revision: HCFA-PM-91-9 (MB)
November 1991

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE: North Dakota

**REQUIREMENTS FOR ADVANCE DIRECTIVES UNDER
STATE PLANS FOR MEDICAL ASSISTANCE**

The following is a written description of the law of the State (whether statutory or as recognized by the courts of the State) concerning advance directives. If applicable, States should include definitions of living will, durable power of attorney for health care, durable power of attorney, witness requirements, special State limitations on living will declarations, proxy designation, process information and State forms, and identify whether State law allows for a health care provider or agent of the provider to object to the implementation of advance directives on the basis of conscience.

North Dakota State law provides for adults to execute a health care directive. Following is a summary of principal pieces of State law.

"Agent" means an adult to whom authority to make health care decisions is delegated under a health care directive for the individual granting the power.

"Health care directive" means a written instrument that complies with state law and includes one or more health care instructions, a power of attorney for health care, or both.

"Health care instruction" means an individual's direction concerning a health care decision for the individual, including a written statement of the individual's values, preferences, guidelines, or directions regarding health care directed to health care providers, others assisting with health care, family members, an agent, or others.

"Principal" means an adult who has executed a health care directive.

A principal may execute a health care directive. A health care directive may include one or more health care instructions to health care providers, others assisting with health care, family members, and a health care agent. A health care directive may include a power of attorney to appoint an agent to make health care decisions for the principal when the principal lacks the capacity to make health care decisions, unless otherwise specified in the health care directive. Subject to State law and any express limitations set forth by the principal in the health care directive, the agent has the authority to make any and all health care decisions on the principal's behalf that the principal could make. After consultation with the attending physician and other health care providers, the agent shall make health care

TN No.: 21-0014
Supersedes
TN No.: 92-02

Approval Date: 09-09-2021

Effective Date: 07-01-2021

decisions: in accordance with the agent's knowledge of the principal's wishes and religious or moral beliefs, as stated orally, or as contained in the principal's health care directive; or if the principal's wishes are unknown, in accordance with the agent's assessment of the principal's best interests. In determining the principal's best interests, the agent shall consider the principal's personal values to the extent known to the agent. A health care directive, including the agent's authority, is in effect only when the principal lacks capacity to make health care decisions, as certified in writing by the principal's attending physician and filed in the principal's medical record, and ceases to be effective upon a determination that the principal has recovered capacity. The principal may authorize in a health care directive that the agent make health care decisions for the principal even though the principal retains capacity to make health care decisions. In that case, the health care directive is in effect as stated in the health care directive under any conditions the principal may impose. The principal's attending physician shall make reasonable efforts to inform the principal of any proposed treatment, or of any proposal to withdraw or withhold treatment.

A person may not exercise the authority of an agent while serving in one of the following capacities: the principal's health care provider; a nonrelative of the principal who is an employee of the principal's health care provider; the principal's long-term care services provider; or a nonrelative of the principal who is an employee of the principal's long-term care services provider.

To be legally sufficient in North Dakota, a health care directive must: be in writing; be dated; state the principal's name; be executed by a principal with capacity to do so with the signature of the principal or with the signature of another person authorized by the principal to sign on behalf of the principal; contain verification of the principal's signature or the signature of the person authorized by the principal to sign on behalf of the principal, either by a notary public or by witnesses as provided under this chapter; and include a health care instruction or a power of attorney for health care, or both.

A health care directive must be signed by the principal and that signature must be verified by a notary public or at least two or more subscribing witnesses who are at least eighteen years of age. A person notarizing the document may be an employee of a health care or long-term care provider providing direct care to the principal. At least one witness to the execution of the document must not be a health care or long-term care provider providing direct care to the principal or an employee of a health care or long-term care provider providing direct care to the principal on the date of execution. The notary public or any witness may not be, at the time of execution, the agent, the principal's spouse or heir, a person related to the principal by blood, marriage, or adoption, a person entitled to any part of the estate of the principal upon the death of the principal under a will or deed in existence or by operation of law, any other person who has, at the time of execution, any claims against the estate of the principal, a person directly financially responsible for the principal's medical care, or the attending physician of the principal. If the principal is physically unable to sign,

the directive may be signed by the principal's name being written by some other person in the principal's presence and at the principal's express direction.

A health care directive is revoked: by notification by the principal to the agent or a health care or long-term care services provider orally, or in writing, or by any other act evidencing a specific intent to revoke the directive; or by execution by the principal of a subsequent health care directive.

North Dakota statute provides for an optional health care directive form; however, another form may be used, as long as it complies with state law. A health care directive may include provisions consistent with State law, including the designation of one or more alternate agents to act if the named agent is not reasonably available to serve, limitations on the agent, instructions regarding artificially administered nutrition or hydration, and the designation of an agent authorized to make health care decisions even though the principal retains the capacity to make health care decisions.

A principal's health care or long-term care services provider may decline to comply with a health care decision of a principal's designated agent or a health care instruction for reasons of conscience or other conflict. A provider that declines to comply with a health care decision or instruction shall take all reasonable steps to transfer care of the principal to another health care provider who is willing to honor the agent's health care decision, or instruction or directive, and shall provide continuing care to the principal until a transfer can be effected.