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State/Territory Name: North Dakota

State Plan Amendment (SPA) #: ND-16-0004

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 AND HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-26-12
Baltimore, MD 21244-1850



Financial Management Group

JUN 07 2016

Ms. Maggie Anderson, Executive Director
Division of Medical Services
Department of Human Services
600 East Boulevard Avenue
Department 325
Bismarck, ND 58505-0250

Re: North Dakota 16-0004

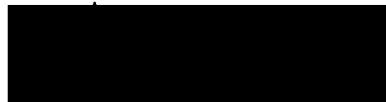
Dear Ms. Anderson:

We have reviewed the proposed amendment to Attachment 4.19-D of your Medicaid State plan submitted under transmittal number (TN) 16-0004. Effective for services on or after January 1, 2016, this amendment provides for a three percent inflationary increase for nursing facility services, incorporates limits to the various components of the per diem rate, updates leave day definitions, and identifies the changes to income that must be offset against costs. Please note that expenditures for services provided under this amendment should be claimed on line 3A on the Form CMS-64 expenditure report.


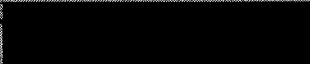
We conducted our review of your submittal according to the statutory requirements at sections 1902(a)(2), 1902(a)(13), 1902(a)(30) and 1903(a) of the Social Security Act and the implementing Federal regulations at 42 CFR 447 Subpart C. We are pleased to inform you that Medicaid State plan amendment TN 16-0004 is approved effective January 1, 2016. The HCFA-179 and the amended plan pages are attached.

If you have any questions, please contact Christine Storey at (303) 844-7044.

Sincerely,



Kristin Fan
Director

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL		1. TRANSMITTAL NUMBER: 16-0004	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 January 1, 2016	
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:		7. FEDERAL BUDGET IMPACT: a. FFY <u>2016</u> \$ <u>2,858,544</u> b. FFY <u>2017</u> \$ <u>3,811,392</u>	
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: Attachment 4.19-D, Subsection 1, pages 4a, 4b, 26, 27, 28, 28a, 29, 29a, 46 & 47		9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable): Attachment 4.19-D, Subsection 1, pages 4a, 4b, 26, 27, 28, 28a, 29, 29a, 46 & 47	
10. SUBJECT OF AMENDMENT: Identify the increase for Nursing Facility Services for January 1, 2016, update leave day definitions and identify changes to income that must be offset to costs			
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 OF STATE AGENCY OFFICIAL: 		16. RETURN TO: Maggie D. Anderson, Executive Director ND Department of Human Services 600 East Boulevard Avenue Dept 325 Bismarck ND 58505-0250	
13. TYPED NAME: Maggie D. Anderson			
14. TITLE: Executive Director, Department of Human Services			
15. DATE SUBMITTED: March 24, 2016 REVISED 5-17-2016			
FOR REGIONAL OFFICE USE ONLY			
17. DATE RECEIVED:		18. DATE APPROVED: JUN 07 2016	
PLAN APPROVED - ONE COPY ATTACHED			
19. EFFECTIVE DATE OF APPROVED MATERIAL: JAN 01 2016		20. SIGNATURE OF OFFICIAL: 	
21. TYPED NAME: Kristin Fan		22. TITLE: Director, FMC	
23. REMARKS:			

51. "Therapeutic leave day" means any day that a resident is not in the facility, another nursing facility, swing-bed facility, transitional care unit, subacute unit, an intermediate care facility for individuals with intellectual disabilities, or an acute care setting, or, if not in an institutional setting, is not receiving home and community based waived services.
52. "Top management personnel" means owners, board members, corporate officers, general, regional, and district managers, administrators, and any other person performing functions ordinarily performed by such personnel.
53. "Bona fide sale" means the purchase of a facility's capital assets with cash or debt in an arm's length transaction. It does not include :
- a. A stock purchase of a facility;
 - b. A sale and leaseback to the same licensee;
 - c. A transfer of an interest to a trust;
 - d. Gifts or other transfers for nominal or no consideration;
 - e. A merger of two or more related organizations;
 - f. A change in the legal form of doing business;
 - g. The addition or deletion of a partner owner or shareholder; or
 - h. A sale, merger, reorganization, or any other transfer of interest between related organizations.
54. "Building" means the physical plant including building components and building services equipment licensed as a facility and used directly for resident care and auxiliary buildings including sheds garages and storage buildings located on the site used directly for resident care.
55. "Capital asset" means a facility's buildings, land improvements, fixed equipment, movable equipment, leasehold improvements, and all additions to or replacements of those assets used directly for resident care.
56. "Close relative" means an individual whose relationship by blood marriage or adoption to an individual who is directly or indirectly affiliated with controls or is controlled by a facility is within the third degree of kinship.
57. "Noncovered day" means any bed hold day in excess of the State's bed-hold limit for which the resident may elect to pay.

58. "Depreciation guidelines" means the latest revised edition of the American Hospital Association's guidelines as published by American Hospital Publishing, Inc. in "Estimated Useful Lives of Depreciable Hospital Assets."
59. "Fixed equipment" means equipment used directly for resident care affixed to a building, not easily movable, and identified as such in the depreciation guidelines.
60. "Hospice general inpatient care" means short-term inpatient care necessary for pain control or acute or chronic symptom management that cannot feasibly be provided in other setting. It does not mean care provided to an individual residing in a nursing facility.
61. "Institutional leave day" means any day that a resident is not in the facility, but is in another nursing facility, swing-bed facility, transitional care unit, subacute unit, or intermediate care facility for individuals with intellectual disabilities.
62. "Land improvements" means any improvement to the land surrounding the facility used directly for resident care and identified as such in the depreciation guidelines.
63. "Movable equipment" means movable care and support services equipment generally used in a facility, including equipment identified as major movable equipment in the depreciation guidelines.
64. "Respite care" means short-term care provided to an individual when necessary to relieve family members or other persons caring for the individual at home.
65. "Working capital debt" means debt incurred to finance nursing facility operating costs, but does not include debt incurred to acquire a capital asset or to refund or refinance debt associated with acquiring a capital asset.
66. "Certified nurse aide" means an individual who has satisfactorily completed a nurse aide training and competency evaluation program approved by the state as meeting the requirements of 42 CFR §483.151-483.154 or who has been deemed or determined competent as provided in 42 CFR §483.151 (a) and (b); and is registered on a state-established registry of nurse aides as required by 42 CFR §483.156

32. The following taxes:

- a. Federal income and excess profit taxes, including any interest or penalties paid thereon;
- b. State or local income and excess profit taxes;
- c. Taxes in connection with financing, refinancing, refunding, or refunding operation, such as taxes in the issuance of bonds, property transfers, issuance or transfer of stocks, etc., which are generally either amortized over the life of the securities or depreciated over the life of the asset, but not recognized as tax expense;
- d. Taxes such as real estate and sales tax for which exemptions are available to the provider;
- e. Taxes on property not used in the provision of covered services;
- f. Taxes, such as sales taxes, levied against the residents and collected and remitted by the provider.
- g. Self-employment (FICA) taxes applicable to individual proprietors, partners, members of a joint venture;

33. The unvested portion of a facility's accrual for sick or annual leave;

34. The cost, including depreciation, of equipment or items purchased with funds received from a local or state agency, exclusive of any federal funds, unless identified as an offset to cost exception in subdivision h of subsection 1 of Section 13;

35. Hair care, other than routine hair care, furnished by the facility;

36. The cost of education unless:

- a. The education was provided by an accredited academic or technical educational facility;
- b. The expenses were for materials, books, or tuition;
- c. The facility claims the cost of the education expense in an amount not to exceed the individual's education expense;

- d. The amount of education expense claimed for an individual does not exceed fifteen-thousand dollars in the aggregate; and
 - e. The facility has a contract with the individual which stipulates a minimum commitment to work for the facility of six-thousand-six-hundred-fifty-six hours of employment, as well as a repayment plan if the individual does not fulfill the contract obligations. The number of hours of employment required may be prorated for an individual who receives less than fifteen thousand dollars in assistance.
37. Vacated
38. Employment benefits associated with salary costs are not includable in a rate set under this plan.
39. Increased lease costs of a provider unless:
- a. The lessor incurs increased costs related to the ownership of the facility or a resident-related asset;
 - b. The increased costs related to the ownership are charged to the lessee; and
 - c. The increased costs related to the ownership would be allowable had the costs been incurred directly by the lessee;
40. The direct and indirect costs of providing therapy services to nonresidents or Medicare Part B therapy services, including purchase costs related to providing therapy services if the provider does not want therapy income offset under Section 13.1.k.
41. Costs associated with or paid for the acquisition of licensed nursing facility capacity.
42. Goodwill; and
43. Lease costs in excess of the amount allocable to the leased space as reported on the Medicare Cost Report by a lessor who provides services to recipients of benefits under Title XVIII or Title XIX of the Social Security Act.
44. Salaries accrued at a facility's fiscal year end but not paid within seventy-five days of the cost report year end.

Section 13 - Offset to Costs

1. Several items of income must be considered as offsets against various costs as recorded in the books of the facility. Income in any form received by the facility, must be offset up to the total of the appropriate actual allowable costs, with the following exceptions:
 - a. An established rate;
 - b. Income from payments made under the Workforce Investment Act;
 - c. Bed reduction incentive payments;
 - d. Donations;
 - e. The deferred portion of patronage dividends credited to the facility and not previously offset;
 - f. Charges for private rooms or special services;
 - g. Noncovered bedhold days; or
 - h. Sales tax revenue received from a political subdivision or local taxing authority for a facility located in a community with a population of less than twelve thousand five hundred people.

2. If actual costs are not identifiable, income must be offset up to the total of costs described in this section. If costs relating to income are reported in more than one cost category, the income must be offset in the ratio of the costs in each cost category. Sources of income include, but are not limited to:
 - a. "Activities income". Income from the activities department and the gift shop will be offset to activity costs.
 - b. "Vending income". Income from the sale of beverages, candy, or other items will be offset to the cost of the vending items or, if the cost is not identified, all vending income will be offset to the cost category where vending costs are recorded.
 - c. "Dietary income". Amounts received from or on behalf of employees, guests, or other non residents for meals or snacks will be offset to dietary and food costs.
 - d. "Drugs or supplies income". Amounts received from employees, doctors, or others not admitted as residents will be offset to nursing supplies. Medicare Part B income for drugs and supplies must be offset to nursing supplies.

- e. "Insurance recoveries income". Any amount received from insurance for a loss incurred will be offset against the appropriate cost category regardless of when the cost was incurred if the facility did not adjust the basis for depreciable assets.
- f. "Interest or investment income". Interest received on investments, except amounts earned on funded depreciation or from earnings on gifts where the identity remains intact, will be offset to interest expense.
- g. "Laundry income". All amounts received for services rendered to or on behalf of employees, doctors, or others will be offset to laundry costs.
- h. "Private duty nurse income". Income received for the providing of a private duty nurse will be offset to nursing salaries.

- i. "Rentals of facility space income". Revenues received from outside sources for the use of facility space and equipment will be offset to property costs.
 - j. "Telephone income". Revenues received from residents, guests, or employees will be offset to administration costs. Income from emergency answering services need not be offset.
 - k. "Therapy income." Except for income from Medicare Part A, income from therapy services, including Medicare Part B income, must be offset to therapy costs unless the provider chooses to make therapy costs non-allowable under subsection 40 of section 12.
 - l. "Bad Debt Recovery." Income for bad debts which have been previously claimed must be offset to property costs in total in the year of recovery.
 - m. "Other cost-related income." Miscellaneous income, including amounts generated through the sale of a previously expensed item, e.g., supplies or equipment, or amounts generated from default of contractual obligations related to education expense, must be offset to the cost category where the item was expensed.
3. Purchase discounts, allowances, refunds, and rebates are reductions of the cost of whatever was purchased.
 4. Payments to a provider by its vendor will ordinarily be treated as purchase discounts, allowances, refunds, or rebates in determining allowable costs even though these payments may be treated as "contributions" or "unrestricted grants" by the provider and the vendor. However, such payments may represent a true donation or grant. Examples include, but are not limited to, when: (1) they are made by a vendor in response to building or other fund raising campaigns in which communitywide contributions are solicited; (2) the volume or value of purchases is so nominal that no relationship to the contribution can be inferred. The provider must provide verification, satisfactory to the department, to support a claim that a payment represents a true donation.
 5. Where an owner or other official of a provider directly receives from a vendor monetary payments or goods or services for the owner's or official's own personal use as a result of the provider's purchases from the vendor, the value of such payments, goods, or services constitutes a type of refund or rebate and must be applied as a reduction of the provider's costs for goods or services purchased from the vendor.

6. Where the purchasing function for a provider is performed by a central unit or organization, all discounts, allowances, refunds, and rebates must be credited to costs of the provider and cannot be treated as income by the central unit or organization or used to reduce the administrative costs of the central unit or organization.
7. For purposes of this section, "medicare part B income" means the interim payment made by medicare during the report year plus any cost settlement payments made to the provider or due from the provider for previous periods which are made during the report year and which have not been reported to the department prior to June 30, 1997.

Section 24 – Adjustment Factors for Direct Care, Other Direct Care and Indirect Care Costs

1. An appropriate economic change index may be used for purposes of adjusting historical costs for direct care, other direct care, and indirect care and for purposes of adjusting limitations of direct care costs, other direct care costs, and indirect care costs, but may not be used to adjust property costs.
2. For the rate year beginning January 1, 2009 the appropriate economic change index is five percent.
3. For the rate year beginning January 1, 2010 the appropriate economic change index is six percent.
4. For the rate year beginning January 1, 2011 the appropriate economic change index is six percent.
5. For the rate year beginning January 1, 2012 the appropriate economic change index is three percent.
6. For the rate year beginning January 1, 2013 the appropriate economic change index is three percent.
7. For the rate year beginning January 1, 2014 the appropriate economic change index is three percent.
8. For the rate year beginning January 1, 2015 the appropriate economic change index is three percent.
9. For the rate year beginning January 1, 2016 the appropriate economic change index is three percent.

Section 25 - Rate Limits and Incentives

1. Limits - All facilities except those nongeriatric facilities for individuals with physical disabilities or units within a nursing facility providing geropsychiatric services described in Section 5 - Exclusions must be used to establish a limit rate for the Direct Care, Other Direct Care, and Indirect Care cost categories. The base year is the report year ended June 30, 2010. Base year costs may not be adjusted in any manner or for any reason not provided for in this section.

a. The limit rate for each of the cost categories will be established as follows:

- (1) Historical costs for the report year ended June 30, 2010, as adjusted must be used to establish rates for all facilities in the Direct Care, Other Direct Care and Indirect Care cost categories. The rates as established must be ranked from low to high for each cost category.
- (2) For the rate year beginning January 1, 2016, the limit rate for each cost category is:
 - (a) For the Direct Care cost category, \$172.84;
 - (b) For the Other Direct Care cost category, \$28.70; and
 - (c) For the Indirect Care cost category, \$73.82.

(3), (4), and (5) have been vacated.