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State/Territory Name: North Carolina

State Plan Amendment (SPA) #: 23-0001

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
601 E. 12th St., Room 355
Kansas City, Missouri 64106



Medicaid and CHIP Operations Group

April 25, 2023

Dave Richard
Deputy Secretary of Medical Assistance
Division of Medical Assistance
2001 Mail Service Center
1985 Umstead Drive
Raleigh, NC 27699-20014

Re: North Carolina State Plan Amendment (SPA) 23-0001

Dear Deputy Secretary Richard:

The Centers for Medicare & Medicaid Services (CMS) reviewed your Medicaid State Plan Amendment (SPA) submitted under transmittal number (TN) 23-0001. This amendment proposes to update property values for undue hardship definition and cost effectiveness methodology. Revisions have also been made to the undue hardship criteria by increasing the amount of assets for a qualified undue hardship applicant or related family member.

We conducted our review of your submittal according to statutory requirements of the Social Security Act and 42 CFR 447.50-57. This letter is to inform you that North Carolina's SPA TN 23-0001 was approved on April 25, 2023, with an effective date of January 1, 2023.

If you have any questions, please contact Morlan Lannaman at (470) 890-4232 or via email at Morlan.Lannaman@cms.hhs.gov.

Sincerely,

James G. Scott, Director
Division of Program Operations

Enclosures

cc: Betty J. Staton, NC DHHS
Cecilia Williams, NC DHHS
Emma Sandoe, NC DHHS

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL FOR: CENTERS FOR MEDICARE & MEDICAID SERVICES	1. TRANSMITTAL NUMBER <u>2 3 — 0 0 0 1</u>	2. STATE <u>NC</u>
	3. PROGRAM IDENTIFICATION: TITLE OF THE SOCIAL SECURITY ACT <input checked="" type="radio"/> XIX <input type="radio"/> XXI	
TO: CENTER DIRECTOR CENTERS FOR MEDICAID & CHIP SERVICES DEPARTMENT OF HEALTH AND HUMAN SERVICES	4. PROPOSED EFFECTIVE DATE January 01, 2023	
5. FEDERAL STATUTE/REGULATION CITATION Title XIX of the Social Security Act, 42 U.S.C § 1396 (p).	6. FEDERAL BUDGET IMPACT (Amounts in WHOLE dollars) a. FFY <u>23</u> \$ <u>2,046,357</u> b. FFY <u>24</u> \$ <u>2,649,941</u>	
7. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT ATTACHMENT 4.17-A Pages 3, 4 and 6	8. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable) ATTACHMENT 4.17-A Pages 3, 4 and 6	

9. SUBJECT OF AMENDMENT
Estate Recovery Program

10. GOVERNOR'S REVIEW (Check One)

GOVERNOR'S OFFICE REPORTED NO COMMENT
 COMMENTS OF GOVERNOR'S OFFICE ENCLOSED
 NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

OTHER, AS SPECIFIED: **Secretary**

DocuSigned by: ENCY OFFICIAL	15. RETURN TO Office of the Deputy Secretary Department of Health and Human Services 2501 Mail Service Center Raleigh, NC 27699-20014
12. TYPED NAME Dave Richard	
13. TITLE Deputy Secretary	
14. DATE SUBMITTED 02/01/23 5:15 AM PST	

FOR CMS USE ONLY

16. DATE RECEIVED February 13, 2023	17. DATE APPROVED April 25, 2023
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PLAN APPROVED - ONE COPY ATTACHED

18. EFFECTIVE DATE OF APPROVED MATERIAL January 01, 2023	19. SIC
20. TYPED NAME OF APPROVING OFFICIAL James G. Scott	21. TITLE OF APPROVING OFFICIAL Director, Division of Program Operations

22. REMARKS

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

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4. The State defines undue hardship as follows:
- A. Only a qualified undue hardship applicant may be granted a claim of undue hardship. In order for a claim of undue hardship to be granted, the qualified undue hardship applicant must meet all of the requirements for at least one of the three following undue hardship definitions:
1. Real or personal property included in the estate of the deceased Medicaid beneficiary pursuant to N.C. Gen. Stat. § 28A-15-1 meets the following conditions:
- a. The property is the sole source of income for a qualified undue hardship applicant and his or her spouse and related family members in his or her household, and
- b. The gross income available to the qualified undue hardship applicant and his or her spouse and related family members in his or her household is below 200 percent of the federal poverty level.
- OR
2. Recovery would result in the sale of real property included in the estate of the deceased Medicaid beneficiary pursuant to N.C. Gen. Stat. § 28A-15-1 and the following conditions are met:
- a. The qualified undue hardship applicant is residing on and has continuously resided on the real property since the decedent's death; and
- b. The qualified undue hardship applicant resided on the property for at least 12 months immediately prior to and continuously until the date of the decedent's death; and
- c. The gross income available to the qualified undue hardship applicant and his or her spouse and related family members in his or her household is below 200 percent of the federal poverty level; and
- d. Effective for dates of death on or after January 1, 2023 the assets of the qualified undue hardship applicant and his or her spouse and related family members in his or her household are valued below twenty-five thousand dollars (\$25,000).
- OR
3. Recovery would result in the sale of real property included in the estate of the deceased Medicaid beneficiary pursuant to N.C. Gen. Stat. § 28A-15-1 and the following conditions are met:
- a. The qualified undue hardship applicant owns a tenancy in common interest of at least 25% in the real property, as evidenced by a valid and properly recorded deed; and

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- b. The qualified undue hardship applicant's ownership interest in the real property was acquired at least 24 months prior to the Medicaid beneficiary's death, as evidenced by a valid and properly recorded deed; and
 - c. The real property has a value of less than \$100,000 determined as follows:
 - (1) By the most current County tax assessment value of the property; or
 - (2) By an appraisal of the property, obtained at the expense of the qualified undue hardship applicant, by an appraiser licensed by and in good standing with the North Carolina Appraisal Board; and
 - d. The qualified undue hardship applicant is residing on and has continuously resided on the real property since the decedent's death; and
 - e. The qualified undue hardship applicant resided on the real property for at least 12 months immediately prior to and continuously until the date of the decedent's death; and
 - f. The gross income available to the qualified undue hardship applicant and his or her spouse and related family members in his or her household is below 200 percent of the federal poverty level; and
 - g. Effective for dates of death on or after January 1, 2023 the assets of the qualified undue hardship applicant and his or her spouse and related family members in his or her household, excluding the qualified undue hardship applicant's tenancy in common interest in the real property, are valued below twenty-five thousand dollars (\$25,000).
- B. An undue hardship waiver or deferral applies only during the lifetime of the qualified undue hardship applicant and only as long as the qualified undue hardship applicant continues to meet the criteria for one of the undue hardship definitions. A waiver or deferral of Medicaid estate recovery based on undue hardship only applies as a waiver or deferral of estate recovery for the following property:
- 1. For a qualified undue hardship applicant who meets the criteria for the first undue hardship definition, the property of the decedent's estate that serves as the sole source of income; or
 - 2. For a qualified undue hardship applicant who meets the criteria for the second or third undue hardship definitions, the real property on which the qualified undue hardship applicant resides.

The State Medicaid agency may continue to pursue its estate claim against any property of the Medicaid beneficiary's estate that is not subject to the undue hardship waiver or deferral.

5. The following standards and procedures are used by the State for waiving or deferring estate recoveries when recovery would cause an undue hardship, and when recovery is not cost-effective:
- A. A claim of undue hardship must be made by or on behalf of a qualified undue hardship applicant by submitting a complete undue hardship application to the State Medicaid agency together with all documentation necessary for the agency to evaluate the claim.
 - B. In the event that an estate is opened within six months of the Medicaid beneficiary's death, a claim of undue hardship must be made within 60 days of the date that the agency presents its estate claim according to one of the methods provided in N.C. Gen. Stat. § 28A-19-1(a).

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- F. Each claim of undue hardship will be evaluated within 90 calendar days from the date of receipt by the State Medicaid agency of a complete application and all necessary documentation. In the event of an incomplete application or incomplete documentation, the State Medicaid agency may extend the time for the qualified undue hardship applicant to provide a complete application and complete documentation for an additional 30 days. If a complete application and all necessary documentation are not received by the State Medicaid agency within this time frame, the undue hardship claim will be denied.
- G. A written notice of decision will be mailed to the undue hardship applicant within 10 calendar days after the State Medicaid agency has completed its review. The State Medicaid agency will either grant or deny the claim of undue hardship. If the undue hardship claim is granted, the State Medicaid agency will not pursue its estate recovery claim against the property related to the undue hardship as long as the qualified undue hardship applicant continues to meet the undue hardship criteria.
- H. If the qualified undue hardship applicant dies or the State Medicaid agency determines that the applicant no longer meets the undue hardship criteria, the State Medicaid agency may resume pursuit of the Medicaid estate claim against the property subject to an undue hardship waiver or deferral. The State Medicaid agency may require the qualified undue hardship applicant to submit additional documentation at any time to demonstrate that the applicant continues to meet the undue hardship criteria. If the State Medicaid agency determines that the qualified undue hardship applicant no longer meets the undue hardship criteria, a written notice of decision will be mailed to the qualified undue hardship applicant within 10 calendar days of the determination.
- I. If the undue hardship applicant disagrees with the State Medicaid agency decision, he or she may appeal to the Office of Administrative Hearings (OAH) within 60 calendar days from the date that the written decision is mailed to the undue hardship applicant.
6. The State defines cost-effective as follows (include methodology/thresholds used to determine cost-effectiveness):
- Effective for dates of death on or after January 1, 2023 cost-effective refers to circumstances in which all the following conditions are met: (1) the gross estate assets prior to any disbursements, distributions, or any other payments are at least \$50,000 (2) the Medicaid claim is at least \$10,000 (3) the actual recovery from the estate on the Medicaid claim (regardless of the actual claim amount) is expected to be at least \$5,000. A waiver based on cost-effectiveness may be a conditional waiver and may specify that the waiver will cease if additional assets are subsequently discovered that may be property of the estate. The State has 3 years from the date of discovery to pursue any assets subsequently discovered.
7. The State uses the following collection procedures (include specific elements contained in the advance notice requirement, the method for applying for a waiver, hearing and appeals procedures, and time frames involved):