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State/Territory Name: North Dakota

State Plan Amendment (SPA) #: 21-0003

This file contains the following documents in the order listed:

1) Approval Letter
2) CMS 179 Form
3) Approved SPA Pages
March 31, 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) 21-0003

Dear Ms. Knapp:

We have reviewed the State Plan Amendment (SPA) submitted under transmittal number 21-0003. This SPA amends the State Plan to request an extension to the exemption for a Recovery Audit Contractor.

Please be informed that this SPA was approved on March 30, 2021, with an effective date of April 1, 2021. The extension to the exemption for a Recovery Audit Contractor is approved for two years, and will expire on April 1, 2023. Enclosed is the CMS-179 and SPA pages.

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

Sincerely,

James Scott, Director
Division of Program Operations

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

TO: REGIONAL ADMINISTRATOR
CENTERS FOR MEDICARE AND MEDICAID SERVICES
DEPARTMENT OF HEALTH AND HUMAN SERVICES

1. TRANSMITTAL NUMBER: 21-0003
2. STATE North Dakota

3. PROGRAM IDENTIFICATION:
TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)

4. PROPOSED EFFECTIVE DATE: April 1, 2021

5. TYPE OF PLAN MATERIAL (Check One):
- [ ] NEW STATE PLAN
- [ ] AMENDMENT TO BE CONSIDERED AS NEW PLAN
- [x] AMENDMENT

COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (Separate Transmittal for each amendment)

6. FEDERAL STATUTE/REGULATION CITATION:
42 CFR 455.516 and 1902(a)(42) of the Act

7. FEDERAL BUDGET IMPACT:
   a. FFY 2021 $0
   b. FFY 2022 $0

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:
Section 4.5b, pages 36b and 36c

9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable):
   Section 4.5b, pages 36b and 36c (TN 18-0017)

10. SUBJECT OF AMENDMENT:
Amends the State Plan to request an extension to the exemption for a Recovery Audit Contractor.

11. 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:
     Caprice Knapp, Director
     Medical Services Division

12. SIGNATURE OF STATE AGENCY OFFICIAL:

13. TYPED NAME:
Caprice Knapp

14. TITLE:
Director, Medical Services Division

15. DATE SUBMITTED:
   Original Submission: January 13, 2021
   Resubmission Date: January 22, 2021

16. RETURN TO:
   Caprice Knapp, Director
   Medical Services Division
   ND Department of Human Services
   600 East Boulevard Avenue Dept 325
   Bismarck ND 58505-0250

FOR REGIONAL OFFICE USE ONLY

17. DATE RECEIVED: January 13, 2021
18. DATE APPROVED: March 30, 2021

19. EFFECTIVE DATE OF APPROVED MATERIAL:
April 1, 2021

20. SIGNATURE OF FEDERAL OFFICIAL:
   Digitally signed by James G. Scott -S
   Date: 2021.03.31 11:56:04 -05'00'

21. TYPED NAME:
James G. Scott

22. TITLE:
Director, Division of Program Operations

23. REMARKS:
### Citation

| Section 1902(a)(42)(B)(i) of the Social Security Act | ____ The State has established a program under which it will contract with one or more recovery audit contractors (RACs) for the purpose of identifying underpayments and overpayments of Medicaid claims under the State Plan and under any waiver of the State Plan.  

_____ The State is seeking an exception to establishing such program for the following reasons: The State has an approved RAC waiver effective April 1, 2019 through April 1, 2021. The State is requesting an extension of the current RAC waiver due to the majority of the State Medicaid recipients being part of a Managed Care Organization. The state issued an RFP for a new RAC vendor; in 2017 however, no proposals were received. There is no evidence that issuing a new RFP would result in receipt of proposals/response from prospective vendors. The State has no changes to its Medicaid program that would benefit the state to put out an RFP to vendors. The North Dakota Medicaid Program Integrity Unit efforts have not diminished and the Unit is continually exploring additional audit areas and methods to improve auditing practices across the Medicaid expenditure universe. The PIU recently contracted with a vendor to explore auditing opportunities within long term care. North Dakota is requesting an extension of the exemption from establishing a Medicaid RAC program, effective April 1, 2021 through April 1, 2023. |

| Section 1902(a)(42)(B)(ii)(I) of the Act | ____ The State Medicaid agency has contracts of the type(s) listed in section 1902(a)(42)(B)(ii)(I) of the Act. All contracts meet the requirements of the statute. RACs are consistent with the statute.  

Place a check mark to provide assurance of the following:  
  
_____ The State will make payments to the RAC(s) only from amounts recovered.  

_____ The State will make payments to the RAC(s) on a contingent basis for collecting overpayments. |

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Revision: HCFA-PM-88-10 (BERC) December 2010  
State: North Dakota  

### 4.5b Medicaid Recovery Audit Contractor Program
4.5b Medicaid Recovery Audit Contractor Program – (continued)

| Section 1902(a)(42)(b)(ii)(II)(aa) of the Act | The following payment methodology shall be used to determine State payments to Medicaid RACs for identification and recovery of overpayments (e.g., the percentage of the contingency fee):

|   | The State attests that the contingency fee rate paid to the Medicaid RAC will not exceed the highest rate paid to Medicare RACs, as published in the Federal Register.

|   | The State attests that the contingency fee rate paid to the Medicaid RAC will exceed the highest rate paid to Medicare RACs, as published in the Federal Register. The State will only submit for FFP up to the amount equivalent to that published rate.

|   | The contingency fee rate paid to the Medicaid RAC that will exceed the highest rate paid to Medicare RACs, as published in the Federal Register. The State will submit a justification for that rate and will submit for FFP for the full amount of the contingency fee.

Citation

| Section 1902(a)(42)(b)(ii)(bb) of the Act | The following payment methodology shall be used to determine State payments to Medicaid RACs for the identification of underpayments (e.g., amount of flat fee, the percentage of the contingency fee):

|   | The State has an adequate appeal process in place for entities to appeal any adverse determination made by the Medicaid RAC(s).

| Section 1902(a)(42)(b)(ii)(III) of the Act | The State assures that the amounts expended by the State to carry out the program will be amounts expended as necessary for the proper and efficient administration of the State Plan or a waiver of the plan.

| Section 1902(a)(42)(B)(ii)(IV) (AA) of the Act | The State assures that the recovered amounts will be subject to a State's quarterly expenditure estimates and funding of the State's share.

|   | The State has an adequate appeal process in place for entities to appeal any adverse determination made by the Medicaid RAC(s).
### 4.5b Medicaid Recovery Audit Contractor Program – (continued)

| Section 1902(a)(42)(B)(ii)(IV)(cc) of the Act | ____ Efforts of the Medicaid RAC(s) will be coordinated with other contractors or entities performing audits of entities receiving payments under the State Plan or waiver in the state, and/or State and Federal law enforcement entities and the CMS Medicaid Integrity Program. |

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**TN No.: 21-0003**  
Supersedes  
TN No.: 18-0017  
Approval Date: 03/30/2021  
Effective Date: 04-01-2021