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State/Territory Name: North Dakota

State Plan Amendment (SPA) #: 23-0009

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 St., Room 355
Kansas City, Missouri 64106



Medicaid and CHIP Operations Group

May 31, 2023

Krista Fremming
Interim Director
Medical Services Division
ND Department of Health and Human Services
600 East Boulevard Avenue Dept. 325
Bismarck, ND 58505-0250

Re: North Dakota State Plan Amendment (SPA) 23-0009

Dear Ms. Fremming:

The Centers for Medicare & Medicaid Services (CMS) reviewed your Medicaid State Plan Amendment (SPA) submitted under transmittal number (TN) ND-23-0009. This amendment proposes to amend the State Plan to request an extension to the exemption for a Recovery Audit Contractor (RAC).

We conducted our review of your submittal according to section 1902(a)(42) of the Social Security Act and implementing regulations at 42 CFR 455. This letter is to inform you that North Dakota Medicaid SPA 23-0009 was approved on May 31, 2023, with an effective date of April 1, 2023.

If you have any questions, please contact Tyson Christensen at (816) 426-6440 or via email at Tyson.Christensen@cms.hhs.gov.

Sincerely,

James G. Scott, Director
Division of Program Operations

Enclosures

cc: LeeAnn Thiel

**TRANSMITTAL AND NOTICE OF APPROVAL OF
STATE PLAN MATERIAL
FOR: CENTERS FOR MEDICARE & MEDICAID SERVICES**

1. TRANSMITTAL NUMBER <u>2 3</u> — <u>0 0 0 9</u>	2. STATE <u>ND</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
April 1, 2023

5. FEDERAL STATUTE/REGULATION CITATION
42 CFR 455 and 1902(a)(42) of the Act

6. FEDERAL BUDGET IMPACT (Amounts in WHOLE dollars)
a. FFY 2023 \$ 0
b. FFY 2024 \$ 0

7. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT
Section 4.5b, pages 36b-36d


8. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable)
Section 4.5b, pages 36b-36d (TN 21-0003)

9. SUBJECT OF AMENDMENT

Amends the State Plan to request an extension to the exemption for a Recovery Audit Contractor.

10. GOVERNOR'S REVIEW (Check One)

<input type="radio"/> GOVERNOR'S OFFICE REPORTED NO COMMENT	<input checked="" type="radio"/> OTHER, AS SPECIFIED: Krista Fremming, Interim Director Medical Services Division
<input type="radio"/> COMMENTS OF GOVERNOR'S OFFICE ENCLOSED	
<input type="radio"/> NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL	

11. SIGNATURE OF STATE AGENCY OFFICIAL


12. TYPED NAME
Krista Fremming

13. TITLE
Interim Medical Services Director

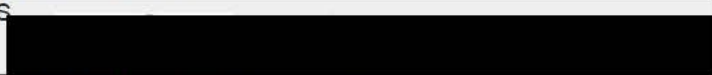
14. DATE SUBMITTED
March 7, 2023

15. RETURN TO
Krista Fremming, Interim Director
Medical Services Division
ND Department of Health and Human Services
600 East Boulevard Avenue Dept 325
Bismarck ND 58505-0250

FOR CMS USE ONLY

16. DATE RECEIVED March 7, 2023	17. DATE APPROVED May 31, 2023
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PLAN APPROVED - ONE COPY ATTACHED

18. EFFECTIVE DATE OF APPROVED MATERIAL April 1, 2023	19. S 
20. TYPED NAME OF APPROVING OFFICIAL James G. Scott	21. TITLE OF APPROVING OFFICIAL Director, Division of Program Operations

22. REMARKS

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

State: North Dakota

4.5b Medicaid Recovery Audit Contractor Program

Citation	
Section 1902(a)(42)(B)(i) of the Social Security Act	<p><input type="checkbox"/> 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.</p> <p><input checked="" type="checkbox"/> 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, 2023. 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 contracted with a vendor that identified potential audit recoveries within long term care and the Unified Program Integrity Contractor Western Jurisdiction (UPICW) has been expanding on that audit as well as initiating others. North Dakota is requesting an extension of the exemption from establishing a Medicaid RAC program, effective April 1, 2023 through April 1, 2025.</p>
Section 1902(a)(42)(B)(ii)(I) of the Act	<p><input type="checkbox"/> 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.</p> <p>Place a check mark to provide assurance of the following:</p> <p><input type="checkbox"/> The State will make payments to the RAC(s) only from amounts recovered.</p>

TN No. 23-0009

Supersedes TN No.: 21-0003

Approval Date: 05-31-2023

Effective Date: 04-01-2023

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

State: North Dakota

4.5b Medicaid Recovery Audit Contractor Program – (continued)

	<p>_____ The State will make payments to the RAC(s) on a contingent basis for collecting overpayments.</p>
<p>Section 1902(a)(42)(b)(ii)(II)(aa) of the Act</p>	<p>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):</p> <p>_____ 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.</p> <p>_____ 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.</p> <p>_____ 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.</p>

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

State: North Dakota

4.5b Medicaid Recovery Audit Contractor Program – (continued)

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):
Section 1902(a)(42)(b)(ii)(III) of the Act	_____ 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)(IV) (AA) 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)(bb) 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.
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.

TN No. 23-0009

Supersedes TN No.: 21-0003

Approval Date: 05-31-2023

Effective Date: 04-01-2023