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State/Territory Name: North Dakota

State Plan Amendment (SPA) #: 26-0002

This file contains the following documents in the order listed:

- 1) Approval Letter
- 2) Companion Letter
- 3) CMS 179 Form/Summary Form (with 179-like data)
- 4) Approved SPA Pages

DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S3-14-28
Baltimore, Maryland 21244-1850



Financial Management Group

April 30, 2026

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: TN 26-0002

Dear Director Fremming,

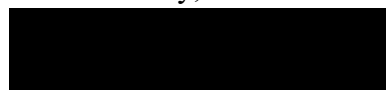
The Centers for Medicare & Medicaid Services (CMS) has reviewed the proposed North Dakota state plan amendment (SPA) to Attachment 4.19-D ND-26-0002 which was submitted to CMS on February 4, 2026. This plan amendment proposes to amend the State Plan to implement a two percent inflationary increase for Psychiatric Residential Treatment Facility Services.

We reviewed your SPA submission for compliance with statutory requirements, including in sections 1902(a)(2), 1902(a)(13), 1902(a)(30), 1903 as it relates to the identification of an adequate source for the non-federal share of expenditures under the plan, as required by 1902(a)(2), of the Social Security Act and the applicable implementing Federal regulations.

Based upon the information provided by the state, we have approved the amendment with an effective date of January 1, 2026. We are enclosing the approved CMS-179 and a copy of the new state plan pages.

If you have any additional questions or need further assistance, please contact Sudev Varma via email at sudev.varma@cms.hhs.gov

Sincerely,



Rory Howe
Director
Financial Management Group

DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S3-14-28
Baltimore, Maryland 21244-1850



Financial Management Group

April 30, 2026

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Medical Services Division
ND Department of Health and Human Services
600 East Boulevard Avenue Dept 325
Bismarck ND 58505-0250

RE: Payment Methodologies for Out-of-State Providers in Attachment 4.19-D

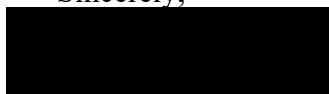
Dear Director Fremming,

The Centers for Medicare & Medicaid Services (CMS) is providing this letter as a companion to the approval of SPA ND-26-0002 which amends the State Plan to implement a two percent inflationary increase for Psychiatric Residential Treatment Facility Services.

It appears that some of the previously approved payment methodologies that pay out-of-state providers differently (noted in “same page” review) may be problematic in light of the D.C. Circuit opinion in *Asante v. Kennedy*, No. 23-5055 (D.C. Cir. 2025), petition for cert. denied (U.S. Mar. 23, 2026) (No. 25361). By approving the corresponding SPA, CMS is expressly not approving any payment methodologies that would violate *Asante*. At this time, CMS will not take enforcement action against the state over such payment methodologies provided that the state does not implement such methodologies in a manner that conflicts with *Asante*. CMS is currently exploring options for how to proceed with this issue, which may include rulemaking.

If you have any additional questions or need further assistance, please contact Sudev Varma at 301-448-3915 or via email at sudev.varma@cms.hhs.gov.

Sincerely,



Rory Howe
Director
Financial Management Group

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

| | |
|---|-----------------------|
| 1. TRANSMITTAL NUMBER <u>2 6 — 0 0 0 2</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
January 1, 2026

5. FEDERAL STATUTE/REGULATION CITATION
42 CFR 447, Subpart C, 42 CFR 447.252

6. FEDERAL BUDGET IMPACT (Amounts in WHOLE dollars)
a. FFY 2026 \$ 879,578
b. FFY 2027 \$ 1,216,930

7. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT
Attachment 4.19-D, Subsection 3, Page 2


8. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable)
Attachment 4.19-D, Subsection 3, Page 2 (TN 25-0003)

9. SUBJECT OF AMENDMENT
Amends the State Plan to implement a two percent inflationary increase for Psychiatric Residential Treatment Facility Services.

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:

11. SIGNATURE OF STATE AGENCY OFFICIAL


12. TYPED NAME
Krista Fremming

13. TITLE
Interim Medical Services Director

14. DATE SUBMITTED
February 4, 2026

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
February 4, 2026

17. DATE APPROVED
April 30, 2026

PLAN APPROVED - ONE COPY ATTACHED

18. EFFECTIVE DATE OF APPROVED MATERIAL
January 1, 2026

19. SIGNATURE OF APPROVING OFFICIAL


20. TYPED NAME OF APPROVING OFFICIAL
Rory Howe

21. TITLE OF APPROVING OFFICIAL
Director of the Financial Management Group

22. REMARKS

5. The daily rate is established by dividing actual allowable costs plus an inflation factor of two percent by census days effective for dates of service January 1, 2026.
6. A PRTF dissatisfied with the results of a final rate determination may request a reconsideration of the final rate within 30 days of the written notification of a final rate. A PRTF dissatisfied with the results of the Department's decision regarding the request for a reconsideration determination may file an appeal within 30 days of the written notice of the Department's decision regarding the reconsideration determination.
7. Payments to out-of-state PRTFs shall be made based on the rate for comparable services established by the Medicaid agency in the state where the facility is located. If no rate is established by the Medicaid agency in that state, then the per diem rate payable to the out-of-state PRTF shall be the lower of billed charges or the average of the per diem rates in effect for in-state PRTFs at the time of the services are first provided by the out-of-state PRTF, except that a per diem rate higher than the average per diem rate may be negotiated by the state for extraordinary or unusual circumstances on a case by case basis. Negotiated per diem rates may not exceed the cost of the service provide by the PRTF.