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State/Territory Name: South Dakota

State Plan Amendment (SPA) #: 22-0014

This file contains the following documents in the order listed:

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

Sarah Aker, Medicaid Director
Department of Social Services
Richard F. Kneip Building
700 Governors Drive
Pierre, SD 57501-2291

RE: TN 22-0014

Dear Ms. Aker:

The Centers for Medicare & Medicaid Services (CMS) has completed our review of South Dakota's State Plan Amendment (SPA) Transmittal #22-0014, submitted on October 24, 2022. The SPA clarifies how the premium assistance program determines if premium assistance is estimated to be cost effective and aligns with policies and current practice.

CMS approved SPA #22-0014 on April 25, 2023, with an effective date of October 1, 2022. Enclosed is a copy of the CMS-179 summary form, as well as the approved pages for incorporation into the South Dakota State Plan.

During the review of the SPA, CMS recommended the state consider systems changes to allow the enrollment of private plan, non-Medicaid providers into state claiming systems for the purposes of providing cost-sharing protections to Premium Assistance Program beneficiaries in accordance with cost sharing policies approved under the state plan. This change would also assist the state in tracking cost-sharing for Premium Assistance Program beneficiaries to ensure they do not exceed the five percent limit. In addition, CMS will be sending a companion letter along with the approval of this SPA to document the state's commitment to coming into compliance with the cost-sharing tracking requirements along with the implementation of its new systems, scheduled for March 2024.

If you have any questions regarding this amendment, please contact Mandy Strom at mandy.strom@cms.hhs.gov or (303)844-7068.

Sincerely,

[redacted]

James G. Scott, Director
Division of Program Operations

Enclosures

cc: Matthew Ballard, South Dakota Medicaid
Renae Hericks, South Dakota Medicaid

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
601 E. 12th St., Room 355
Kansas City, Missouri 64106

CENTERS FOR MEDICARE & MEDICAID SERVICES
CENTER FOR MEDICAID & CHIP SERVICES

Medicaid and CHIP Operations Group

April 25, 2023

Sarah Aker, Medicaid Director
Department of Social Services
Richard F. Kneip Building
700 Governors Drive
Pierre, SD 57501-2291

RE: TN 22-0014 Companion letter

Dear Ms. Aker:

This letter is being sent as a companion to the Centers for Medicare & Medicaid Services' (CMS) approval of South Dakota's State Plan Amendment (SPA) #22-0014, which proposes to update how the state determines premium assistance to be cost effective. During the course of our review of SPA #22-0014, we identified a cost sharing policy and procedure that is not consistent with federal requirements. This letter serves to memorialize the agreement that the state will implement a cost-sharing tracking system for all beneficiaries who are subject to cost-sharing under the state plan.

Sections 1906 and 1906A of the Social Security Act permit states to elect to provide a premium assistance program to beneficiaries otherwise eligible for Medicaid who have access to cost-effective private insurance. Under a premium assistance program, states must provide a cost sharing wrap, and ensure premium assistance beneficiaries receive the same cost sharing protections as other Medicaid beneficiaries. Sections 1916A(a)(2)(B), (b)(1)(B)(ii) and (b)(2)(A) of the Social Security Act (the Act), implemented at 42 CFR §447.56(f), set an aggregate cap on the total premiums and cost sharing charged to a given Medicaid beneficiary (or, in the case of a family with multiple beneficiaries, all beneficiaries in the household) to five percent of the beneficiary's family income. This five percent aggregate cap may be applied, at state option, on either a monthly or quarterly basis ("aggregate cap period").

As discussed during a phone call on March 2, 2023 with South Dakota agency staff, the state has not yet implemented a system to track beneficiaries' premiums and cost sharing payments prior to beneficiaries reaching their household aggregate cap. South Dakota informed CMS that it was aware of this issue and that it intends to comply with federal policy concerning cost sharing and premium tracking through an eligibility system upgrade which will enable the state to automate the tracking of beneficiary's incurred premium and cost sharing towards their family aggregate.

South Dakota has confirmed that this upgrade is scheduled to be implemented by March 1, 2024. Until the automated tracking system is implemented, South Dakota will ensure that premium assistance beneficiaries can report to the state agency when they have incurred cost sharing on eligible medical expenses in excess of five percent of the beneficiary's family income as approved under the state plan. Tracking cost sharing and premiums is not integral to the purpose of SPA #22-0014. In accordance with SMD #10-020, CMS explained to the state the option it has to resolve this issue separately from the approval of the SPA.

Please respond within 90 days of receipt of this letter to provide written acknowledgement of receipt of this letter and confirmation of the terms described to bring state operations into compliance with tracking requirements under 42 CFR §447.56(f). During this 90-day period, CMS welcomes the opportunity to work with you and your staff. Should you or your staff have any questions, please contact Mandy Strom at mandy.strom@cms.hhs.gov or (303)844-7068.

Sincerely,

[redacted]

James G. Scott, Director
Division of Program Operations

cc: Matthew Ballard, South Dakota Medicaid
Renae Hericks, South Dakota Medicaid

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE & MEDICAID SERVICES

FORM APPROVED
OMB No. 0938-0193

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL

FOR: CENTERS FOR MEDICARE & MEDICAID SERVICES

1. TRANSMITTAL NUMBER: 22 — 0014
2. STATE: SD
3. PROGRAM IDENTIFICATION: TITLE OF THE SOCIAL SECURITY ACT: (●) XIX ( ) XXI

TO: CENTER DIRECTOR
CENTERS FOR MEDICAID & CHIP SERVICES
DEPARTMENT OF HEALTH AND HUMAN SERVICES

4. PROPOSED EFFECTIVE DATE
October 1, 2022

5. FEDERAL STATUTE/REGULATION CITATION
Section 1906 of the Social Security 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 4.22, Page 70
Attachment 4.22-C, Pages 1 and 2

8. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT *(If Applicable)*
Section 4.22, Page 70 (TN 08-2)

9. SUBJECT OF AMENDMENT
Clarifies how the premium assistance program determines if premium assistance is estimated to be cost effective and aligns the policies with current practice.

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
[redacted]

12. TYPED NAME
Laurie R. Gill

13. TITLE
Cabinet Secretary

14. DATE SUBMITTED
October 24, 2022

15. RETURN TO
DEPARTMENT OF SOCIAL SERVICES
DIVISION OF MEDICAL SERVICES
700 GOVERNORS DRIVE
PIERRE, SD 57501-2291

FOR CMS USE ONLY

16. DATE RECEIVED
October 24, 2022

17. DATE APPROVED
April 25, 2023

PLAN APPROVED - ONE COPY ATTACHED

18. EFFECTIVE DATE OF APPROVED MATERIAL
October 1, 2022

19. SIGNATURE OF APPROVING OFFICIAL
[redacted]

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
MEDICAL ASSISTANCE PROGRAM
State/Territory: SOUTH DAKOTA

SECTION 4. GENERAL PROGRAM ADMINISTRATION

Citation — 4.22 Third Party Liability (continued)

42 CFR 433.151(a)

(f) The Medicaid agency has written cooperative agreements for the enforcement of rights to and collection of third party benefits assigned to the State as a condition of eligibility for medical assistance with the following: (Check as appropriate.)

__X__ State title IV-D agency. The requirements of 42 CFR 433.152(b) are met.

__X__ Other appropriate State agency(ies) — DSS-Office of Recoveries & Fraud Investigations

_____ Other appropriate agency(ies) of another state —

_____ Courts and law enforcement officials.

Section 1902(a)(60) of the Act

(g) The Medicaid agency assures that the State has in effect the laws relating to medical child support under Section 1908 of the Act.

1906 of the Act

(h) The Medicaid agency specifies the guidelines used in determining the cost effectiveness of an employer-based group health plan by selecting one of the following:

_____ The secretary's method as provided in the State Medicaid Manual, Section 3910.

__X__ The State provides methods for determining cost effectiveness on **ATTACHMENT 4.22-C**.

State/Territory: South Dakota
State Methodology of Determining Cost-Effectiveness of Individual and Group Health Plans

Enrollment in the Premium Assistance Program is voluntary. Premium assistance enrollees are able to see providers enrolled in Medicaid and/or the private insurance for any Medicaid eligible services. For Medicaid eligible recipients, enrollment in the Premium Assistance Program does not change the recipient's eligibility for benefits through the state plan or cost sharing obligations under the state plan. The Medicaid agency pays all premiums, deductibles, coinsurance and other cost sharing obligations for items and services covered under the State plan, subject to any nominal Medicaid copayment, for premium assistance beneficiaries. Individuals enrolled in the Premium Assistance Program are afforded the same recipient protections provided to all other Medicaid enrollees. Any cost-sharing imposed in excess of the 5 percent cap is adjusted through claims reprocessing by the Medicaid agency.

I. South Dakota Medicaid determines the cost-effectiveness for payment of qualifying group or individual market health insurance premiums using the following methodology:

1. Any Medicaid-eligible recipient who has an existing, ongoing, and medically- confirmed medical condition determined by the South Dakota Medicaid to be considered a cost-effective condition is deemed to meet the cost-effective criteria. Examples of medical conditions considered cost-effective include cancer, neonatal intensive care, transplants, motor vehicle accidents, head trauma, and heart conditions.

2. When the criteria of *1.* is not met, cost-effectiveness will be calculated as follows:
   a. Determine:
      i. The annual anticipated cost for Medicaid services generally covered by the private health insurance based on the recipient's claim history and other relevant information.
      ii. Total the results of each of the following calculations:
         a. The group or individual market health insurance premium less the employer contribution.
         b. A predetermined annual administration cost per participant.
         c. The expected cost to South Dakota Medicaid for any deductibles, coinsurance and/or copayments.
   b. Subtract the result of *ii.* from the result of *i*.
   c. If the result is a cost savings greater than or equal to $1,000, the policy is considered cost-effective.
   d. If the result is less than $1,000 in cost savings, the policy is not considered cost-effective.

3. When the criteria of *1.* and *2.* are not met, specific information relating to the individual circumstances of the Medicaid-eligible recipient may be provided. On a case-by-case basis and at the sole discretion of South Dakota Medicaid, a determination of cost-effectiveness can be made if sufficient evidence is provided to demonstrate savings to South Dakota Medicaid.

II. Redetermination Review

1. South Dakota Medicaid will complete a redetermination review at least yearly for all Premium Assistance Program enrollees. The yearly review shall consist of:
   a. Verifying South Dakota Medicaid eligibility; and

b. Completing a cost-effective analysis using the cost-effectiveness methodology

2. South Dakota may re-determine eligibility at any point if:
   a. The monthly premium of the group or individual market health insurance increases;
   b. There is a change in eligibility category or status for South Dakota Medicaid;
   c. The services offered by the group or individual market health insurance decrease;
   d. There is a change in the deductible, co-insurance or any other cost-sharing provisions of the group or individual market health policy; or
   e. There is reason to believe a change has occurred which may affect eligibility for the Premium Assistance Program.
3. Failure to submit required documents for redetermination or failure to meet the cost effectiveness criteria may result in disenrollment from the Premium Assistance Program.

III. Coverage of Non-South Dakota Medicaid Family Members
1. The Premium Assistance Program will pay the premiums for additional family members who are not South Dakota Medicaid eligible, if the individual's premium amount cannot be separated from the family premium amount. In this circumstance, the entire amount of the family's premium will be used to calculate cost effectiveness.
2. South Dakota will not pay a deductible, copayment, or coinsurance obligation on behalf of non-Premium Assistance Program individuals covered under a family's insurance.

IV. Purchasing or paying for health insurance coverage is deemed not cost effective when:
1. A recipient is also enrolled in Medicare;
2. A recipient is enrolled in a limited benefits Medicaid program;
3. Payment of health insurance premiums have been fully reimbursed or offset by a third party, including, but not limited to:
   a. An employer.
   b. An individual court-ordered to provide medical support.
4. The group or individual market health insurance only provides catastrophic, limited benefit, limited duration, or indemnity coverage.

V. Premium Assistance Payments
1. Payments may be made directly to the insurer, employer, or the recipient.
2. The initial insurance premium payment will be made immediately upon program approval and on the first business day of each qualifying month thereafter.