

Table of Contents

State/Territory Name: North Dakota

State Plan Amendment (SPA) #: 20-0001

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 AND HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-26-12
Baltimore, MD 21244-1850



Financial Management Group

April 15, 2020

Caprice Knapp
Director
ND Department of Human Services
600 East Boulevard Avenue, Dept. 325
Bismarck, ND 58505-0250

Re: North Dakota 20-0001

Dear Ms. Knapp:

We have reviewed the proposed amendment to Attachment 4.19-D of your Medicaid State plan submitted under transmittal number (TN) 20-0001. Effective for services on or after January 1, 2020, this amendment implements an inflationary increase for nursing facility (NF) services. In addition, it provides for an increase to the operating margin, clarifies rate adjustments and updates the criteria for extensive services.

We conducted our review of your submittal according to the statutory requirements at sections 1902(a)(2), 1902(a)(13), 1902(a)(30) and 1903(a) of the Social Security Act and the implementing Federal regulations at 42 CFR 447 Subpart C. We are pleased to inform you that Medicaid State plan amendment TN 20-0001 is approved effective January 1, 2020. The CMS-179 and the amended plan pages are attached.

If you have any questions, please contact Christine Storey at (303) 844-7044.

Sincerely,

A solid black rectangular box used to redact the signature of Kristin Fan.

Kristin Fan
Director

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL FOR: CENTERS FOR MEDICARE AND MEDICAID SERVICES		1. TRANSMITTAL NUMBER: <div style="text-align: center; font-size: 1.2em;">20-0001</div>	2. STATE <div style="text-align: center; font-size: 1.2em;">North Dakota</div>
TO: REGIONAL ADMINISTRATOR CENTERS FOR MEDICARE AND MEDICAID SERVICES DEPARTMENT OF HEALTH AND HUMAN SERVICES		3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)	
5. TYPE OF PLAN MATERIAL (<i>Check One</i>): <input type="checkbox"/> NEW STATE PLAN <input type="checkbox"/> AMENDMENT TO BE CONSIDERED AS NEW PLAN <input checked="" type="checkbox"/> AMENDMENT		4. PROPOSED EFFECTIVE DATE <div style="text-align: center; font-size: 1.2em;">January 1, 2020</div>	
COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (<i>Separate Transmittal for each amendment</i>)			
6. FEDERAL STATUTE/REGULATION CITATION: <div style="text-align: center;">42 CFR Part 447 Subpart C; 42 CFR 447.252</div>		7. FEDERAL BUDGET IMPACT: a. FFY <u>2020</u> <u>\$2,540,742</u> b. FFY <u>2021</u> <u>\$3,546,716</u>	
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: Attachment 4.19-D. Subsection 1, pages 4b, 13, 16, 18, 32, 46, 48, 49, 50, 63		9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (<i>If Applicable</i>): Attachment 4.19-D. Subsection 1, pages 4b, 13, 16, 18, 32, 46, 48, 49, 50, 63	
10. SUBJECT OF AMENDMENT: Amends the State Plan to implement an inflationary increase, to implement an increase to the operating margin for Nursing Facility Services, to clarify rate adjustments and to update the extensive services criteria.			
11. GOVERNOR'S REVIEW (<i>Check One</i>): <input type="checkbox"/> GOVERNOR'S OFFICE REPORTED NO COMMENT <input checked="" type="checkbox"/> OTHER, AS SPECIFIED: <input type="checkbox"/> COMMENTS OF GOVERNOR'S OFFICE ENCLOSED <u>Caprice Knapp, Director</u> <input type="checkbox"/> NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL <u>Medical Services Division</u>			
12. SIGNATURE OF STATE AGENCY OFFICIAL: <div style="background-color: black; width: 200px; height: 20px; margin-top: 10px;"></div>		16. RETURN TO: Caprice Knapp, Director Medical Services Division ND Department of Human Services 600 East Boulevard Avenue Dept 325 Bismarck ND 58505-0250	
13. TYPED NAME: <div style="text-align: center; font-weight: bold;">Caprice Knapp</div>		16. RETURN TO: Caprice Knapp, Director Medical Services Division ND Department of Human Services 600 East Boulevard Avenue Dept 325 Bismarck ND 58505-0250	
14. TITLE: <div style="text-align: center; font-weight: bold;">Director, Medical Services Division</div>			
15. DATE SUBMITTED: <div style="text-align: center;"> Original Date: January 31, 2020 Resubmission Date: February 14, 2020 </div>			
FOR REGIONAL OFFICE USE ONLY			
17. DATE RECEIVED:		18. DATE APPROVED: 04/15/20	
PLAN APPROVED – ONE COPY ATTACHED			
19. EFFECTIVE DATE OF APPROVED MATERIAL: <div style="text-align: center;">01/01/20</div>		20. SIGNATURE OF REGIONAL OFFICIAL: <div style="background-color: black; width: 150px; height: 20px; margin-top: 10px;"></div>	
21. TYPED NAME: Kristin Fan		22. TITLE: Director, FMG	
23. REMARKS:			

58. "Depreciation guidelines" means the latest revised edition of the American Hospital Association's guidelines as published by American Hospital Publishing, Inc. in "Estimated Useful Lives of Depreciable Hospital Assets."
59. "Fixed equipment" means equipment used directly for resident care affixed to a building, not easily movable, and identified as such in the depreciation guidelines.
60. "Hospice general inpatient care" means short-term inpatient care necessary for pain control or acute or chronic symptom management that cannot feasibly be provided in other setting. It does not mean care provided to an individual residing in a nursing facility.
61. "Institutional leave day" means any day that a resident is not in the facility, but is in another nursing facility, swing-bed facility, transitional care unit, subacute unit, or intermediate care facility for individuals with intellectual disabilities.
62. "Land improvements" means any improvement to the land surrounding the facility used directly for resident care and identified as such in the depreciation guidelines.
63. "Movable equipment" means movable care and support services equipment generally used in a facility, including equipment identified as major movable equipment in the depreciation guidelines.
64. "Respite care" means short-term care provided to an individual when necessary to relieve family members or other persons caring for the individual at home.
65. "Working capital debt" means debt incurred to finance nursing facility operating costs, but does not include debt incurred to acquire a capital asset or to refund or refinance debt associated with acquiring a capital asset.
66. "Certified nurse aide" means an individual who has satisfactorily completed a nurse aide training and competency evaluation program approved by the state as meeting the requirements of 42 CFR §483.151-483.154 or who has been deemed or determined competent as provided in 42 CFR §483.151 (a) and (b); and is registered on a state-established registry of nurse aides as required by 42 CFR §483.156
67. "Rate adjustment percentage" means the percentage used to determine the minimum adjustment threshold to the rate weight of one.

Section 7 - Direct Care Costs

Direct care costs include only those costs identified in this section.

1. Therapies:
 - a. Salary and employment benefits for speech, occupational, and physical therapists or for personnel, who are not reported in subsection 2, performing therapy under the direction of a licensed therapist.
 - b. The cost of non-capitalized therapy equipment or supplies used to directly provide therapy, not including office supplies such as forms or pens.
 - c. Training which is required to maintain licensure, certification or professional standards and the related travel costs.
2. Nursing:
 - a. Salary and employment benefits for the director of nursing, nursing supervisors, inservice trainers for nursing staff, registered nurses, licensed practical nurses, quality assurance personnel, certified nurse aides, individuals providing assistance with activities of daily living, individuals with a cognitive impairment who provide care-related services and who require the direction or supervision of a registered nurse in order to perform those services, and ward clerks.
 - b. Routine nursing supplies, personal hygiene supplies, medical supplies, and noncapitalized equipment necessary to provide for the care of residents routinely used in the provision of daily care of residents based on the resident needs.
 - c. Training which is required to maintain licensure, certification or professional standards requirements and the related travel costs.
 - d. Routine hair care, including grooming, shampooing, and cutting.
 - e. The cost of noncapitalized wheelchairs.

- n. Bad debts and collection fees as provided for in Section 17 - Bad Debts.
 - o. Business meetings, conventions, association meetings and seminars.
 - p. Travel, except as necessary for training programs for personnel required to maintain licensure, certification, or professional standards requirements.
 - q. Training, except for training for personnel required to maintain licensure, certification or professional standards requirements.
 - r. Business office functions.
 - s. Vacated.
 - t. Working capital interest.
 - u. Any costs that cannot be specifically classified to other cost categories.
2. Chaplain:
- a. Salary and employment benefits for all personnel assigned to meet the spiritual needs of the residents.
 - b. Supplies and other expenses related to meeting the spiritual needs of the residents.
3. Pharmacy - Compensation for pharmacy consultants.
4. Plant operations:
- a. Salary and employment benefits for a director of plant operations, engineers, carpenters, electricians, plumbers, caretakers, vehicle drivers, and all other personnel performing tasks related to maintenance or general plant.
 - b. The cost of heating and cooling, electricity, water, sewer and garbage and cable TV.
 - c. Repairs and maintenance contracts and purchased services.
 - d. Supplies necessary for repairs and maintenance of the facility, including hardware, building materials and tools, other maintenance related supplies and non-capitalized equipment not included elsewhere.
 - e. Motor vehicle operating expenses.

Section 10 – Property Costs

Property related costs and other pass through costs include only those costs identified in this section.

1. Depreciation.
2. Interest expense on capital debt.
3. Property taxes including special assessments as provided for in Section 20 – Taxes.
4. Lease and rental costs.
5. Start up costs.
6. Reasonable legal and related expenses:
 - a. Incurred or as a result of a successful challenge to a decision by a governmental agency, made on or after January 1, 1990, regarding a rate year beginning on or after January 1, 1990.
 - b. Related to legal services furnished on or after January 1, 1990; and
 - c. In the case of a partially successful challenge, not in excess of an amount determined by developing a ratio of total amounts claimed successfully to total amounts claimed in the partially successful challenge and applying that ratio to the total legal and related expenses paid.
7. Allowable Bad Debts expense under Section 17.2 in the report year in which the bad debt is determined to be uncollectable with no likelihood of future recovery.
8. Education expense allowed under Section 12.35 in the report year in which it is expended.
9. Computer software and related technology costs, including cloud-based costs.

Section 16 - Compensation

1. Compensation for top management personnel will be limited, prior to allocation, if any, to the highest market-driven compensation of an administrator employed by a freestanding facility with licensed capacity during the previous report year at least equal to the licensed capacity of the smallest facility within the top quartile of all facilities ranked by licensed capacity, increased by the Consumer Price Index for All Urban Consumers, United States city average, all items index.
2. Compensation includes, but is not limited to:
 - a. Salary for managerial, administrative, professional, and other services.
 - b. Amounts paid by the provider for the personal benefit of the person, e.g., housing allowance, flat-rate automobile allowance.
 - c. The cost of assets and services which the person receives from the provider.
 - d. Deferred compensation, pensions, and annuities.
 - e. Supplies and services provided for the personal use of the person.
 - f. The cost of a domestic or other employee who works in the home of the person.
 - g. Life and health insurance premiums paid for the person and medical services furnished at nursing facility expense.
3. Reasonable compensation for a person with at least 5% ownership, persons on the governing board, or any person related within the third degree of kinship to top management personnel shall be considered an allowable cost if services are actually performed and required to be performed. The amount to be allowed shall be an amount determined by the department to be equal to the amount normally required to be paid for the same services if provided by a nonrelated employee. Reasonableness also requires that functions performed be necessary in that, had the services not been rendered, the facility would have to employ another person to perform them. Reasonable compensation on an hourly basis may not exceed the amount to be determined to be the limitation in paragraph 1 of this section divided by two thousand eighty.
4. Costs otherwise nonallowable under this chapter may not be included as personal compensation.

Section 24 – Adjustment Factors for Direct Care, Other Direct Care and Indirect Care Costs

1. An appropriate economic change index may be used for purposes of adjusting historical costs for direct care, other direct care, and indirect care and for purposes of adjusting limitations of direct care costs, other direct care costs, and indirect care costs, but may not be used to adjust property costs.
2. For the rate year beginning January 1, 2009 the appropriate economic change index is five percent.
3. For the rate year beginning January 1, 2010 the appropriate economic change index is six percent.
4. For the rate year beginning January 1, 2011 the appropriate economic change index is six percent.
5. For the rate year beginning January 1, 2012 the appropriate economic change index is three percent.
6. For the rate year beginning January 1, 2013 the appropriate economic change index is three percent.
7. For the rate year beginning January 1, 2014 the appropriate economic change index is three percent.
8. For the rate year beginning January 1, 2015 the appropriate economic change index is three percent.
9. For the rate year beginning January 1, 2016 the appropriate economic change index is three percent.
10. For the rate year beginning January 1, 2020 the appropriate economic change index is two percent.

- b. A facility which has an actual rate that exceeds the limit rate for a cost category will receive the limit rate.
2. The department will review, on an ongoing basis, aggregate payments to nursing facilities to determine that payments do not exceed an amount that can reasonably be estimated would have been paid for those services under Medicare payment principles. If aggregate payments to nursing facilities exceed estimated payments under Medicare, the department will make adjustments to rates to establish the upper limitations so that aggregate payments do not exceed an amount that can be estimated would have been paid under Medicare payment principles.
 3. The department shall accumulate and analyze statistics on costs incurred by the nursing facilities. These statistics may be used to establish reasonable ceiling limitations taking into consideration relevant factors including resident needs, nursing hours necessary to meet resident needs, size of the nursing facility and the costs that must be incurred for the care of residents in an efficiently and economically operated nursing facility.
 4. The department shall establish limits on actual allowable historical operating cost per diems based on cost reports of allowable operating costs. The limit rates shall be the median rate plus 20 percent for the Direct Care cost category; the median rate plus 20 percent for the Other Direct care category; and the median rate plus 10 percent for the Indirect Care cost category. Until a new base period is established, the department shall adjust the limits annually by the adjustment factor set forth in Section 24 – Adjustment Factors for Direct Care, Other Direct Care and Indirect Care Costs and the limit rate for those rate years may not fall below the median rate for the cost category of the applicable cost report year.
 5. For rates through December 31, 2016 and for rates effective June 1, 2017, for a facility with an actual rate below the limit rate for Indirect Care costs, an incentive amount equal to 70% times the difference between the actual rate, exclusive of inflation indices, and the limit rate, in effect at the end of the year immediately preceding the rate year, up to a maximum of \$2.60, or the difference between the actual rate, inclusive of the adjustment factor and the limit rate for indirect care costs, whichever is less will be included as part of the Indirect Care cost rate.
 6. For rates effective January 1, 2020, a facility will receive an operating margin of 4.40% and for rates effective January 1, 2018 through December 31, 2019, a facility will receive an operating margin of 3.74%. The operating margin will be based on the lesser of the actual Direct Care and Other Direct Care rates, exclusive of inflation indices, or the limit rate, in effect at the end of the year immediately preceding the rate year. The operating margin will then be added to the rate for the Direct Care and Other Direct Care cost categories.

Section 26 - Rate Adjustments

1. Desk Audit Rate

- a. The cost report will be reviewed taking into consideration prior year's adjustments. The facility will be notified by electronic mail of any adjustments based on the desk review. Within seven working days after notification, the facility may submit information to explain why the desk adjustment should not be made. The department will review the information and make appropriate adjustments.
- b. The desk audit rate will be effective January 1 of each rate year unless the department specifically identifies an alternative effective date and will continue in effect until a final rate is established.
- c. (Vacated)
- d. No decision on the request for reconsideration of the desk rate will be given by the department unless the facility has been notified that the desk rate is the final rate.
- e. The desk rate may be adjusted for special rates or one-time adjustments provided for in Section 28 - Special Rates or Section 29 - One Time Adjustments.
- f. The desk rate may be adjusted to reflect errors, adjustments or omissions for the report year which result in a change of at least the rate adjustment percentage per day.

2. Final Rate

- a. The cost report may be field audited to establish a final rate. If no field audit is performed, the desk audit rate will become the final rate upon notification from the department. The final rate is effective January first of each rate year unless the department specifically identifies an alternative effective date.
- b. The final rate will include any adjustments for nonallowable costs, errors or omissions, that are found during a field audit or are reported by the facility within twelve months of the rate year end and that result in a change from the desk audit rate of at least the rate adjustment percentage per day for the rate weight of one.
- c. (Vacated)
- d. The final rate may be revised at any time for special rates or one-time adjustments provided for in Section 28 or Section 29.

- e. If adjustments, errors or omissions are found after a final rate has been established, the following procedures will be used:
 - (1) Adjustments, errors or omissions found within twelve months of establishment of the final rate and resulting in a change of at least the rate adjustment percentage per day for the rate weight of one will result in a change to the final rate. The change will be applied retroactively as provided for in this section.
 - (2) Adjustments, errors or omissions found later than twelve months after the establishment of the final rate, and which would have resulted in a change of at least the rate adjustment percentage per day for the rate weight of one had they been included, will be included as an adjustment in the report year that the adjustment, error or omission was found.
 - (3) Vacated.
 - (4) The two report years immediately preceding the report year to which the adjustments, errors, or omissions apply may also be reviewed for similar adjustments, errors, or omissions.

3. Adjustment of the Total Payment Rate

- a. The final rate as established will be retroactive to the effective date of the desk rate.

- i. Feeling bad or failure or let self or others down;
- ii. Trouble concentrating on things;
- iii. Moving or speaking slowly or being fidgety or restless;
- iv. Thoughts of being better off dead or hurting self; or
- v. Short-tempered or easily annoyed.

6. The major categories in hierarchial order are:

- a. Rehabilitation category. To qualify for the rehabilitation category, a resident must receive rehabilitation therapy. A resident who qualifies for the rehabilitation category is assigned a subcategory based on the resident's activities of daily living score. The rehabilitation category may be assigned within a classification period based on initiation or discontinuation dates if therapies are begun or discontinued on any date not within an assessment reference period.
- b. Extensive services category. To qualify for the extensive services category, a resident must have an activities of daily living score of at least two and within the fourteen days preceding the assessment, received tracheostomy care or required a ventilator, or respirator while a resident.
- c. Special care high category.
 - i. To qualify for the special care high category, a resident must have at least one of the following conditions or treatments and an activities of daily living score of at least two:
 - 1. Comatose and completely dependent for activities of daily living;
 - 2. Septicemia;
 - 3. Diabetes with:
 - a. Insulin injections seven days a week; and
 - b. Insulin order changes on two or more days;
 - 4. Quadriplegia with an activities of daily living score of at least five;
 - 5. Chronic obstructive pulmonary disease and shortness of breath when lying flat;