



**Medical Services**  
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Jack Dalrymple, Governor  
Maggie D. Anderson, Executive Director

August 15, 2013

Scott Davis, Executive Director  
600 E Boulevard Avenue  
Bismarck ND 58505

RE: Tribal Consultation on the North Dakota Medicaid Expansion.

Dear Mr. Davis,

This letter is regarding the Tribal Consultation Policy established between the North Dakota Department of Human Services (Department) and the North Dakota Indian Tribes. This consultation process was established to ensure Tribal governments are included in the decision making process when a State Plan Amendment, waiver proposal or amendment, or demonstration project proposal directly impacts the North Dakota Tribes and/or their Tribal members.

On March 23, 2010, the Patient Protection and Affordable Care Act (ACA) was signed into law. A number of State Plan Amendments are necessary to implement various Medicaid and Children's Health Insurance Program (CHIP) changes resulting from the ACA, including the Medicaid Expansion.

The Centers for Medicare and Medicaid Services (CMS) has recently issued templates for the State Plan Amendments that the State Medicaid and CHIP agencies will be required to file. In addition to the required Amendments, North Dakota will be implementing the Medicaid Expansion.

The amendments and other changes are summarized as follows:

**Medicaid Expansion:** The Department will be completing a State Plan Amendment to implement the Medicaid Expansion; the Department anticipates that one or more private insurance carriers will provide the healthcare coverage for individuals enrolled in the Medicaid Expansion. The healthcare coverage will include the ten essential benefits as required by the Affordable Care Act. States that have adopted the Medicaid Expansion are required to choose an Alternative Benefit Package that will be used for the identified population; it is anticipated that coverage for the Medicaid Expansion will be modeled after the state's largest commercial Health Maintenance Organization in North Dakota;

however, some differences will occur to ensure the benefit package meets all Medicaid requirements.

The Department has released a Request for Proposal for the healthcare coverage. Proposals are due September 30, 2013. The RFP can be viewed at: <https://apps.nd.gov/csd/spo/services/bidder/main.htm>

The following paragraph is included within the RFP (pages 24-25) and is copied here for your convenience in reviewing how the Department has described the requirements for potential bidders related to Indian Health Services/638:

*A successful offeror may enroll Indian Health Services (including Tribal Public Law 638 Programs) as network providers. Even if a successful offeror does not enroll Indian Health Services (including Tribal Public Law 638 Programs) as network providers, a successful offeror must demonstrate that there is timely access for Indian enrollees to the services available through these providers. The successful offeror must reimburse Indian Health Services (including Tribal Public Law 638 Programs) consistent with the encounter payments methodology used by North Dakota Medicaid; which includes payment for multiple encounters in one day, according to the criteria in the North Dakota Medicaid State Plan. A copy of the North Dakota Medicaid State Plan that describes this methodology is available as Attachment H. STATE would provide the successful offeror the annual encounter rates for each Indian Health Services (or Tribal Public Law 638 program). The successful offeror may choose to adopt paying the Medicaid encounter rate, or may make supplemental payments to the Indian Health Service Providers (or Tribal Public Law 638 programs) to ensure the rate is no less than the rate paid by North Dakota Medicaid. Offerors should describe their planned approach in their proposal.*

As part of the implementation of the Medicaid Expansion, the Department is planning to have mandatory enrollment of individuals eligible for the Medicaid Expansion into the plans offered by private carriers (managed care plans). This will include mandatory enrollment of Native Americans. Therefore, **the Department is also preparing a Medicaid 1915(b) waiver** to allow for the mandatory enrollment of individuals eligible for the Medicaid expansion into a managed care plan. It is unknown if there will be more than one choice of plans, this will only be known after the proposals are received and evaluated.

**Medicaid premiums and Cost Sharing:** According to the American Recovery and Reinvestment Act (ARRA) of 2009, Public Law 111-5 provides protections for enrolled

Indians in Medicaid. This Act precludes states from imposing Medicaid premiums or any other Medicaid cost sharing on Indian applicants and participants served by Indian health providers. This Act also assures that Indian health providers, and providers of Contract Health Services (CHS), under a referral from an Indian health provider, will receive payment not subject to cost sharing. Vendors selected to manage the healthcare for the Medicaid Expansion will be required to implement cost sharing for Native Americans that is consistent with current Medicaid cost sharing rules.

- **Eligibility Groups:** Starting January 1, 2014, North Dakota Medicaid and CHIP will use the Modified Adjusted Gross Income (MAGI) eligibility method for determining eligibility for parents and other caretakers, pregnant women, children under age 19, former foster care children up to age 26, and those eligible for the Medicaid Expansion. The Non-MAGI group, which consists of the Aged, Blind and Disabled individuals, will have eligibility determined under current Medicaid rules.
- **Application Process:** For the MAGI group, North Dakota Medicaid and CHIP will use a single, streamlined application and process developed by the United States Department of Health and Human Services. North Dakota Medicaid and CHIP will coordinate eligibility and enrollment between Medicaid, CHIP, the Federal Marketplace (Health Insurance Exchange) and other insurance affordability programs.
- **MAGI Income Methodology:** The Department will be implementing required changes to the determination of household composition, family size and income determination. Implementing the MAGI Income methodology is intended to simplify the way income is calculated for Medicaid and CHIP. MAGI Income Methodology will be used for the Federal Marketplace, in addition to Medicaid and CHIP. The Department will also be establishing MAGI-based income eligibility levels, in other words, converting the current "net" income eligibility levels into "MAGI-equivalent" levels.
- **Transitioning current Medicaid recipients to MAGI:** The Department will transition current Medicaid recipients to the MAGI based determination when the recipients are due for a Medicaid review. However, the Department has received approval from the Centers for Medicare and Medicaid Services, under section 1902(e)(14)(A) of the Social Security Act, to extend the dates for the state's eligibility renewals scheduled for January 1, 2014 through March 31, 2014. The state anticipates extending each eligibility period for three months, thus completing January 2014 renewals in April 2014, February 2014 renewals in May 2014, and March 2014 renewals in June 2014.

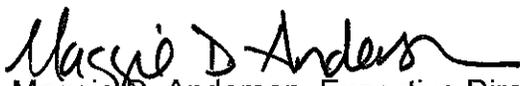
**Establish a 2010(f) group:** North Dakota will establish a new coverage group for children who lose Medicaid eligibility as a result of the discontinuation of disregards under the MAGI methodologies. This will ensure this group has an additional coverage option available.

- **State Residency and Interstate Agreement:** North Dakota Medicaid will select conditions of state residency, interstate agreement procedures and temporary absence criteria.
- **Citizenship and Non-Citizen Eligibility Requirements:** North Dakota Medicaid will determine citizenship and non-citizen eligibility requirements.
- **Hospital Presumptive Eligibility (PE) Requirements:** North Dakota Medicaid will implement hospital presumptive eligibility. Presumptive eligibility offers temporary coverage of Medicaid while the applicant is awaiting an official determination. The goal of PE is to offer healthcare to those in need until the application process is complete.

Comments or questions can be submitted to my attention via email at [manderson@nd.gov](mailto:manderson@nd.gov) or via phone at 701-328-2538. **The Centers for Medicare and Medicaid Services (CMS) is requesting that states submit the required State Plan Amendments as soon as possible; therefore, the state is using expedited consultation for this notice. Even though expedited consultation is being used, comments are welcome and will be incorporated into the amendment process with CMS. Please submit any comments by September 16, 2013.**

The Department appreciates the continuing opportunity to work collaboratively with you to achieve the Department's mission, which is: "To provide quality, efficient, and effective human services, which improve the lives of people."

Sincerely,



Maggie D. Anderson, Executive Director  
Department of Human Services