



Medical Services
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Jack Dalrymple, Governor
Carol K. Olson, Executive Director

January 27, 2011

Ms. Myra Pearson
Spirit Lake Nation
PO Box 359
Fort Totten, ND 58335-0359

Re: Potential Modification to North Dakota Medicaid Services and the Medicaid Waiver

Dear Ms. Myra Pearson:

The past two years, North Dakota has experienced flooding in different areas throughout the state. In 2009, the North Dakota Medicaid program worked with the Centers for Medicare and Medicaid Services (CMS) to secure an 1115 Medicaid Demonstration waiver. The waiver allowed certain flexibilities for clients and providers with regard to Medicaid operations during the flooding period. The 2009 CMS 1115 waiver is enclosed for your review.

Enclosed is a News Release which was issued on January 11, 2011 from the Office of Governor Jack Dalrymple declaring an emergency to provide flood protection to the Devils Lake Basin. This includes the counties of Benson, Nelson, Ramsey, Towner and the Spirit Lake Nation. In addition, data from the National Weather Service Weather Forecast office on January 18, 2011 indicates current spring flood outlooks for much of the southern basin of North Dakota has a higher risk of spring flood levels than were seen in advance of the 2006 or 2010 major flood events. The southern basin includes the Fargo-Moorhead area.

In 2010, the Department received notice from CMS that if there is future flooding, the Department should seek changes to existing Medicaid services and waivers rather than submit an 1115 demonstration waiver. This letter serves as a notice that if flooding should occur this spring, it is expected that the Department may need to submit a modification to requirements of the various Medicaid services and waivers. The Department would expect any changes to be consistent with the changes made in 2009.

Page Two
Ms. Myra Pearson
January 27, 2011

After reviewing the 2009 CMS 1115 waiver, should you or any of your staff have comments or recommendations, please contact me via email at manderson@nd.gov or via telephone at 701.328.1603.

Sincerely,


Maggie D. Anderson, Director
Medical Services Division

CS/mlt

Enclosure



DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

Administrator
Washington, DC 20201

JUL 15 2009

Ms. Carol K. Olson
Executive Director
North Dakota Department of Human Services
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Ms. Olson:

This letter serves to confirm approval of time-limited Demonstration authorities needed to implement the North Dakota Disaster Relief section 1115 Demonstration project, from March 13, 2009, through August 31, 2009. The Medicaid portion of the Demonstration is approved as Project Number 11-W-00244/8, and the Children's Health Insurance Program (CHIP) portion of the Demonstration is approved as Project Number 21-W-00062/8.

On March 13, 2009, the Acting Secretary of the Department of Health and Human Services declared that a public health emergency existed in the flood-stricken State of North Dakota. The declared public health emergency for North Dakota has now ended. The Demonstration is the product of discussions immediately after March 13, 2009, among North Dakota Medicaid and CHIP staff, and staff from the Centers for Medicare & Medicaid Services (CMS).

The Demonstration is granted in recognition of the public health emergency in North Dakota caused by the flooding in March and April 2009. The Demonstration waiver and expenditure authorities outlined in this letter, and in the enclosed Special Terms and Conditions (STCs), are intended to assist the State of North Dakota to continue ensuring Medicaid and CHIP coverage for needy residents after the natural disasters. In light of the natural disasters and to ensure that needy residents of North Dakota are able to obtain necessary health care to promptly address medical conditions, the Demonstration will be presumed to meet the Medicaid budget neutrality requirements applicable to section 1115 demonstration projects. The CHIP allotment neutrality requirements of section 1115 demonstration projects will apply.

Our approval of this Demonstration (and the waivers and Federal matching provided thereunder) is limited to the specific waivers and expenditure authorities outlined in the enclosed list, and the specifications described in the enclosed STCs, which set forth in detail the nature, character, and extent of the Demonstration. The award is subject to our receiving your written acceptance of this award within 30 days after the date of this letter.

On April 7, 2009, the State of North Dakota submitted a letter detailing the State's requests. Below, please find a description of the following:

1. Approvable requests under section 1115 demonstration authority;
2. Request for which section 1115 demonstration authority is not needed; and
3. Requests for which we are not providing section 1115 demonstration authority.

(1) Approvable Requests Under Section 1115 Demonstration Authority

Redeterminations

The State requested to continue eligibility for those individuals who require an eligibility redetermination in the 46 Federal Emergency Management Agency (FEMA) disaster designated counties from March 13, 2009, through May 31, 2009, for individuals enrolled in Medicaid, CHIP, and the 1915(c) Home and Community-Based Services (HCBS) waivers. We have granted the State the necessary waivers and expenditure authority to extend these redeterminations.

1915(c) HCBS Waivers

The State requested authority to expand the definition of provider types under the 1915(c) waivers to include families. The STCs state that the definition of provider types under 1915(c) waivers is expanded to include legally responsible persons, relatives, and legal guardians from March 13, 2009, through June 30, 2009.

The State also requested that clients served through the Developmental Disabilities (DD)/Mental Retardation (MR) 1915(c) waivers receive respite care. The STCs state that these clients may receive short-term respite care in a community care residential facility approved by the State that is not a private residence from March 13, 2009, through June 30, 2009.

(2) Request For Which Section 1115 Demonstration Authority Is Not Needed

Medicaid Eligibility Quality Control (MEQC) and Payment Error Rate Measurement (PERM)

The State asked for flexibility regarding MEQC and PERM reviews involving Medicaid and CHIP cases for disaster-declared counties for the months of March and April. As discussed during conference calls with CMS staff, eligibility is reviewed relative to the State's policy that is in effect at the time of the MEQC or PERM review, and this would include any provisions outlined in the section 1115 Demonstration approval documents.

(3) Requests For Which We Are Not Providing Section 1115 Demonstration Authority

Definition of Resident Day

The State requested to waive the definition of a resident day so it could pay for the day of discharge for individuals at both the sending and receiving facilities. This type of arrangement would result in a duplicative payment. It is not CMS policy to use section 1115 authority to make duplicative payments; and, as a result, we are not approving this request.

Bed Holds

The State requested authority to pay both the sending and receiving facility for the duration of a client's evacuation. This type of arrangement would result in a duplicative payment. It is not CMS policy to use section 1115 authority to make duplicative payments; and, as a result, we are not approving this request.

A full listing of the approved waiver and expenditure authorities for the Demonstration is enclosed.

Written notification to our office of your acceptance of this award must be received within 30 days after the date of this letter. Your project officer is Ms. Julie Sharp. She is available to answer any questions concerning this demonstration project. Ms. Sharp's contact information is as follows:

Centers for Medicare & Medicaid Services
Center for Medicaid and State Operations
7500 Security Boulevard
Mailstop S2-01-16
Baltimore, MD 21244-1850
Telephone: (410) 786-2292
Facsimile: (410) 786-5882
E-mail: Juliana.Sharp@cms.hhs.gov

Official communications regarding program matters should be sent simultaneously to Ms. Sharp and to Mr. Richard Allen, Associate Regional Administrator for the Division of Medicaid and Children's Health Operations in our Denver Regional Office. Mr. Allen's address is:

Centers for Medicare & Medicaid Services
Division of Medicaid and Children's Health Operations
Colorado State Bank Building
1600 Broadway, Suite 700
Denver, CO 80202-4367

If you have questions regarding this correspondence, please contact Ms. Dianne Heffron, Acting Director, Family and Children's Health Programs Group, Center for Medicaid and State Operations, at (410) 786-3247.

We recognize the great efforts that North Dakota has made in facing significant challenges since March 13, 2009, and we appreciate the opportunity to work with you to ensure that North Dakotans receive the assistance they require.

Sincerely,



Charlene Frizzera
Acting Administrator

Enclosures

Page 4 – Ms. Carol K. Olson

cc:

Richard Allen, ARA, Region VIII

Bernadette Quevedo-Mendoza, State Representative

**CENTERS FOR MEDICARE & MEDICAID SERVICES
WAIVER LIST**

NUMBER: 11-W-00244/8
21-W-00062/8

TITLE: North Dakota Disaster Relief Section 1115 Demonstration

AWARDEE: North Dakota Department of Human Services

All requirements of the Medicaid program expressed in law, regulation, and policy statement, not expressly waived in this list, shall apply to the State plan mandatory and optional populations. In addition, the provisions of the Social Security Act (the Act) specifically listed as waived in this list are "not applicable" to the Demonstration populations made eligible through expenditure authority, as specified in the individual waivers.

The Demonstration will operate under these waiver authorities and those provisions specified as "not applicable" beginning March 13, 2009, through August 31, 2009. The waiver authorities will continue through August 31, 2009, unless otherwise stated.

Title XIX:

1. Annual Redeterminations of Eligibility **Sections 1902(a)(4)
and 1902(a)(19)**

To enable North Dakota to continue eligibility under North Dakota's title XIX program, for an additional 3 months (ending no later than August 31, 2009), for individuals who reside in the 46 Federal Emergency Management Agency (FEMA)-disaster designated counties and whose redeterminations would otherwise be due from March 13, 2009, through May 31, 2009. This waiver shall apply only when there is no information presented to the State Medicaid Agency or North Dakota Department of Human Services during that period indicating that the individual is no longer eligible.

2. 30-Day Continuity of Stay Requirement **Sections 1902(a)(10)(A)(ii)(V)
and 1902(a)(10)(A)(ii)(VI)**

To enable North Dakota to treat individuals as institutionalized, or as individuals receiving home and community-based services, even if they receive less than 30-days of continuous care in the respective setting from March 13, 2009, through June 30, 2009.

Title XXI:

1. Annual Redeterminations

Section 2102

To enable North Dakota to continue eligibility under North Dakota's title XXI program for an additional 3 months (ending no later than August 31, 2009), for individuals who reside in the 46 FEMA-disaster designated counties and whose redeterminations would otherwise be due from March 13, 2009, through May 31, 2009. This waiver shall apply when there is no information presented to the State Medicaid Agency or the North Dakota Department of Human Services during that period indicating that the individual is no longer eligible. In addition, anyone requesting a CHIP eligibility determination during this time period must be enrolled in Medicaid if Medicaid-eligible.

**CENTERS FOR MEDICARE AND MEDICAID SERVICES
EXPENDITURE AUTHORITY**

NUMBER: 11-W-00244/8
21-W-00062/8

TITLE: North Dakota Disaster Relief Section 1115 Demonstration

AWARDEE: North Dakota Department of Human Services

Under the authority of section 1115(a)(2) of the Social Security Act (the Act), expenditures made by the State for the items identified below, which are not otherwise included as expenditures under section 1903 or section 2105, shall, for the period of this Demonstration, be regarded as expenditures under North Dakota's title XIX or title XXI plan.

The following expenditure authorities shall enable North Dakota to implement the section 1115 Demonstration (North Dakota Disaster Relief).

All requirements of the Medicaid and Children's Health Insurance program (CHIP) expressed in law, regulation, and policy statement, not expressly identified as not applicable in the list below, shall apply beginning March 13, 2009, through August 31, 2009.

Title XIX:

1. Expenditures for extending an additional 3 months of medical assistance benefits (ending no later than August 31, 2009), to individuals receiving benefits under North Dakota's title XIX program, for whom the State is unable to complete a redetermination of eligibility, unless information is received by the State Medicaid Agency or the North Dakota Department of Human Services earlier than this date, indicating that a redetermination is warranted earlier. This expenditure authority is limited to individuals residing in the 46 FEMA-disaster designated counties whose redeterminations were due from March 13, 2009, through May 31, 2009.
2. Expenditures for expanding the definition of provider types serving individuals eligible under any of the 1915(c) waivers to include legally responsible persons, relatives, and legal guardians. This expenditure authority is applicable from March 13, 2009, through June 30, 2009.
3. Expenditures for providing short-term respite care in a community care residential facility approved by the State that is not a private residence for clients served through the Developmental Disabilities (DD)/ Mental Retardation (MR) 1915(c) waivers. This expenditure authority is applicable from March 13, 2009, through June 30, 2009.

Title XXI:

1. Expenditures for extending an additional 3 months of child health assistance benefits (ending no later than August 31, 2009) to individuals receiving benefits under North Dakota's title XXI program, for whom the State is unable to complete a redetermination of eligibility, unless information is received by the State Medicaid Agency or the North Dakota Department of Human Services earlier than this date, indicating that a redetermination is warranted earlier. This expenditure authority is limited to individuals residing in the 46 FEMA-disaster designated counties whose redeterminations were due from March 13, 2009, through May 31, 2009.

**CENTERS FOR MEDICARE & MEDICAID SERVICES
SPECIAL TERMS AND CONDITIONS**

NUMBER: 11-W-00244/8
21-W-00062/8

TITLE: North Dakota Disaster Relief Medicaid Section 1115 Demonstration

AWARDEE: North Dakota Department of Human Services

I. PREFACE

The following are the Special Terms and Conditions (STCs) for the North Dakota Flood Relief section 1115(a) Medicaid Demonstration (hereinafter "Demonstration"), operated by the North Dakota Department of Human Services (State) and partially funded by the Centers for Medicare & Medicaid Services (CMS). The STCs set forth in detail the State's obligations to the Centers for Medicare & Medicaid Services (CMS) during the life of the Demonstration. The STCs are effective March 13, 2009, unless otherwise specified. This Demonstration is approved through August 31, 2009.

The STCs have been arranged into the following subject areas: Program Description and Objectives, General Program Requirements, Definitions and Conditions, Eligibility and Facilities, Benefits, Cost Sharing, Delivery Systems, General Reporting Requirements, and Schedule of State Deliverables During the Demonstration Period.

II. PROGRAM DESCRIPTION AND OBJECTIVES

The Demonstration is granted in recognition of the public health emergency in North Dakota caused by the flooding in March and April 2009. The Demonstration will assist the State of North Dakota to continue assuring Medicaid and Children's Health Insurance program (CHIP) coverage for needy residents in North Dakota after this natural disaster. The Demonstration also reduces the administrative burden associated with redetermining ongoing eligibility for the affected county and State agency staff.

The State reports that households in many areas of the State have been evacuated from their homes to temporary locations while they seek a longer-term solution to their housing needs. These households may have no address at which to receive mail. Many households have also lost documents and many employers are temporarily closed and cannot provide work verification for these households. Additionally, county and State agency staff have been burdened with assisting with disaster relief efforts.

III. GENERAL PROGRAM REQUIREMENTS

1. **Compliance with Federal Non-Discrimination Statutes.** The State must comply with all applicable Federal statutes relating to non-discrimination. These include, but are not limited

to, the Americans with Disabilities Act of 1990, title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

2. **Compliance with Medicaid and CHIP Law, Regulation, and Policy.** All requirements of the Medicaid and CHIP programs expressed in law, regulation, and policy statement not expressly waived or identified as not applicable in the waiver and expenditure authority documents of which these terms and conditions are part, must apply to the Demonstration.
3. **CMS Right to Terminate or Suspend.** CMS may suspend or terminate the Demonstration, in whole or in part, at any time before the date of expiration, whenever it determines, following a hearing that the State has materially failed to comply with the terms of the project. CMS must promptly notify the State in writing of the determination and the reasons for the suspension or termination, together with the effective date.
4. **Finding of Non-Compliance.** The State does not relinquish its rights to challenge CMS' finding that the State materially failed to comply.
5. **Withdrawal of Waiver Authority.** CMS reserves the right to withdraw the waiver or expenditure authorities at any time it determines that continuing the waivers or expenditure authorities would no longer be in the public interest or promote the objectives of titles XIX or XXI. CMS must promptly notify the State in writing of the determination and the reasons for the withdrawal, together with the effective date, and afford the State an opportunity to request a hearing to challenge CMS' determination, prior to the effective date. If a waiver or expenditure authority is withdrawn, Federal financial participation (FFP) is limited to normal closeout costs associated with terminating the waiver or expenditure authority, including services and administrative costs of disenrolling participants.
6. **Adequacy of Infrastructure.** To the extent possible under emergent circumstances, the State will ensure the availability of adequate resources for implementation and monitoring of the Demonstration, including education, outreach, and enrollment; maintaining eligibility systems; compliance with cost sharing requirements; and reporting on financial and other Demonstration components.

IV. DEFINITIONS AND CONDITIONS

7. **Duration of the Demonstration Program:** The duration of the program will be from March 13, 2009, through August 31, 2009.
8. **Effective Date:** The Demonstration project will be effective upon approval by the Secretary. Eligibility and payments under such a Demonstration may be retroactive to March 13, 2009; the date that a natural disaster was declared in the State of North Dakota.
9. **Disaster Area:** Refers to a geographic area or region in which a National Disaster has been declared. For North Dakota, this is the 46 Federal Emergency Management Agency (FEMA)-disaster designated counties of: Adams, Barnes, Benson, Billings, Bottineau, Bowman, Burleigh, Cass, Cavalier, Dickey, Dunn, Eddy, Emmons, Foster, Grand Forks, Grant, Griggs, Hettinger, Kidder, LaMoure, Logan, McHenry, McIntosh, McKenzie, McLean, Mercer, Morton, Mountrail, Nelson, Oliver, Pembina, Pierce, Ramsey, Ransom,

Richland, Sargent, Sioux, Stark, Steele, Stutsman, Towner, Traill, Walsh, Ward, Wells, and Williams and the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, the Standing Rock Indian Reservation, and the Spirit Lake Indian Reservation. Additional counties may be added as they are disaster-designated by FEMA.

10. **Final Report:** The State must submit a final report to CMS to describe the impact of this program, including but not limited to, the impact on affected individuals, the State, and local governmental units. CMS will provide guidance on the submittal of the final report. The report will be due to CMS by December 31, 2009.

V. ELIGIBILITY & FACILITIES

11. **Eligibility Overview.** Eligibility will be based on the eligibility levels contained in the Medicaid State plan, CHIP State plan, and 1915(c) waivers.
12. **Annual Redeterminations of Eligibility.** The State may continue Medicaid, CHIP, and 1915(c) waiver eligibility without a redetermination for affected individuals in the counties specified below for the time periods specified below. Eligibility may continue for up to 3 months, not to exceed August 31, 2009, or until information is received that warrants a redetermination, whichever is earlier. FFP is available under this Demonstration throughout the period beginning with the date the 2009 redetermination was due (i.e., March 13, through May 31, 2009) and ending after 3 months on an individual basis, but not later than the completion of the next redetermination. The next scheduled redetermination date must be no later than August 31, 2009.

2009 Redetermination Due	Redetermination Waiver Applicable
March 13, 2009, through May 31, 2009	46 FEMA-Disaster Designated Counties (see Disaster Area above in STC #9) for a period of 3 months, ending no later than August 31, 2009

13. **1915(c) Waiver Service Plans.** For annual service plans due on or after March 13, 2009, the State may extend, to the extent necessary, existing service plans through June 30, 2009, for persons enrolled in any of the five 1915(c) waiver programs who are directly affected by the flooding.
14. **Continuity of Care Requirement.** From March 13, 2009, through June 30, 2009, for purposes of eligibility, the State may treat individuals as institutionalized, or receiving home and community-based services, even though they receive less than 30 days of continuous care in the respective setting.

VI. BENEFITS

15. **Benefits.** This Demonstration project does not affect the benefits stipulated in the Medicaid State plan, CHIP State plan, or an approved 1915(c) waiver. Individuals must receive the

same benefits as they currently receive under the program for which they are enrolled, e.g., Medicaid State plan, CHIP State plan, or 1915(c) waiver.

VII. COST SHARING

16. **Cost Sharing.** The State must apply the same cost sharing as outlined in the program for which the individual is enrolled (e.g., Medicaid State plan, CHIP State plan, or 1915(c) waiver).

VIII. DELIVERY SYSTEMS

17. **Delivery Systems.** This Demonstration project does not affect the method of health care delivery for the following programs: Medicaid State plan, CHIP State plan, or 1915(c) waivers. Depending on the eligibility group, individuals shall use the appropriate delivery systems as specified in the Medicaid State plan, CHIP State plan, or 1915(c) waiver.
18. **Primary Care Case Management (PCCM) Program.** From March 13, 2009, through June 30, 2009, the gatekeeper responsibilities of the PCCM program operated under the Medicaid State plan may be lifted, to the extent necessary, for persons residing in any of the 46 FEMA-disaster designated counties.
19. **Provider Types under 1915(c) Waivers.** From March 13, 2009, through June 30, 2009, the definition of provider types under the 1915(c) waivers is expanded to include legally responsible persons, relatives, and legal guardians.
20. **Respite Care.** From March 13, 2009, through June 30, 2009, clients served through the Developmental Disabilities (DD)/ Mental Retardation (MR) 1915(c) waivers may receive short-term respite care in a community care residential facility approved by the State that is not a private residence.

IX. GENERAL REPORTING REQUIREMENTS

21. **Monthly Calls.** CMS must schedule monthly conference calls with the State. The purpose of these calls is to discuss any significant, actual or anticipated, developments affecting the Demonstration. The State and CMS must jointly develop the agenda for the calls.
22. **Final Report.** The State must submit a final report to CMS to describe the impact of this program, including but not limited to, the impact on affected individuals, the State, local governmental units, and facilities by provider type. CMS will provide guidance on the submittal of the final report. The draft report will be due to CMS by December 31, 2009. CMS must provide comments on the draft report within 60 days of receipt, and the State must submit a final report within 60 days of receipt of CMS comments.
23. **Cooperation with Federal Evaluators.** Should CMS undertake an evaluation of the Demonstration, the State must fully cooperate with Federal evaluators and their contractors' efforts to conduct an independent federally funded evaluation of the Demonstration.

24. **Budget Neutrality.** In light of the natural disaster, the Demonstration will be presumed to meet budget neutrality tests under this Demonstration program. Therefore, North Dakota will not be required to provide or demonstrate budget neutrality through “without waiver” and “with waiver” expenditure data. Title XXI allotment neutrality will be applicable under this Demonstration program.

X. SCHEDULE OF STATE DELIVERABLES DURING THE DEMONSTRATION PERIOD

Due Date	Deliverable
30 days from approval letter date	State Acceptance of Demonstration, STCs, Waivers, and Expenditure Authorities
December 31, 2009	Draft Final Report