

March 18, 2020

Jackie Glaze  
CMS Acting Director,  
Medicaid and CHIP Operations Group Center for Medicaid and CHIP Services  
61 Forsythe St SW Suite 4T20  
Atlanta, GA 30303-8909

Carbon Copy Sent to: [Jackie.Glaze@cms.hhs.gov](mailto:Jackie.Glaze@cms.hhs.gov)

Dear Ms. Glaze,

Pursuant to Section 319 of the Public Health Services Act and Title V. of the Stafford Act, a public health emergency and a national emergency have been declared in response to the Coronavirus pandemic (COVID-19). The United States Department of Health and Human Service's [formal waiver approval authority](#) under Section 1135 for states has been published. We understand that the 1135 waiver authority will be retroactive to March 1, 2020 and that it expires 60 days after the national emergency has been declared over. This letter is North Dakota's request for a waiver of specific Medicaid and Children's Health Insurance Program (CHIP) federal regulations so that the State may respond to the pandemic in the most expeditious manner possible.

North Dakota's specific waiver requests address the State's unique situation. This waiver will give North Dakota the flexibility to implement changes, as needed, to address urgent health care needs of our citizens that may arise as a result of the pandemic. Please note that North Dakota is considering implementing all of the blanket waivers announced by CMS on March 13, 2020 in Medicaid and CHIP. This letter seeks Center for Medicaid and CHIP Service's approval for additional waivers as described below. North Dakota may also seek additional flexibilities as covered under Appendix K for each 1915(c) waiver and amendments to the State Plan as needed. At this time, North Dakota does not plan to submit a Section 1115 demonstration waiver.

**Critical Access Hospital Capacity.** North Dakota is requesting a blanket waiver of the federal limit of 25 beds and a length of stay of 96 hours.

**Delayed Reporting.** North Dakota may be delayed in submitting 64, 37, and 416 federal reports to CMS.

**Emergency Medical Treatment and Labor Act (EMTALA).** North Dakota is requesting a blanket waiver so that it may temporarily suspend application of EMTALA sanctions for redirecting an individual to receive medical observation and screening at an alternate location or transfer an individual who has not been stabilized if the transfer is a result of the national emergency.

**Fair Hearings.** North Dakota may modify timeframe for enrollees to exercise their appeal rights to allow an additional 120 days to request a fair hearing when the initial 120th day deadline for an

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enrollee occurred during the period of this Section 1135 waiver. North Dakota may allow beneficiaries to have more than 90 days to request a state fair hearing for eligibility or fee-for-service issues.

**Hospital Capacity.** North Dakota may allow acute care hospitals to treat acute patients in excluded distinct units such as inpatient psychiatric units and rehabilitation units if required as a result of the emergency.

**Home Health.** North Dakota may extend the auto-cancellation date of requests for anticipated payment (RAP) during the national emergency. North Dakota may be delayed in reporting data into the OASIS system. Home health assessments may be done remotely or by record review.

**Pharmacy.** North Dakota may waive the 34-day supply limit for medications. North Dakota may waive the current limit for professional dispensing fee and increase it temporarily to account for mailing, delivery, and other additional costs being incurred as a result of the pandemic. North Dakota may request to claim FMAP when paying for drugs in situations of marketplace shortages such that the only available products are not part of the Medicaid Drug Rebate Program. Payment for non-rebatable drugs as exceptions would only occur when a shortage is confirmed by the multiple wholesalers or the FDA drug shortage website. All of North Dakota's pharmacy services are under a fee-for-service arrangement.

**Primary Care Case Management Program (PCCM).** The gatekeeper requirements of the PCCM program operated under the Medicaid state plan may be lifted. PCCM requirements prior to the enacting date will not be waived.

**Provider Types.** The definition of provider types under state plan personal cares may be expanded to include legally responsible persons, relatives, and legal guardians.

**Preadmission Screening and Resident Review (PASRR).** PASRR Level I and II screenings, evaluations, and determinations as required by 42 CFR 483 Subpart C, upon admission to a nursing home may not be required. The State would ensure the performance of PASRR within 30 days after admission to a nursing facility. Specifically, the Level I and II screenings would take place no later than the 30<sup>th</sup> day after admission to a nursing facility.

**Provider Enrollment.** North Dakota may waive the following provider screening and enrollment requirements: suspending payment of application fees until the next revalidation period; waiving the requirement that background checks be conducted and passed prior to enrollment, instead allowing providers to enroll and require that they pass background checks within the first 45 days of enrollment; waiving site visits; and ceasing revalidation processing.

**Providing Payments to Temporary Facilities.** North Dakota may reimburse for COVID-19 testing that is performed at a drive-by location. The provider who is administering the testing must submit the bill using the facility's place of service code, but the service may be provided outside of the four walls of the facility.

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**Prior Authorization.** North Dakota may waive some or all prior authorization requirements in its fee-for-service program specifically for home health and durable medical equipment. Prior authorizations may also be extended in fee-for-service.

**Resident Assessment.** Minimum Data Set (MDS) assessments as required by 42 CFR 438.20 may take place no later than the 30<sup>th</sup> day after admission to the facility.

**Tribal Consultation.** North Dakota will continue to consult with tribal partners on state plan amendments and waivers. North Dakota may use remote methods to consult with tribes and may extend or waive tribal consultation timelines.

North Dakota appreciates CMS' leadership during this time of concern and uncertainty. North Dakota has developed these waiver requests based on the unique circumstances in our State, the immediate and expected needs of our beneficiaries, and the guidance from CMS. We look forward to your timely feedback for this waiver request and aim to provide additional information as needed in a timely manner that will ultimately, lead to approval and implementation.

Sincerely,



Caprice Knapp, PhD  
Medicaid Director

Cc: Executive Director Chris Jones

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