



# National Indian Health Board NATIONAL TRIBAL COVID-19 RESPONSE

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Updated 1/20/2021

## Section 1135 Medicaid Waiver Authority – North Dakota

### Background

When the President of the United States declares a disaster or emergency under the Stafford Act or National Emergencies Act and the Department of Health and Human Services (HHS) Secretary declares a public health emergency under Section 319 of the Public Health Service Act, the HHS Secretary is authorized to use Section 1135 of the Social Security Act to modify certain Medicare, Medicaid, and Children's Health Insurance Program (CHIP) requirements in order to allow states to respond to the emergency.

On March 24, 2020, the Centers for Medicare & Medicaid Services (CMS) approved North Dakota's Section 1135 waiver, accessible [here](#). This one-pager is meant to be a general guide and is not an exhaustive description of the waiver.

### What does North Dakota's Section 1135 waiver look like?

The waiver makes several changes to North Dakota's Medicaid program, as outlined below:

### **Provider Enrollment**

CMS authorized North Dakota to expedite the enrollment of out of state providers who are not currently enrolled in the state's Medicaid program. North Dakota may continue to use existing procedures to enroll out of state providers who are already in the state's Medicaid program (with one small exception, CMS is waiving the limit on claims within a 180 day period).

CMS has also authorized providers not currently enrolled in Medicare or another state's Medicaid agency to temporarily enroll in North Dakota's programs. To make this possible, North Dakota will be allowed to waive application fee requirements, criminal background checks, site visits, and state licensure requirements. However, the program provider must maintain an out of state license. To these temporarily authorized providers, North Dakota must cease payment within six months of the emergency declaration being lifted, unless the providers submit an application for full participation in the program and are approved.

### **Pre-Admission Screening and Annual Resident Review**

Level 1 and 2 assessments can be waived for 30 days and all new admissions may be treated like exempt hospital discharges. While CMS is not setting a time frame for the completion of Resident Reviews, reviews should be completed on new admissions having a mental illness or intellectual disability diagnosis as soon as resources are available.



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## **Allowing services in alternative settings**

Pursuant to the waiver, North Dakota may allow services to be provided in unlicensed settings, such as temporary shelters, when a provider's facility is not available. The state has to make a reasonable assessment that the facility meets minimum standards to ensure the health, safety, and comfort of beneficiaries and staff. The placing facility is responsible for determining reimbursements for the temporary setting.

## **State fair hearing requests and appeal deadlines**

North Dakota is approved to modify the timeline under which managed care enrollees can request an appeal of a denial of services. Enrollees may request a state fair hearing immediately, bypassing the requirement to exhaust all appeals with their managed care organization. Further, North Dakota is authorized to waive the 120 day deadline for enrollees to file an appeal with the state, provided the 120 day deadline would have occurred during the period of the public health emergency. Managed care recipients in that situation will receive an additional 120 days to file their appeal for a state fair hearing.

North Dakota also has the flexibility to allow recipients to have "more than 90 days" to request a state fair hearing for eligibility or fee for service issues.

## **Use of Legally Responsible Individuals to Render Personal Care Services**

North Dakota will be approved to temporarily allow payment for personal care services by legally responsible individuals, provided that the state makes a reasonable assessment that the caregiver is capable of rendering such services.

## **Requirement to Obtain Beneficiary and Provider Signatures of HCBS Person-Centered Service Plan**

North Dakota may temporarily wave written consent requirements for person-centered service plans. Providers are authorized to obtain documented verbal consent from the beneficiary and those responsible for its implementation.

## **SPA Flexibilities: Tribal Consultation**

North Dakota has also been approved to modify the Tribal consultation period associated with any emergency SPA that they file to address COVID-19. This applies only to emergency provisions that will sunset at the end of the emergency. No guidance is given as to how much this period may be shortened.

## **How does this affect Tribes?**

If a state seeks a Section 1135 waiver, Tribes are impacted by its provisions. North Dakota has five federally recognized Tribes.



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## Medicaid Disaster State Plan Amendment – North Dakota

### Background

The Medicaid State Plan is the foundational document for a state's Medicaid program; it sets the rules for eligibility, benefits, and payments. Before a state can participate in the Medicaid program, it must file a state plan with the Centers for Medicare & Medicaid Services (CMS). There are certain requirements that a state plan must adhere to and if a state wishes to deviate from these statutory requirements, they must seek a waiver (such as a Section 1115 or Section 1915 waiver) of the usual Medicaid rules. When a state wants to amend their State Plan, they have to file what is called a "State Plan Amendment" (SPA).

On April 8, 2020, North Dakota was approved for an Emergency State Plan Amendment in order to respond to COVID-19. You can find that [here](#).

On November 24, 2020, North Dakota was approved for a 2<sup>nd</sup> State Plan Amendment. You can find that [here](#).

On January 19, 2021, North Dakota was approved for a 3<sup>rd</sup> State Plan Amendment. You can find that [here](#).

All approvals are for the duration of the federally declared COVID-19 emergency, unless stated otherwise.

### Premiums and Cost Shares

North Dakota is amending their State Plan to waive premiums and cost-shares for beneficiaries enrolled through the Employed Individuals with Disabilities program.

### Prescription Drugs

North Dakota is amending their State Plan to allow for a one-time 90 day refill without prior authorization.

### Preferred Drug List

North Dakota is amending their State Plan in order to be allowed to make exceptions to their published Preferred Drug List, in the event that drug shortages occur.

### Payment for Reserved Beds

North Dakota is amending their State Plan to allow them to waive the 15 day limit for payment for a reserved bed for COVID-19 hospitalizations of beneficiaries who have an intellectual disability and are residents of a nursing facility or intermediate care facility.

### Qualified Service Provider Qualifications

North Dakota is amending their State Plan to allow for the suspension of Qualified Service Provider qualifications





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## Nursing Facility Rate Appeals

North Dakota is amending their State Plan to waive the timeline for nursing facility rate reconsiderations and appeals.

## Nursing Facility Payment

North Dakota is amending their State Plan in order to waive the 24 day limit for payment for a reserved day for therapeutic leave of absences for a resident of a nursing facility.

## Intermediate Care Facility Payment

North Dakota is amending their State Plan to increase the payment for a reserved day for therapeutic leave of absences for a resident of an intermediate care facility to 60 days.

## Questions?

Please contact Christopher Chavis, Policy Center Deputy Director, at 202-750-3402 or at [cchavis@nihb.org](mailto:cchavis@nihb.org).