

**North Carolina Department of Health and Human Services**

2001 Mail Service Center • Raleigh, North Carolina 27699-2001

Tel 919-733-4534 • Fax 919-715-4645

Beverly Eaves Perdue, Governor

January 7, 2011

Lanier M. Cansler, Secretary

The Honorable Joe Hackney, Speaker of the House  
North Carolina House of Representatives  
Room 2304, Legislative Building  
Raleigh, NC 27601

The Honorable Marc Basnight, President Pro Tem  
North Carolina Senate  
Room 2007, Legislative Building  
Raleigh, NC 27601

Dear Speaker Hackney and President Pro Tempore Basnight:

Session Law 2010-31, Section 10.35A.(c) instructs the Department of Health and Human Services (DHHS) Division of Medical Assistance (Division) to develop and implement a home and community based services assisted living program under 1915(c) Waiver authority or 1915(i) Medicaid State Plan authority in order to continue Medicaid funding of personal care services to individuals living in adult care homes. The Division was instructed to determine which program to implement based on an analysis of which alternative best addresses both resident needs and federal requirements and to apply to the Centers for Medicare and Medicaid Services for approval of the program.

The Department is pleased to provide the enclosed status report. If you have questions or would like additional information, please contact Tara Larson, Chief Clinical Operating Officer, Division of Medical Assistance at (919) 855-4100.

Sincerely,

A handwritten signature in blue ink, appearing to read "Lanier".

Lanier M. Cansler

LMC:tl

Enclosure

cc: Pam Kilpatrick  
John Dervin  
Michael Watson  
Craig Gray, MD, MBA, JD  
Dan Stewart

Sharnese Ransome  
Jim Slate  
Lee Dixon  
Legislative Library (one hard copy)





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The Honorable Beverly Earle, Co-Chair  
Appropriations Subcommittee on Health  
and Human Services  
North Carolina General Assembly  
Room 634, Legislative Office Building  
Raleigh, NC 27603

The Honorable Verla Insko, Co-Chair  
Appropriations Subcommittee on Health  
and Human Services  
North Carolina General Assembly  
Room 307-B1, Legislative Office Building  
Raleigh, NC 27603

The Honorable Bob England, Co-Chair  
Appropriations Subcommittee on Health and Human Services  
North Carolina General Assembly  
Room 303, Legislative Office Building  
Raleigh, NC 27603

Dear Representatives Earle, England and Insko:

Session Law 2010-31, Section 10.35A.(c) instructs the Department of Health and Human Services (DHHS) Division of Medical Assistance (Division) to develop and implement a home and community based services assisted living program under 1915(c) Waiver authority or 1915(i) Medicaid State Plan authority in order to continue Medicaid funding of personal care services to individuals living in adult care homes. The Division was instructed to determine which program to implement based on an analysis of which alternative best addresses both resident needs and federal requirements and to apply to the Centers for Medicare and Medicaid Services for approval of the program.

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Lanier M. Cansler

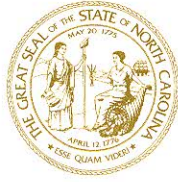
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January 7, 2011

Lanier M. Cansler, Secretary

The Honorable William R. Purcell, Co-Chair  
Appropriations on Health and Human Services  
North Carolina General Assembly  
Room 625, Legislative Office Building  
Raleigh, NC 27603

The Honorable Doug Berger, Co-Chair  
Appropriations on Health and Human Services  
North Carolina General Assembly  
Room 526, Legislative Office Building  
Raleigh, NC 27603

Dear Senators Purcell and Berger:

Session Law 2010-31, Section 10.35A.(c) instructs the Department of Health and Human Services (DHHS) Division of Medical Assistance (Division) to develop and implement a home and community based services assisted living program under 1915(c) Waiver authority or 1915(i) Medicaid State Plan authority in order to continue Medicaid funding of personal care services to individuals living in adult care homes. The Division was instructed to determine which program to implement based on an analysis of which alternative best addresses both resident needs and federal requirements and to apply to the Centers for Medicare and Medicaid Services for approval of the program.

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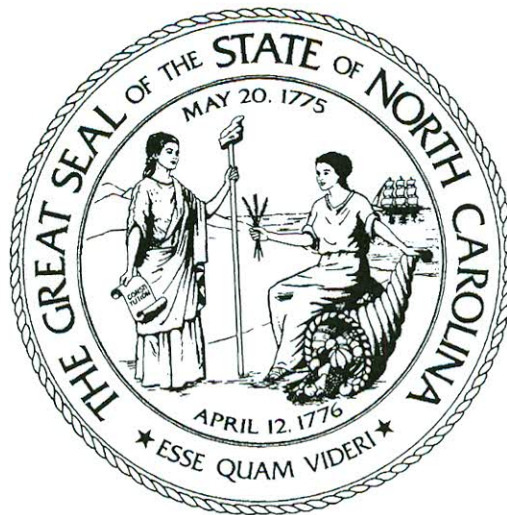
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# **Status Report on Implementation of a Medicaid Home and Community Based Services Assisted Living Program**

**Section 10.35A.(c) of S.L. 2010-31**



**State of North Carolina  
Department of Health and Human Services  
Division of Medical Assistance**



**January 1, 2011**

### **A. Legislative Mandate**

Section 10.35A of Session Law 2010-31 instructed the Department of Health and Human Services, Division of Medical Assistance (Division) to develop and implement a home and community based services assisted living program under 1915(c) Waiver authority or 1915(i) Medicaid State Plan authority in order to continue Medicaid funding of personal care services to individuals living in adult care homes. The Division was instructed to determine which program to implement based on an analysis of which alternative best addresses both resident needs and federal requirements and to apply to the Centers for Medicare and Medicaid Services for approval of the program by August 10, 2010.

The Division is to provide a report on the program on or before January 1, 2011 to the Joint Legislative Commission on Governmental Operations, the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division.

### **B. Selection of the 1915(i) Medicaid State Plan Option**

In determining the most advantageous coverage option, the Division of Medical Assistance did a side-by-side analysis of the 1915(i) and the 1915(c) authorities. The 1915(i) authority was determined to be the most advantageous to the State for the following reasons:

- Eligibility for services under a 1915(c) waiver requires that participants meet nursing facility level of care criteria. Thus, the State would have had to determine on a case by case basis whether each person in an adult care home requires the level of care that persons receive in nursing facilities; only those who were found to qualify for nursing facility level of care would have been able to participate in the waiver. Although many of the frail elderly with chronic health problems and younger adults with severe physical impairments in adult care homes would meet these criteria, there are many who would not, particularly those whose primary diagnosis is mental illness. On the other hand, 1915(i) eligibility is based on functional criteria, both physical and mental or intellectual, which are set by the state and, according to federal law, must be less stringent than the criteria for admission to a nursing home.
- One disadvantage of the 1915(i) authority is that financial eligibility criteria are slightly more stringent than 1915(c) criteria, in that the individual's income cannot exceed 150% of the Federal Poverty Level. Generally, one's income must be under 100% of the Federal Poverty Level to qualify for Medicaid in the aged, blind and disabled categories. However, Medicaid eligibility for adult care home residents is tied to eligibility for State-County Special Assistance, and in some cases recipients of Special Assistance have incomes over 150% of the poverty level. At this time, there are approximately 250 individuals receiving Special Assistance who would not qualify for 1915(i) services due to excess income. Thus, neither option will allow for the provision of personal care to all adult care home residents. However, loss of eligibility for the service would be significantly greater than 250 individuals under the 1915(c) waiver due to the nursing facility level of care requirement.

- The Patient Protection and Affordable Care Act amended the 1915(i) authority to remove the restriction to a finite set of services. The State will have the same flexibility in developing and defining services under 1915(i) that exists under 1915(c).
- The 1915(i) authority is much less administratively burdensome to the State than the waiver option. For example, it is not unusual for a 1915(c) waiver application to be 200 or more pages in length, while the 1915(i) application for this program was only 35 pages. The 1915(i) also has fewer federal reporting requirements.

### **C. Status of 1915(i) Application:**

The 1915(i) application was submitted to the Centers for Medicare and Medicaid Services (CMS) on November 5, 2010. The application includes one comprehensive service, designated as “Home and Community Based Residential Services” (HCBS – Residential). HCBS-Residential covers assistance with activities of daily living, such as ambulation, dressing and transfers; supervision or oversight as needed; and non-emergent medical transportation. Service providers are limited to adult care homes licensed in accordance with NC General Statute 131D and supervised living facilities for adults with developmental disabilities or mental illness licensed under NC General Statute 122-C.

The application includes a quality assurance and improvement strategy with quantifiable performance measures in several areas, including appropriateness of plan of care to consumer’s needs; provider qualifications; financial and program accountability of the Medicaid agency; and health and safety of program participants. The application also proposes to set up an intra-departmental monitoring team composed of representatives from all divisions within DHHS that work directly with adult care homes and supervised living facilities and the residents, including the Divisions of Medical Assistance, Health Service Regulation, Aging and Adult Services, and Mental Health, Developmental Disabilities and Substance Abuse Services. In addition, representatives from the adult care home and supervised living industries will be members of the intra-departmental monitoring team.

The content of the application was reviewed and agreed upon by the DHHS 1915(i) workgroup, which includes the DHHS divisions and industry representatives cited in the preceding paragraph. The timeframe for CMS approval or denial is 90 days although CMS can “stop the clock” if there is a need for additional information from the State to complete the review process.