



NC DEPARTMENT OF
**HEALTH AND
HUMAN SERVICES**
Division of Social Services

ROY COOPER • Governor
MANDY COHEN, MD, MPH • Secretary
SUSAN G. OSBORNE • Assistant Secretary for County Operations

April 6, 2021

DEAR COUNTY DIRECTOR OF SOCIAL SERVICES

ATTENTION: ALL COUNTY DSS DIRECTORS and DSS FISCAL OFFICERS

SUBJECT: COMMERCIAL OFF THE SHELF SOFTWARE

Federal Requirements for Counties Considering Using Commercial Off-The-Shelf Software

Dear County Directors and DSS Fiscal Officers,

The following contains very important information for County DSS/HHS agencies considering the use of, or who have recently begun using a Commercial Off-The-Shelf (COTS) product designed to support Health and Human Services (HHS) programs. COTS software means proprietary software products that are ready-made and available for sale to the general public at established catalog or market prices. In general, COTS products for these programs are **ineligible for Federal Financial Participation (FFP)** under 45 CFR, Part 95, Subpart F.

For COTS expenses to be considered for FFP, a waiver would need to be submitted, in advance, for federal approval. If approved, FFP may be allowable. As a multi-op state, NC allocates DSS costs across multiple federal programs and therefore these COTS waivers must be sent to both HHS and USDA.

In the past, NC DHHS has considered the COTS waiver process only applicable to State procurements and has not enforced this requirement at the local level. During recent conversations with our federal partners, it was made clear that NC DHHS must submit a COTS waiver for any COTS product designed to support HHS programs being used by the state or county agency. We wish to support you in your efforts to leverage local ingenuity to better serve families. Our intention with this guidance is to make sure that we support you in doing this so that we can maximize local and state FFP and make our resources go as far as possible to help the people we serve.

NC DEPARTMENT OF HEALTH AND HUMAN SERVICES • DIVISION OF SOCIAL SERVICES

LOCATION: 820 S. Boylan Avenue, McBryde Building, Raleigh, NC 27603
MAILING ADDRESS: 2401 Mail Service Center, Raleigh, NC 27699-2401
www.ncdhhs.gov • TEL: 919-527-6335 • FAX: 919-334-1018

AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER

Going forward, **NC DHHS will require advance notice of counties' intentions to procure COTS products designed to support HHS programs.** Please provide that advance notice via an email to ncdsscomputerplans@dhhs.nc.gov. That advance notice must provide an overview of the business case, intended procurement strategy, and the anticipated budget (initial costs and ongoing). NC DHHS staff may reach out with guidance, questions, or considerations based on what is provided in that advance notice. Some of that information will roll over cleanly into the subsequent COTS waiver, if applicable. If NC DHHS already has a federally approved COTS waiver for a specific product, we can let the county know in our response and share the pertinent information from that waiver with the county.

COTS waiver requests, when applicable, must be submitted as an attachment to your ADP request and/or annual ADP plans. Approval by NC DHHS and our federal partners is required prior to counties claiming costs on the 1571 for reimbursement. The turnaround expectation for COTS approval will be 90 days (30 for NC DHHS and 60 days for our federal partners).

If you are considering the procurement of a COTS product designed to support HHS programs or have recently contracted with a vendor for such a product and have not yet submitted an ADP request, please reach out to ncdsscomputerplans@dhhs.nc.gov. The following information provides a high-level summary of the information needed for a COTS waiver, and some other considerations:

Information to be included in a COTS Waiver:

- Alternatives Analysis and Feasibility Study
- Business Case and Justification of Use
- Benefits of Use
- Transition Plan and Future Procurements
- Competitive Procurement
- Risk Mitigation Plan

Other key considerations:

- **Prior Approval Conditions:** Under certain conditions, the federal government requires prior federal approval for procurement. If the conditions are not met, FFP may not be allowable. With advance notice of your intentions to procure a COTS product, NC DHHS can assist you with ensuring that all requirements are met.
- [Comprehensive Child Welfare Information System \(CCWIS\)](#) Implications of COTS products used for Child Welfare:
 - With the delays in rolling out our Statewide Child Welfare System, NC DHHS understands that some counties have made the decision to utilize new technologies to support their child welfare programs. Once a system is ready to implement statewide, duplication and inconsistent use may impact the state's ability to maximize FFP and some local systems **may** need to be decommissioned. NC DHHS will work to develop plans with counties so they may

continue leveraging beneficial and non-duplicative county-owned technology while still harnessing all core elements of the future statewide system.

Sincerely,



Rob Morrell

Director, Human Services Business Information & Analytics



Richard Stegenga

Deputy Director, Division of Social Services, Business Operations