DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-26-12
Baltimore, Maryland 21244-1850

March 12, 2021

David Richard
Deputy Secretary, North Carolina Medicaid
Division of Health Benefits
North Carolina Department of Health and Human Services
1985 Umstead Drive
2501 Mail Service Center
Raleigh, North Carolina 27699-2501

Re: SUPPORT Act Section 1006(b) Section 1135 Flexibilities Requested in January 14, 2021 Communication (Fifth Request)

Dear Mr. Richard:

The Centers for Medicare & Medicaid Services (CMS) granted an initial approval to the State of North Carolina for multiple section 1135 flexibilities on March 23, 2020. Your follow-up communication to CMS on January 14, 2021 indicated North Carolina's response to the COVID-19 pandemic has delayed its ability to submit a state plan amendment (SPA) to fulfill the requirements outlined in section 1006(b) of the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT) for Patients and Communities Act ("SUPPORT Act"). Specifically, the state was unable to submit the required coverage and/or payment SPA(s) for the new medication-assisted treatment (MAT) benefit for opioid use disorders in accordance with the regulatory SPA submission and public notice timelines, and requested a modification of the requirements.

Attached, please find a response to your requests for waivers or modifications, pursuant to section 1135 of the Social Security Act (the Act), to address the challenges posed by COVID-19. Approval of these section 1135 flexibilities is also contingent upon North Carolina meeting the conditions outlined on page twelve of State Health Officials Letter # 20-005 (Mandatory Medicaid State Plan Coverage of Medication-Assisted Treatment), which includes conducting tribal consultation, as required under section 1902(a)(73)(A) and described in the State Plan. Please note this approval addresses those requests related to Medicaid and does not apply to the Children's Health Insurance Program (CHIP) as separate CHIP programs were required to comply with requirements at section 5022 of the SUPPORT Act by October 24, 2019.

On March 13, 2020, the President of the United States issued a proclamation that the COVID-19 outbreak in the United States constitutes a national emergency by the authorities vested in him by the Constitution and the laws of the United States, including sections 201

and 301 of the National Emergencies Act (50 U.S.C. 1601 *et seq*.), and consistent with section 1135 of the Act. On March 13, 2020, pursuant to section 1135(b) of the Act, the Secretary of the United States Department of Health and Human Services invoked his authority to waive or modify certain requirements of titles XVIII, XIX, and XXI of the Act as a result of the consequences of the COVID-19 pandemic, to the extent necessary, as determined by CMS, to ensure that sufficient health care items and services are available to meet the needs of individuals enrolled in the respective programs and to ensure that health care providers that furnish such items and services in good faith, but are unable to comply with one or more of such requirements as a result of the COVID-19 pandemic, may be reimbursed for such items and services and exempted from sanctions for such noncompliance, absent any determination of fraud or abuse. This authority took effect as of 6PM Eastern Standard Time on March 15, 2020, with a retroactive effective date of March 1, 2020. The emergency period will terminate, and section 1135 waivers will no longer be available, upon termination of the public health emergency, including any extensions.

To streamline the section 1135 waiver request and approval process, CMS has issued a number of blanket waivers for many Medicare provisions, which primarily affect requirements for individual facilities, such as hospitals, long-term care facilities, home health agencies, and so on. Waiver or modification of these provisions does not require individualized approval, and, therefore, these authorities are not addressed in this letter. Please refer to the current blanket waiver issued by CMS that can be found at: https://www.cms.gov/about-cms/emergency-preparedness-response-operations/current-emergencies/coronavirus-waivers.

This letter is in response to all requests submitted to CMS. If the state determines that it has additional needs, please contact your state lead and CMS will provide the necessary technical assistance for any additional submissions.

Please contact Jackie Glaze, Deputy Director, Medicaid and CHIP Operations Group, at (404) 387-0121 or by email at Jackie.Glaze@cms.hhs.gov if you have any questions or need additional information. We appreciate the efforts of you and your staff in responding to the needs of the residents of the State of North Carolina and the health care community.

Sincerely,

Anne Marie Costello
Acting Deputy Administrator and Director

STATE OF NORTH CAROLINA
APPROVAL OF FEDERAL SECTION 1135 WAIVER REQUESTS

CMS Response: March 12, 2021

SUPPORT Act Section 1006(b) MAT State Plan Amendment (SPA) Flexibilities: Submission Deadline and Public Notice

Pursuant to section 1135(b)(5) and/or 1135(b)(1)(C) of the Act, CMS is modifying the SPA submission requirements at 42 C.F.R. § 430.20, to allow the state to submit a SPA implementing section 1905(a)(29) of the Act by March 31, 2021 that would take effect on October 1, 2020.

Pursuant to section 1135(b)(5) and/or 1135(b)(1)(C) of the Act, CMS is modifying the public notice time frames set forth at 42 C.F.R. § 447.205, in order to obtain an effective date of October 1, 2020 for its SPA implementing statewide methods and standards for setting payment rates for the benefit described at section 1905(a)(29) of the Act. The state will issue public notice as soon as possible.