



North Carolina Department of Health and Human Services

Pat McCrory
Governor

Aldona Z. Wos, M.D.
Ambassador (Ret.)
Secretary DHHS

Adam Sholar
Legislative Counsel
Director of Government Affairs

February 1, 2014

SENT VIA ELECTRONIC MAIL

The Honorable Ralph Hise, Co-Chair
Joint Legislative Oversight Committee on
Health and Human Services
Room 1026, Legislative Building
Raleigh, NC 27603

The Honorable Justin Burr, Co-Chair
Joint Legislative Oversight Committee on
Health and Human Services
Room 307A, Legislative Office Building
Raleigh, NC 27603-5925

The Honorable Mark Hollo, Co-Chair
Joint Legislative Oversight Committee on
Health and Human Services
Room 639, Legislative Office Building
Raleigh, NC 27603-5925

Dear Senator Hise and Representatives Burr and Hollo:

The progress report from the Department of Health and Human Services on the implementation and operation of a tiered rate structure and block grant with the State-County Special Assistance Program pursuant to Session Law 2013-360 is enclosed.

The report provides information about the Department's communication with the one hundred county departments of social services regarding their interest in participating in a pilot. It also includes information from a conference call with the Social Security Administration regarding compliance with their regulations. In addition, the report addresses a change that would need to be made to the NC State Medicaid Plan in order to conduct a pilot.

If you have further questions or need additional information, please contact Dennis Streets, Director of the Division of Aging and Adult Services at Dennis.Streets@dhhs.nc.gov or 919-855-3401.

Sincerely,



Adam Sholar

Cc: Sherry Bradsher Matt McKillip

www.ncdhhs.gov

Tel 919-855-4800 • Fax 919-715-4645

Location: Adams Building/Dix Campus • 101 Blair Drive • Raleigh, NC 27603

Mailing Address: 2001 Mail Service Center • Raleigh, NC 27699-2001

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Joyce Jones
Kristi Huff
Brandon Griefe

Sandy Terrell
Jessica Bradley
Pam Kilpatrick
Denise Thomas
Theresa Matula
Sarah Riser
Pat Porter



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SENT VIA ELECTRONIC MAIL

Mr. Mark Trogon, Director
Fiscal Research Division
North Carolina General Assembly
Room 619, Legislative Office Building
Raleigh, NC 27603-5925

Dear Mr. Trogon:

The progress report from the Department of Health and Human Services on the implementation and operation of a tiered rate structure and block grant with the State-County Special Assistance Program pursuant to Session Law 2013-360 is enclosed.

The report provides information about the Department's communication with the one hundred county departments of social services regarding their interest in participating in a pilot. It also includes information from a conference call with the Social Security Administration regarding compliance with their regulations. In addition, the report addresses a change that would need to be made to the NC State Medicaid Plan in order to conduct a pilot.

If you have further questions or need additional information, please contact Dennis Streets, Director of the Division of Aging and Adult Services at Dennis.Streets@dhhs.nc.gov or 919-855-3401.

Sincerely,

Adam Sholar

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	Dennis Streets	Sandy Terrell
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Kristi Huff
Brandon Griefe

Pat Porter

**Progress Report on the
Implementation and Operation of Tiered Rate and Block Grant State-County Special
Assistance Pilot
February 1, 2014**

Legislative Mandate

Session Law 2013-360 requires the Department of Health and Human Services, Division of Aging and Adult Services to establish a pilot program to implement a tiered rate structure within the State-County Special Assistance program for individuals residing in group homes, in-home living arrangements, and assisted living residences as defined in G.S. 131D-2.1. The purposes of the pilot program are to (i) determine the best way to implement a block grant for this program statewide and (ii) test the feasibility and effectiveness of implementing a tiered rate structure to address program participants' intensity of need, including medication management. The Department is to select a minimum of four and a maximum of six counties to participate in the pilot program, at least two of which shall be rural and at least two of which shall be urban. Per Session Law 2013-360, the pilot program is to (i) be implemented during the 2013-2014 fiscal year, (ii) operate for at least a 12-month period, and (iii) comply with any agreements in effect between the State of North Carolina and the United States government.

As directed, the Department is to implement the pilot program in collaboration with the local departments of social services in the counties selected for participation. As part of the pilot program, the selected counties are to receive a State General Fund allocation as a block grant to be equally matched with county general funds. The General Fund allocation provided to each county participating in the pilot program is to be calculated based upon the average annual Special Assistance expenditures for that county during the 2011-2013 fiscal biennium, adjusted for the amount of projected annual growth in the number of Special Assistance recipients in that county during the 2013-2015 fiscal biennium. These funds may be used to pay for room, board, and personal care services, including medication management, for individuals eligible to receive State-County Special Assistance, subject to the following limitations and requirements:

- (1) These funds are not to be used to cover any portion of the cost of providing services for which an individual receives Medicaid coverage.
- (2) The pilot program is to comply with all federal and State requirements governing the existing State-County Special Assistance program, except that Section 12D.3 does not apply to the pilot program.
- (3) The tiered rate structure is to be based upon intensity of need, and an individual's placement within a tier shall be based upon an independent assessment of the individual's need for room, board, and assistance with activities of daily living, including medication management.

Collaboration with County Departments of Social Services

The Division of Aging and Adult Services (DAAS) sent a Dear County Director of Social Services letter to all one hundred county departments of social services (DSSs) on September 30, 2013, informing them of the required tiered State-County Special Assistance (SA) pilot. The letter to the DSSs is included as Attachment A of this progress report. The letter invited their participation in the pilot and included each DSS's projected block grant allocation from the State General Fund to be matched with county funds as required in Session Law 2103-360 for participation in the pilot.

DAAS received a response from all one hundred DSSs. Only one DSS (Pamlico) indicated interest in participating in the pilot. With this limited interest, DAAS will not be able to conduct the pilot as required by the legislation.

Compliance with Federal Agency Regulations and Agreements

The SA Program operates as an Optional State Supplement Program to the federal Supplemental Security Income (SSI) Program in certain licensed facilities. This program must follow regulations in the Social Security Act which include Section 1616 [42 U.S.C. 1382e] and Section 1618 [42 U.S.C. 1382g] under the jurisdiction of the Social Security Administration (SSA). The program is “optional” since as of 1974 states have had the “option” to provide payments to supplement the SSI of low-income individuals. NC initiated its supplement in 1974 when SSI was established, converting what was formerly known as the State Boarding Home Fund for the Aged and Infirm established in 1951. Once states make payments as a supplement to SSI on or after June 30, 1977, states must continue to provide these payments and adhere to maintenance of effort regulations or risk losing all Title XIX (Medicaid) funding. As such, SSA regulations must be considered before implementing any operational changes to the SA Program.

In addition to the above regulations, the Centers for Medicare and Medicaid Services (CMS) regulations [42 CFR 435.200] allow states to cover individuals receiving an optional state supplement in their state Medicaid plans. SA beneficiaries in certain licensed facilities are an optional coverage group under NC’s Medicaid State Plan and have been since at least 1974.

DAAS submitted a letter to the Regional Office of the SSA on August 30, 2013, seeking guidance to determine if an SA pilot with a block grant budget and a tiered rate structure would be in compliance with SSA regulations. The letter to the SSA is included as Attachment B of this progress report. The letter was subsequently forwarded to the Central Office of SSA to provide a response to DAAS.

The Central Office of the SSA requested a conference call with DAAS staff to better understand the nature and scope of the SA pilot and DAAS’s request for guidance about conducting the pilot. The SSA scheduled and conducted that call on January 9, 2014.

During the January 9th conference call, DAAS staff learned that a tiered rate structure would be permissible under SSA regulations (Section 1616 and Section 1618 of the Social Security Act referenced above) as long as NC upholds the maintenance of effort requirement. SSA regulations require states to maintain certain levels of assistance for Optional State Supplement programs. States may comply with this regulation in one of two ways: (1) maintain supplementary payment levels at March 1983 levels or (2) maintain total state expenditures in the current twelve month calendar year equal to the total state expenditures in the previous twelve month period. NC uses the payment methodology, method (1) above, to meet the SSA regulations for maintenance of effort. NC has chosen the payment methodology given the fluctuations in expenditures in the SA budget over the years. The State has remained above its 1983 payment levels based on the maximum rates for SA established by the NC General Assembly.

Also, during the conference call on January 9, SSA staff indicated that NC could switch to method (2) and maintain total state expenditures at current levels as the baseline for meeting maintenance of effort. This can be done without penalty, but does mean that NC would have to maintain this amount at a minimum for purposes of the SA program budget going forward. SA expenditures for calendar year 2013 were \$131,392,076. If NC chooses to implement method (2) by using total state expenditures, it could block grant the SA program statewide and in effect “cap” enrollment by limiting the amount of funding available for the program and remain in

compliance with the maintenance of effort SSA regulations (Sections 1616 and 1618 of the Social Security Act).

DAAS received e-mail communication from Angela Hood with the SSA on January 14, 2014 confirming what had been discussed in the January 9th conference call. The e-mail correspondence is included as Attachment C of this progress report.

Recommendation 6 of the December 19, 2012 Blue Ribbon Commission Final Report, entitled Transitions to Community Living, directed the Department of Health and Human Services to study SA to develop alternate cost methodology options for determining rates and to investigate the feasibility of a tiered rate structure to address assessed resident needs based on the intensity of need, including medication management. The October 1, 2013 report entitled, DHHS Findings and Recommendations in Response to Blue Ribbon Commission on Transitions to Community Living Recommendations, noted that tiered rates across facility and private living settings based on the requirements in Session 2013-360 could increase the state and county budgets for SA. Taking into consideration the SSA regulations for maintenance of effort under the payment level methodology, the basic tier of a tiered rate structure could not fall below the 1983 minimum state supplement payment level. The minimum in 1983 was \$239.70. The SA payment level is different from the maximum rate for SA set by the General Assembly.

Sections 1616 and 1618 of the Social Security Act would allow NC to conduct a pilot to test the feasibility and effectiveness of a tiered rate structure and a block grant program and not jeopardize compliance with those federal regulations in any of the settings identified in Session Law 2013-360. However, CMS regulation 42 CFR 435.200 allows the state to make SA beneficiaries in certain licensed facilities a Medicaid eligibility group in the NC Medicaid State Plan. As a Medicaid eligibility group, the SA benefit must be available to all individuals in the state who qualify. As such, NC would be out of compliance with its existing Medicaid State Plan using a block grant for SA where eligible individuals are unable to receive the benefit due to a capped budget.

Implications for an SA Pilot

Without additional counties willing to participate, the pilot will not be possible. Moreover, while NC does have some flexibility under the SSA regulations for conducting a pilot, a change in the Medicaid State Plan would be required. In order to implement a block grant for SA in a pilot and subsequently statewide, the NC General Assembly would need to change the State Medicaid Plan and CMS would have to approve a State Plan Amendment eliminating this coverage group for SA beneficiaries in certain licensed facilities. The implications for taking this type of action, even if approved by CMS, would have to be considered for the individuals in this coverage group. DAAS's initial projection for the number of people who would no longer qualify for Medicaid under this coverage group, if it were eliminated, is approximately 5,700.



North Carolina Department of Health and Human Services
Division of Aging and Adult Services

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Secretary DHHS

Dennis Streets
Division Director

September 30, 2013

DEAR COUNTY DIRECTOR OF SOCIAL SERVICES

ATTENTION: Adult Services and Special Assistance Supervisors and Managers

SUBJECT: Tiered Rate Pilot for State/County Special Assistance Program

This letter is to request your county's participation to design and implement a tiered rate pilot for the State/County Special Assistance Program (SA). SL 2013-360 directs the NC Department of Health and Human Services, Division of Aging and Adult Services (DAAS) to establish an SA pilot program. The special provision for the pilot program is **Attachment 1** for your reference.

The pilot has two primary components. First, it must implement a tiered rate structure within the SA program for individuals residing in group homes, adult care homes, and in-home living arrangements. The pilot is to test the feasibility and effectiveness of a tiered rate structure that addresses program participants' intensity of need, including medication management. The individual's SA tier payment will be determined by an independent assessment of the individual's need for room, board and assistance with activities of daily living (ADLs), including medication management.

Second, the pilot is to determine the best way to implement a block grant for the SA program statewide. A block grant would mean a capped budget to operate the SA program. Currently, the cost of the SA program is borne equally between state funds (50%) and county government funds (50%). The SA facility-based program operates as an entitlement without a capped budget.

SL 2013-360 requires the pilot to be implemented this state fiscal year in four to six counties (at least two urban and two rural); operate for at least twelve months; and comply with all Federal and State requirements governing the existing SA program. DAAS has submitted a letter to the Social Security Administration to determine if the SA pilot will be in compliance with the Federal regulations that govern Optional State Supplement (OSS) programs. The OSS regulations are the basis under which North Carolina operates the SA program in residential settings. All SA beneficiaries in the pilot counties living in residential facilities and in private living would be subject to the tiered payment rates established for the pilot.

www.ncdhhs.gov • www.ncdhhs.gov/aging
Tel 919-855-3400 • Fax 919-733-0443

Location: Taylor Hall, 693 Palmer Drive • Raleigh, NC 27603
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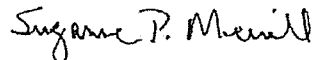
The pilot counties will assist DAAS in the design of the processes, procedures, tools and forms necessary to implement the pilot program. Those same counties will then implement what has been developed. No additional funding was appropriated for the pilot for DAAS or the participating counties.

SL 2013-360 states that the selected counties shall receive a State General Fund allocation as a block grant to be equally matched with county general funds. The General Fund allocation to each pilot county is calculated based upon the average annual SA expenditures for that county during the 2011-2013 biennium and adjusted for the amount of projected annual growth in the number of SA recipients in that county during the 2013-2015 biennium. These funds are to be used to pay for room, board and personal care services, including medication management, for individuals eligible to receive SA. The funds cannot be used to replace Medicaid reimbursement for services. DAAS has calculated the projected pilot budget for all one hundred counties based upon the legislative provisions. The calculation document is entitled **State/County Special Assistance Pilot for Tiered Rate Block Grant** and is **Attachment 2** for your reference in determining your interest in participating in the pilot.

Please complete and the DSS director will sign **Attachment 3--County Response Form for Participation in the SA Pilot Program** indicating whether your county is interested or not in participating in the pilot program. We are requesting a response from all one hundred counties by **October 18, 2013** regardless of your decision. DAAS will then make a determination regarding the counties to participate in the pilot. The form can be e-mailed to Suzanne.Merrill@dhhs.nc.gov or faxed to 919-715-0023.

If you have questions about the SA pilot, please contact me at the e-mail address above or by phone at 919-855-3460 or Chris Urso at Chris.Urso@dhhs.nc.gov or by phone 919-855-3461. We appreciate your attention to this request and look forward to hearing from you about your decision to participate.

Sincerely,



Suzanne P. Merrill, Chief
Adult Services Section

/spm

AFS-12-2013

Attachments (3)

Attachment 1

SUBPART XII-D. DIVISION OF AGING AND ADULT SERVICES

TIERED STATE-COUNTY SPECIAL ASSISTANCE PILOT

SECTION 12D.2.(a) As used in this section, the term "group home" means any facility that (i) is licensed under Chapter 122C of the General Statutes, (ii) meets the definition of a supervised living facility under 10A NCAC 27G .5601(c)(1) or 10A NCAC 27G .5601(c)(3), and (iii) serves adults whose primary diagnosis is mental illness or a developmental disability but may also have other diagnoses.

SECTION 12D.2.(b) It is the intent of the General Assembly to create a State-County Special Assistance program that allows counties greater flexibility in serving individual needs within their communities and greater control over how county funds are used to support this program in light of the fact that counties are required to pay for fifty percent (50%) of the costs of this program. To that end, the General Assembly directs the Department of Health and Human Services to establish a pilot program in accordance with subsection (c) of this section.

SECTION 12D.2.(c) The Department of Health and Human Services, Division of Aging and Adult Services (Department), shall establish a pilot program to implement a tiered rate structure within the State-County Special Assistance program for individuals residing in group homes, in-home living arrangements, and assisted living residences as defined in G.S. 131D-2.1. The purposes of the pilot program are to (i) determine the best way to implement a block grant for this program statewide and (ii) test the feasibility and effectiveness of implementing a tiered rate structure to address program participants' intensity of need, including medication management. The Department shall select a minimum of four and a maximum of six counties to participate in the pilot program, at least two of which shall be rural counties and at least two of which shall be urban counties. The pilot program shall (i) be implemented during the 2013-2014 fiscal year, (ii) operate for at least a 12-month period, and (iii) comply with any agreements in effect between the State of North Carolina and the United States government.

SECTION 12D.2.(d) The Department shall implement the pilot program in collaboration with the local departments of social services in the counties selected for participation. As part of the pilot program, the selected counties shall receive a State General Fund allocation as a block grant to be equally matched with county general funds. The General Fund allocation provided to each county participating in the pilot program shall be calculated based upon the average annual Special Assistance expenditures for that county during the 2011-2013 fiscal biennium, adjusted for the amount of projected annual growth in the number of Special Assistance recipients in that county during the 2013-2015 fiscal biennium. These funds may be used to pay for room, board, and personal care services, including medication management, for individuals eligible to receive State-County Special Assistance, subject to the following limitations and requirements:

- (1) These funds shall not be used to cover any portion of the cost of providing services for which an individual receives Medicaid coverage.
- (2) The pilot program shall comply with all federal and State requirements governing the existing State-County Special Assistance program, except that Section 12D.3 does not apply to the pilot program.
- (3) The tiered rate structure shall be based upon intensity of need, and an individual's placement within a tier shall be based upon an independent assessment of the individual's need for room, board, and assistance with activities of daily living, including medication management.

SECTION 12D.2.(e) By February 1, 2014, the Department shall submit a progress report on the implementation and operation of the pilot program, including any obstacles to implementation; and by February 1, 2015, the Department shall submit a final report on the results of the pilot program, along with any recommendations based on these results, to the Joint Legislative Oversight Committee on Health and Human Services and the Fiscal Research Division. The report due by February 1, 2015, shall include information from all participating counties on at least all of the following:

- (1) The amount of the tiered rates implemented as part of the pilot program.
- (2) The cost methodology for determining these tiered rates.
- (3) The number of individuals participating in the pilot program while residing in a group home.
- (4) The number of individuals participating in the pilot program while residing in an in-home living arrangement.

Attachment 1

- (5) The number of individuals participating in the pilot program while residing in an assisted living residence as defined by G.S. 131D-2.1, broken down by facility type.
- (6) A comparison of the number of recipients of State-County Special Assistance prior to and during the pilot program, broken down by county and living arrangement.
- (7) Any other information the Department deems relevant for determining the best way to implement a block grant statewide for the State-County Special Assistance program.

Attachment 2-State/County Special Assistance Pilot for Tiered Rate Block Grant				
		Annual Expenditures for 2011-2013 Biennium	Projected Annual Growth (Decrease)	Maximum Allocation
1	Alamance	1,292,692	3,923	1,296,615
2	Alexander	274,144	3,538	277,682
3	Alleghany	57,466	3,117	60,583
4	Anson	234,400	(18,617)	215,783
5	Ashe	309,996	23,116	333,112
6	Avery	116,879	674	117,553
7	Beaufort	575,937	17,869	593,806
8	Bertie	354,948	16,553	371,501
9	Bladen	450,838	3,142	453,980
10	Brunswick	454,373	(6,366)	448,007
11	Buncombe	1,866,168	(40,442)	1,825,726
12	Burke	632,020	(25,075)	606,945
13	Cabarrus	1,128,971	(23,521)	1,105,450
14	Caldwell	690,767	21,837	712,604
15	Camden	55,205	3,489	58,694
16	Carteret	406,009	18,809	424,818
17	Caswell	276,737	1,508	278,245
18	Catawba	1,226,296	(7,721)	1,218,575
19	Chatham	445,947	(17,792)	428,155
20	Cherokee	249,858	9,213	259,071
21	Chowan	201,190	5,289	206,479
22	Clay	98,314	(3,407)	94,907
23	Cleveland	1,192,463	(3,832)	1,188,631
24	Columbus	554,390	(11,678)	542,712
25	Craven	647,158	(29,556)	617,602
26	Cumberland	2,126,913	(4,319)	2,122,594
27	Currituck	131,371	4,904	136,275
28	Dare	221,155	6,789	227,944
29	Davidson	1,101,241	(2,511)	1,098,730
30	Davie	299,853	(6,343)	293,510
31	Duplin	612,843	(15,492)	597,351
32	Durham	2,257,386	(11,635)	2,245,751
33	Edgecombe	745,263	(2,872)	742,391
34	Forsyth	2,627,001	(54,711)	2,572,290
35	Franklin	498,149	(13,155)	484,994
36	Gaston	1,888,667	(39,556)	1,849,111
37	Gates	85,119	6,347	91,466
38	Graham	112,397	(9,156)	103,241
39	Granville	408,617	(2,272)	406,345
40	Greene	250,127	(3,432)	246,695
41	Guilford	2,835,693	(81,785)	2,753,908
42	Halifax	816,444	(19,737)	796,707

**Attachment 2-State/County Special Assistance Pilot
for Tiered Rate Block Grant**

		Annual Expenditures for 2011-2013 Biennium	Projected Annual Growth (Decrease)	Maximum Allocation
43	Harnett	932,752	(18,908)	913,844
44	Haywood	508,588	18,856	527,444
45	Henderson	1,022,378	8,567	1,030,945
46	Hertford	437,901	8,079	445,980
47	Hoke	293,862	12,270	306,132
48	Hyde	40,509	2,466	42,975
49	Iredell	978,331	14,696	993,027
50	Jackson	177,460	2,752	180,212
51	Johnston	1,295,762	11,586	1,307,348
52	Jones	88,127	(7,110)	81,017
53	Lee	413,456	(9,986)	403,470
54	Lenoir	783,691	(16,290)	767,401
55	Lincoln	506,056	(7,283)	498,773
56	Macon	194,837	9,086	203,923
57	Madison	163,697	(6,086)	157,611
58	Martin	356,723	(18,520)	338,203
59	McDowell	458,080	(16,951)	441,129
60	Mecklenburg	3,171,764	(95,194)	3,076,570
61	Mitchell	122,767	2,824	125,591
62	Montgomery	363,240	(22,120)	341,120
63	Moore	709,241	(27,121)	682,120
64	Nash	854,062	(14,514)	839,548
65	New Hanover	1,293,222	(12,955)	1,280,267
66	Northampton	435,971	4,765	440,736
67	Onslow	703,766	22,791	726,557
68	Orange	740,191	(9,164)	731,027
69	Pamlico	91,080	(4,569)	86,511
70	Pasquotank	574,652	(9,547)	565,105
71	Pender	316,100	4,664	320,764
72	Perquimans	173,367	13,432	186,799
73	Person	521,337	(643)	520,694
74	Pitt	1,229,647	29,651	1,259,298
75	Polk	191,527	2,078	193,605
76	Randolph	1,005,091	(42,366)	962,725
77	Richmond	422,567	(12,704)	409,863
78	Robeson	1,606,224	(729)	1,605,495
79	Rockingham	999,689	2,053	1,001,742
80	Rowan	979,499	(45,553)	933,946
81	Rutherford	761,568	(41,711)	719,857

**Attachment 2-State/County Special Assistance Pilot
for Tiered Rate Block Grant**

		Annual Expenditures for 2011-2013 Biennium	Projected Annual Growth (Decrease)	Maximum Allocation
82	Sampson	631,550	(10,654)	620,896
83	Scotland	419,249	(7,645)	411,604
84	Stanly	539,939	(1,911)	538,028
85	Stokes	539,397	34,202	573,599
86	Surry	723,778	(10,647)	713,131
87	Swain	83,643	3,760	87,403
88	Transylvania	235,769	(7,914)	227,855
89	Tyrrell	36,564	-	36,564
90	Union	771,015	(26,278)	744,737
91	Vance	551,082	16,976	568,058
92	Wake	3,905,770	12,512	3,918,282
93	Warren	294,257	(5,082)	289,175
94	Washington	143,693	(4,962)	138,731
95	Watauga	275,988	(1,350)	274,638
96	Wayne	1,205,227	(24,252)	1,180,975
97	Wilkes	486,216	(4,666)	481,550
98	Wilson	978,104	(5,703)	972,401
99	Yadkin	273,282	2,007	275,289
100	Yancey	128,811	680	129,491
	Prepared by Helen Tack, DAAS Budget Officer 9-26-13			

ATTACHMENT 3

County Response Form for Participation
in SA Pilot Program

☐ Yes, _____ County DSS is interested in participating in the SA Pilot Program.

☐ No, _____ County DSS is not interested in participating in the SA Pilot Program.

DSS Director Signature

Date

Please e-mail or fax this form to Suzanne.Merrill@dhhs.nc.gov
or 919-715-0023 (fax) by October 18, 2013.



North Carolina Department of Health and Human Services
Division of Aging and Adult Services

Pat McCrory
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Aldona Z. Wos, M.D.
Ambassador (Ret.)
Secretary DHHS

Dennis Streets
Division Director

August 30, 2013

Ila Barnes-Frazier
Social Security Administration Regional Office
SSI Program Team
Atlanta Regional Office
SSIPT, 61 Forsyth St. SW, Suite 23T42
Atlanta, GA 30303

Dear Ms Barnes-Frazier:

I am writing as a matter of urgency to seek guidance from the Social Security Administration (SSA) regarding the implementation of a pilot program for North Carolina's Optional State Supplement (OSS) to SSI, NC State/County Special Assistance (SA).

NC SL 2013-360 ratified by the NC General Assembly and signed by Governor Pat McCrory in July 2013 directs the NC Department of Health and Human Services, Division of Aging and Adult Services to establish an SA pilot program. The special provision for the pilot program is attached for your quick reference.

The pilot has two primary components. First, it must implement a tiered rate structure within NC's SA program for individuals residing in group homes, adult care homes, and in-home living arrangements. NC's OSS pays for care in adult care homes and group homes. The pilot is to test the feasibility and effectiveness of a tiered rate structure that addresses program participants' intensity of need, including medication management. The individual's tier payment will be determined by an independent assessment of the individual's need for room, board, and assistance with activities of daily living, including medication management.

Second, the pilot is to determine the best way to implement a block grant for the SA program statewide. A block grant would mean a capped budget to operate the SA program. Currently, the cost of the SA program is borne equally between state funds (50%) and county government funds (50%).

The pilot must be implemented this state fiscal year in four to six counties; operate for at least twelve months; and comply with all Federal and State requirements governing the existing SA program. The OSS beneficiaries in the pilot counties would be subject to the tiered payment rates established for the pilot which will be different than the current methodology used to establish the OSS payment. During the pilot, the remaining 94-96 counties will continue to operate the OSS under the structure described below. In other words, during the pilot the payment methodology would not be uniform across the state.

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The current rate structure for the SA program statewide is outlined in the chart below. NC has one hundred county departments of social services that determine eligibility and administer the SA program. The chart was submitted for publication in the *State Assistance Programs for SSI Recipients, January 2011*. It describes two rates based on living arrangements: (1) adult care homes/group homes and (2) special care units for Alzheimer's and other dementias. As required by Section 1616 of the Social Security Act, NC pays the supplement to all individuals in the specified living arrangements who are either receiving SSI or who would but for their income be eligible to receive SSI.

Table 1.

Optional state supplementation payment levels, January 2012 (in dollars)

Living arrangement	Combined federal and state		State supplementation	
	Individual	Couple	Individual	Couple
Adult care home				
Basic (aged, blind, and disabled) ^a	1,228.00	b	530.00	b
Special care unit (aged, blind, and disabled)	1,561.00	b	863.00	b
<p>a. An additional \$20_ income exclusion is allowed. In addition, a \$ 46 personal needs allowance is included in the optional supplementation.</p> <p>b. Couples residing in these living arrangements are treated as individuals.</p> <p>DEFINITION:</p> <p>Adult care home. Includes recipients residing in an assisted living residence in which the housing management provides 24-hour scheduled and unscheduled personal care services to two or more residents either directly or, for scheduled needs, through formal written agreement with licensed home care or hospice agencies. Recipients residing in a special care unit for Alzheimer's in an adult care home are eligible for a higher payment amount.</p>				

The tiered rate is intended to cover individuals whose physical/mental functional status does not meet the impairment level required for the State's Medicaid Personal Care Services Program. While the exact method for defining the tiers and the affiliated rates is under development, the rate structure must be based on an independent assessment of an individual's need for room, board, and assistance with activities of daily living (ADLs) (e.g., assistance with bathing, feeding dressing, mobility), including medication management. A rate would be established for each tier based on ADL needs and then an individual's countable monthly income would be subtracted from the rate to arrive at the payment level for that individual. We have specific questions to assure that our optional state supplement would be operating in compliance of applicable federal requirements. While the pilot will expand the SA living arrangement definition to persons living in their own homes, NC will have to determine whether to include this living arrangement under the OSS on an ongoing basis.

With this proposed rate structure, NC's minimum payment levels would not fall below our required minimum payment level of \$215.70 effective 2013 (this is the *State* supplementation rate.) The minimum under the pilot is a state supplement rate of \$518 for persons living in either basic adult care homes or special care units

We have several questions related to each component of the SA pilot to determine if NC's OSS program will be operating in compliance with applicable Federal requirements and abiding by NC's Memorandum of Agreement with the SSA.

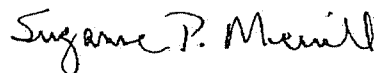
1. Can a tiered rate structure be used under an OSS program? The tiered rates would be based on the need for room and board and ADL assistance rather than purely on income and the setting of care.
2. Under an OSS program, can a tiered rate structure based on the need for room and board and ADL assistance be used in the same setting of care where other individuals are receiving a payment for room and board only? In the room and board only payment situation, Medicaid Personal Care Services would pay for the ADL assistance based on a higher level of need.

To help explain question 2 using just an example of a tiered rate structure, the room and board rate is \$1,182/month; the tiered rate for one ADL is \$543/month; and the tiered rate for two ADLs is \$815/month. All eligible individuals would receive the room and board assistance. Based on an independent assessment some individuals may need assistance with one ADL while others may need assistance with two ADLs and some individuals would have the ADL assistance paid for under Medicaid. The specific payment for an individual would be determined by subtracting his/her countable monthly income from the rate.

3. The bill requires a "block grant" with a specific state allocation to be matched by counties. With this stipulation, NC's SA Program would not be an entitlement for all who qualify once the funds are depleted. Would a wait-list situation in the pilot counties be allowable?

Please consider these questions and whether or not this pilot as written in the legislation and explained above would be allowable under federal regulations for an OSS. Thank you for your time and assistance. We look forward to hearing from you very soon.

Sincerely,



Suzanne P. Merrill, Chief
Adult Services Section

Attachment

Attachment 1

SUBPART XII-D. DIVISION OF AGING AND ADULT SERVICES

TIERED STATE-COUNTY SPECIAL ASSISTANCE PILOT

SECTION 12D.2.(a) As used in this section, the term "group home" means any facility that (i) is licensed under Chapter 122C of the General Statutes, (ii) meets the definition of a supervised living facility under 10A NCAC 27G .5601(c)(1) or 10A NCAC 27G .5601(c)(3), and (iii) serves adults whose primary diagnosis is mental illness or a developmental disability but may also have other diagnoses.

SECTION 12D.2.(b) It is the intent of the General Assembly to create a State-County Special Assistance program that allows counties greater flexibility in serving individual needs within their communities and greater control over how county funds are used to support this program in light of the fact that counties are required to pay for fifty percent (50%) of the costs of this program. To that end, the General Assembly directs the Department of Health and Human Services to establish a pilot program in accordance with subsection (c) of this section.

SECTION 12D.2.(c) The Department of Health and Human Services, Division of Aging and Adult Services (Department), shall establish a pilot program to implement a tiered rate structure within the State-County Special Assistance program for individuals residing in group homes, in-home living arrangements, and assisted living residences as defined in G.S. 131D-2.1. The purposes of the pilot program are to (i) determine the best way to implement a block grant for this program statewide and (ii) test the feasibility and effectiveness of implementing a tiered rate structure to address program participants' intensity of need, including medication management. The Department shall select a minimum of four and a maximum of six counties to participate in the pilot program, at least two of which shall be rural counties and at least two of which shall be urban counties. The pilot program shall (i) be implemented during the 2013-2014 fiscal year, (ii) operate for at least a 12-month period, and (iii) comply with any agreements in effect between the State of North Carolina and the United States government.

SECTION 12D.2.(d) The Department shall implement the pilot program in collaboration with the local departments of social services in the counties selected for participation. As part of the pilot program, the selected counties shall receive a State General Fund allocation as a block grant to be equally matched with county general funds. The General Fund allocation provided to each county participating in the pilot program shall be calculated based upon the average annual Special Assistance expenditures for that county during the 2011-2013 fiscal biennium, adjusted for the amount of projected annual growth in the number of Special Assistance recipients in that county during the 2013-2015 fiscal biennium. These funds may be used to pay for room, board, and personal care services, including medication management, for individuals eligible to receive State-County Special Assistance, subject to the following limitations and requirements:

- (1) These funds shall not be used to cover any portion of the cost of providing services for which an individual receives Medicaid coverage.
- (2) The pilot program shall comply with all federal and State requirements governing the existing State-County Special Assistance program, except that Section 12D.3 does not apply to the pilot program.
- (3) The tiered rate structure shall be based upon intensity of need, and an individual's placement within a tier shall be based upon an independent assessment of the individual's need for room, board, and assistance with activities of daily living, including medication management.

SECTION 12D.2.(e) By February 1, 2014, the Department shall submit a progress report on the implementation and operation of the pilot program, including any obstacles to implementation; and by February 1, 2015, the Department shall submit a final report on the results of the pilot program, along with any recommendations based on these results, to the Joint Legislative Oversight Committee on Health and Human Services and the Fiscal Research Division. The report due by February 1, 2015, shall include information from all participating counties on at least all of the following:

- (1) The amount of the tiered rates implemented as part of the pilot program.

- (2) The cost methodology for determining these tiered rates.
- (3) The number of individuals participating in the pilot program while residing in a group home.
- (4) The number of individuals participating in the pilot program while residing in an in-home living arrangement.
- (5) The number of individuals participating in the pilot program while residing in an assisted living residence as defined by G.S. 131D-2.1, broken down by facility type.
- (6) A comparison of the number of recipients of State-County Special Assistance prior to and during the pilot program, broken down by county and living arrangement.
- (7) Any other information the Department deems relevant for determining the best way to implement a block grant statewide for the State-County Special Assistance program.

Attachment B to Legislative Progress Report on SA Tiered Pilot

From: Hood, Angela [Angela.Hood@ssa.gov]
Sent: Tuesday, January 14, 2014 2:52 PM
To: Merrill, Suzanne
Cc: Brown, Scott B.; Foley, Dennis; Mansfield, David; MacInnis, Patricia; McGruder, Ann; Urso, Chris; Beard, Ann-Maria
Subject: North Carolina's State Supplement Program Discussion

Dear Ms. Merrill:

You wrote to us about North Carolina's pilot optional state supplementation program, and asked several questions about the maintenance of effort ("pass-along") requirements of the Social Security Act. At the end of our teleconference on January 9, 2014 discussing these matters, you asked us to set out in writing the points we had covered; this email serves to memorialize our conversation.

As we understand the pilot from your description, North Carolina currently makes optional state supplement payments to some 20,000 individuals in various settings of care, and the pilot – which has not yet begun – is meant to test a block grant or capped state supplementation program. The pilot would include a tiered rate structure, in which payments made to individuals would depend on the level of assistance they require with activities of daily living. In addition, the pilot would move from an entitlement nature – with payments made to all eligible individuals – to a capped program, in which only a certain amount of state funds would be available for a specific county. Current recipients and future applicants would both be covered by the pilot. The pilot's funding level will be based on the two-year expenditures for 2011-13, with modifications for projected growth, and the cap would vary from county to county.

Generally speaking, it is possible for a state to use a tiered rate structure and still meet its pass-along obligations, as states have flexibility in establishing payment categories and amounts, and flexibility in meeting pass-along obligations that attach to the established categories and amounts. Pass-along requires that once a category is established, certain efforts or expenditures must be maintained.

North Carolina currently complies with its pass-along obligations under the payment levels method, defined in Section 1618 of the Social Security Act (Act) (42 U.S.C. § 1382g(e)) and 20 C.F.R. § 416.2096(b)(1). Under the payment levels method, the state supplement payment levels in a state may not be reduced below the levels in effect in March 1983 (or in effect at the creation of the state supplement payment category, if later). A state with a uniform payment level across various categories of supplements could institute a tiered set of payments (different amounts for different categories; or even different amounts within a category) and still meet its pass-along obligations, provided the new payments do not fall below the historical benchmarks the state must maintain.

The law even provides states flexibility to reduce payments below required levels and still be considered to meet pass-along, provided the total amount expended on supplementation in a year is as least as much as the previous year (the total expenditures method). Under this method, a state need not maintain individual payment levels, but the total amount the state spends must not reduce from year to year. Act Section 1618(b) (42 U.S.C. § 1382g(b)); 20 C.F.R. § 416.2096(c). A state that complies with pass-along under the total expenditures method has flexibility to cap its state supplement payment budget, so long as the state spends in this year what it spent in the preceding 12 months – that is, the state may create a ceiling on expenditures, so long as it does not fall below the floor set by the previous year's spending. In calculating total expenditures, SSA considers the total of state supplementary payments (in North Carolina, as we understand it, this would include state- and county-provided funds).

We send out a letter to the states each fall asking which pass-along compliance method they intend to use for the following year. A state may change from the payment levels method to the total expenditures method, or vice-versa. However, a state must comply with one method or the other and cannot use the payment levels method for some supplementary payment categories and the total expenditures method for others. If North Carolina wishes to change its pass-along compliance method for 2014 to accommodate its pilot, it should inform us as soon as possible.

You asked about the general definition of a state supplement payment in the law for Social Security's purposes. That definition provides, in part, that a payment qualifies as a state supplement payment only if it is made regularly, and in cash or a negotiable instrument convertible into cash on demand. Act Section 1616(a) (42 U.S.C. § 1383e(a)); 20 C.F.R. § 2001(a)(3). Vendor payments, or payments in the form of vouchers usable only for certain purposes, do not qualify as state supplement payments under the pass-along provisions. 20 C.F.R. § 2096(c)(4).

I hope this information will assist you in preparing your interim report to the General Assembly. Please contact me with any questions.

Thank you,
Angela Hood
SSA/Office of Retirement and Disability Policy/Office of Income Security Programs Analyst
410-965-6912