DHHS POLICIES AND PROCEDURES

Section IV:	**General Administration**
Title:	**Medicaid Waiver Requests and Applications**
Current Effective Date:	**5/1/05**
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Purpose

The procedures outlined in this policy are established to facilitate the submission and review of Medicaid waiver requests and subsequent waiver applications from all divisions within the Department of Health and Human Services (DHHS), including those requests that originate from within the Division of Medical Assistance (DMA).

Policy

All Medicaid waiver applications must undergo an internal review and approval process within the DHHS prior to submission to the Centers for Medicare and Medicaid Services (CMS). The review and approval process will be applied to both the preliminary "Request for Medicaid Waiver" as well as to the final waiver application. Final approval at each stage of the process is at the discretion of the DHHS Secretary. Only waiver requests from DHHS divisions/offices will be considered. If an entity outside of DHHS wishes to submit a waiver request, it must be sponsored by a DHHS division/office. Sponsorship means that the sponsoring DHHS division/office shall be prepared to assume responsibility, in collaboration and partnership with DMA, for the planning, implementation and ongoing oversight of the waiver being proposed by the outside agency. Outside agencies may contact DMA directly regarding waiver proposals, in which case DMA shall determine whether it shall serve as sponsor or recommend sponsorship by another DHHS division/office.

Implementation

A Medicaid waiver is the authority given to a state by the Centers for Medicare and Medicaid Services (CMS) to "waive" one (1) or more federal Medicaid regulations in order to create non-traditional services, programs and delivery systems. Only certain Medicaid regulations can be waived depending upon the type of waiver requested. There are three (3) types of waivers, as described below:

1. Home and Community Based Services (HCBS) Waivers

    A. Also known as 1915(c) waivers, which refers to the section of the Social Security Act that grants the waiver authority.
    B. Regulations that can be waived include statewideness, comparability of services, and income/resource eligibility rules.

C. Provides for home-based services and supports as an alternative to care in a long-term care institution such as a nursing facility.
D. Requirements: CMS approval – the initial approval covers three (3) years, renewal every five (5) years thereafter; health/safety of consumer is assured; all consumers meet level of care requirements; expenditures do not exceed cost of care in an institution; waiver program is assessed by an independent entity.

2. Freedom of Choice Waivers

A. Also known as 1915(b) waivers.
B. Regulations that can be waived include statewideness, comparability of services, and freedom of choice.
C. Used to implement mandatory managed care delivery systems (e.g. HMOs or primary care case management systems).
D. Can generate savings.
E. Requirements: CMS approval every two (2) years; must be cost-effective, i.e. Medicaid expenditures under the waiver cannot exceed what expenditures would have been without the waiver; stringent quality management is required; assessment of program by independent entity every two (2) years.

3. Research and Demonstration Waivers

A. Also known as 1115 waivers.
B. Regulations that can be waived include statewideness, comparability of services, freedom of choice, income/resource rules and all other provisions of 1902, as well as some provisions of 1903, of the Social Security Act.
C. Consists of policy experiment that must be formally evaluated.
D. Used to expand Medicaid eligibility, provide new types of benefit packages and/or try new reimbursement methodologies.
E. Requirements: State commits to policy experiment and evaluation; must be cost-effective, i.e. Medicaid expenditures under the waiver cannot exceed what expenditures would have been without the waiver; other terms and conditions specified by CMS upon approval.

The Medicaid waiver review and approval process is as follows:

3. The division/office intending to propose a Medicaid waiver shall conduct its own initial research to determine whether a waiver is actually needed, ruling out the amending of existing waivers or other strategies that may accomplish the desired outcome. If the division/office determines that a new waiver is required, it shall determine which type of waiver it would like to propose. The division/office shall create a "waiver request" by completing the "Request for Medicaid Waiver" form which addresses such matters as the intended target population, the need for the waiver, the estimated fiscal impact, a brief description of the waiver, etc. The "waiver

request" is a preliminary document that precedes the submission of a formal CMS waiver application. The requesting division/office may contact the DMA Waiver Coordinator during this early development period for consultation in order to obtain information on how the existing waivers work and what services are covered and for assessing the need for a new waiver. The DMA Waiver Coordinator shall also be available to consult on the completion of the "Request for Medicaid Waiver" form.

4. The director of the requesting division/office shall review the "Request for Medicaid Waiver", sign it if he/she approves, and submit it to the DMA Director. DMA Waiver Requests that require additional appropriated state funds shall be submitted to DMA no later than July 1st of the state fiscal year preceding the date of implementation. Only waivers for which adequate funding has been included in that state fiscal year's budget shall be implemented. Waiver requests that do not require additional appropriated state funds may be submitted at any time during the year. However, an appropriate timeframe, jointly agreed upon by the DMA Waiver Coordinator and the requesting division/office, shall be determined in order to allow adequate time to review and approve the waiver request and subsequent application prior to implementation of the waiver.

5. The DMA Waiver Coordinator shall review the request and obtain additional information or clarification from the requesting division/office if such is needed to ensure that the request is fully understood.

6. The DMA Waiver Coordinator shall submit each Request for Medicaid Waiver to the DMA Management Team for review and discussion in consultation with the DMA Waiver Coordinator. The DMA Management Team will identify an appropriate ad hoc DMA Waiver Review Panel depending upon the nature of the waiver request. Each ad hoc review panel shall include the DMA Waiver Coordinator and at least one (1) representative of a DHHS division or office outside of the DMA in order to ensure maximum objectivity.

7. The ad hoc review panel shall take the following steps to review the request, assess the strategic value of undertaking the waiver in light of the mission of DMA, and make a recommendation as to whether to pursue the waiver:

   A. At its discretion, the panel may ask the requesting division/office for clarification or additional information that may be necessary to properly evaluate the request.
   B. The panel members shall review and assess the request using a standard scoring tool.
   C. DMA, in all cases, shall remain responsible for oversight of the waiver and for assuring that it operates according to federal Medicaid requirements. Therefore, the panel shall estimate the DMA resources needed to develop, implement, oversee and maintain the waiver. The estimate shall include

requirements such as staff time for implementation and ongoing operation, changes to automated systems, and financial and actuarial analyses.

D. The panel shall recommend approval or denial based on its assessment of the request and the feasibility of taking on the new waiver in light of resources needed.

E. If approval is being recommended, the panel shall recommend a "lead agency" within the department which shall be responsible for day-to-day operations of the waiver. The lead agency may be DMA, the sponsoring agency or office, or another agency or office within DHHS. The panel shall prioritize the request among other outstanding waiver requests and other division priorities. The recommendation to approve, along with this additional information, shall be presented to the DMA Director.

F. If the panel recommends denying the request, a written justification for denial shall be included with the panel's recommendation to the DMA Director.

8. The DMA Director, who shall be fully apprised of the contents and progress of the waiver request during the review process, shall sign off on the panel's recommendation and present it to the DHHS Secretary. DMA shall make a recommendation to the DHHS Secretary within 60 days of receipt of the complete waiver request. The waiver request is considered complete when all additional and clarifying information is received as determined by the waiver coordinator and discussed in Step 3 above.

9. All requests for Medicaid Waiver that are ultimately submitted to the DHHS Secretary shall either be approved or denied by the DHHS Secretary. The DHHS Secretary's decision shall be communicated in writing to the Director of DMA with a copy to the director of the requesting division/office. The Director of DMA shall notify the panel regarding this action.

10. Upon the DHHS Secretary's approval of the "Request for Medicaid Waiver", the requesting division/office shall meet with the DMA Waiver Coordinator to develop a timeline for submission of the CMS waiver application and implementation of the waiver. The requesting division/office shall draft the formal CMS waiver application in consultation with the DMA Waiver Coordinator and DMA staff with expertise to provide programmatic or fiscal technical assistance, routinely including appropriate staff in the areas of Clinical Policy, Budget Management, Financial Management, Recipient and Provider Services and MMIS+. The DMA Waiver Coordinator shall provide ongoing oversight of the waiver process on behalf of DMA.

11. The division/office shall submit the CMS waiver application, along with a draft memorandum of understanding (MOU) or an amendment to an existing MOU that addresses the responsibilities of the division/office and DMA with respect to the implementation, administration and oversight of the waiver, to the Director of DMA. The CMS waiver application and draft MOU or MOU amendment shall then be screened initially by the DMA Waiver Coordinator for completeness and consistency

with previous discussions and guidance and then referred to the ad hoc DMA Waiver Review Panel. The panel shall conduct its review of the CMS waiver application and draft MOU or MOU amendment and meet with the requesting division/office as needed to agree on any needed changes.

Once the application is finalized, the DMA Waiver Review Panel and the requesting division/office shall present the application and draft MOU or MOU amendment to the DMA Director and provide briefings as appropriate.

12. After reviewing the waiver application, the Director of DMA shall submit the panel's documented findings and recommendations, along with the waiver application, supporting documentation and an endorsing cover letter, to the DHHS Secretary for final review and approval. The Director of DMA shall also indicate to the DHHS Secretary the priority of the waiver relative to other waivers or special initiatives and recommend a timeline for its implementation. The Director of DMA shall hold the draft MOU for finalization upon CMS approval of the waiver application.

13. The DHHS Secretary shall review the waiver application. If the DHHS Secretary approves the waiver application, he/she shall sign it and return it to the Director of DMA, who shall submit it to CMS and return a signed copy to the requesting division/office. DMA shall send a copy of the waiver application to the House and Senate Appropriations committees and the Fiscal Research Division at the same time that it is submitted to CMS for approval, as required by SL 2004 Section 10.19.(t). If the DHHS Secretary denies the waiver application, the DHHS Secretary shall provide written documentation to the Director of DMA indicating the reason(s) for the denial and provide a copy to the requesting division/office. The Director of DMA shall notify the panel regarding this action.

14. The DMA Waiver Coordinator shall facilitate discussions with CMS and involve DMA programmatic/fiscal staff, the requesting division/office or outside agency and/or the ad hoc DMA Waiver Review Panel in supplying clarification and additional information to CMS as needed.

For questions or clarification on any of the information contained in this policy, please contact Judy Walton at Judy.Walton@ncmail.net or call (919) 855-4111. For general questions about department-wide policies and procedures, contact the DHHS Policy Coordinator.

DMA Waiver Policy Flow Diagram