

N.D.A.G. Letter to Goff (Jan. 9, 1992)

January 9, 1992

Honorable John T. Goff
Cass County State's Attorney
P.O. Box 2806
Fargo, ND 58108

Dear Mr. Goff:

Thank you for your November 13, 1991, letter in which you request clarification of the services which are required to be provided by the Regional Child Support Enforcement Unit in Fargo, North Dakota.

The Regional Child Support Enforcement Units located throughout the state of North Dakota have been established to fulfill the requirements of Title IV-D of the Social Security Act, codified at 42 U.S.C. 651 et seq. The purpose of Title IV-D is to enforce "the support obligations owed by absent parents to their children . . . establishing paternity, obtaining child and spousal support, and assuring that assistance in obtaining support will be available under this part to all children whether or not eligible for aid under part A (for whom such assistance is requested)." 42 U.S.C.A. § 651 (Supp. 1991). The reference to part A in the preceding statute refers to the Aid to Families with Dependent Children Program (AFDC), as codified at 42 U.S.C.A. § 601 et seq.

States are not required to participate in the federal AFDC or Medicaid programs, however, states which elect to participate must follow the federal law regulating such programs. See, Todd v. Norman, 840 F.2d 608 (8th Cir. 1988), and Colorado Health Care v. Colorado Department of Social Services, 842 F.2d 1158, (10th Cir. 1988). When a state, such as North Dakota, elects to participate in either the AFDC or Medicaid programs, that state is required to follow all applicable federal regulations.

Federal regulations require that "[t]he State must provide all appropriate IV-D services, in addition to IV-D services related to securing medical support, to all individuals who are eligible to receive services under paragraph (a)(1)(ii) of this section unless the individual notifies the state that only IV-D services related to securing medical support are wanted."

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C.F.R. 302.33(a)(5). This section requires the IV-D agency to provide full child support enforcement services to medical assistance-only cases. Failure to conform to this regulation will jeopardize the state's participation in the Medicaid program.

Medical assistance is governed by N.D.C.C. ch. 50-24.1. N.D.C.C. § 50-24.1-04 provides that "[t]he department of human services is authorized to promulgate such rules and regulations as are necessary to qualify for any federal funds available under this chapter."

N.D.C.C. § 50-24.1-04. This section grants the Department of Human Services the flexibility to adapt to the ever-changing requirements of the federal programs with which it deals. It is the clear intent of the legislature that access to federal funds for these programs not be jeopardized because of an inability to respond to changes in the program. The Department of Human Services has promulgated a rule which further promotes this flexibility. The rule governing applications for medial assistance benefits states, in pertinent part, "[t]he applicant and each individual for whom assistance is requested must, as a condition of eligibility, execute all necessary documents to protect his, or the agency's, rights to subsequent reimbursement from any third parties, for medical care and services included under this plan" N.D. Admin. Code § 75-02-02-16(1). As stated earlier, the state must conform to federal regulations or jeopardize its participation in the federal program. This regulation protects the state's participation in the program by allowing the Department of Human Services to adapt eligibility requirements to the provisions of the federal regulations.

It is therefore my opinion that the Child Support Enforcement offices must provide full child support enforcement services to all medical assistance-only applicants and case referrals, unless the applicant or referred party requests otherwise. It is my further opinion that the statutes and regulations currently in force in North Dakota are sufficient to allow the Child Support Enforcement offices to provide full child support enforcement services to those applicants.

I trust this responds to your inquiry.

Sincerely,

Nicholas J. Spaeth

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