

**Application for Spousal Deeming Waiver  
Under Section 1115 of the Social Security Act**

June 30, 2014

**Table of Contents**

**Section I – Program Description .....2**

**Section II – Demonstration Eligibility .....5**

**Section III – Demonstration Benefits and Cost Sharing Requirements.....7**

**Section IV – Delivery System and Payment Rates for Services .....9**

**Section V – Implementation of Demonstration .....11**

**Section VI – Demonstration Financing and Budget Neutrality .....11**

**Section VII – List of Proposed Waivers and Expenditure Authorities .....12**

**Section VIII – Public Notice.....12**

**Section IX – Demonstration Administration .....16**

**Attachments**

Attachment A      Budget Neutrality Worksheet

Attachment B      Minnesota State Register Notice

Attachment C      Public Comment and Testimony

Attachment D      Stakeholder Email List

Attachment E      Tribal Consultation Policy

Attachment F      September 2013 Tribal Letter

## Section I – Program Description

### **1) Provide a summary of the proposed Demonstration program, and how it will further the objectives of title XIX and/or title XXI of the Social Security Act (the Act).**

This waiver proposal is closely tied to Section 2404 of the Patient Protection and Affordable Care Act, Public Law 111–148. Section 2404 requires states to apply a set of rules known as “spousal impoverishment protections” when determining Medicaid financial eligibility for all persons enrolled in a waiver program for home and community-based services (HCBS) for a five–year period starting January 2014. The spousal impoverishment protections were originally enacted through the Medicare Catastrophic Coverage Act of 1988. These provisions allow a married person who needs nursing home care to achieve Medicaid financial eligibility without spending all of a married couple’s income and assets, providing some financial relief to the spouse who lives in the community. Until the Affordable Care Act (ACA) was enacted, spousal impoverishment protections were a state option in determining eligibility for HCBS waivers. Section 2404 of the ACA provides financial relief for disabled and elderly persons in states that do not currently expand eligibility in their HCBS waivers beyond the state plan. In Minnesota, however, imposition of the spousal impoverishment protections would negatively affect some current beneficiaries.

In Minnesota, spousal impoverishment protections have long been in place for the Elderly Waiver (EW) program, which serves people age 65 and older. Minnesota uses a different approach to protect the spouses of people receiving services under the HCBS waivers that serve people with disabilities, however. These waivers include the Brain Injury (BI) waiver, Community Alternative Care (CAC) waiver, Community Alternatives for Disabled Individuals (CADI) waiver and Developmental Disabilities (DD) waiver. Under this approach, called “exemption from spousal deeming,” Minnesota counts only the income and assets of the individual spouse applying for Medicaid in the eligibility determination under 42 CFR §§ 435.217 and 435.602. Minnesota’s approach is advantageous financially for most married couples under age 65 than are the spousal impoverishment protections. Even without the division of assets and the income allowance inherent in the spousal impoverishment protections, many younger couples are better off with this treatment because there is no cap on the amount of marital assets that the community spouse can accumulate over his or her lifetime. In addition, some married people under age 65 who receive services under Minnesota’s HCBS waivers will lose eligibility altogether if we use the spousal impoverishment rules, due to accumulated assets.

The purpose of the proposed demonstration is to protect current and future married HCBS waiver recipients by retaining eligibility criteria that are currently in use under Minnesota’s HCBS waivers for persons with disabilities. For married individuals not otherwise financially eligible for Medicaid, a spouse applying for an HCBS waiver is treated as a separate household under sections 42 CFR §§ 435.217 and 435.602. If the current eligibility criteria are not retained, some people currently receiving HCBS waiver services would lose eligibility for Medicaid, and standards would be more stringent for future applicants. In order to qualify for Medicaid, the community spouse would not be able to keep as many assets as under the current approach. In

addition to the immediate effect, there is a longer-term disadvantage to married couples who are subject to the spousal impoverishment protections test earlier in life.<sup>1</sup> Determination of the resource allowance earlier in life prior to accumulation of assets will affect the ability of the community spouse to keep accumulated assets when he or she in turn requires long-term care services as a senior. In recognition of the impact of this provision on families, the Minnesota Legislature has directed the Department of Human Services (DHS) to ask for a waiver from this provision in order to prevent currently eligible individuals from losing Medicaid eligibility and to protect future applicants for HCBS waivers for persons with disabilities.

During the comment period, one professional noted that in family situations in which the spouse in need of HCBS waiver services is also the primary wage earner in the family and the community spouse acts as an informal caregiver for the working spouse, the ability to allocate income to the community spouse under the spousal impoverishment protection rules and thereby decrease the monthly contribution to the cost of care may be more advantageous than exemption from spousal deeming in the short term. However, the ability to accumulate assets would still affect these families in the long term. In addition, the exemption from spousal deeming allows eligibility for families that would otherwise lose coverage entirely. The DHS fiscal analysis identified over one hundred families in this situation. Many of these families and their advocates submitted testimony in favor of this demonstration. No families submitted testimony opposing this demonstration.

DHS suggests that the existing Medical Assistance for Employed Persons with Disabilities (MA-EPD) program is a potential alternative route to eligibility for families in which the spouse receiving HCBS services is also the primary wage earner. Under MA-EPD, the participant must pay a sliding scale premium based on income, but this amount may be more manageable for the household than income limits for people with disabilities on Medical Assistance. An asset limit applies, but the asset limit is higher and spousal assets, the home and household goods, retirement accounts, and one vehicle are not counted. Unlike the spousal impoverishment protections, under MA-EPD the couple is not locked into the value of the total marital assets that were held at the time of the first continuous period of an institutional stay of 30 days or more.

## **Request**

Minnesota requests authority to continue to count only the income and assets of the individual spouse under authority of 42 CFR §§435.217 and 435.602, if that individual is participating in one of the following home and community-based services waivers under section 1915(c). Minnesota would apply this policy in place of the spousal impoverishment protection provisions at section 2404 of the ACA. The waiver programs included are: Brain Injury (BI) waiver, Community Alternative Care (CAC) waiver, Community Alternatives for Disabled Individuals (CADI) waiver and Developmental Disabilities (DD) waiver. Minnesota's remaining 1915(c)

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<sup>1</sup> This is because the spousal impoverishment protections test potentially limits the amount of assets a spouse may be able to keep in the case of a person with a break in eligibility. The community spouse asset allowed amount will forever remain the same. If community spouses do accumulate assets, and there is a break in HCBS the family becomes more economically insecure when required to spend down assets upon reapplication for HCBS or nursing home care.

waiver program, the Elderly Waiver, already uses the spousal impoverishment protections, so no authority is necessary.

**2) Include the rationale for the Demonstration.**

Please see the summary above.

**3) Describe the hypotheses that will be tested/evaluated during the Demonstration's approval period and the plan by which the State will use to test them.**

This waiver is intended to preserve current policy to avoid subjecting families to a lifelong asset limit if one spouse under age 65 needs HCBS waiver services. The hypothesis is that imposing a lifelong asset limit on spouses at a time when families are typically accumulating assets will either encourage divorce, or prevent an otherwise capable spouse from accumulating assets and avoiding the cycle of poverty. The evaluation will measure accumulated assets of both spouses at the time of first enrollment and after breaks in eligibility, in comparison to the community spouse resource allowance that would have been imposed using spousal impoverishment protection rules.

**4) Describe where the Demonstration will operate, i.e., statewide, or in specific regions; within the State.**

The demonstration will operate statewide.

**5) Include the proposed timeframe for the Demonstration.**

Minnesota seeks to secure federal authority for the five year period from January 1, 2014 through December 31, 2018.

**6) Describe whether the Demonstration will affect and/or modify other components of the State's current Medicaid and CHIP programs outside of eligibility, benefits, cost sharing or delivery systems.**

The demonstration will not affect and/or modify other components of the State's current Medicaid and CHIP programs outside of eligibility, benefits, cost sharing or delivery systems.

## Section II – Demonstration Eligibility

**1) Include a chart identifying any populations whose eligibility will be affected by the Demonstration.**

<b>Eligibility Group Name</b>	<b>Social Security Act and CFR Citations</b>	<b>Income Level</b>
Individuals Eligible for 1915(c) Home and Community-Based Services under the Community Alternative Care (CAC) Waiver	1902(a)(10)(A)(ii)(VI) 1915(c)	If not otherwise eligible under a State Plan group, meet requirements for medical Assistance under 42 CFR 435.217 counting only the income and assets of the spouse applying for HCBS services.
Individuals Eligible for 1915(c) Home and Community-Based Services under the Community Alternatives for Disabled Individuals (CADI) Waiver	1902(a)(10)(A)(ii)(VI) 1915(c)	If not otherwise eligible under a State Plan group, meet requirements for medical Assistance under 42 CFR 435.217 counting only the income and assets of the spouse applying for HCBS services.
Individuals Eligible for 1915(c) Home and Community-Based Services under the Brain Injury (BI) Waiver	1902(a)(10)(A)(ii)(VI) 1915(c)	If not otherwise eligible under a State Plan group, meet requirements for medical Assistance under 42 CFR 435.217 counting only the income and assets of the spouse applying for HCBS services.
Individuals Eligible for 1915(c) Home and Community-Based Services under the Developmental Disabilities (DD) Waiver	1902(a)(10)(A)(ii)(VI) 1915(c)	If not otherwise eligible under a State Plan group, meet requirements for medical Assistance under 42 CFR 435.217 counting only the income and assets of the spouse applying for HCBS services.

**2) Describe the standards and methodologies the state will use to determine eligibility for any populations whose eligibility is changed under the Demonstration, to the extent those standards or methodologies differ from the State plan.**

Minnesota seeks to keep the existing eligibility treatment the same under this demonstration for people who are disabled, meet institutional level of care and are participating in one of the following HCBS waivers: Brain Injury (BI) waiver, Community Alternative Care (CAC) waiver, Community Alternatives for Disabled Individuals (CADI) waiver and Developmental Disabilities (DD) Waiver. Eligibility under 42 CFR §§ 435.217 and 435.602 counts only the applicant's income and assets in the eligibility determination.

Spousal impoverishment protection rules currently apply to the following people in Minnesota and Minnesota does not seek to affect their eligibility under this demonstration:

- People with a community spouse who are participating in the Elderly Waiver (EW)
- People with a community spouse who reside in long-term care facilities.

**3) Specify any enrollment limits that apply for expansion populations under the Demonstration.**

N/A

**4) Provide the projected number of individuals who would be eligible for the Demonstration, and indicate if the projections are based on current state programs (i.e., Medicaid State plan, or populations covered using other waiver authority, such as 1915(c)). If applicable, please specify the size of the populations currently served in those programs.**

Please refer to the budget neutrality worksheet in Attachment A.

**5) To the extent that long term services and supports are furnished (either in institutions or the community), describe how the Demonstration will address post-eligibility treatment of income, if applicable. In addition, indicate whether the Demonstration will utilize spousal impoverishment rules under section 1924, or will utilize regular post-eligibility rules under 42 CFR 435.726 (SSI State and section 1634) or under 42 CFR 435.735 (209b State).**

DHS is seeking waiver authority to exempt the eligibility groups identified in the table above from the spousal impoverishment protection rules under section 1924 of the Social Security Act and section 2404 of the ACA. Spousal impoverishment protection rules would continue to apply to seniors participating in the Elderly Waiver.

**6) Describe any changes in eligibility procedures the state will use for populations under the Demonstration, including any eligibility simplifications that require 1115 authority (such as continuous eligibility or express lane eligibility for adults or express lane eligibility for children after 2013).**

The State is proposing no changes to eligibility procedures. The eligibility procedures currently used for the populations under this demonstration will continue.

**7) If applicable, describe any eligibility changes that the state is seeking to undertake for the purposes of transitioning Medicaid or CHIP eligibility standards to the methodologies or standards applicable in 2014 (such as financial methodologies for determining eligibility based on modified adjusted gross income), or in light of other changes in 2014.**

N/A

## Section III – Demonstration Benefits and Cost Sharing Requirements

1) Indicate whether the benefits provided under the Demonstration differ from those provided under the Medicaid and/or CHIP State plan:

Yes       No (if no, please skip questions 3 – 7)

2) Indicate whether the cost sharing requirements under the Demonstration differ from those provided under the Medicaid and/or CHIP State plan:

Yes       No (if no, please skip questions 8 - 11)

3) If changes are proposed, or if different benefit packages will apply to different eligibility groups affected by the Demonstration, please include a chart specifying the benefit package that each eligibility group will receive under the Demonstration.

N/A

4) If electing benchmark-equivalent coverage for a population, please indicate which standard is being used:

N/A

- Federal Employees Health Benefit Package
- State Employee Coverage
- Commercial Health Maintenance Organization
- Secretary Approved

5) In addition to the Benefit Specifications and Qualifications form:

<http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/Downloads/Interim1115-Benefit-Specifications-and-Provider-Qualifications.pdf>, please complete the following chart if the Demonstration will provide benefits that differ from the Medicaid or CHIP State plan.

N/A

6) Indicate whether Long Term Services and Supports will be provided.

Yes (if yes, please check the services that are being offered)       No

7) Indicate whether premium assistance for employer sponsored coverage will be available through the Demonstration.

Yes (if yes, please address the questions below)  No (if no, please skip this question)

**8) If different from the State plan, provide the premium amounts by eligibility group and income level.**

N/A

**9) Include a table if the Demonstration will require copayments, coinsurance and/or deductibles that differ from the Medicaid State plan.**

N/A

**If the state is proposing to impose cost sharing in the nature of deductions, copayments or similar charges beyond what is permitted under the law, the state should also address in its application, in accordance with section 1916(f) of the Act, that its waiver request:**

- a) will test a unique and previously untested use of copayments;**
- b) is limited to a period of not more than two years;**
- c) will provide benefits to recipients of medical assistance which can reasonably be expected to be equivalent to the risks to the recipients;**
- d) is based on a reasonable hypothesis which the demonstration is designed to test in a methodologically sound manner, including the use of control groups of similar recipients of medical assistance in the area; and**
- e) is voluntary, or makes provision for assumption of liability for preventable damage to the health of recipients of medical assistance resulting from involuntary participation.**

**Please refer to Information on Cost Sharing <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/Downloads/Interim1115-Information-on-Cost-Sharing-Requirements.pdf> requirements for further information on statutory exemptions and limitations applicable to certain populations and services.**

**10) Indicate if there are any exemptions from the proposed cost sharing (if additional space is needed, please supplement your answer with a Word attachment).**

N/A

## Section IV – Delivery System and Payment Rates for Services

1) Indicate whether the delivery system used to provide benefits to Demonstration participants will differ from the Medicaid and/or CHIP State plan:

Yes

No (if no, please skip questions 2 – 7 and the applicable payment rate questions)

2) Describe the delivery system reforms that will occur as a result of the Demonstration, and if applicable, how they will support the broader goals for improving quality and value in the health care system. Specifically, include information on the proposed Demonstration’s expected impact on quality, access, cost of care and potential to improve the health status of the populations covered by the Demonstration. Also include information on which populations and geographic areas will be affected by the reforms.

3) Indicate the delivery system that will be used in the Demonstration by checking one or more of the following boxes:

Managed care

Managed Care Organization (MCO)

Prepaid Inpatient Health Plans (PIHP)

Prepaid Ambulatory Health Plans (PAHP)

Fee-for-service (including Integrated Care Models)

Primary Care Case Management (PCCM)

Health Homes

Other (please describe)

4) If multiple delivery systems will be used, please include a table that depicts the delivery system that will be utilized in the Demonstration for each eligibility group that participates in the Demonstration (an example is provided). Please also include the appropriate authority if the Demonstration will use a delivery system (or is currently seeking one) that is currently authorized under the State plan, section 1915(a) option, section 1915(b) or section 1932 option.

5) If the Demonstration will utilize a managed care delivery system:

a) Indicate whether enrollment be voluntary or mandatory. If mandatory, is the state proposing to exempt and/or exclude populations?

b) Indicate whether managed care will be statewide, or will operate in specific areas of the state.

**c) Indicate whether there will be a phased-in rollout of managed care.**

**d) Describe how the state will assure choice of MCOs, access to care and provider network adequacy.**

**e) Describe how the managed care providers will be selected/procured.**

**6) Indicate whether any services will not be included under the proposed delivery system and the rationale for the exclusion.**

**7) If the Demonstration will provide personal care and/or long term services and supports, please indicate whether self-direction opportunities are available under the Demonstration. If yes, please describe the opportunities that will be available, and also provide additional information with respect to the person-centered services in the Demonstration and any financial management services that will be provided under the Demonstration.**

**Yes**      **No**

Self-direction opportunities are the same as described in the approved CAC, CADI, BI, and DD HCBS waivers.

**8) If fee-for-service payment will be made for any services, specify any deviation from State plan provider payment rates. If the services are not otherwise covered under the State plan, please specify the rate methodology.**

N/A

**9) If payment is being made through managed care entities on a capitated basis, specify the methodology for setting capitation rates, and any deviations from the payment and contracting requirements under 42 CFR Part 438.**

N/A

**10) If quality-based supplemental payments are being made to any providers or class of providers, please describe the methodologies, including the quality markers that will be measured and the data that will be collected.**

N/A

## **Section V – Implementation of Demonstration**

**1) Describe the implementation schedule. If implementation is a phase-in approach, please specify the phases, including starting and completion dates by major component/milestone.**

The State proposes immediate implementation to assure that existing policies may continue without interruption.

**2) Describe how potential Demonstration participants will be notified/enrolled into the Demonstration.**

The State has followed public notice protocol for this waiver request as required under the federal transparency regulations. The proposed waiver will not change current eligibility standards and methodologies. Therefore, to avoid confusion, demonstration participants will not be notified.

**3) If applicable, describe how the state will contract with managed care organizations to provide Demonstration benefits, including whether the state needs to conduct a procurement action.**

N/A

## **Section VI – Demonstration Financing and Budget Neutrality**

Please refer to Attachment A for the budget neutrality worksheet. As noted in the last tab of the worksheet, entitled “SI fiscal impact,” Minnesota identified 1,405 married HCBS waiver recipients under age 65 whose spouse was not enrolled in Medical Assistance. Of this group, only 242 had been on Medical Assistance 3 years or less. It was assumed that a third of these cases would be new in any given year.

In reviewing a sampling of these cases, we found that 4% had joint assets above spousal impoverishment protection maximum allowed amounts. In addition, 13% had joint assets below the minimum but above the minimum spousal impoverishment protection limits. Both of these groups would be negatively affected by the limit on total marital assets that is established at the first period of institutionalization under spousal impoverishment protection policy. It was estimated that over 100 people currently receiving HCBS waiver services would lose eligibility in the first year if the spousal impoverishment protection provisions were implemented, and a segment of future applicants would also be ineligible in future years. The loss of eligibility would result in a savings to the state and federal government if this waiver request were not granted. This savings would be offset, however, by an expected decrease in the amount contributed to care by recipients if spousal impoverishment protections were implemented because some individuals would allocate excess income to spouses and therefore it would not be available as a contribution to the cost of care. In total, the analysis assumes that granting

Minnesota's request to keep the current eligibility standards in place for people under age 65 on the HCBS waivers would result in a very modest savings of 0.28% of the total cost of providing HCBS waiver services over the five years of the waiver.

## **Section VII – List of Proposed Waivers and Expenditure Authorities**

The state seeks to waive Section 1924(h)(1)(A) during the five year period that begins on January 1, 2014, as temporarily modified by Section 2404 of the Patient Protection and Affordable Care Act, Public Law 111–148<sup>2</sup>, to the extent it would be applicable to eligibility determinations for individuals under the state's 1915(c) HCBS waivers for the disabled. The state does not seek to waive this section for the Elderly Waiver.

## **Section VIII – Public Notice**

**Please include the following elements as provided for in 42 CFR 431.408 when developing this section:**

### **1) Start and end dates of the state's public comment period.**

A notice requesting public comment on the proposed Spousal Deeming §1115 waiver renewal request was published in the Minnesota State Register on December 23, 2013. This notice announced a 30-day comment period from December 23, 2013 to January 22, 2014. The notice described how to access an electronic copy or request a hard copy of the waiver request. Instructions for submitting written comments were provided. In addition, the notice included information about two public hearings scheduled to provide stakeholders and other interested parties the opportunity to comment on the waiver request. The time and location for the two public hearings, along with information about how to arrange to speak at either of the hearings, was provided. Finally, the notice provided a link to the Spousal Deeming waiver web page for complete information on the Spousal Deeming waiver request including the public notice process, the public input process, planned hearings and a copy of waiver application. A copy of the Minnesota State Register Notice published on December 23, 2013 is provided as Attachment B.

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<sup>2</sup> Section 2404 provides: During the 5-year period that begins on January 1, 2014, section 1924(h)(1)(A) of the Social Security Act (42 U.S.C. 1396r-5(h)(1)(A)) shall be applied as though “is eligible for medical assistance for home and community-based services provided under subsection (c), (d), or (i) of section 1915, under a waiver approved under section 1115, or who is eligible for such medical assistance by reason of being determined eligible under section 1902(a)(10)(C) or by reason of section 1902(f) or otherwise on the basis of a reduction of income based on costs incurred for medical or other remedial care, or who is eligible for medical assistance for home and community-based attendant services and supports under section 1915(k)” is substituted in such section for “(at the option of the State) is described in section 1902(a)(10)(A)(ii)(VI).”

**2) Certification that the state provided public notice of the application, along with a link to the state’s web site and a notice in the state’s Administrative Record or newspaper of widest circulation 30 days prior to submitting the application to CMS.**

The DHS web page at [Spousal Deeming Waiver](#) provides the public with information about the Spousal Deeming waiver request. The website is updated on a regular basis and includes information about the public notice process, opportunities for public input, planned hearings and additional informational meetings. A copy of the initial draft of the Spousal Deeming waiver request and the final draft of the waiver request that includes modifications following the public input process is also posted on the website. The main page of the DHS public website includes a new “Public Participation” link to help people quickly identify what comment periods are open. This page contained a link to the [Spousal Deeming Waiver](#) web page during the public comment period. The Spousal Deeming Waiver page instructs how to submit comments to DHS during the comment period, and includes a web link to the federal web site visitors may visit during the upcoming federal comment period.

**3) Certification that the state convened at least 2 public hearings, of which one hearing included teleconferencing and/or web capability, 20 days prior to submitting the application to CMS, including dates and a brief description of the hearings conducted.**

Two public hearings were held to provide stakeholders and other interested parties the opportunity to comment on the waiver request. Teleconferencing was available at each hearing to allow interested stakeholders the option to participate in the hearing remotely. The first public hearing was held at the DHS Elmer L. Andersen Human Services Building on January 6, 2014. Public testimony was given by one person, and two members of the public were in attendance. The second public hearing was held at the DHS Lafayette on January 14, 2014. Public testimony was given by two people, and four members of the public were in attendance. Transcripts of public testimony given at both hearings has been included at Attachment C.

**4) Certification that the state used an electronic mailing list or similar mechanism to notify the public.**

On December 23, 2013 an email was sent to all stakeholders on the stakeholder electronic mailing list informing them of the State’s intent to submit the Spousal Deeming waiver request and directing them to the Minnesota State Register notice published on December 23, 2013. Please refer to the stakeholder e-mail list at Attachment D.

**5) Comments received by the state during the 30-day public notice period.**

DHS received eight written comments from stakeholders and three written transcripts of public testimony given by individuals attending the public hearings (referenced in item 3 above) regarding the proposed Spousal Deeming waiver request during the comment period from December 23, 2013 to January 22, 2014. Copies of the eight written comments and three written transcripts are included at Attachment C. Comments that included private medical or public assistance information regarding the commenter have been redacted to remove individually identifying information.

**6) Summary of the state’s responses to submitted comments, and whether or how the state incorporated them into the final application.**

Most public testimony and written comment received from stakeholders and other interested parties were very supportive of DHS’ request for federal waiver authority to retain the current HCBS waiver eligibility criteria allowing spousal income and asset disregards. DHS appreciates that this waiver has engendered a high level of public interest and concern, and in particular thanks those commenters that traveled to public hearings on this waiver despite extreme winter weather conditions.

One commenter noted that the waiver request could be improved by allowing people to choose between spousal impoverishment protection rules and the exemption from spousal deeming, depending on which income methodology that would be most advantageous to them. DHS appreciates this comment, but state law limits this waiver request to the parameters outlined herein.

One commenter urged DHS to consider additional factors in the fiscal analysis including the impact of the change in the policy on HCBS waiver recipients and their spouses’ ability to engage in paid work and pay taxes, the need for additional paid supports, increased use of institutional settings and Social Security Disability. DHS appreciates this comment, but declines to expand the fiscal analysis at this time because of the constraints of the Medicaid section 1115 waiver process which is limited to direct impacts on Medicaid cost.

As discussed previously, one commenter expressed concerns about the impact of this waiver request for families in which the spouse receiving HCBS waiver services is also the primary wage earner in the family and the community spouse acts as an informal caregiver for the working spouse. This commenter believes that spousal impoverishment protection guidelines would be more advantageous in this situation. DHS agrees that in some family situations for married couples under age 65, spousal impoverishment protection rules are more advantageous than exemption from spousal deeming. However, in other situations, the exemption from spousal deeming allows eligibility for families that would otherwise lose coverage entirely. The DHS fiscal analysis identified over one hundred families in this situation, and many of these families submitted testimony in favor of the waiver.

DHS suggests that the existing Medical Assistance for Employed Persons with Disabilities (MA-EPD) program is a potential alternative route to eligibility for families in which the spouse receiving HCBS services is also the primary wage earner. Under MA-EPD, the participant must pay a sliding scale premium based on income, but this amount may be more manageable for the household than income limits for people with disabilities on Medical Assistance. An asset limit applies, but the asset limit is higher and spousal assets, the home and household goods, retirement accounts, and one vehicle are not counted. Unlike the spousal impoverishment protections, under MA-EPD the couple is not locked into the value of the total marital assets that were held at the time of the first continuous period of an institutional stay of 30 days or more.

Next, the commenter appears to suggest that if Minnesota transitions to spousal impoverishment protection rules for people under 65, the special income standard that equals 300% of social

security insurance or SSI would also apply to people under 65. DHS disagrees. Federal law allows states to adopt the 300% of SSI standard for HCBS waiver participants with or without the use of spousal impoverishment protection policies. State law applies the special income standard only to people age 65 or older.

**7) Certification that the state conducted tribal consultation in accordance with the consultation process outlined in the state’s approved Medicaid State plan, or at least 60 days prior to submitting this Demonstration application if the Demonstration has or would have a direct effect on Indians, tribes, on Indian health programs, or on urban Indian health organizations, including dates and method of consultation.**

In Minnesota, there are seven Anishinaabe (Chippewa and Ojibwe) reservations and four Dakota (Sioux) communities. The seven Anishinaabe reservations include Grand Portage located in the northeast corner of the state, Bois Forte located in extreme northern Minnesota, Red Lake located in extreme northern Minnesota west of Bois Forte, White Earth located in northwestern Minnesota, Leech Lake located in the north central portion of the state, Fond du Lac located in northeastern Minnesota west of the city of Duluth, and Mille Lacs located in the central part of the state, south of Brainerd. The four Dakota Communities include: Shakopee Mdewakanton Sioux located south of the Twin Cities near Prior Lake, Prairie Island located near Red Wing, Lower Sioux located near Redwood Falls, and Upper Sioux whose lands are near the city of Granite Falls. While these 11 tribal groups frequently collaborate on issues of mutual benefit, each operates independently as a separate and sovereign entity – a state within a state or nation within a nation. Recognizing American Indian tribes as sovereign nations, each with distinct and independent governing structures, is critical to the work of DHS. DHS has a designated staff person in the Medicaid Director’s office who acts as a liaison to the Tribes. Attachment E is Minnesota’s tribal consultation policy.

The Tribal Health Work Group was formed to address the need for a regular forum for formal consultation between tribes and state staff. Work group attendees include Tribal Chairs, Tribal Health Directors, Tribal Social Services Directors, and the state consultation liaison. The Native American Consultant from CMS and state agency staff attend as necessary depending on the topics covered at each meeting. The state liaison attends all Tribal Health Work Group meetings and provides updates on state and federal activities. The liaison will often arrange for appropriate DHS policy staff to attend the meeting to receive input from Tribes and to answer questions.

The State’s intent to submit the spousal deeming waiver request was included in a summary of federal waiver activity provided to Tribal Chairs and Tribal Health Directors at the August 22, 2013 and June 10, 2014 Tribal Health Work Group meetings.

On September 25, 2013 a letter was sent to all Tribal Chairs and Tribal Health Directors informing them of the State’s intent to submit the spousal deeming waiver request. The letter also informed Tribes that additional information regarding the proposed waiver and the public input process would be posted in the Minnesota State Register and on the DHS web site and invited them to comment on the waiver proposal. A copy of the letter is provided at Attachment F.

On December 23, 2013 an email was sent to all Tribal Chairs and Tribal Health Directors informing them of the 30-day public comment period for the waiver and directing them to the Minnesota State Register notice published on December 23, 2013 and the [Spousal Deeming Waiver](#) web page.

**If this application is an emergency application in which a public health emergency or a natural disaster has been declared, the State may be exempt from public comment and tribal consultation requirements as outlined in 42 CFR 431.416(g). If this situation is applicable, please explain the basis for the proposed emergency classification and public comment/tribal consultation exemption (if additional space is needed, please supplement your answer with a Word attachment).**

N/A

## **Section IX – Demonstration Administration**

### **Contact**

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