

October 5, 2021

Brett Friedman
Acting State Medicaid Director
Office of Health Insurance Programs
New York Department of Health
Empire State Plaza
Corning Tower
Albany, NY 12237

Dear Mr. Friedman:

The Centers for Medicare & Medicaid Services (CMS) is approving New York's request to amend its section 1115(a) demonstration project titled, "Medicaid Redesign Team" (Project Number 11-W-00114/2) in accordance with section 1115(a) of the Social Security Act ("the Act").

This approval is effective as of the date of this letter through March 31, 2022, upon which date, unless extended or otherwise amended, all authorities granted to operate this demonstration will expire. CMS's approval of this demonstration amendment is conditioned upon compliance with the enclosed list of waiver and expenditure authorities and the Special Terms and Conditions (STCs) defining the nature, character and extent of anticipated federal involvement in the project.

Extent and Scope of Amendment

In 2015, New York created Health and Recovery Plans (HARPs), which are comprehensive Medicaid special needs plans (SNP) serving people age 21 and older with serious mental illness (SMI) and/or substance use disorders (SUD). HARPs offer an enhanced benefit package, including a suite of rehabilitation and recovery services called behavioral health Home and Community Based Services (BH HCBS).¹ The state highlights that fewer than 4 percent of HARP beneficiaries have received any of those services.

CMS is approving an amendment that transitions a set of BH HCBS into Community Oriented Recovery and Empowerment (CORE) rehabilitative services (as such term is defined in Section 1905(a)(13) of the Social Security Act) for HARP and HIV SNP members. CORE services are

¹ BH HCBS are also available to people enrolled in HIV SNPs who meet HARP eligibility criteria.

available to HARP members, and HIV SNP members meeting HARP eligibility criteria, for whom such services are recommended by a physician or Licensed Practitioner of the Healing Arts as defined by New York State. These changes will increase the number of people who are likely to be able to access the services that are approved under the MRT demonstration.

New York State will ensure continuity of care for individuals in BH HCBS including the four services transitioning to CORE. Individuals receiving BH HCBS who directly transition to CORE services will not receive a reduction in services or eligibility based on this amendment (see special terms and conditions (STC) Attachment D for the full list of BH HCBS). In addition, this replacement of services does not implicate the Families First Coronavirus Response Act (FFCRA) provisions for maintenance of effort (MOE) or the new American Rescue Plan (ARP) Act HCBS provision to receive the enhanced federal medical assistance percentages (FMAP) rate.

CORE will continue to be operated through the state's managed care plans. The BH CORE services must be medically necessary, and would be overseen and audited by the state and Medicaid managed care plans. For those services remaining in HCBS, an independent BH HCBS assessment system must be in place in any geographic location where HARP enrollment is an option for eligible individuals. With this approval, the service settings requirements will no longer apply to the BH CORE services but will continue to apply to BH HCBS.

To effectuate the change, New York has requested amending its current expenditure authority to reflect the replacement of BH HCBS with BH CORE. New York's BH HCBS is authorized via Expenditure Authority #5 in the STCs, which became effective December 7, 2016.

The state's applicable monitoring and evaluation deliverables during the remainder of the current demonstration approval period must suitably capture data and interpret findings on access, quality, and costs in the context of this amendment.

Consideration of Public Comments

To increase the transparency of demonstration projects, sections 1115(d)(1) and (2) of the Act direct the Secretary to issue regulations providing for two periods of public comment on a state's application for a section 1115 demonstration that would result in an impact on eligibility, enrollment, benefits, cost-sharing, or financing. The first comment period occurs at the state level before submission of the section 1115(a) application, and the second comment period occurs at the federal level after the Secretary receives the application.

As enacted by the Affordable Care Act (ACA), and incorporated under section 1115(d)(2)(A) and (C) of the Act, comment periods should be "sufficient to ensure a meaningful level of public input" but the statute imposed no additional requirement on the states or the Secretary to provide individualized responses to address those comments, as might otherwise be required under a general rulemaking. Accordingly, the implementing regulations issued in 2012 provide that CMS will review and consider all comments received by the deadline, but will not necessarily provide individualized written responses to public comments (42 CFR 431.416(d)(2)).

The federal comment period was open from September 10, 2020 through October 10, 2020 and CMS only received one comment that neither supported nor opposed this proposal; instead, it just requested that CMS consider the special needs of HARP beneficiaries with regards to the use of telephone sessions, which is outside the scope of this amendment.

After carefully reviewing the public comment submitted during the federal comment period, CMS has concluded that the amendment is likely to advance the objectives of Medicaid.

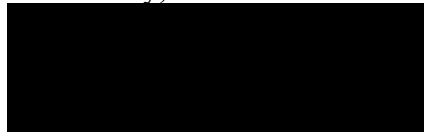
Other Information

The award of this approval is subject to our receiving your written acknowledgement of the award and acceptance of these STCs within 30 days of the date of this letter. Your project officer for this demonstration is Jonathan Morancy. He is available to answer any questions concerning your amendment. Mr. Morancy's contact information is below:

Centers for Medicare & Medicaid Services
Center for Medicaid & CHIP Services
Mail Stop: S2-25-26
7500 Security Boulevard
Baltimore, MD 21244-1850
Telephone: (410) 786-9012
E-mail: Jonathan.Morancy@cms.hhs.gov

If you have any questions regarding this approval, please contact Ms. Judith Cash, Director, State Demonstrations Group, Center for Medicaid and CHIP Services at (410) 786-9686.

Sincerely,



Daniel Tsai
Deputy Administrator and Director

Enclosure

cc: Frankeena McGuire, State Monitoring Lead, Medicaid and CHIP Operations Group