



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

May 11, 2020

Judith Cash
Director of the State Demonstrations Group
Center for Medicaid & CHIP Services
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Re: **Request for Section 1115(a) Demonstration Authority Related to the
COVID-19 Public Health Emergency**

Dear Ms. Cash:

On behalf of the State of New York (“New York” or the “State”), the Department of Health (the “Department”) hereby requests approval from the Centers for Medicare & Medicaid Services (“CMS”) under Section 1115(a) of the Social Security Act for certain of the regulatory flexibilities and expenditure authorities contemplated by State Medicaid Directors Letter #20-002 (“SMDL #20-002”). The specific flexibilities and authorities sought by New York are set forth in the enclosed application that is based on the template furnished by CMS with SMDL #20-002, which New York seeks to become effective retroactive to March 1, 2020.

As CMS is aware, on March 7, 2020, Governor Andrew M. Cuomo signed Executive Order No. 202 declaring a Disaster State of Emergency for the entire State of New York due to the outbreak of novel coronavirus (“COVID-19”) in the State. Under the terms of the Executive Order, since amended to reflect the changing nature of the outbreak and the State’s rapid responses to these changes, certain State laws were suspended or waived, and State agencies have been instructed to take all reasonable efforts to assist in the response and recovery. These responses are informed by the fact that New York has had the highest number of both confirmed cases and resulting deaths in the country from COVID-19.

Despite the State’s decisive response to the COVID-19 outbreak by our providers, local districts, health plans, and communities—which has been extraordinary and involves taking swift action to approve private laboratories to test for the virus, standing up drive-through testing centers in outbreak hotspots to increase its testing capacity, and now rapidly building temporary hospital sites—the COVID-19 pandemic has demonstrated an immediate and fundamental need to rapidly pivot and reconfigure aspects of the State’s healthcare delivery system that are only possible through this new section 1115 demonstration opportunity. To address the immediate needs made apparent by the COVID-19 pandemic, the State requests this emergency waiver to make three key initial investments to preserve essential providers that serve as the safety net are developing emergency response capacity in the near term:

- 1. Emergency Capacity Assurance;**
- 2. Rapid Facility Conversion; and**
- 3. Regional Coordination and Workforce Deployment.**

To support targeted and appropriately prompt distribution of funds, these efforts will be funded through two funding pools using constructs from New York's existing waiver with which New York providers are familiar:

- **Emergency Capacity Assurance Fund (ECAAF):** This pool will provide direct funding to stabilize providers and ensure the ongoing availability of provider capacity during and after this public health emergency. Specifically, this funding would be directed to supporting initiatives #1: Preserving the Safety Net; and #2: Rapid Facility Conversion. These funds will be disbursed directly to providers, as identified below, through a precise and rapid application process where providers will describe and attest to how they intend to spend the funds within pre-set priority areas and the specific timeframe over which the funds will be spent. Unspent funds identified in provider progress reports will be reallocated to emerging needs or other providers.
- **Regional Coordination and Emergency Deployment Fund (RCEDF):** This pool will fund Performing Provider Systems ("PPSs") to support #3: Regional Coordination and Workforce Redeployment efforts. This fund will be allocated based on attribution of Medicaid lives adjusted to account for concentrations of COVID-19 cases in the region and other factors pertinent to the emergency response, as applicable.

In addition to this funding, New York is requesting those flexibilities and authorities most necessary and reasonably tailored to maintaining provider capacity in facilities as well as home and community-based settings; and achieving reasonable regulatory accommodations to promote social distancing while preserving beneficiary access to needed care and services. The proposed authorities and flexibilities would apply to existing delivery systems and programs approved under the New York State Plan and New York's existing waivers, including the Section 1115 Medicaid Redesign Team ("MRT") Waiver (formerly called the Partnership Plan), No. 11-W-00114/2.

MRT Waiver Extension Request

As provided in SMDL #20-002, CMS is not requiring that states submit a budget neutrality demonstration and public notices for emergency Section 1115 demonstration projects designed to combat and respond to the spread of COVID-19. New York appreciates this flexibility, but recognizes that the unprecedented public health crisis does not absolve the State from the need to meet budget neutrality requirements and public notice for other material amendments to the MRT Waiver, which is currently set to expire on March 31, 2021. However, for the reason set forth in this application, New York requests as part of this submission an extension of up to *twelve-months* of the current terms and conditions in the MRT Waiver to allow the State time to review all programs authorized under the MRT Waiver in light of the pandemic and conduct the appropriate budget neutrality review and public notice process. This extension request is also informed by the fact that conducting a routine public notice process, which would be necessary to commence in the coming months, is rendered nearly impossible by the social distancing and other measures necessary to the public health emergency.

As CMS reviews this application, we kindly note that it includes several authorities and flexibilities that the Department previously requested approval under its Section 1135 waiver request on March 23, 2020. Based on our ongoing discussions with CMS regarding the appropriate avenues for requesting various federal flexibilities related to the COVID-19 public health emergency, the Department has shifted requests from that previous 1135 submission to this 1115 application. As our discussions with CMS continue, the Department reserves the right

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to amend this 1115 waiver application to request approval of additional flexibilities the State has sought or will seek pursuant to Section 1135, 1915(c) Appendix K applications (or amendments thereto), or any disaster State Plan Amendments.

We thank CMS for its continued partnership in allowing New York to respond most effectively to this unprecedented public health emergency.

Sincerely,

A handwritten signature in cursive script that reads "Donna Frescatore".

Donna Frescatore
Medicaid Director
Office of Health Insurance Programs

Enclosure

cc: Adam Goldman
Howard Zucker, MD
Brett Friedman