

Disabled and Elderly Health Programs Group

September 27, 2021

Ms. Nicole Comeaux
Director, Medical Assistance Division
New Mexico Human Services Department
P.O. Box 2348
Santa Fe, NM 87504-2348

Dear Director Comeaux:

The Centers for Medicare & Medicaid Services' (CMS) is requesting additional information regarding New Mexico's American Rescue Plan Act of 2021 (ARP) section 9817 initial spending plan and spending narrative submitted on July 12, 2021.

We identified missing information which we will need to review before the initial spending plan and spending narrative can be approved. The State Medicaid Director Letter (SMDL) [#21-003](#), section D, titled *Required Reporting on Activities to Enhance, Expand, or Strengthen HCBS under the Medicaid Program* provides a description of the information states should include in their initial spending plans and spending plan narratives.

Additional Information Requested

- Estimate the anticipated expenditures for the activities the state intends to implement to enhance, expand, or strengthen HCBS under the state Medicaid program between April 1, 2021, and March 31, 2024.

In the submission, your state included information on the activities that it intends to implement and the estimated total cost for the activities. However, the anticipated cost for each activity or category of activity was not included. **Please update your spending plan and narrative to provide the estimated cost for each activity to enhance, expand, or strengthen HCBS under the Medicaid program.**

- Identify which of the state's proposed activities are administrative in nature and not considered HCBS as defined under section 9817(a)(2)(B) of the ARP and described in Appendix B of the SMDL.
- Under Section V, Table 2, Spending Plan Projection, please explain how the "Reinvestment Funds Attributable to the HCBS FMAP Increase" of \$51 million was calculated. Identify the "reinvestment" services that qualify for the additional round of increased HCBS FMAP across the course of three years as the state proposes in the spending plan.

In addition, it is unclear whether some of these activities would enhance, expand, or strengthen HCBS under the Medicaid program. CMS is requesting the following changes or clarifications to your state’s spending plan and narrative:

- Clearly indicate whether the following activities are targeted at providers delivering services that are listed in Appendix B of the SMDL or that could be listed in Appendix B (e.g., behavioral health services that are covered under another benefit but could be covered under the rehabilitative services benefit):
 - Temporary Economic Recovery Payment;
 - Training Program;
 - School-based Investments;
 - Grant Program to Increase HCBS Workforce;
 - Behavioral Health Community Based Services Economic Recovery and Network Establishment Investment;
 - Supportive Housing Units, specifically the activity to evaluate and establish contracting arrangements with provider networks to provide HCBS to members living in these settings;
 - Closed Loop Referral System; and
 - High Fidelity Wraparound Expansion.

If any of these activities are not focused on providers that are delivering services listed in Appendix B or that could be listed in Appendix B, explain how the activities enhance, expand, or strengthen HCBS under Medicaid. In addition, under the “Grant Program to Increase HCBS Workforce” activity, please confirm that the private duty nursing service is limited to private duty nursing provided in the home.

- Clearly indicate whether your state plans to pay for ongoing internet connectivity costs as part of the following activities: “Behavioral Health Community Based Services Economic Recovery and Network Establishment Investment”; “Member Level Technology Investment”; and “Assistive Technology Increase.” Ongoing internet connectivity costs are permissible uses of funds to enhance, expand, or strengthen HCBS under section 9817 of the ARP. However, states must demonstrate how ongoing internet connectivity costs would enhance, expand, or strengthen HCBS. Further, approval of ongoing internet connectivity costs in ARP section 9817 spending plans and narratives does not authorize such activities for FFP.
- Clearly indicate whether your state plans to pay for capital investment costs as part of the following activities: “Behavioral Health Community Based Services Economic Recovery and Network Establishment Investment”; “Adult Day Care Site Funding”; and “Supportive Housing Units.” Capital investment costs are permissible uses of funds to enhance, expand, or strengthen HCBS under section 9817 of the ARP. However, states must demonstrate how capital investments would enhance, expand, or strengthen HCBS and ensure that capital investments will result in settings that are fully compliant with the home and community-based settings criteria. Further, approval of capital investment costs in ARP section 9817 spending plans and narratives does not authorize such activities for FFP.
- Confirm that the state will not pay for room and board (which CMS would not find to be a permissible use of funds) as part of the “Supportive Housing Units” activity.
- Provide additional information on the services that would be paid for with ARP section 9817 funding under the activities to “Add Community Benefit Slots” and “Add Home

and Community-Based Waiver Slots” and clarify whether the state intends to use ARP section 9817 funding to pay for any services other than those listed in Appendix B or that could be listed in Appendix B for individuals who are Medicaid-eligible prior to HCBS waiver enrollment, or any institutional services for individuals who become newly eligible as a result of the increase in waiver slots.

Please note that, if a state increases the number of section 1915(c) waiver slots and enrolls additional individuals who are not already Medicaid eligible into the waiver program as a result, the state will have an increase in non-HCBS Medicaid expenditures as a result of the increase in waiver program enrollment. In this situation, states can use the funds attributable to the increased FMAP to pay for community-based Medicaid expenditures, including community-based state plan services not listed in Appendix B, for individuals who become Medicaid eligible because of the increase in the number of waiver slots as part of the state’s activities to enhance, expand, or strengthen HCBS under ARP section 9817. However, states cannot use the funds attributable to the increased FMAP to pay for institutional services for those individuals, as this would be inconsistent with the intent of ARP section 9817.

- Explain how the “School-based Investments” and the “School-based Services Infrastructure Investments” activities will enhance, expand, or strengthen HCBS under Medicaid.
- Under the “Development Funding for Caregiver Cooperative (Phase 2) to Support ALTSD” activity, please indicate if “long-term” settings are institutional or home and community-based settings.
- Explain how the state will ensure that the “Faculty endowments for Nursing Schools” activity will result in more nurses that are delivering the services that are listed in Appendix B or that could be listed in Appendix B.
- Under the “Revolving Trust” activity, please provide the following information:
 - Which specific state agency will be making the money available?
 - Will only SSI recipients be eligible for the payment(s)?
 - Would the payment be a one-time payment, or will there be periodic payments?
 - If a one-time payment, how much would the payment be (the SSI FBR x [X])?
 - Would there be a designated purpose for the payments, or will use be wholly discretionary for the recipients?
 - What is the purpose or benefit of making the payments through a trust? Will these trusts have a trustee?
 - Will the recipients be required to pay back the money received through the trust?
- Under the “intensive case management for services for children in state custody” activity, identify the setting(s) in which the intensive case management services for children in state custody will occur.

Please update the spending plan and narrative by providing the information requested above and include the estimated cost for each activity to enhance, expand, or strengthen HCBS under the Medicaid program. Please let us know if you would like to schedule a call to discuss the questions included in this letter.

General Considerations

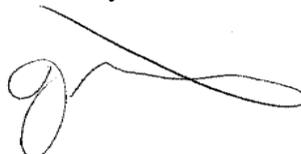
As part of this request for additional information, CMS is noting the following:

- CMS expects your state to notify CMS as soon as possible if your state’s activities to enhance, expand, or strengthen HCBS under ARP section 9817:
 - Are focused on services other than those listed in Appendix B or that could be listed in Appendix B (e.g., behavioral health services that are covered under another benefit but could be covered under the rehabilitative services benefit). If any activities are not directly related to the services listed in Appendix B or services that could be listed in Appendix B, please explain how those activities enhance, expand, or strengthen HCBS under Medicaid;
 - Include room and board (which CMS would not find to be a permissible use of funds); and/or
 - Include activities other than those listed in Appendices C and D.

CMS will need additional information before it can determine whether any of those activities or uses of funds are approvable under ARP section 9817.

As of today, CMS’s review is suspended until we receive your complete response. So that we may continue with the review process, please provide the requested information within 15 business days. We look forward to continuing to work with you to advance HCBS in New Mexico. Please submit questions or concerns regarding this request for information to HCBSincreasedFMAP@cms.hhs.gov.

Sincerely,



Jennifer Bowdoin
Director, Division of Community Systems
Transformation

cc: Valerie Tapia