DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-26-12
Baltimore, Maryland 21244-1850

March 28, 2023

Lorelei Kellogg
Interim Director, Medical Assistance Division
New Mexico Human Services Department
State Capitol
Room 400
Santa Fe, NM 87501

Dear Ms. Kellogg:

The Centers for Medicare & Medicaid Services (CMS) is approving New Mexico's request to amend its section 1115(a) demonstration entitled, "New Mexico Centennial Care 2.0" (Project Number 11-W00285/6), in accordance with section 1115(a) of the Social Security Act (the Act). With this approval, the demonstration amendment will become effective March 28, 2023 through December 31, 2023.

Approval of this demonstration amendment will enable New Mexico to receive federal financial participation (FFP) once CMS approves the implementation plan for inpatient, residential and other services provided to otherwise-eligible Medicaid beneficiaries while they are short-term residents in institutions for mental diseases (IMD) for diagnoses of serious mental illness (SMI) and/or serious emotional disturbance (SED). This amendment will also provide FFP for improvements to New Mexico's Home and Community Based Services (HCBS), as well as for the implementation of a High Fidelity Wraparound (HFW) intensive care coordination benefit.

CMS's approval of this section 1115(a) demonstration amendment is subject to the limitations specified in the attached waivers, expenditure authorities, Special Terms and Conditions (STCs), and any supplemental attachments defining the nature, character, and extent of federal involvement in this project. The state may deviate from the Medicaid state plan requirements only to the extent those requirements have been specifically listed as waived or not applicable to expenditures authorized under the demonstration.

Extent and Scope of Demonstration

SMI/SED IMD Authority

As requested by the state, the demonstration will authorize FFP, once CMS approves the SMI/SED implementation plan, for otherwise covered services furnished during short-term stays in acute inpatient psychiatric hospitals and residential treatment centers that qualify as IMDs for Medicaid eligible individuals who are primarily receiving treatment for SMI, as well as those Medicaid recipients under age 21 who receive treatment services for SED furnished by Qualified

Residential Treatment Programs. These services will be provided as part of a comprehensive continuum of care to treat SMI/SED including outpatient, community-based services.

During the demonstration period, the state seeks to achieve the goals, listed below, which align with the State Medicaid Director letter (SMDL) #18-011, "Opportunities to Design Innovative Service Delivery Systems for Adults with a Serious Mental Illness or Children with a Serious Emotional Disturbance."[1] CMS expects the state to achieve the goals on a statewide basis. The goals of the SMI/SED demonstration amendment are to:

1. Reduce utilization and lengths of stay in emergency departments among Medicaid beneficiaries with SMI/SED while awaiting mental health treatment in specialized settings;
2. Reduce preventable readmissions to acute care hospitals and residential settings;
3. Improve availability of crisis stabilization services, including services made available through call centers and mobile crisis units, intensive outpatient services, as well as services provided during acute short-term stays in residential crisis stabilization; programs, psychiatric hospitals, and residential treatment settings throughout the state;
4. Improve access to community-based services to address the chronic mental health care needs of beneficiaries with SMI/SED, including through increased integration of primary and behavioral health care; and
5. Improve care coordination, especially continuity of care in the community following episodes of acute care in hospitals and residential treatment facilities.

CMS reaffirms the national priority addressed by this demonstration opportunity to expand access to high quality community-based behavioral health services. As a condition of this award and as described in the milestones outlined in SMDL #18-011, the state is expected to strengthen its entire behavioral health delivery system, and to meet all monitoring, reporting, and transparency requirements as outlined in the attached STCs, including reporting on the quality of care provided in IMDs furnishing services to beneficiaries under the demonstration. This commitment includes actions to ensure a continuum of care is available to address more chronic, on-going behavioral health care needs of beneficiaries with SMI/SED, to provide a full array of crisis stabilization services, to engage beneficiaries with SMI/SED in treatment as soon as possible, to ensure good quality of care in IMDs, and to improve connections to community-based care following stays in acute care settings. CMS expects that as the state enhances the community-based behavioral health treatment system and increases opportunities for early intervention, there will be greater access to community-based services to address the mental health care needs of beneficiaries with SMI/SED, thereby reducing the reliance on inpatient treatment facilities.

HCBS Improvements

This amendment will increase the enrollment limit of the Community Benefit Program. The Community Benefit Program provides HCBS such as adult day health, assisted living, behavioral support consultation, and customized community supports. On May 19, 2022, CMS approved an update to the state's Emergency Preparedness and Response Appendix K to increase the enrollment limit to 5,989 through six months after the end of the public health emergency. As part of this amendment approval, CMS is approving the increased enrollment limit through the

[1] Available at: https://www.medicaid.gov/federal-policy-guidance/downloads/smd18011.pdf

end of New Mexico's current demonstration period. Finally, the state also requested authority to increase the Community Benefit enrollment limit by an additional 800 slots to a total of 6,789 slots if the state finds it has sufficient funding. CMS is also approving this request.

New Mexico also requested to increase the service limits for Community Transition and Environmental Modification Services. CMS is also approving these requests.

HFW Intensive Care Coordination

CMS is approving expenditure authority for the implementation of an HFW intensive care coordination benefit. The state has piloted HFW intensive care coordination since 2007 and seeks to expand the service statewide. HFW intensive care coordination will allow the state to provide a team of highly skilled planners and facilitators to create custom and tailored plans to help children with SED enrolled in either the managed care or fee-for-service (FFS) delivery systems. This benefit aims to assist children and their families reach beneficiary-centered success while remaining in their homes and communities.

As outlined in the STCs, the eligibility requirements for the HFW intensive care coordination benefit include children or youth with an SED diagnosis who have a functional impairment in two or more domains identified by the Child and Adolescent Needs and Strengths tool; are involved in two or more systems such as special education, behavioral health, protective services or juvenile justice; or at-risk for such involvement in the case of children aged 0 to 5; and at risk of or in an out of home placement.

Element of the Demonstration Request CMS is Not Approving at This Time

New Mexico requested federal match for the establishment of Graduate Medical Education (GME) grant programs. CMS will continue to work with the state on the policy parameters for its workforce initiatives. At this time, this request is under development and is not being approved at this time.

Budget Neutrality

Under section 1115(a) demonstrations, states can test innovative approaches to operating their Medicaid programs if CMS determines that the demonstrations are likely to assist in promoting the objectives of the Medicaid statute. CMS has long required, as a condition of demonstration approval, that demonstrations be "budget neutral," meaning the federal costs of the state's Medicaid program with the demonstration cannot exceed what the federal government's Medicaid costs in that state likely would have been without the demonstration. In requiring demonstrations to be budget neutral, CMS is constantly striving to achieve a balance between its interest in preserving the fiscal integrity of the Medicaid program and its interest in facilitating state innovation through section 1115 approvals. In practice, budget neutrality generally means that the total computable (i.e., both state and federal) costs for approved demonstration expenditures are limited to a certain amount for the demonstration approval period. This limit is called the budget neutrality expenditure limit and is based on a projection of the Medicaid expenditures that could have occurred absent the demonstration (the "without waiver" (WOW) costs).

In this amendment to the New Mexico Centennial Care 2.0 demonstration, CMS is including revised STCs, as applicable, that reflect these efforts to achieve the aforementioned balance between fiscal integrity and state innovation. Specifically, CMS is revising the approach to adjusting the budget neutrality calculation in the middle of a demonstration approval period. Historically, CMS has limited its review of state requests for "mid-course" budget neutrality adjustments to situations that necessitate a corrective action plan, in which projected expenditure data indicate a state is likely to exceed its budget neutrality expenditure limit. CMS has updated its approach to mid-course corrections in this demonstration approval to provide flexibility and stability for the state over the life of a demonstration. This update identifies, in the STCs, a list of circumstances under which a state's baseline may be adjusted based on actual expenditure data to accommodate circumstances that are either out of the state's control (e.g., expensive new drugs that the state is required to cover enter the market); and/or the effect is not a condition or consequence of the demonstration (e.g., unexpected costs due to a public health emergency); and/or the new expenditure (while not a new demonstration-covered service or population that would require the state to propose an amendment to the demonstration) is likely to further strengthen access to care (e.g., a legislated increase in provider rates). CMS also explains in the STCs what data and other information the state should submit to support a potentially approvable request for an adjustment. CMS considers this a more rational, transparent, and standardized approach to permitting budget neutrality modifications during the course of a demonstration.

Monitoring and Evaluation

Consistent with CMS requirements for all section 1115 demonstrations, and as outlined in the STCs, the state is required to undertake robust monitoring and evaluation of the demonstration. Throughout the life-cycle of the demonstration approval period, monitoring will support tracking the state's progress towards the demonstration milestones. The state will be required to submit a monitoring protocol in alignment with CMS' SMI/SED monitoring guidance, no later than 150 days, respectively, after the approval of this amendment. The state will also be required to track enrollment in the HCBS programs under this amendment. Similarly, the state will be required to track participation in and health outcomes from the HFW intensive care coordination services. Furthermore, the state will also conduct an independent mid-point assessment of the SMI/SED component's progress, outlining any necessary mitigation strategies for milestones or performance targets at risk of not being met.

Additionally, the state will be required to submit a revised evaluation design no later than 180 days after approval of this amendment. The revision will incorporate all components applicable to this amendment including SMI/SED, HCBS, and HFW intensive care coordination. The revised evaluation design will ensure a thorough assessment of whether the demonstration initiatives are effective in producing the desired outcomes for beneficiaries and the Medicaid program overall. The state and CMS will also work collaboratively such that the state's demonstration evaluation efforts accommodate data collection and analyses stratified by key subpopulations of interest—to the extent feasible—to inform a fuller understanding of existing disparities in access, utilization, and health outcomes, and how the demonstration might support bridging any such inequities.

Consideration of Public Comments

New Mexico conducted a 30-day public comment period on the draft amendment proposal from January 1, 2021 through January 31, 2021, to provide an opportunity for public comment on the state's amendment application. The state also held two virtual public listening sessions on January 19, 2021, and January 28, 2021. The New Mexico Human Services Department received comments from 4 entities related to its draft 1115 demonstration amendment (released on December 31, 2020) through multiple public comment opportunities that included public hearings, email submissions, and voicemail comments. All commenters expressed support for the proposals in the demonstration amendment. The state also gave notice to their tribal populations.

Regarding the HCBS improvements, New Mexico published its Section 9817 American Rescue Plan Act (ARPA) HCBS Spending Plan on its website on July 14, 2021. The state held a 30-day state public comment period from July 14, 2021 through August 18, 2021. Therefore, the state has complied with the public notice process requirements outlined in STCs 7 and 9. In addition to public notice, New Mexico conducted several stakeholder engagement hearings, receiving feedback from stakeholders such as: providers, state government agencies, Native American Tribe and Pueblo officials, members of disability and family/caregiver advocacy groups, interested parties, and state legislative staff.

To increase the transparency of demonstration projects, sections 1115(d)(1) and (2) of the Act direct the Secretary of Health & Human Services to issue regulations providing for two periods of public comment on a state's application for a section 1115 demonstration, including proposed amendments, 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 application, and the second comment period occurs at the federal level after the application is received by the Secretary.

Section 1115(d)(2)(A) and (C) of the Act further specifies that 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 an individualized response 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 written responses to all public comments (42 CFR 431.416 (d)(2)).

Comments Regarding the SMI/SED IMD Expenditure Authority

CMS held a federal comment period from March 26, 2021 through April 26, 2021, and received 3 comments. One commenter supported the amendment, stating the amendment will allow New Mexico to provide better support for individuals who may require longer stays at a residential treatment facility, will help the state maintain and enhance beneficiary access across an array of behavioral health services while reducing emergency department utilization, and will complement New Mexico's existing IMD expenditure authority for SUD treatment which will enhance beneficiary access to critical services for those with SMI/SED and/or SUD.

A second commenter opined that the state has not explained why obtaining FFP for services in an IMD is a valid experiment under section 1115 of the Act and that CMS lacks authority to approve this amendment. CMS has determined that New Mexico's request serves a research and demonstrative purpose, as outlined in SMDL #18-011. Proposed hypotheses outlined in the state's application to be tested through evaluation include the hypotheses that the demonstration will "improve availability of crisis stabilization services including services made available through call centers and mobile crisis units, intensive outpatient services, as well as provided during acute short-term stays in residential crisis stabilization programs, psychiatric hospitals, and residential treatment settings throughout the state," and "improve access to community-based services to address the chronic mental health care needs of beneficiaries with SMI or SED including through increased integration of primary and behavioral health care"; CMS will work with the state to further detail evaluation plans as part of the evaluation design process outlined in the STCs. We note that the demonstration includes both robust monitoring and evaluation requirements, and we expect the demonstration to yield data and analysis useful to Congress, the state, CMS, researchers, and other stakeholders.

Furthermore, CMS does not lack the authority to approve the state's request for SMI/SED IMD expenditure authority. Section 1115(a)(2) of the Act grants the Secretary the authority, in the context of a demonstration project under section 1115(a), to provide federal matching for state expenditures that would not otherwise be federally matchable under the terms of section 1903. This "expenditure authority" has been exercised by the Secretary for decades to conduct demonstration projects that provide expanded coverage for individuals or services that could not otherwise be covered under a State's Medicaid State plan. This interpretation has been upheld in court as a valid exercise of the Secretary's demonstration authority under section 1115. For example, federal courts have upheld demonstration projects that covered individuals under section 1115(a)(2) who would not otherwise be eligible for coverage. See Spry v. Thompson, 487 F.3d 1272 (9th Cir. 2007); Wood v. Betlach, No. CV-12-08098, 2013 WL 3871414 (D. Ariz. July 26, 2013).

The commenter also shared concerns that authorizing FFP for services provided in IMDs could risk diverting resources away from community-based services and would undermine community integration. Nothing in this demonstration requires that services be provided to any individual in any particular setting, nor does it limit the availability of community-based settings. CMS is requiring the state to take actions through this demonstration to *increase* access to services across a statewide comprehensive continuum of care to treat SMI. This includes actions aimed at improving access to community-based services, including crisis stabilization services, and care coordination, especially continuity of care in the community following episodes of acute care in hospitals and residential treatment facilities. In addition, the state is required to ensure that providers utilize an evidence-based tool to determine the appropriate level of care and length of stay. The state is also required to use a utilization review entity to ensure beneficiaries have access to the appropriate levels and types of care, and to provide oversight to ensure lengths of stay are limited to what is medically necessary while ensuring that only those who have a clinical need to receive treatment in psychiatric hospitals and residential treatment settings are receiving treatment in those facilities.

In addition, this SMI IMD expenditure authority should not reduce or divert state spending on community-based mental health services as a result of available federal funding for services in

IMDs because CMS is requiring New Mexico to ensure that it maintains at least current spending on outpatient, community-based mental health services consistent with historical spending at the state and local level, as outlined in the STCs. New Mexico is required to adopt processes to ensure Medicaid beneficiaries receive the appropriate level of care and length of stay, and to show in its SMI/SED Mid-Point Assessment that it has made sufficient progress towards achieving demonstration milestones as outlined in SMDL #18-0111, to include "increasing access to [a] continuum of care." In fact, the state will be working to promote coordinated transitions to community-based services from inpatient and institutional care, and CMS is requiring New Mexico to ensure that inpatient and residential care will supplement and coordinate with community-based care.

Comments Regarding HFW Intensive Care Coordination

One commenter remarked that CMS should not approve the HFW intensive care coordination expenditure authority because the commenter asserted that states should provide these services pursuant to the Medicaid Early and Periodic Screening, Diagnosis and Treatment (EPSDT) mandate. Although this benefit could be covered under EPSDT, the state's primary purpose for seeking 1115 authority for the HFW intensive care coordination component is to provide the care coordination benefit to both the managed care and fee-for-service (FFS) populations. As a result, CMS determined that it would be appropriate to provide the requested expenditure authority for the HFW intensive care coordination benefit. Under the EPSDT mandate, beneficiaries under the age of 21 are eligible to receive all appropriate and medically necessary services needed to correct and ameliorate health conditions that are coverable under section 1905(a) of the Act. Nothing in the New Mexico demonstration overrides any EPSDT requirements. The state remains responsible for the provision of medically necessary services pursuant to the EPSDT mandate.

The commenter also did not support the approval of HFW intensive care coordination services because the commenter asserted that New Mexico's request to implement HFW as an intensive care coordination model does not constitute an experiment or test a novel approach. CMS believes the state is testing a novel approach to providing care coordination in an equitable manner by providing care coordination to beneficiaries in both the managed care and FFS delivery systems. The state will be required to update its evaluation design to evaluate the effectiveness of the HFW intensive care coordination benefit.

Comments Regarding the HCBS Changes

CMS held a federal public comment period on the HCBS changes from January 14, 2022 through February 13, 2022. CMS received three comments during the federal comment period. One of the comments was blank and another comment did not refer to the amendment.
CMS received one comment from an organization that generally supports the state's request to increase the Community Benefit slots, as well as the service limit increases to Community Transition services and Environmental Modification services. However, this commenter expressed concern about having a financial cap on Community Transition and Environmental Modification services. The commenter notes that occasionally, the cost for home modifications could exceed the environmental modification cap set by the STCs. As the commenter also notes, the demonstration's STCs include a provision that additional environmental modifications services may be requested if the person's health and safety needs exceed the applicable cap.

After careful review of the public comments submitted during the federal public comment period and the information received from the state public comment period, CMS has concluded that the demonstration amendment is likely to advance the objectives of Medicaid.

Other Information

CMS's approval of this amendment is conditioned on compliance with the enclosed set of STCs defining the nature, character, and extent of anticipated federal involvement in the project. The award is subject to your written acknowledgement of the award and acceptance of the STCs within 30 days of the date of this letter.

Your project officer for this demonstration is Ms. Sandra Phelps. She is available to answer any questions concerning your section 1115 demonstration. Ms. Phelps may be reached at Sandra.Phelps@cms.hhs.gov.

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

Sincerely,

Daniel Tsai
Deputy Administrator and Director

Enclosure

cc: Dana Brown, State Monitoring Lead, CMS Medicaid and CHIP Operations Group