



Administrator

Washington, DC 20201

December 30, 2020

Daniel Tsai
Assistant Secretary, MassHealth
Executive Office of Health and Human Services
One Ashburton Place, 11th Floor Room 1109
Boston, MA 02108

Dear Mr. Tsai:

On March 13, 2020, the President of the United States issued a proclamation that the COVID-19 outbreak in the United States constitutes a national emergency by the authorities vested in him by the Constitution and the laws of the United States, including sections 201 and 301 of the National Emergencies Act (50 U.S.C. 1601 et seq.), and consistent with section 1135 of the Social Security Act (Act) as amended (42 U.S.C. 1320b-5). On March 13, 2020, pursuant to section 1135(b) of the Act, the Secretary of Health and Human Services invoked his authority to waive or modify certain requirements of titles XVIII, XIX, and XXI of the Act as a result of the consequences of the COVID-19 pandemic, to the extent necessary, as determined by the Centers for Medicare & Medicaid Services (CMS), to ensure that sufficient health care items and services are available to meet the needs of individuals enrolled in the respective programs and to ensure that health care providers that furnish such items and services in good faith, but are unable to comply with one or more of such requirements as a result of the COVID-19 pandemic, may be reimbursed for such items and services and exempted from sanctions for such noncompliance, absent any determination of fraud or abuse. This authority took effect as of 6:00 PM Eastern Standard Time on March 15, 2020, with a retroactive effective date of March 1, 2020. We note that the emergency period will terminate, upon termination of the public health emergency (PHE), including any extensions.

In response to the section 1115(a) demonstration opportunity announced to states on March 22, 2020 in State Medicaid Director Letter (SMDL) #20-002¹, on March 24, 2020, Massachusetts submitted a request for a section 1115(a) demonstration to address the COVID-19 PHE. CMS has determined that the state's application is complete, consistent with the exemptions and flexibilities outlined in 42 CFR 431.416(e)(2) and 431.416(g).² CMS expects that states will offer, in good faith and in a prudent manner, a post-submission public notice process, including

¹ See SMDL #20-002, "COVID-19 Public Health Emergency Section 1115(a) Opportunity for States," available at <https://www.medicaid.gov/sites/default/files/Federal-Policy-Guidance/Downloads/smd20002-1115template.docx>.

² Pursuant to 42 CFR 431.416(g), CMS has determined that the existence of unforeseen circumstances resulting from the COVID-19 PHE warrants an exception to the normal state and federal public notice procedures to expedite a decision on a proposed COVID-19 section 1115 demonstration. States applying for a COVID-19 section 1115 demonstration are not required to conduct a public notice and input process. CMS is also exercising its discretionary authority to expedite its normal review and approval processes to render timely decisions on state applications for COVID-19 section 1115 demonstrations. CMS will post all section 1115 demonstrations approved under this COVID-19 demonstration opportunity on the Medicaid.gov website.

tribal consultation as applicable, to the extent circumstances permit. This letter also serves as time-limited approval of select components of the Massachusetts COVID-19 Public Health Emergency section 1115(a) demonstration, described below, which is hereby authorized retroactively from March 1, 2020, through the date that is 60 days after the end of the PHE (including any renewal of the PHE). In addition, this letter includes a time-limited approval of an amendment to the existing MassHealth Demonstration.

CMS has determined that the Massachusetts COVID-19 PHE section 1115(a) demonstration – including the waiver and expenditure authorities detailed below – is necessary to assist the state in delivering the most effective care to its beneficiaries in light of the COVID-19 PHE. The demonstration is likely to assist in promoting the objectives of the Medicaid statute because it is expected to help the state furnish medical assistance in a manner intended to protect, to the greatest extent possible, the health, safety, and welfare of individuals and providers who may be affected by COVID-19. The freedom of choice authority promotes the objectives of the program in particular by allowing the Commonwealth to temporarily operate expanded telehealth and mobile testing networks during the COVID-19 PHE, bolstering beneficiary access while conserving limited federal and state resources.

In addition, in light of the unprecedented emergency circumstances associated with the COVID-19 pandemic and consistent with the President’s declaration detailed above – and in consequence of the time-limited nature of this demonstration – CMS did not require the state to submit budget neutrality calculations for the Massachusetts COVID-19 PHE section 1115(a) demonstration. In general, CMS has determined that the costs to the federal government are likely to have been otherwise incurred and allowable. Massachusetts will still be required to track demonstration expenditures and will be expected to evaluate the connection between those expenditures and the state’s response to the PHE, as well as the cost-effectiveness of those expenditures.

The state will be required to complete a final report, which will consolidate monitoring and evaluation reporting deliverables associated with the approved waiver and expenditure authorities and demonstration STCs, no later than one year after the end of the COVID-19 section 1115 demonstration authority. CMS will provide guidance for the evaluation design and final report, specifically developed for the COVID-19 section 1115 to facilitate state compliance with 42 CFR 431.424(c); an evaluation design will be due to CMS within 60 days of demonstration approval.

The state will test whether and how the approved waivers and expenditure authorities affect the state’s response to the PHE. To that end, the state will use research questions that pertain to the approved waivers and expenditure authorities. The evaluation will also assess cost-effectiveness by tracking administrative costs and health services expenditures for demonstration beneficiaries and assessing how these outlays affected the state’s response to the PHE.

Requests CMS is Approving at this Time

The state submitted a number of requests, many of which may be or have already been approved under the state plan, 1135 waivers, and Appendix K for 1915(c) waivers, and are not described below. In addition to requested demonstration protocol and technical changes not described

below, Massachusetts requested and CMS approved the following technical changes to the state's MassHealth 1115 demonstration. These do not require additional authority under section 1115(a), but are included for information only:

- Massachusetts requested to extend the deadline for the DSRIP midpoint assessment otherwise due September of 2020 by two months, which CMS approved, as a technical change to the MassHealth demonstration, on April 22, 2020.
- Massachusetts requested to make payments necessary to maintain continued access to health care services during the national emergency in accordance with changes to Attachment E to the MassHealth 1115 demonstration submitted by the state. CMS approved these revisions to the protocol on May 20, 2020.

CMS is also confirming its understanding that MassHealth will not avail itself of its existing waiver of retroactive eligibility in its MassHealth section 1115(a) demonstration (11-W-00030/1) for the duration of the COVID-19 PHE. Therefore, retroactive eligibility must be provided upon request as early as the first day of the third calendar month before the month of application, but no earlier than March 1, 2020, if the applicant received Medicaid services and would have been eligible for Medicaid if the individual had applied.

This letter only addresses requests that CMS is approving at this time. Consistent with the flexibilities described in the SMDL #20-002, and with additional flexibilities requested by Massachusetts, CMS is approving the following requests:

Waiver Authorities

1. Statewideness

Section 1902(a)(1)

To the extent necessary to permit the state to target services on a geographic basis that is less than statewide, in order to support the state's mobile testing initiatives.

2. Reasonable Promptness; Amount, Duration, Scope; Comparability

Section 1902(a)(8) and 1902(a)(10)(B) and 1902(a)(17)

To the extent necessary to permit the state to vary the amount, duration, and scope of services based on population needs; to provide different services to different beneficiaries in the same eligibility group, or different services to beneficiaries in the categorically needy and medically needy groups; and to allow the state to triage access to long-term services and supports based on highest need.

3. Freedom of Choice

Section 1902(a)(23)(A)

To the extent necessary to permit the state to restrict beneficiary choice to a limited network of telehealth network providers and ambulance providers providing mobile testing services.

Expenditure Authorities

1. **Long-Term Services and Supports (LTSS).** Expenditures for 1905(a) LTSS services for individuals even if services are not timely updated in the plan of care, or are delivered in allowable alternative settings for the period of the public health emergency. The Commonwealth defines alternative settings as those which would have been otherwise-approvable via 1915(c), Appendix K (e.g. hotels, shelters, schools and churches).³

2. **Retainer Payments.** Expenditures for the state to make retainer payments for dates of service beginning in the month of July 2020 and ending after 30 consecutive days to providers of adult day health and day habilitation services (that include a personal care component) provided under 1905(a)(13) of the Act to maintain capacity during the emergency. The retainer payment time limit may not exceed 30 consecutive days. If the state has or submits and receives approval of an institutional facility bed hold State Plan Amendment (SPA) that is fewer than 30 days, then the state may only make retainer payments authorized under the 1115 authority that is less than or equal to the aggregate maximum monthly institutional facility bed hold limit in the SPA. In addition, retainer payments may only be paid to providers with treatment relationships to beneficiaries that existed at the time the PHE was declared and who continue to bill for adult day health or day habilitation services as though they were still providing these services to those beneficiaries in their absence. The retainer payments may not exceed the approved rate(s) or average expenditure amounts paid during the previous quarter for the service(s) that would have been provided.

Approval of this demonstration is subject to the limitations specified in the list of approved authorities and the enclosed STCs. The state may deviate from its Medicaid state plan requirements only to the extent that the requirements have been specifically waived or identified as not applicable to the demonstration. This approval is conditioned upon continued compliance with the enclosed STCs which set forth in detail the nature, character and extent of anticipated federal involvement in the project.

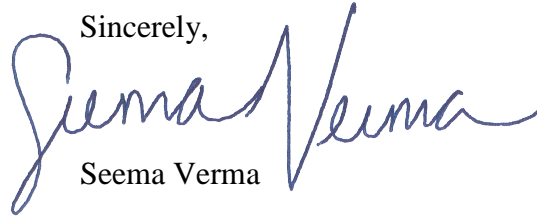
The award is subject to CMS receiving written acceptance of this award within 15 days of the date of this approval letter. Your project officer is Ms. Rabia Khan. Ms. Rabia Khan is available to answer any questions concerning implementation of the state's section 1115(a) demonstration and her contact information is as follows:

Centers for Medicare & Medicaid Services
 Center for Medicaid and CHIP Services
 Mail Stop: S2-25-26
 7500 Security Boulevard
 Baltimore, Maryland 21244-1850
 Email: Rabia.Khan1@cms.hhs.gov

³ See "APPENDIX K: Emergency Preparedness and Response" template, available at <https://www.medicaid.gov/medicaid/home-community-based-services/downloads/1915c-appendix-k-template.pdf>.

We appreciate your state's commitment to addressing the significant challenges posed by the COVID-19 pandemic and we look forward to our continued partnership on the Massachusetts COVID-19 PHE section 1115(a) demonstration. If you have any questions regarding this approval, please contact Ms. Teresa DeCaro, Acting Director, State Demonstrations Group, Center for Medicaid and CHIP Services, at (410) 786-9686.

Sincerely,

A handwritten signature in blue ink that reads "Seema Verma". The signature is fluid and cursive, with the first name "Seema" and the last name "Verma" clearly distinguishable.

Seema Verma

Enclosure

cc: Marie deMartino, State Monitoring Lead, Medicaid and CHIP Operations Group