

August 11, 2022

Amanda Cassel Kraft
Acting Assistant Secretary, MassHealth
Executive Office of Health and Human Services
One Ashburton Place, 11th Floor Room 1109
Boston, MA 02108

Dear Ms. Cassel Kraft:

The Centers for Medicare & Medicaid Services (CMS) is approving Massachusetts's request to amend its section 1115 demonstration project entitled, "MassHealth" (Project Number 11-W-00030/1), in accordance with section 1115(a) of the Social Security Act (the Act). Approval of this amendment will:

1. Enable the Commonwealth to receive Federal Financial Participation (FFP), once CMS approves the Commonwealth's Implementation Plan, for otherwise covered Medicaid services, including inpatient psychiatric hospital services, provided to otherwise-eligible Medicaid beneficiaries who are primarily receiving treatment for a serious mental illness (SMI) or serious emotional disturbance (SED) who are short-term residents in facilities that meet the definition of an institution for mental diseases (IMD);
2. Extend Medicare cost sharing assistance by expanding MassHealth Standard income eligibility to align with state budget changes; and,
3. Extend Community Support Program services to also be offered to individuals with justice involvement living in the community.

This approval is effective August 11, 2022 through September 30, 2022, upon which date, unless extended or otherwise amended, all authorities granted to operate this demonstration will expire. The demonstration was previously expected to expire June 30, 2022, but on June 9, 2022, CMS approved a three-month temporary extension to September 30, 2022, to permit additional time for negotiations on the Commonwealth's extension application.

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

Extent and Scope of the Amendment

As requested by the Commonwealth, this demonstration will authorize FFP for otherwise covered Medicaid services, including inpatient psychiatric hospital services, provided to otherwise-eligible Medicaid beneficiaries who are primarily receiving treatment for a SMI or SED who are short-term residents in facilities that meet the definition of an IMD. These services will be provided as part of a comprehensive continuum of care to treat SMI/SED including outpatient, community-based services. Massachusetts is continuing to develop the SMI/SED Implementation Plan, which must be approved by CMS prior to the Commonwealth receiving federal matching dollars under this demonstration. Once approved, CMS will include the Plan as Attachment T of the STCs.

With this demonstration authority, the Commonwealth seeks to achieve the following goals, 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 Disturbance¹.” CMS expects the Commonwealth to achieve the goals on a statewide basis. These actions are a condition of receiving FFP for services provided in IMDs per the STCs:

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 Commonwealth is expected to strengthen their 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 participating IMDs. 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 or SED, to provide a full array of crisis stabilization services, to engage beneficiaries with SMI or 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 Commonwealth enhances the community-based behavioral

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

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 or SED, thereby reducing the reliance on inpatient treatment facilities.

This amendment approval also expands expenditure authority for Medicare cost sharing assistance by expanding income eligibility to align with FY 2019 state budget changes. The new upper income standard for MassHealth Standard members eligible for Medicare Part B cost sharing assistance is increasing from 135 percent to 165 percent of the FPL (without applying an asset test).

Under the MassHealth demonstration, the Commonwealth has expenditure authority to provide diversionary behavioral health services, which are home and community-based mental health and substance use disorder services furnished as clinically appropriate alternatives to and diversions from inpatient mental health and substance use disorder services in more community-based, less structured environments. This amendment will expand eligibility for the diversionary behavioral health Community Support Program to include individuals with justice involvement living in the community.

CMS is also approving technical corrections and clarifications to the Commonwealth's demonstration effective August 11, 2022 through September 30, 2022 as follows:

- Clarifications to Tables A, B, C and D relative to the delivery of certain services and eligibility;
- Modification to the due date for the Commonwealth's interim evaluation report, in light of delays due to the COVID-19 pandemic; and,
- Clarifications throughout to STC references, formatting, and grammar.

Consistent with CMS requirements for all section 1115 demonstrations, and as outlined in the STCs, the Commonwealth will be required to undertake robust monitoring and evaluation of the demonstration. Throughout the life-cycle of the demonstration approval period, monitoring will support tracking the Commonwealth's progress towards its demonstration goals. The Commonwealth will be required to submit a monitoring protocol and a revised evaluation design, in alignment with CMS-identified metrics and applicable SMI/SED monitoring and evaluation guidance, no later than 150 days and 180 days, respectively, after the approval of this amendment. 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. Furthermore, the Commonwealth will also conduct an independent mid-point assessment of the SMI/SED component's progress, outlining any necessary mitigation strategies. Given that the SMI/SED component of the demonstration has a limited period of implementation during the current approval period for the state's demonstration, the evaluation design will accommodate as comprehensive an assessment of the demonstration's progress as feasible within this time period.

On January 20, 2022, Massachusetts withdrew the postpartum eligibility extension request included in the MassHealth amendment request submitted on June 8, 2021. The Commonwealth withdrew the request to seek the postpartum extension State Plan option under the American

Rescue Plan Act of 2021. This Medicaid State Plan Amendment (SPA) was approved by CMS on July 26, 2022.

CMS continues to review the Commonwealth's requests to expand the upper income standard for CommonHealth members eligible for Medicare Part B cost sharing assistance and flexibilities related to place of service that were offered by CMS during the COVID-19 public health emergency. Specifically, these are requests for expenditure authority to operate a Hospital at Home program based on the CMS Acute Hospital Care at Home program and expenditure authority to pay for clinic services delivered via telehealth (when neither the provider nor member is at the clinic) and in other non-clinic locations, including but not limited to the member's home and other community locations.

Consideration of Public Comments

Massachusetts provided public notice for the initial amendment submission (dated September 8, 2017) in accordance with the processes described in the September 27, 1994 Federal Register notice (59 FR 49249) as generally acceptable methods of state public notice for demonstration amendments. CMS generally considers a state to have provided acceptable public notice if the state follows one or more (if the state desires) of the processes described in the 1994 Federal Register notice. Accordingly, the state chose two options for completing public notice: 1) conducted a 30-day public notice and comment period on the draft amendment proposal from July 20, 2017 through August 19, 2017; and 2) held two public listening sessions in two different geographic areas on August 4, 2017 and August 16, 2017. Massachusetts also completed tribal consultation in accordance with section 1902(a)(73) of the Act by providing a summary to tribal leaders and designees on July 27, 2017, with a request for comment by August 26, 2017. Massachusetts received broad support from all stakeholders on the 2017 amendment request.

CMS conducted its 30-day federal comment period from September 20, 2017 through October 20, 2017. All public comments received during the federal comment period were supportive of the request for IMD expenditure authority. However, in accordance with CMS policy at that time, our federal review and June 27, 2018 approval of the Commonwealth's 2017 amendment request was more limited than the broad expenditure authority Massachusetts requested related to payments for services delivered in IMDs. On November 13, 2018, CMS released SMDL #18-011 announcing a new section 1115(a) opportunity to design innovative service delivery systems for individuals with SMI or SED. Related to this SMDL, CMS released Frequently Asked Questions (FAQs) on May 17, 2019 indicating that states that had previously submitted section 1115 applications requesting coverage of SMI/SED in IMDs, that were still pending with CMS, did not have to conduct additional public notice if it submitted the additional information outlined in the SMI/SED SMDL for CMS' consideration.²

In accordance with this guidance, on August 21, 2020, Massachusetts submitted the additional materials necessary for CMS to initiate federal review of the Commonwealth's request for FFP for services provided to individuals with SMI/SED in IMDs. CMS completed a second federal comment period from August 31, 2020 through September 30, 2020 to provide an opportunity for public comment on the Commonwealth's supplemental information. CMS received two relevant comments during this second federal comment period. One commenter supported the

² <https://www.medicaid.gov/federal-policy-guidance/downloads/faq051719.pdf>

demonstration amendment for furthering efforts to improve behavioral health services and treatment.

The second commenter did not support the amendment for various reasons. First, the commenter raised concerns about the Commonwealth’s public notice process. CMS has determined that the Commonwealth provided appropriate public notice in accordance with CMS’ FAQ guidance discussed above. The second federal comment period conducted on the Commonwealth’s supplemental application materials for the SMI/SED request provided adequate opportunity for the public to provide meaningful comment as intended by federal transparency requirements.

Second, the commenter asserted that CMS lacks authority for the amendment. CMS has authority to approve the SMI/SED IMD authority under our expenditure authority set forth at section 1115(a)(2) of the Act. 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 in state expenditures that would not otherwise be federally matchable under the terms of section 1903. Specifically, with respect to state expenditures under a section 1115 “demonstration project which, in the judgment of the Secretary, is likely to assist in promoting the objectives of [Medicaid],” expenditures that would “not otherwise” be matchable under section 1903 may “be regarded as expenditures under the State plan or plans approved under such title, or for administration of such State plan or plans . . . as may be appropriate.” This “expenditure authority” has been exercised by the Secretary for decades to conduct demonstration projects that provide coverage for individuals or services that could not otherwise be covered under a State’s Medicaid State plan. This has allowed the Secretary to expand eligibility for benefits to individuals who would not otherwise be eligible, and for services that would not otherwise be covered. 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 and imposed cost sharing obligations on these individuals that would not be permissible under the Medicaid statute. *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).

Third, the commenter argued that the amendment is not testing a novel change to the program because the Commonwealth previously possessed authorities that allowed it to provide SMI/SED treatment services in IMDs prior to more recent CMS policy changes. CMS has determined that Massachusetts’ request serves a research and demonstrative purpose as outlined in the in SMDL #18-011. As noted above, testing the benefits of covering individuals and services that could not otherwise be covered promotes the coverage objective of Medicaid, and helps states and CMS gather information that Congress might be able to rely upon in determining whether the Medicaid statute should be changed to provide for such coverage as a State plan covered service. CMS believes that this authority will yield useful data as this demonstration includes robust monitoring and evaluation requirements.

Fourth, the commenter 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 Commonwealth to take actions through this demonstration to increase access to services across a 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, Massachusetts is required to ensure that providers utilize an evidence-based tool to determine appropriate level of care and length of stay. The Commonwealth 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 and ensure 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/SED 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 Massachusetts to ensure that it maintains spending on outpatient, community-based mental health services consistent with historical spending at the state and local level, as outlined in the STCs. Massachusetts is required to adopt processes to ensure Medicaid beneficiaries receive the appropriate level of care and length of stay, and to show in its mid-point assessment that it has strengthened community-based mental health services. In fact, the state will be working to promote coordinated transitions to community-based services from inpatient and institutional care. Nonetheless, CMS is requiring Massachusetts to ensure that inpatient and residential care will supplement and coordinate with community-based care.

Massachusetts provided public notice for a subsequent June 8, 2021 amendment submission again in accordance with the processes described in the 1994 Federal Register notice. The Commonwealth chose two of the options that CMS generally considers as acceptable public notice: 1) the state uses a commission or other similar process, where meetings are open to members of the public, in the development of the proposal; and 2) the state provides for formal notice and comment, provided that such notice is given at least 30 days prior to submission. The Commonwealth held a virtual public hearing on its application on March 31, 2021 and provided a 30-day public comment period from March 23, 2021 through April 25, 2021 to solicit input on the proposed amendment request. Massachusetts also completed tribal consultation in accordance with section 1902 (a)(73) of the Act by providing a summary to tribal leaders and designees on March 23, 2021, with a request for comment by April 25, 2021.

Consistent with the CMS April 27, 2012 State Medicaid Director/State Health Official Letter on the “Revised Review and Approval Process for Section 1115 Demonstrations” (SHO# 12-001), a federal public comment period opened from June 25, 2021 through July 25, 2021. CMS received ten comments regarding the application during the federal comment period; however, one of these comments was just a copy and paste of the Commonwealth’s amendment description and was not considered. All of the remaining nine commenters were supportive of the MassHealth amendment.

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

Other Information

CMS's approval of this demonstration amendment is conditioned upon compliance with the enclosed list of waiver and expenditure authorities and the STCs defining the nature, character, and extent of anticipated federal involvement in the demonstration. The award is subject to CMS receiving written acceptance of this award within 30 days of the date of this approval letter.

Your project officer is Ms. Rabia Khan. Ms. Khan is available to answer any questions concerning implementation of the Commonwealth'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, MD 21244-1850
Email: Rabia.Khan1@cms.hhs.gov
Phone: (410) 786-6276

We appreciate your state's commitment to improving the health of people in Massachusetts, and we look forward to our continued partnership on the MassHealth section 1115(a) demonstration. If you have questions regarding this approval, please contact Ms. Judith Cash, Director, State Demonstrations Group, Center for Medicaid and CHIP Services, at (410) 786-9686.

Sincerely,

A handwritten signature in dark ink, appearing to read "Anne Marie Costello". The signature is fluid and cursive, with the first name "Anne" and last name "Costello" being clearly distinguishable.

Anne Marie Costello
Deputy Director

Enclosures

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