June 2, 2022

Henry Lipman
Medicaid Director
Division of Medicaid Services
New Hampshire Department of Health and Human Services
129 Pleasant Street
Concord, NH 03301-6521

Dear Mr. Lipman:

The Centers for Medicare & Medicaid Services (CMS) is approving New Hampshire’s request to amend its section 1115 demonstration project entitled, “Substance Use Disorder Treatment and Recovery Access” (Project Number 11-W-00321/1), in accordance with section 1115(a) of the Social Security Act (the Act), which will be re-titled as the “Substance Use Disorder Serious Mental Illness and Serious Emotional Disturbance Treatment and Recovery Access” (NH SUD SMI SED TRA) demonstration. Approval of this amendment, along with the concurrent approval of the state’s SMI/SED Implementation Plan, will enable the state to receive Federal Financial Participation (FFP) 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 or serious emotional disturbance (SMI/SED). These services will be provided as part of a comprehensive continuum of care to treat SMI/SED including outpatient, community-based services.

This approval is effective June 2, 2022 through June 30, 2023, upon which date, unless extended or otherwise amended, all authorities granted to operate this demonstration will expire.

**Extent and Scope of Demonstration**

As requested by the state, this demonstration will authorize FFP for otherwise covered services furnished during short term, acute inpatient stays in psychiatric hospitals that qualify as institutions for mental diseases (IMDs) for Medicaid eligible individuals ages 21-64 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.

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 Mental Health Disorder.”

1. Increase access to and improve quality of care for SMI/SED beneficiaries.
2. Enhance coordination and integration of care across services.
3. Improve data collection and measurement of outcomes.
4. Support innovation in service delivery models.

The state will further detail these goals in the approved Implementation Plan. The state’s Division of Medicaid Services will submit a plan for the demonstration to CMS within 90 days of the date of this letter and will provide updates on the plan’s progress at least annually thereafter.
Emotional Disturbance.¹ CMS expects the state to achieve the goals on a statewide basis. The specific actions the state will take toward meeting these goals through the demonstration are described in detail within the state’s SMI/SED Implementation Plan, which the state submitted as required by Special Terms and Conditions (STC) 18. CMS has completed its review of the SUD Implementation Plan and determined that it is consistent with the requirements set forth in the STCs and, therefore, is concurrently approving it as Attachment G of the STCs. With this concurrent approval, the state may begin receiving FFP for services provided under the demonstration to beneficiaries who are short-term residents in IMDs primarily to receive treatment for SMI/SED, under the terms of the demonstration effective as of the date of this letter. The goals of this demonstration 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; participating counties
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, ongoing 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.

Consistent with CMS requirements for all section 1115 demonstrations, and as outlined in the STCs, the state will be required to undertake robust monitoring and evaluation of the demonstration. Throughout the life-cycle of the demonstration approval period, monitoring will

¹ Available at: https://www.medicaid.gov/federal-policy-guidance/downloads/smd18011.pdf
support tracking the state’s progress towards its demonstration goals. The state 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 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.

CMS’s approval of this section 1115(a) demonstration amendment is subject to the limitations specified in the attached waivers and expenditure authorities, STCs, and any supplemental attachments defining the nature, character, and extent of federal involvement in this demonstration project. The state 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.

Consideration of Public Comments

New Hampshire provided public notice for this amendment in accordance with STC 12 that specifies the September 27, 1994 Federal Register notice (59 FR 49249) as including the generally acceptable methods of state public notice for proposed demonstration amendments. For this proposed amendment, New Hampshire followed two of the state notice processes described in section VII of the 1994 Federal Register notice. Specifically, the state provided: 1) formal notice and comment in accordance with the state’s administrative procedure act at least 30 days prior to submission; and 2) held one or more public hearings, at which the most recent working proposal was described and made available to the public, and time was provided for comments to be received.

New Hampshire conducted a 30-day public notice and comment period on the draft amendment proposal from August 2, 2021 through August 31, 2021. The state also held three public listening sessions with virtual options on August 9, 2021 in Concord, New Hampshire; on August 11, 2021 in Nashua, New Hampshire, and on August 16, 2021 in Concord, New Hampshire. New Hampshire does not have any federally recognized tribes and therefore did not need to complete tribal consultation in accordance with section 1902(a)(73) of the Act. New Hampshire received broad support from stakeholders on the amendment request as well as some comments in opposition that the state responded to in the Public Notice section of its amendment application and in follow-up meetings with certain stakeholders.

CMS held a federal comment period from September 21, 2021 through October 21, 2021 to provide an opportunity for public comment on the state’s amendment application. CMS received seven relevant comments during this federal comment period. Five commenters supported the demonstration amendment for furthering efforts to improve behavioral health services and treatment. Two commenters expressed opposition to the amendment.
First, both commenters who opposed the demonstration amendment shared concerns that authorizing FFP for services provided in IMDs could risk diverting resources away from community-based services and would undermine community integration efforts for beneficiaries with SMI/SED. 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 comprehensive continuum of care to treat SMI/SED. 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 appropriate level of care and length of stay, and the demonstration requires that the average length of stay for beneficiaries receiving covered services while short-term residents in an IMD must not exceed 30 days. 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 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 because CMS is requiring New Hampshire 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 Hampshire 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 #18-011, 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 Hampshire to ensure that inpatient and residential care will supplement and coordinate with community-based care.

Second, a commenter opined that the state has not explained why obtaining federal financial participation 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 Hampshire’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 result in improved availability of crisis stabilization services in the state,” and “access of beneficiaries with SMI/SED to community-based services to address their chronic mental health care needs will improve under the demonstration;” 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).

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

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. Kathleen O’Malley. Ms. O’Malley 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, MD 21244-1850  
Email: Kathleen.OMalley@cms.hhs.gov

We appreciate your state’s commitment to improving the health of people in New Hampshire, and we look forward to our continued partnership on the Substance Use Disorder Serious Mental Illness and Serious Emotional Disturbance Treatment and Recovery Access 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,

[Redacted]

Deputy Administrator and Director

Enclosures

cc: Falecia Smith, Acting State Monitoring Lead, Medicaid and CHIP Operations Group