



December 3, 2020

Mike Smith  
Secretary  
Vermont Agency of Human Services  
280 State Drive  
Waterbury, VT 05671

Dear Secretary Smith:

On March 13, 2020, the President of the United States issued a proclamation that the Coronavirus Disease 2019 (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) #20-002,<sup>1</sup> on March 31, 2020, Vermont 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

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

flexibilities outlined in 42 CFR 431.416(e)(2) and 431.416(g).<sup>2</sup> CMS expects that states will offer, in good faith and in a prudent manner, a post-submission public notice process, including tribal consultation as applicable, to the extent circumstances permit. This letter also serves as approval of one of the requests included in the state’s request, which will be approved under the Vermont Global Commitment to Health section 1115(a) demonstration (Project Number 11-W-00194/1) and 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).

CMS has determined that the COVID-19 PHE amendment to the Vermont Global Commitment to Health section 1115(a) demonstration – including the revised terms 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 amendment 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.

### ***Request CMS is Approving at this Time***

In addition to the state requested flexibilities to 1915(c) waiver(s) within the Vermont Global Commitment to Health 1115 demonstration, which were addressed in the Appendix K-like approval on May 22, 2020<sup>3</sup>, the state has requested additional flexibilities during the PHE. This letter only addresses the request that CMS is approving at this time.

The state requested to waive the requirement, at 42 CFR 438.406(b)(4), to allow beneficiaries to provide evidence and testimony “in person” to appeal an adverse benefit determination during the PHE. The Global Commitment to Health Special Terms and Conditions (STC), specifically STC 24 Managed Care-Like Model – Designated Non-Risk PIHP, stipulate that 42 CFR 438 subpart F, which includes appeal requirements, applies to the Vermont managed care-like delivery model. CMS is approving the request by amending the STCs to modify the application of 42 CFR 438.406(b) during periods of PHEs and adding subsection (e) to STC 24 as follows:

STC 24(e): During periods of a public health emergency (PHE), as declared by the Secretary of Health and Human Services as a result of a Presidential declaration under the Stafford Act, the non-risk PIHP (DVHA) is not required to offer in person opportunities for beneficiaries to present evidence and testimony and make legal and

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<sup>2</sup> 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 or amendment. States applying for a COVID-19 section 1115 demonstration or amendment 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 or amendments. CMS will post all section 1115 demonstrations approved under this COVID-19 demonstration opportunity on the Medicaid.gov website.

<sup>3</sup> Vermont Global Commitment to Health Appendix K Update Approval Letter available at <https://www.medicaid.gov/medicaid/section-1115-demonstrations/downloads/vt-global-commitment-to-health-cms-appendix-k-appvl-ltr-05222020.pdf>.

factual arguments as described in 42 CFR 438.406(b)(4). However, the non-risk PIHP (DVHA) must provide enrollees reasonable opportunity, in writing, telephonically, and video or virtual communication, to present evidence and testimony and make legal factual arguments. Monitoring and Evaluation requirements are described in STCs 74(a) and 78.

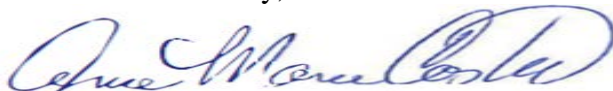
Furthermore, CMS is codifying new subsections to STCs 74 Draft Evaluation Design and 78 Summative Evaluation Report, to include Monitoring and Evaluation requirements for the approved flexibilities under STC 24(e). Approval of this demonstration amendment is subject to the limitations specified in STC 24(e) and the previously approved expenditure authorities and STCs. The state may deviate from its Medicaid state plan requirements only to the extent that the requirements have been specifically identified as not applicable for the demonstration, as specified in the list of approved authorities. This approval is conditioned upon continued compliance with the previously approved STCs, which set forth in detail the nature, character and extent of anticipated federal involvement in the project. Following approval, the state must provide updates in the regular demonstration Quarterly Operational Reports on the availability and use of video or virtual communication in lieu of in-person appeals and beneficiary grievances.

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. 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](mailto:Rabia.Khan1@cms.hhs.gov)  
Phone: (410) 786-6276

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 Vermont Global Commitment to Health section 1115(a) demonstration. If you have any questions regarding this approval, please contact Ms. Judith Cash, Director, State Demonstrations Group, Center for Medicaid and CHIP Services, at (410) 786-9686.

Sincerely,



Anne Marie Costello  
Acting Deputy Administrator and Director

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Enclosure

cc: Gilson DaSilva, State Monitoring Lead, Medicaid and CHIP Operations Group