

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



March 7, 2023

Jenney Samuelson
Secretary
Vermont Agency of Human Services
280 State Drive
Waterbury, VT 05671

Dear Secretary Samuelson:

Vermont submitted the Reasonable Opportunity Period (ROP) Extension COVID-19 Public Health Emergency (PHE) section 1115 demonstration application on December 21, 2022. This letter serves as a time-limited approval of the request included in the state's ROP Extension COVID-19 PHE section 1115 demonstration application, which will be approved as an amendment under the Vermont Global Commitment to Health (GCH) section 1115(a) demonstration (Project Number 11-W-00194/1).

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 (the 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: 1) sufficient health care items and services are available to meet the needs of individuals enrolled in the respective programs, and 2) health care providers who 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 on March 15, 2020, with a retroactive effective date of March 1, 2020. We note that the emergency period will end upon termination of the 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) #20-002,¹ Vermont submitted on December 21, 2022, a section 1115 COVID-19 demonstration application to address the COVID-19 PHE. CMS has determined that the state's application is complete and, consistent with the exemptions

¹ 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>.

and flexibilities outlined in 42 C.F.R. § 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 tribal consultation as applicable, to the extent circumstances permit.

This amendment will test, in the context of the COVID-19 PHE unwinding period, how the expenditure authority to provide coverage beyond the statutorily limited 90-day ROP for individuals who have declared to U.S. citizenship, but for whom that status has not been verified, will support state’s management of workload during the unwinding period in a manner that promotes continuity of coverage and reduces barriers to care, in line with the objectives of the Medicaid program. The amendment requires that the state develop an Evaluation Design, expected for submission to CMS within 180 calendar days after the approval of the demonstration amendment. The design will support an evaluation that will advance the state and CMS’s understanding of the successes and challenges in implementing the expenditure authority in the wake of the COVID-19 PHE and help inform best practices for similar situations in the future.

CMS has determined that this demonstration amendment – including the expenditure authority detailed below – addresses the state’s needs in managing workload during the unwinding period to conduct renewals and other eligibility and enrollment actions (including outstanding verifications). As such, the authority would help support the objectives of the Medicaid program related to ensuring access to care and coverage while the state is returning to normal operations.

Consistent with the expectations outlined in the State Health Official (SHO) Letter #22-001, this demonstration amendment supports states in their efforts to restore routine eligibility and enrollment operations when the PHE ends, including conducting renewals of eligibility for all beneficiaries, in a manner that promotes continuity of coverage and establishes a sustainable workload in future years.³ The ROP Extension demonstration assists states in processing eligibility and enrollment actions during the unwinding period by providing additional time to complete outstanding verifications to prevent inappropriate terminations of coverage, which may not be possible for those whose declared U.S. citizenship status has not been verified or whose status is inconsistent with available data sources absent this demonstration. Furthermore, this demonstration supports parity with existing policy that allows states to, through a state plan amendment, implement a good faith extension of the ROP for individuals who have attested to a satisfactory immigration status.⁴

² Pursuant to 42 C.F.R. §.431.416(g), CMS has determined that the unforeseen circumstances resulting from the COVID-19 PHE warrant 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.

³ SHO #22-001, “Promoting Continuity of Coverage and Distributing Eligibility and Enrollment Workload in Medicaid, the Children’s Health Insurance Program (CHIP), and Basic Health Program (BHP) Upon Conclusion of the COVID-19 Public Health Emergency,” available at <https://www.medicaid.gov/federal-policy-guidance/downloads/sho22001.pdf>.

⁴ 42 C.F.R. § 435.956(b)(2)(ii)(B).

This extension allows the state to maintain coverage for individuals declaring to be U.S. citizens if the agency needs more time to verify the individual's status through available electronic data sources, if the agency determines that the individual is making a good faith effort to obtain any necessary documentation, or to assist the individual in obtaining documents needed to verify their status. This extension also supports the need to ensure individuals in an ROP understand what is being required of them to establish their eligibility; and ensures parity with the option available to states in order to provide a good faith extension during an ROP provided to verify immigration status.

The expenditure authority would allow the state to extend the ROP during the unwinding period which is likely to facilitate an equitable application of the verification policies and processes for individuals who have declared to U.S. citizenship and individuals who have declared to satisfactory immigration status. States can utilize the good faith extension permitted under existing regulatory authority at 42 C.F.R. § 435.956(b)(2)(ii)(B) and implemented under the state plan to extend the ROP for individuals who have declared to satisfactory immigration status to align with and manage their eligibility and enrollment workload, including outstanding verifications, during the unwinding period.

To achieve the same goal of assisting states in aligning and managing their eligibility and enrollment workload when the PHE ends, states will need expenditure authority to continue processing verifications of individuals who have declared to U.S. citizenship for 15 months beginning with the first month of a state's unwinding period. These 15 months include a state's 12-month unwinding period as described in SHO 22-001, plus three additional months for the state to complete its verification of U.S. citizenship for an individual whose case comes up for processing in month 12 of the unwinding period. For any given individual, the authority to extend the ROP will terminate 3 months after the state initiates the verification for the individual. At the end of the verification process for a specific individual, if the state is either unable to verify an individual's status or determines the individual is not a U.S. citizen, the state must take action to terminate eligibility within 30 days in accordance with section 1902(ee)(1)(B)(ii)(III) of the Social Security Act and 42 C.F.R. § 435.956(b)(3), and provide notice and fair hearing rights in accordance with 42 C.F.R. § 431 subpart E.

To that end, the expenditure authority during the unwinding period is expected to help maintain access to care for individuals in an ROP, and state alignment and management of the workload to conduct redeterminations and other eligibility actions. This authority allows the state to maintain coverage for individuals declaring to be U.S. citizens if the agency needs more time to verify the individual's status through available electronic data sources, if the agency determines that the individual is making a good faith effort to obtain any necessary documentation, or to assist the individual in obtaining documents needed to verify his/her status.

This authority is effective from the date the state begins its unwinding period and lasts for up to 15 months.

Expenditure Authority

CMS is approving expenditure authority for the state, for up to 15 months beginning with the first day of the first month of the state's unwinding period, to provide coverage beyond the 90-day ROP provided under section 1902(ee)(1)(B)(ii), for individuals who have declared to U.S.

citizenship, but for whom that status has not been verified, and are otherwise eligible for Medicaid. This expenditure authority allows for coverage of individuals who have been in an ROP beginning on March 18, 2020 or at any time thereafter during the PHE, and who have had their coverage maintained in order to comply with the continuous enrollment condition under section 6008(b)(3) of the Families First Coronavirus Response Act.

This expenditure authority exempts the state from compliance with the requirements under section 1902(ee)(1)(B)(ii)(II) of the Act and allows Vermont to maintain coverage for individuals declaring to be U.S. citizens if the agency needs more time to verify the individual's status through available electronic data sources, if the agency determines that the individual is making a good faith effort to obtain any necessary documentation, or to assist the individual in obtaining documents needed to verify their status. At the end of the verification process, if the individual's U.S. citizenship is either unable to be verified or is determined to not be a U.S. citizen, the state must take action to terminate eligibility within 30 days in accordance with 1902(ee)(1)(B)(ii)(III) of the Social Security Act and 42 C.F.R. § 435.956(b)(3), and in accordance with part 42 C.F.R. § 431 subpart E (relating to notice and fair hearing rights).

The authority ends no more than 15 months from the beginning with the first day of the first month of the state's unwinding period. The start date of the state's unwinding period is April 1, 2023, and so the authority ends July 1, 2024. These 15 months include the state's 12-month unwinding period, plus three months for the state to complete the verification of U.S. citizenship for an individual whose case comes up for renewal in month 12 of the unwinding period. For any given individual, the authority to extend the ROP will terminate 3 months after the state initiates a renewal (or other eligibility action) for the individual.

Monitoring and Evaluation

Given the scope and time-limited nature of this demonstration amendment, and recognizing the challenges associated with the COVID-19 PHE, including the substantial work the state would be undertaking during the unwinding period, CMS has streamlined the monitoring and evaluation expectations for this demonstration amendment. As it is still important to gather evidence regarding the operation and effectiveness of this amendment, the approval of this expenditure authority requires that Vermont undertake data collection and analyses that are meaningful but not unduly burdensome for the state during and after this unprecedented public health emergency, while also being consistent with the applicable provisions of 42 CFR §§ 431.424 and 431.428. In effect, CMS expects the state to accommodate a qualitative assessment of the expenditure authority with applicable descriptive and contextual data. The state is required to prepare an Evaluation Design and a Final Report. The Final Report will consolidate the amendment's monitoring and evaluation requirements. The draft Evaluation Design will be due to CMS within 180 calendar days after approval of the amendment. The draft Final Report will be due to CMS 18 months after the expiration of the amendment approval period.

CMS will provide technical assistance to help the state fulfill the monitoring and evaluation requirements, including developing the Evaluation Design. CMS expects that the Evaluation Design will be a brief outline of the state's plans to evaluate the demonstration amendment. The evaluation will support understanding the successes, challenges, and lessons learned in implementing the demonstration amendment, to help inform best practices for similar situations in the future. The state may use evaluation questions that would provide information and

understanding about: the populations affected by the expenditure authority under this amendment; the relevant policies and procedures that would support reducing barriers to care; challenges associated with implementing the amendment and engaging with individuals in an ROP as well as mechanisms and experiences overcoming these challenges, as applicable; and principal lessons learned for any future PHEs. The Final Report should also outline any challenges and limitations that might be encountered in the planning and conduct of the monitoring and evaluation activities. Since the expenditure authority would last more than one year (i.e., 15 months), the state is also required to satisfy 42 CFR § 431.428 by ensuring that the Final Report captures all applicable requirements stipulated for an annual report (e.g., incidence and results of any audits, investigations or lawsuits, or any state legislative developments that may impact the demonstration). Per 42 C.F.R. § 431.420(f), the state must comply with any requests for data from CMS or its federal evaluation contractors. Once approved, per 42 C.F.R. § 431.424(e), the state is required to post the Evaluation Design to its Medicaid agency website within 30 calendar days of CMS approval. Likewise, per the standard Public Access requirement associated with section 1115 demonstration deliverables, the state will post the CMS-approved Final Report to its website within 30 calendar days of CMS approval.

Other Information

Approval of this expenditure authority is conditioned upon compliance with the previously approved special terms and conditions, which set forth in detail the nature, character and extent of anticipated federal involvement in the project.

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

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Baltimore, Maryland 21244-1850
Email: Rabia.Khan1@cms.hhs.gov

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 GCH demonstration. 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

Page 6 – Ms. Jenney Samuelson

Enclosure

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