

Disabled and Elderly Health Programs Group

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September 3, 2021

Jacey Cooper  
State Medicaid Director  
Chief Deputy Director, Health Care Programs  
Director's Office  
1501 Capitol Avenue, MS 0000  
P.O. Box 997413  
Sacramento, CA 95899-7413

Dear Ms. Cooper:

We are pleased to inform you that California's initial state spending plan and spending narrative submitted on July 12, 2021, meet the requirements set forth in the May 13, 2021, Centers for Medicare & Medicaid Services (CMS), State Medicaid Director Letter (SMDL) [#21-003](#) and are receiving partial approval. California qualifies for a temporary 10 percentage point increase to the federal medical assistance percentage (FMAP) for certain Medicaid expenditures for home and community-based services (HCBS) under section 9817 of the American Rescue Plan Act of 2021 (ARP). We have approved the temporary 10 percentage point increase to the state's FMAP for certain Medicaid HCBS listed in Appendix B of the SMDL. The increased FMAP is available for qualifying expenditures between April 1, 2021, and March 31, 2022. However, CMS needs additional information, as described beginning on the next page. In addition, CMS has identified one activity in your state's initial spending plan and narrative that is not approvable, as described on the next page.

Full approval of the state spending plan and spending narrative is conditioned upon resolving the issues described below and upon the state's continued compliance with program requirements as stated in SMDL #21-003. These requirements are in effect as of April 1, 2021, and continue until March 31, 2024, or until the state has fully expended the funds attributable to the increased FMAP, whichever comes first.

It is important to note that CMS partial approval of the initial spending plan and spending narrative solely addresses the state's compliance with the applicable requirements set forth under section 9817 and fulfillment of the requirements as stated in SMDL # 21-003. This spending plan approval does not constitute approval for purposes of claiming federal financial participation (FFP). Approval of any activity in your state's spending plan does not provide approval to claim FFP for any expenditures that are not eligible for FFP. States must continue to comply with all existing federal requirements for allowable claims, including documenting expenditures and draws to ensure a clear audit trail for the use of federal funds reported on the Form CMS-37 Medicaid Program Budget Report and the Form CMS-64, Quarterly Medicaid Statement of Expenditures.

States should follow the applicable rules and processes for section 1915(c) waivers, other Medicaid HCBS authorities, including state plan amendments and section 1115 demonstrations, and other managed care authorities (as applicable), if they are making changes to an HCBS program and intend to use state funds equivalent to the funds attributable to the increased FMAP to pay the state share of the costs associated with those changes. CMS is available to provide continued technical assistance to states when implementing changes to HCBS programs under this provision.

### **Non-Approvable Activities or Uses of Funds**

The following activity in your state’s initial spending plan and narrative is not approvable under ARP section 9817:

- The “Nursing Home and Recovery and Innovation” activity is not a permissible use of funds under ARP section 9817.

### **Additional Information Requested**

As your state further plans and develops the activities in its spending plan, CMS will need more information on the following:

#### *Workforce: Retaining and Building Network of Home and Community Based Direct Care Workers:*

- Clearly indicate whether non-IHSS providers are delivering any of the services that are listed in Appendix B of the SMDL or that could be listed in Appendix B (e.g., behavioral health services that are covered under another benefit but could be covered under the rehabilitative services benefit). If the providers are not delivering any of the services listed in Appendix B or that could be listed in Appendix B, explain how the Direct Care Workforce (non-IHSS) Training and Stipends activity and the Non-IHSS HCBS Care Economy Payments activity will enhance, expand, or strengthen HCBS under Medicaid.
- Clearly indicate whether home and community-based clinical workforce providers, specifically clinics, physician offices, hospitals, and “other clinical providers,” are delivering services listed in Appendix B or that could be listed in Appendix B. If the providers are not delivering any of the services listed in Appendix B or that could be listed in Appendix B, explain how the payments for loan repayment, sign-on bonuses, and training and certification costs under the Increasing Home and Community Based Clinical Workforce activity will enhance, expand, or strengthen HCBS under Medicaid. In addition, confirm that the private duty nursing providers are delivering services in a beneficiary’s own home.

#### *Home and Community Based Services Navigation:*

- Clarify if the CalBridge Behavioral Health Pilot Program is a new program. If the pilot was providing grants prior to or on April 1, 2021, describe how the activity will expand

or enhance the current pilot program. In addition, indicate whether the pilot program increases Medicaid beneficiaries' access to services listed in Appendix B or that could be listed in Appendix B. If this activity is not directly related to the services that are listed in Appendix B or that could be listed in Appendix B, please explain how the activity enhances, expands, or strengthens HCBS under Medicaid.

*Home and Community-Based Services Transitions:*

- Under the Community Based Residential Continuum Pilots for Vulnerable, Aging, and Disabled Populations activity:
  - Confirm if the state intends to pay for room and board (which CMS would not find to be a permissible use of funds) as part of the interim housing, supportive housing, housing interventions, or home ownership support activities;
  - Clearly indicate whether your state plans to pay for capital investments under this activity. Capital investments are permissible uses of funds to enhance, expand, or strengthen HCBS under section 9817 of the ARP. However, states must demonstrate how capital investments would enhance, expand, or strengthen HCBS and ensure that capital investments will result in settings that are fully compliant with the home and community-based settings criteria. Further, approval of capital investments costs in ARP section 9817 spending plans and narratives does not authorize such activities for FFP; and
  - Clarify whether the services under this activity are in addition to the services offered under the Returning Home Well Initiative.
- Provide additional information on the services that would be paid for with ARP section 9817 funding under the activity to eliminate Assisted Living Waiver waitlist slots and clarify whether the state intends to use ARP section 9817 funding to pay for any services other than those listed in Appendix B or that could be listed in Appendix B for individuals who are Medicaid-eligible prior to HCBS waiver enrollment, or any institutional services for individuals who become newly eligible as a result of the increase in waiver slots.

Please note that, if a state increases the number of section 1915(c) waiver slots and enrolls additional individuals who are not already Medicaid eligible into the waiver program as a result, the state will have an increase in non-HCBS Medicaid expenditures as a result of the increase in waiver program enrollment. In this situation, states can use the funds attributable to the increased FMAP to pay for community-based Medicaid expenditures, including community-based state plan services not listed in Appendix B, for individuals who become Medicaid eligible because of the increase in the number of waiver slots as part of the state's activities to enhance, expand, or strengthen HCBS under ARP section 9817. However, states cannot use the funds attributable to the increased FMAP to pay for institutional services for those individuals, as this would be inconsistent with the intent of ARP section 9817.

- Clearly indicate whether the Housing and Homelessness Incentive Program is focused on providers that are delivering services listed in Appendix B or that could be listed in Appendix B, or individuals who are receiving services listed in Appendix B or that could be listed in Appendix B. If this activity is not directly related to the services that are listed in Appendix B or that could be listed in Appendix B, please explain how the activity enhances, expands, or strengthens HCBS under Medicaid. In addition, confirm that the program does not include payment for room and board (which CMS would not find to be a permissible use of funds).
- Confirm that the capital investments under the Community Care Expansion Program activity will result in settings that are fully compliant with the home and community-based settings criteria. Capital investments are permissible uses of funds to enhance, expand, or strengthen HCBS under section 9817 of the ARP. However, states must demonstrate how capital investments would enhance, expand, or strengthen HCBS and ensure that capital investments will result in settings that are fully compliant with the home and community-based settings criteria. Further, approval of capital investments costs in ARP section 9817 spending plans and narratives does not authorize such activities for FFP.

*Services: Enhancing Home and Community-Based Services Capacity and Models of Care:*

- Provide additional information about what the ARP section 9817 funds would be used for under the Alzheimer's Day Care and Resource Center activity. In addition, clearly indicate whether this activity includes one-time payments to providers and if the dementia-capable services are services listed in Appendix B or that could be listed in Appendix B. If this activity is not directly related to the services that are listed in Appendix B or that could be listed in Appendix B, please explain how the activity enhances, expands, or strengthens HCBS under Medicaid.
- Clearly indicate whether the state intends to pay for room and board (which CMS would not find to be a permissible use of funds) or ongoing internet connectivity costs under the Older Adult Resiliency and Recovery activity. Ongoing internet connectivity costs are permissible uses of funds to enhance, expand, or strengthen HCBS under section 9817 of the ARP. However, states must demonstrate how ongoing internet connectivity costs would enhance, expand, or strengthen HCBS. Further, approval of ongoing internet connectivity costs in ARP section 9817 spending plans and narratives does not authorize such activities for FFP.
- Confirm that, under the Developmental Services Rate Model Implementation, the state will maintain HCBS provider payments at a rate no less than those in place as of April 1, 2021.

*Home and Community-Based Services Infrastructure and Support:*

- Clearly describe how the Long-Term Services and Supports Data Transparency activity will enhance, expand, or strengthen HCBS under Medicaid. Payments solely for the purpose of improving the transparency of nursing home and other institutional data are not approvable under ARP section 9817.
- Clearly indicate whether your state plans to pay for ongoing internet connectivity costs as part of the activity to provide Access to Technology for Seniors and Persons with Disabilities. Ongoing internet connectivity costs are permissible uses of funds to enhance, expand, or strengthen HCBS under section 9817 of the ARP. However, states must demonstrate how ongoing internet connectivity costs would enhance, expand, or strengthen HCBS. Further, approval of ongoing internet connectivity costs in ARP section 9817 spending plans and narratives does not authorize such activities for FFP.
- Clearly indicate whether your state plans to pay for capital investments or on-going internet connectivity as part of the Senior Nutrition Infrastructure activity.

***CMS will need additional information before it can determine whether these activities or uses of funds are approvable under ARP section 9817.*** Please update the state's spending plan and narrative to provide the information requested in this letter.

### **General Considerations**

As part of this partial approval, CMS is noting the following:

- CMS expects your state to notify CMS as soon as possible if your state's activities to enhance, expand, or strengthen HCBS under ARP section 9817:
  - Are focused on services other than those listed in Appendix B or that could be listed in Appendix B (e.g., behavioral health services that are covered under another benefit but could be covered under the rehabilitative services benefit). If any activities are not directly related to the services listed in Appendix B or services that could be listed in Appendix B, please explain how those activities enhance, expand, or strengthen HCBS under Medicaid;
  - Include room and board (which CMS would not find to be a permissible use of funds); and/or
  - Include activities other than those listed in Appendices C and D.
- ***CMS will need additional information before it can determine whether any of those activities or uses of funds are approvable under ARP section 9817.***
- HCBS provider pay increases funded through the 10 percent temporary increased FMAP will require an updated rate methodology. For section 1915(c) waiver programs, states are required to submit a waiver amendment for any rate methodology change. If retrospective approval will be required the state should make the change in the Appendix K application.
- Consistent with regulations at 42 C.F.R. § 447.252(b), the state plan methodology must specify comprehensively the methods and standards used by the agency to set payment rates. The state plan methodology must be comprehensive enough to determine the required level of payment and the FFP to allow interested parties to understand the rate setting process and the items and services that are paid through these rates. Claims for

federal matching funds cannot be based upon estimates or projections. The reimbursement methodology must be based upon actual historical utilization and actual trend factors.

- States providing HCBS through a managed care delivery system must comply with applicable federal requirements, including 42 C.F.R. part 438. States must also ensure that appropriate authority is granted for the services and activities to be covered as well as to deliver such services and activities through a managed care delivery system. Additionally, states will need to assess implications for its managed care plan contracts and actuarially sound capitation rates in order to operationalize any programmatic changes. States that seek to contractually require their managed care plans to increase HCBS provider payments must adhere to federal requirements for state directed payments in accordance with 42 C.F.R. § 438.6(c), including prior approval as required.
- If your state is reducing reliance on a specific type of facility-based or congregate service and increasing beneficiary access to services that are more integrated into the community, your state should be clear with stakeholders in your state's stakeholder engagement activities, as well as in submissions to CMS of required ARP section 9817 spending plans and narratives and any resulting waiver or state plan amendments, about how these changes enhance the availability of integrated services in the specific waiver or state plan, and offset any reductions in previously covered services, in compliance with the home and community-based settings criteria or other efforts to increase community integration.

#### **Additional Information Related to the Quarterly Spending Plan and Narrative**

CMS is clarifying that California's next quarterly spending plan and narrative is due 75 days before the quarter beginning January 1, 2022. Please refer to SMDL [#21-003](#) for information on the quarterly reporting process. Your state's quarterly spending plans and spending narratives should:

- Describe how the state intends to sustain the activities it is implementing to enhance, expand, or strengthen HCBS under the Medicaid program including how the state intends to sustain its planned provider payment increases;
- Provide information on the amount or percentage of any rate increase or additional payment per provider and the specific Medicaid authorities under which the state will be making those rate changes or payments;
- Provide the additional information described above;
- Clearly indicate if your state has or will be requesting approval for a change to an HCBS program and be specific about which HCBS program, which authority it operates under, and when you plan to request the change;
- Provide projected and actual spending amounts for each of the state's planned activities to enhance, expand, or strengthen HCBS. In those projections, clearly identify if the state intends to draw down additional FFP for any activities, as well as the amount of state and federal share for any activities for which the state plans to claim additional FFP and whether those activities will be eligible for the HCBS increased FMAP under ARP section 9817;
- Clearly indicate whether your state plans to pay for capital investments or ongoing internet connectivity costs as part of any activity to enhance, expand, or strengthen HCBS. Capital investments and ongoing internet connectivity costs are permissible uses

of funds to enhance, expand, or strengthen HCBS under section 9817 of the ARP. However, states must demonstrate how capital investments and ongoing internet connectivity costs would enhance, expand, or strengthen HCBS and ensure that capital investments will result in settings that are fully compliant with the home and community-based settings criteria. Further, approval of capital investments and ongoing internet connectivity costs in ARP section 9817 spending plans and narratives does not authorize such activities for FFP;

- Provide updated information (as appropriate) on the status and details of the state's proposed activities to enhance, expand, or strengthen HCBS; and
- Make other revisions needed to: update the amount of funds attributable to the increase in FMAP that the state has claimed and/or anticipates claiming between April 1, 2021, and March 31, 2022; update anticipated and/or actual expenditures for the state's activities to implement, to enhance, expand, or strengthen HCBS under the state Medicaid program between April 1, 2021, and March 31, 2024; update or modify the state's planned activities to enhance, expand, or strengthen HCBS; and report on the state's progress in implementing its planned activities to enhance, expand, or strengthen HCBS.

We extend our congratulations on this partial approval and look forward to working with you further throughout the implementation of ARP section 9817. Programmatic and financial questions and state HCBS quarterly spending plan and spending narrative questions for section 9817 of the ARP can be submitted to [HCBSincreasedFMAP@cms.hhs.gov](mailto:HCBSincreasedFMAP@cms.hhs.gov).

Sincerely,

Original signed by

Jennifer Bowdoin  
Director, Division of Community Systems Transformation

cc: Aaron Toyama