

August 15, 2022

Sarah Fertig  
Medicaid Director  
Department of Health and Environment  
900 SW Jackson Avenue, Suite 900  
Topeka KS, 66612

Dear Ms. Fertig:

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 (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 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.

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> and the guidance in State Health Official Letter (SHO) #22-001<sup>2</sup> as published on March 3, 2022, Kansas submitted a request for an amendment to the “KanCare” section 1115(a) demonstration (Project Number 11-W-00283/7) to address the COVID-19 PHE and to promote continuity of coverage during the

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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>.

<sup>2</sup> See 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.medicare.gov/federal-policy-guidance/downloads/sho22001.pdf>

unwinding of the COVID-19 PHE. CMS determined that the state's application is complete, consistent with the exemptions and flexibilities outlined in 42 CFR 431.416(e)(2) and 431.416(g).<sup>3</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 serves as a time-limited approval of the state's requests, which will be approved as an amendment to the KanCare demonstration and which is hereby authorized retroactively from March 1, 2020, through the end of the COVID-19 PHE unwinding period or until all redeterminations are conducted during the unwinding period as discussed in SHO #22-001.

CMS has determined that the COVID-19 PHE amendment to the KanCare demonstration – including the Medicaid expenditure authority detailed below and in Attachment T– is necessary to assist the state in delivering the most effective care to its beneficiaries in light of the COVID-19 PHE and to ensure renewals of eligibility and transitions between coverage programs occur in an orderly process that minimizes beneficiary burden and promotes continuity of coverage at the end 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 who may be affected by COVID-19. This approval allows the state to align its policies for young adults in Medicaid and CHIP, and prevent gaps in coverage during the PHE. Additionally, this amendment ensures that the state can mitigate churn for eligible beneficiaries and smoothly transition individuals between coverage programs during the COVID-19 PHE unwinding period.

In addition, in light of the unprecedented emergency circumstances associated with the COVID-19 pandemic and consistent with the President's declaration detailed above – and in consequence of the time-limited nature of this demonstration amendment – CMS did not require the state to submit budget neutrality calculations for this COVID-19 PHE amendment to the KanCare demonstration. In general, CMS has determined that the costs to the federal government are likely to have been otherwise incurred and allowable. Kansas will still be required to track demonstration amendment expenditures and will be expected to evaluate the connection between those expenditures and the state's response to the PHE and unwinding period, as well as the cost-effectiveness of those expenditures. Due to the highly limited scope of the changes under the amendment, CMS is incorporating this amendment as Attachment T to the KanCare special terms and conditions (STC).

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<sup>3</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.

### ***Request CMS is Approving***

CMS is approving the Medicaid expenditure authority, excerpted below, from March 1, 2020, through the end of the COVID-19 PHE unwinding period, or until all redeterminations are conducted during the unwinding period as discussed in SHO #22-001. In the application, Kansas also requested a waiver of 2103(b)(1) to implement this policy; however, it was determined that such waiver is not needed.

- 1. Continuous Coverage for Individuals Aging Out of CHIP.** Expenditures to provide continued eligibility for CHIP enrollees who turn 19 during the public health emergency (and therefore lost eligibility for CHIP due to age) and who are otherwise ineligible for Medicaid due to income above 0 percent of the federal poverty level (FPL).

### ***Monitoring and Evaluation Requirements***

The state must submit an Evaluation Design to CMS within 60 days of the demonstration amendment approval. CMS will provide guidance on an Evaluation Design specifically for the Medicaid expenditure authority approved for the COVID-19 emergency, including any amendments. The state is required to post its Evaluation Design to the state's website within 30 days of CMS approval of the Evaluation Design, per 42 CFR 431.424(e).

Given the unique circumstances and time-limited nature of this demonstration amendment, CMS expects Kansas to undertake data collection and analyses that are meaningful, but not unduly burdensome for the state. Specifically, the state can focus on qualitative methods and descriptive data to address evaluation questions that will support understanding the successes, challenges, and lessons learned in implementing the demonstration amendment.

The state is required to submit a Final Report. The Final Report will consolidate monitoring and evaluation reporting requirements for this demonstration authority. The state must submit this Final Report no later than one year after the end of the COVID-19 section 1115 demonstration authority. The Final Report will capture data on the demonstration amendment implementation, lessons learned, and best practices for similar situations. Per 42 CFR 431.428(a), for each year of the PHE demonstration authority, the state is required to complete an annual report for this component, and the state should submit all applicable requirements stipulated for an annual report (e.g., administrative difficulties in the operation of the demonstration, issues and/or complaints identified by beneficiaries about the health care delivery system under the demonstration, any state legislative developments that may impact the demonstration) in the Final Report. CMS will provide additional guidance on the structure and content of the Final Report.

Approval of this demonstration amendment is subject to the limitations specified in the approved expenditure authority and the enclosed Attachment T to the STCs. The state may deviate from its Medicaid state plan requirements only to the extent specified in the approved expenditure authority and the STCs for the demonstration. 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.

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 Shelby Higgins. Ms. Higgins is available to answer any questions concerning implementation of the state's section 1115(a) demonstration amendment 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: [Shelby.Higgins@cms.hhs.gov](mailto:Shelby.Higgins@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 KanCare 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,



Daniel Tsai  
Deputy Administrator and Director

Enclosure

cc: Michala Walker, State Monitoring Lead, Medicaid and CHIP Operations Group

## Attachment T

### **Time-limited Expenditure Authority and Associated Requirements for the COVID-19 Public Health Emergency (PHE) Demonstration Amendment**

#### **Expenditure Authority**

Under the authority of section 1115(a)(2) of the Social Security Act (the Act), expenditures made by the state for the items identified below, which are not otherwise included as expenditures under section 1903 of the Act shall be regarded as expenditures under section 1903 of the Act, for the period from March 1, 2020, through the end of the COVID-19 PHE unwinding period, or until all redeterminations are conducted during the unwinding period.

- 1. Continuous Coverage for Individuals Aging Out of CHIP.** Expenditures to provide continued eligibility for CHIP enrollees who turn 19 during the public health emergency (and therefore lost eligibility for CHIP due to age) and who are otherwise ineligible for Medicaid due to income above 0 percent of the federal poverty level (FPL).

#### **Monitoring and Evaluation Requirements**

- 1. Evaluation Design.** The state must submit an Evaluation Design to CMS within 60 days of the demonstration amendment approval. The state is required to post its Evaluation Design to the state's website within 30 days of CMS approval of the Evaluation Design, per 42 CFR 431.424(e). CMS will provide technical assistance to help the state fulfill the monitoring and evaluation requirements, including in developing the Evaluation Design. Given the unique circumstances and time-limited nature of this demonstration amendment, CMS expects Kansas to undertake data collection and analyses that are meaningful, but not unduly burdensome for the state. Specifically, the state can focus on qualitative methods and descriptive data to address evaluation questions that will support understanding the successes, challenges, and lessons learned in implementing the demonstration amendment.
- 2. Final Report.** The state is required to submit a Final Report. The Final Report will consolidate monitoring and evaluation reporting requirements for this demonstration amendment authority. The state must submit this Final Report no later than one year after the end of the COVID-19 section 1115 demonstration authority. The Final Report will capture data on the demonstration amendment implementation, lessons learned, and best practices for similar situations. For each year that the state is required to complete an annual report per 42 CFR 431.428(a), the state may submit all applicable information in the Final Report.