December 23, 2021

Tonya Hales  
Interim Director  
Division of Medicaid and Health Financing  
Utah Department of Health  
P.O. Box 143101  
Salt Lake City, UT 84114-3101

Dear Ms. Hales:

We are pleased to inform you that Utah’s revised state spending plan and spending narrative submitted on September 30, 2021, continues to 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. Utah 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. Utah can begin to implement any activity included in the revised spending plan if CMS has not identified the activity as not approvable or asked for additional information about the activity. Please note that CMS is still reviewing the Family Caregiver Compensation program and will render a decision as quickly as possible as to whether this activity is approvable under ARP section 9817.

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. Please note that CMS responded on November 18, 2021, to Utah’s
inquiry on the possibility of receiving the section 9817 increased FMAP for hospice services as defined at 1905(o) of the Social Security Act (the Act). CMS informed Utah that states can only claim the increased FMAP under section 9817 for services listed in Appendix B of the SMDL. Hospice services as defined in section 1905(o) of the Act are not listed in Appendix B. However, under section 9817, it would be permissible for the state to use the state funds equivalent to the funds attributable to the increased FMAP to enhance, expand, or strengthen in-home hospice services.

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. In particular, your state should follow the applicable rules and processes for claiming FFP for Medicaid administrative costs, including, if necessary, updating the state’s Public Assistance Cost Allocation Plan to reference methodologies, claiming mechanisms, interagency agreements, and other relevant issues that will be used when claiming and appropriately allocating costs. This pertains specifically to the following activity in Utah’s revised spending plan:

- State Medicaid Administration to Support Institutional Diversion Activities.

Additionally, Utah may want to work with CMS to explore the possibility of claiming FFP for Medicaid administrative or service costs for the following activities:

- Authorizing One-Time HCBS Infrastructure “Grant” Proposals for HCBS Providers;
- State Medicaid/Operating Agency HCBS Administrative Infrastructure Improvements;
- Developing and Providing Caregiver Training;
- Study and Recommended Systemic Approaches to Address Direct Care Workforce Shortage; and
- Supporting HCBS Waiver Participants to Secure and Retain Housing.

CMS is available to provide continued technical assistance to states when implementing changes to HCBS programs under this provision.

Additional Information Requested

Please 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 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. Please note that this additional information request does not preclude the state from implementing any of the approved activities in the state’s spending plan. CMS expects the state to provide this information in the quarterly submission.

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. CMS is available to provide technical assistance to states related to these requirements.

- 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**

Utah’s next quarterly spending plan and narrative is due 75 days before the quarter beginning April 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 rate increase per provider;
- 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.

Sincerely,

Jennifer Bowdoin
Director, Division of Community Systems Transformation

cc: Eric Grant