DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-25-26
Baltimore, Maryland 21244-1850

State Demonstrations Group

September 16, 2020

Julie Lovelady
Acting Medicaid Director
Iowa Medicaid Enterprise
100 Army Post Road
Des Moines, IA 50315

Dear Ms. Lovelady:

This letter responds to two questions Iowa posed based on state legislation. The first question is whether the Centers for Medicare & Medicaid Services (CMS) would approve, in a section 1115 demonstration, the expansion of Medicaid coverage to include pregnant women lawfully admitted for permanent residence (LPRs) in the United States, without application of the five-year waiting period. This is identified in Iowa House File No. 766. The second question is whether CMS would approve, in a section 1115 demonstration, direct payment to nursing facilities of room and board expenses for a dually eligible Medicare and Medicaid member receiving the Medicare hospice benefit or a Medicaid-only member electing the member's hospice benefit. This would allow Medicaid managed care organizations and the Medicaid fee-for-service payment system to reimburse the nursing facility for these room and board expenses at no less than 95% of the nursing facility's Medicaid fee-for-service rate, rather than paying an additional amount to the hospice services provider to take into account the room and board furnished by the nursing facility for residents receiving the hospice benefit. This is identified in Iowa House File 518.

The state has existing options to expand Medicaid and CHIP coverage to include LPR pregnant women without application of the five-year waiting period. States can elect to cover, through Medicaid and/or CHIP, lawfully residing pregnant women and/or children, as listed in sections 1903(v)(4) and 2107(e)(1)(N) of the Social Security Act (the Act), and often referred to as the Children's Health Insurance Program Reauthorization Act "CHIPRA" 214 option. When a state elects this option, coverage in Medicaid or CHIP can be provided to individuals under age 21 or pregnant women who are lawfully residing and otherwise eligible under the state plan. This includes coverage of lawfully residing individuals otherwise eligible for Medicaid and CHIP coverage without imposition of the five-year waiting period. As described more fully in SHO Letter 10-006 issued July 1, 2010, under this statute, a state would not have the option to limit coverage only to LPRs. ("Under CHIPRA, a State electing to cover children or pregnant women who are considered to be lawfully residing in the U.S. must offer coverage to all such individuals who meet this definition of lawfully residing, and may not cover a subgroup or only certain groups[.]") A state would be required to extend coverage to all pregnant women who are in any

of the lawfully residing immigration categories. Iowa could elect this state plan option to cover pregnant women who are "lawfully residing in the U.S." and who are otherwise eligible for Medicaid in the state, as it has already done to cover such children under age 21.

The state's second question is about whether CMS would permit the state to pay nursing facilities for room and board costs for their residents receiving the hospice benefit. This policy would effectively redirect a portion of the state's hospice services payments from hospice providers to nursing facilities. This policy is not allowable through a section 1915(b) waiver and cannot be implemented through a state plan amendment (SPA). It is not consistent with §§ 1905(o) and 1902(a)(13)(B) of the Act, which require the state to pay an additional amount to the hospice provider to take into account the room and board furnished by a nursing facility or an intermediate care facility for individuals with intellectual disabilities (ICF/IID) when residents of these facilities elect the hospice benefit. The additional amount paid to the hospice provider must be equal to at least 95% of the facility rate that the state would otherwise pay the nursing facility or ICF/IID. The statute requires states to pay this additional amount to the hospice provider, not to the nursing facility or ICF/IID.

Under section 1115(a) of the Act, the Secretary of Health and Human Services ("Secretary") or CMS, operating under the Secretary's delegated authority, may authorize a state to conduct experimental, pilot, or demonstration projects that, in the judgment of the Secretary, are likely to assist in promoting the objectives of title XIX of the Act. The Secretary (1) may, under section 1115(a)(1), waive provisions in section 1902 of the Act; and/or (2) may, under section 1115(a)(2)(A), authorize federal financial participation (FFP) for state expenditures that would not qualify for FFP under section 1903 of the Act (i.e., provide "expenditure authority"). Section 1902 of the Act lists what elements the Medicaid state plan must include, such as provisions relating to eligibility, beneficiary protections, benefits, services, and premiums. Section 1903, "Payment to States," describes expenditures that may be "matched" with federal title XIX dollars, allowable sources of non-federal share, and managed care requirements. CMS reviews state requests for waiver or expenditure authority under section 1115(a) on a case-by-case basis to determine whether each such request is consistent with the requirements of section 1115(a) and other applicable laws.

CMS has long supported state flexibility to design innovative Medicaid demonstrations that improve program outcomes and promote the objectives of Medicaid. States are always welcome to submit applications for new section 1115 demonstrations, or for amendments to existing section 1115 demonstrations, for CMS consideration. As part of any such application, the state should provide a comprehensive program description of the demonstration, including the goals and objectives to be implemented under the demonstration project, consistent with 42 CFR 431.412(a)(1)(i).

Iowa is welcome to request section 1115(a)(2)(A) expenditure authority to (1) permit the state (or its Medicaid managed care organizations) to pay nursing facilities, not hospice providers, for room and board for nursing facility residents receiving the hospice benefit, and/or (2) to expand coverage to pregnant LPR women without application of the five-year waiting period. CMS, in cooperation with our federal partners, thoroughly reviews all complete section 1115 demonstration applications that states submit, in accordance with CMS regulations. Only after a

thorough review of a complete section 1115 application and any public comments submitted during the federal comment period would CMS decide whether to approve the demonstration.

The CMS team is committed to working with your team to provide any technical assistance the state requires. If you have any questions regarding this letter, please feel free to contact me at (410) 786-9686.

Sincerely,

Judith A. Cash -S

Digitally signed by Judith A. Cash -S
Date: 2020.09.16 10:51:47 -07'00'

Judith Cash
Director

cc: Laura D'Angelo, State Monitoring Lead, Medicaid and CHIP Operations Group