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February 12, 2021

Kevin Bagley  
Director  
Division of Medicaid & Long-Term Care  
State of Nebraska, Department of Health and Human Services  
301 Centennial Mall South, 3rd Floor PO Box 95026  
Lincoln, NE 68509-5026

Dear Mr. Bagley:

On October 20, 2020, the Centers for Medicare & Medicaid Services (CMS) approved Nebraska's request for a new section 1115 demonstration project, entitled "Heritage Health Adult (HHA)" (Project Number 11-W-00337/7) in accordance with section 1115(a) of the Social Security Act (the Act). Among other things, the demonstration authorizes the state to require all HHA beneficiaries ages 21 through 59, with certain exceptions, to participate in and timely document and report 80 hours per month of community engagement activities, such as employment, education, job skills training, or community service, as a condition of receiving certain optional benefits that are otherwise available to other Nebraska Medicaid populations, including dental, vision and over-the-counter medication. By its terms, the demonstration will expire on March 31, 2026.

Under section 1115 and implementing regulations, CMS has the authority and responsibility to maintain continued oversight of demonstration projects in order to ensure that they are currently likely to assist in promoting the objectives of Medicaid, and CMS may withdraw waivers or expenditure authorities if it "find[s] that [a] demonstration project is not likely to achieve the statutory purposes." 42 C.F.R. 431.420(d); see 42 U.S.C. 1315(d)(2)(D).

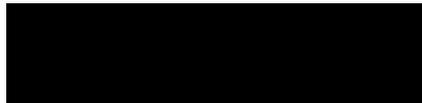
The HHA community engagement requirement is not in effect. Although the demonstration was approved in October 2020, the state has not implemented the demonstration to date. The COVID-19 pandemic has made community engagement infeasible. CMS has serious concerns about testing policies that condition receiving certain health care benefits on meeting work or other community engagement requirements. The COVID-19 pandemic has had a significant impact on the health of Medicaid beneficiaries. Uncertainty regarding the current crisis and the pandemic's aftermath, and the potential impact on economic opportunities (including job skills training and other activities used to satisfy community engagement requirements, i.e., work and other similar activities), access to transportation and to affordable child care have greatly increased the risk that implementation of the community engagement requirement approved in this demonstration will not result in individuals obtaining the additional health care benefits and services available to other Nebraska Medicaid populations. In addition, the uncertainty regarding the lingering health consequences of COVID-19 infections further emphasizes the need for comprehensive coverage for all Medicaid beneficiaries.

Taking into account the totality of circumstances, CMS has preliminarily determined that allowing work and other community engagement requirements to take effect in Nebraska would not promote the objectives of the Medicaid program. Therefore, CMS is providing the state notice that CMS is commencing a process of determining whether to withdraw the authorities approved in the HHA demonstration that permit the state to require work and other community engagement activities as a condition of receiving the additional benefits and services available to other Nebraska Medicaid populations. See Special Terms & Conditions ¶ 10. If the state wishes to submit to CMS any additional information that in the state's view may warrant not withdrawing those authorities, such information should be submitted to CMS within 30 days. If CMS ultimately determines to withdraw those authorities, it "will promptly notify the State in writing of the determination and the reasons for the amendment and withdrawal, together with the effective date, and afford the State an opportunity to request a hearing to challenge CMS' determination prior to the effective date." *Id.*

The HHA demonstration project also includes various other authorities that CMS approved in the demonstration. CMS will also review those other authorities and will follow up with the state when that review is complete.

If you have any questions, please contact Judith Cash, Acting Deputy Director, Center for Medicaid and CHIP Services, at (410) 786-9686.

Sincerely,

A solid black rectangular box redacting the signature of Elizabeth Richter.

Elizabeth Richter  
Acting Administrator

cc: Ashtan Mitchell, State Monitoring Lead, Medicaid and CHIP Operations Group