DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-26-12
Baltimore, Maryland 21244-1850

January 15, 2021

Lori Shibinette
Commissioner
Division of Medicaid Services
New Hampshire Department of Health and Human Services
129 Pleasant Street
Concord, NH 03301-6521

Dear Commissioner Shibinette:

Based on financial data submitted by New Hampshire for its Building Capacity for Transformation (BCT) section 1115(a) demonstration, the Centers for Medicare & Medicaid Services (CMS) has determined that the state has currently exceeded the BCT's cumulative budget neutrality limit by approximately $490 million.[1] The methodology for calculating the BCT's cumulative budget neutrality expenditure limit is detailed in the demonstration's Special Terms and Conditions (STCs). This letter serves as notification of CMS's intent to recoup federal financial participation (FFP) in a portion of the amount by which the state's expenditures exceeded the budget neutrality expenditure limit in the STCs to which the state agreed. This recoupment will occur at the end of this demonstration period.

CMS leadership has been in discussion with the New Hampshire's Department of Health and Human Services about this overage since September 2019 and, in response, the state submitted several proposed retrospective adjustments to the BCT demonstration's budget neutrality limits. As noted, the state agreed to those expenditure limits as part of the approved demonstration STCs on February 2, 2016.[2] CMS will make two baseline *updates* to comport with previous

[1] The $490M budget neutrality overage is the result of comparing the BCT demonstration's limit of $4.3 billion to its actual expenditures ($4.8B) from the CMS-64 for the Quarter Ended (QE) March 31, 2016 (0316) through QE September 30, 2020 (0920). The demonstration's limit is cumulative, and is the sum of each demonstration year's (DY) product of member months and DY's per member per month rate. The demonstration's actual expenditures are cumulative, and consist of 1) traditional Medicaid and HCBS, 2) Expenditures authorized under the demonstration for the Designated State Health Programs (DSHP), and 3) Expenditures authorized under the demonstration for delivery system transformation payment made to and by Integrated Delivery Networks, or IDNs. The source of these expenditures are the CMS-64, BCT demonstration forms. The final cumulative overage will be assessed at the end of the demonstration.

[2] Available at https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/nh/nh-building-capacity-transformation-state-accep-ltr-02022016.pdf.

CMS guidance, but will not be approving the state's proposed budget neutrality adjustments.[3] CMS is committed to maintaining the integrity of its budget neutrality policy for all states and will not allow retrospective adjustments to the expenditure limits that were negotiated with the state prior to the start of the BCT demonstration.

In reviewing the state's data, CMS's analysis indicates that many of the expenditures identified as part of the BCT demonstration were expenditures for state plan covered services for which the state is entitled to FFP, as it would be absent the BCT demonstration. Therefore, CMS has determined that the state must only repay the federal share of the expenditures that were matched under discretionary authority in section 1115(a)(2) to provide FFP in costs not otherwise matchable (CNOM) under section 1903 that were authorized by the BCT demonstration, or up to $110,695,991.[4] Pursuant to STC section IX and, in particular, STCs 70 and 71, the state must return these excess federal funds to CMS using the methodology outlined in STC 68.[5]

Under certain conditions, 42 CFR § 430.48 permits states to repay FFP associated with unallowable expenditures through quarterly installments. The maximum length of the repayment schedule is determined by the amount of the repayment relative to the state's annual state share of the Medicaid program. Based on CMS's preliminary analysis, it appears New Hampshire could qualify for the longest repayment schedule, which is three years, after the end of the current demonstration period.[6] The repayment plan would commence after the BCT demonstration's authority has expired.

CMS requests that the state voluntarily submit a letter outlining its intent to repay this CNOM amount within 30 days of receipt of this letter. New Hampshire should indicate in this letter if it requests to repay the excess federal funds through quarterly installments.

If the state does not agree to return the FFP voluntarily, CMS may issue a disallowance to recoup the FFP at issue. The state may choose to appeal the disallowance by requesting administrative reconsideration from CMS and/or appealing to the U.S. Health and Human Services Departmental Appeals Board (DAB). The state may also elect to retain the FFP during these processes, but would owe interest on any funds that it elected to retain if the disallowance is ultimately upheld by the DAB.

---

[3] See CMS technical corrections letter available at https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/nh/nh-building-capacity-transformation-stc-tech-corrections-08012016.pdf.

[4] The BCT's section 1115(a)(2)(A) expenditure authorities—in total computable dollars for the 5-year approval period—amounted to $150,000,000 for DSRIP and $71,391,981 for DSHP. Combined, total CNOMs amounted to $221,391,981, of which, the federal share is $110,695,991. However, New Hampshire did not claim FFP up to the BCT's annual limits for all of its CNOMs; therefore, the state would only need to repay the FFP actually received.

[5] See also State Medicaid Director Letter #18-009, "CMS Budget Neutrality Policies for Medicaid Section 1115(a) Demonstration Projects," which states in pertinent part, "As a condition of demonstration approval, states currently agree that if the state is found to have exceeded its budget neutrality expenditure limit at the end of its demonstration's period of performance, it will return excess funds to CMS. States return funds by entering a negative adjustment to expenditures claimed on their CMS-64 reports."

[6] Note, it is possible that the state could request additional time to repay under very limited circumstances when it can demonstrate it is under economic distress as defined in 42 CFR 430.48(d)

Lastly, as detailed in State Medicaid Director Letter #17-005, CMS announced its intent to phase-out expenditure authority for Designated State Health Programs (DSHP) in section 1115(a) demonstrations. In addition, CMS has also determined not to extend or renew Delivery System Reform Incentive Payment (DSRIP) programs.[7] Since those are the two major components of the BCT demonstration requiring section 1115(a) authority, CMS intends to maintain our agreement and preserve the original expiration of the BCT demonstration.

We look forward to our continued collaboration on the Granite Advantage and Substance Use Disorder Treatment and Recovery Access section 1115(a) demonstrations. If you have any questions regarding these findings, please contact Ms. Judith Cash, Acting Deputy Director, Center for Medicaid & CHIP Services at (410) 786-9686.

Sincerely,

[redacted]

Anne Marie Costello
Acting Deputy Administrator and Director

cc: Courtney Miller, Director, Medicaid and CHIP Operations Group

[7] See, for example, CMS Letter to New York dated February 21, 2020, available at: https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/ny/medicaid-redesign-team/ny-medicaid-rdsgn-team-cms-ltr-state-20200221.pdf.