
State Demonstrations Group

October 31, 2024

Amir Bassiri
Medicaid Director, Deputy Commissioner
New York Department of Health
Empire State Plaza, Corning Tower, Room 1466
Albany, NY 12237

Dear Director Bassiri:

The Centers for Medicare & Medicaid Services (CMS) is writing in response to your November 10, 2020 Managed Long Term Care (MLTC) amendment application to your section 1115(a) demonstration, entitled “Medicaid Redesign Team” (MRT) (Project Number 11-W-00114/2). In the 2020 amendment application, New York requested two changes:

- (1) To modify the eligibility criteria for MLTC plans; and
- (2) To permit dually eligible Medicare/Medicaid members who do not need Community-Based Long-Term Care, and who voluntarily sign up for a Medicare Dual Eligible Special Needs Plan with a qualified Mainstream Medicaid Managed Care (MMMC) plan, to stay enrolled in that MMMC plan.¹

Regarding the first component of the amendment application, in the March 23, 2022 extension approval letter, CMS noted that the change in eligibility criteria for MLTC plans would remain under review until the end of the American Rescue Act (ARP) maintenance of effort (MOE) period, because section 9817 of the ARP requires that states must not impose stricter eligibility standards, methodologies, or procedures for home and community-based services (HCBS) programs and services than were in place on April 1, 2021, in order to receive the enhanced federal funding available under that provision.² New York has exhausted its ARP funding and intends to submit its final ARP section 9817 spending plan and narrative to CMS. Please note that New York must not impose stricter eligibility standards, methodologies, or procedures for HCBS until such time that New York submits and receives CMS approval of its final ARP section 9817 spending plan and narrative. CMS continues to be available if the

¹ On March 23, 2022, CMS approved the second component of the November 10, 2020 amendment application as part of the 5-year extension of the MRT demonstration available at: <https://www.medicaid.gov/medicaid/section-1115-demonstrations/downloads/ny-medicaid-rdsgn-team-risk-ext-appv1-03232022.pdf>.

² State Medicaid Director Letter #21-003, Implementation of American Rescue Plan Act of 2021 Section 9817: Additional Support for Medicaid HCBS during the COVID-19 Emergency, May 13, 2021, available at: <https://www.medicaid.gov/federal-policy-guidance/downloads/smd21003.pdf>

state has questions or needs technical assistance on submitting its final ARP section 9817 spending plan and narrative. CMS will post New York's final ARP 9817 spending final plan and narrative on Medicaid.gov.³

In your 2020 MLTC amendment application, New York requested that CMS include new detail regarding medical necessity and level of care requirements for eligibility for MLTC plans in the special terms and conditions (STCs). Section 1115 authority is not required for states to impose medical necessity or level of care requirements, and the state can move forward without an amendment to their 1115 demonstration. States have flexibility to impose medical necessity and level of care requirements as long as these requirements adhere to all applicable federal laws, regulation, and policy statements, including all applicable federal statutes relating to non-discrimination.

In addition, New York has an independent and separate obligation under federal laws including, but not limited to, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, Section 1557 of the Affordable Care Act, or the Supreme Court's *Olmstead* decision to ensure that individuals are served in the most integrated setting appropriate to their needs. Guidance from the Department of Justice concerning compliance with the Americans with Disabilities Act and the *Olmstead* decision is available at https://archive.ada.gov/olmstead/q&a_olmstead.htm. Guidance about Section 504 obligations is available at <https://www.hhs.gov/civil-rights/for-individuals/disability/section-504-rehabilitation-act-of-1973/index.html> and for Section 1557 at <https://www.hhs.gov/civil-rights/for-individuals/section-1557/index.html>.

Since CMS does not require states to specify medical necessity or level of care requirements in Medicaid State Plans or 1915(c) HCBS waivers,⁴ CMS considers New York's November 2020 MLTC amendment application closed, as we have determined the change requested in the amendment is not necessary. However, as we note, New York has an obligation to ensure eligibility standards do not discriminate based on disability under CMS and other federal non-discrimination regulations. As noted in footnote 1, the second component of your November 2020 amendment request has already been granted.

³ All ARP Section 9817 Spending Plans and Narratives and CMS Approval Letters are available at: <https://www.medicaid.gov/medicaid/home-community-based-services/guidance-additional-resources/arp-section-9817-state-spending-plans-and-narratives-and-cms-approval-letters/index.html>

⁴ Note: For 1915(c) HCBS Waivers, states must comply with level of care requirements specified in the Application for a Section 1915(c) Home and Community-Based Waiver Instructions, Technical Guide, and Review Criteria available at: https://wms-mmdl.cms.gov/WMS/help/35/Instructions_TechnicalGuide_V3.6.pdf.

Page 3 – Amir Bassiri

We look forward to our continued partnership on the New York section 1115(a) demonstration. If you have any questions, please contact your CMS project officer, Jonathan Morancy, at Jonathan.Morancy@cms.hhs.gov.

Sincerely,

Jacey Cooper
Director

cc: Melvina Harrison, State Monitoring Lead, Medicaid and CHIP Operations Group