DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

*Administrator*
Washington, DC 20201

December 22, 2020

Melody Anthony
Chief State Medicaid Director
Chief Operating Officer
Oklahoma Health Care Authority
4345 N. Lincoln Boulevard
Oklahoma City, Oklahoma 73105

Dear Ms. Anthony:

Under section 1115 of the Social Security Act (the Act), the Secretary of Health and Human Services (HHS) may approve any experimental, pilot, or demonstration project that, in the judgment of the Secretary, is likely to assist in promoting the objectives of certain Act programs including Medicaid. Congress enacted section 1115 of the Act to ensure that federal requirements did not "stand in the way of experimental projects designed to test out new ideas and ways of dealing with the problems of public welfare recipients." S. Rep. No. 87-1589, at 19 (1962), *as reprinted in* 1962 U.S.C.C.A.N. 1943, 1961. As relevant here, section 1115 of the Act allows the Secretary to provide federal financial participation for demonstration costs that would not otherwise be considered as federally matchable expenditures under section 1903 of the Act, to the extent and for the period prescribed by the Secretary.

For the reasons discussed below, the Centers for Medicare & Medicaid Services (CMS) is approving Oklahoma's (the "state") request for a new section 1115(a) demonstration titled, "Institutions for Mental Diseases Waiver for Serious Mental Illness/Substance Use Disorder" (Project Number 11-W-00363/6) (the "demonstration"), in accordance with section 1115(a) of the Act. With this approval, the demonstration will become effective as of the date of this letter, through December 31, 2025. CMS is also concurrently approving the Substance Use Disorder (SUD) and Serious Mental Illness (SMI) Implementation Plans that were submitted with the application, as well as the Health Information Technology (HIT) Plan, which authorizes the state to receive federal financial participation (FFP) under this demonstration.

CMS's approval of this section 1115(a) demonstration is subject to the limitations specified in the attached expenditure authority, Special Terms and Conditions (STCs), and any supplemental attachments defining the nature, character, and extent of federal involvement in this project. The state may deviate from the Medicaid state plan requirements only to the extent those requirements have been specifically listed as not applicable to expenditures or individuals covered by expenditure authority.

## Extent and Scope of Demonstration

This demonstration will authorize FFP for medically necessary SUD treatment, facility-based crisis stabilization, and inpatient treatment services within qualified Institutions for Mental

Diseases (IMD) for Medicaid beneficiaries with SMI, serious emotional disturbance (SED), and/or SUD diagnoses, as well as for beneficiaries with a SUD diagnoses under age 21 in a residential IMD, including Qualified Residential Treatment Programs (QRTPs) that meet the definition of an IMD. Through this demonstration, the state will enhance coverage for high-intensity services to support the full continuum of care to provide better outcomes, support recovery, and reduce health care costs for Medicaid beneficiaries.

**Determination that the demonstration project is likely to assist in promoting Medicaid's objectives**

Under section 1901 of the Act, the Medicaid program provides federal funding to participating states "[f]or the purpose of enabling each state, as far as practicable under the conditions in such state, to furnish (l) medical assistance on behalf of families with dependent children and of aged, blind, or disabled individuals, whose income and resources are insufficient to meet the costs of necessary medical services, and (2) rehabilitation and other services to help such families and individuals attain or retain capability for independence or self-care."

While this statutory text is not necessarily an exhaustive source of Medicaid objectives, it makes clear that at least one objective of Medicaid is to enable states to "furnish… medical assistance" to certain vulnerable populations (i.e., payment for certain healthcare services defined at section 1905 of the Act, the services themselves, or both). This demonstration promotes that Medicaid objective by expanding on coverage to provide coverage of health care costs that would otherwise not be available. In addition to providing expanded coverage, the provision of this additional coverage may lower program costs through improved beneficiary health, making it possible for the state to expand other coverage with the dollars saved. This further promotes the coverage objective of the Medicaid statute.

CMS has determined that approval of the Institutions for Mental Diseases Waiver for Serious Mental Illness/Substance Use Disorder demonstration is likely to promote the objectives of the Medicaid program for the following reasons:

- This demonstration will assist Oklahoma in increasing identification, initiation, and engagement of Medicaid beneficiaries diagnosed with SUD and SMI/SED.
- This demonstration will assist Oklahoma in increasing adherence to, and retention in, SUD and SMI/SED treatment programs.
- This demonstration will assist Oklahoma in reducing inappropriate or preventable utilization of emergency departments and inpatient hospital settings through improved access to a continuum of care services.

**Consideration of Public Comments**

To increase the transparency of demonstration projects, sections 1115(d)(1) and (2) of the Act direct the Secretary to issue regulations providing for two periods of public comment on a state's application for a section 1115 demonstration that would result in an impact on eligibility, enrollment, benefits, cost-sharing, or financing. The first comment period occurs at the state

level before submission of the section 1115 application, and the second comment period occurs at the federal level after the application is received by the Secretary.

The ACA specified that comment periods should be "sufficient to ensure a meaningful level of public input," section 1115(d)(2)(A) & (C) of the Act, but the statute imposed no additional requirement on the states or the Secretary to provide an individualized response to address those comments, as might otherwise be required under a general rulemaking. Accordingly, the implementing regulations issued in 2012 provide that CMS will review and consider all comments received by the deadline, but will not provide individualized written responses to public comments. 42 CFR 431.4164(d)(2).

CMS received five comments during the federal comment period. Three comments were from organizations, two of which opposed the demonstration and one in support of the demonstration. The two organizations raised concerns regarding the funding of IMDs diverting resources from community-based services, and undermining community integration. This demonstration does not require that services be provided to any individual in any particular setting, nor does it limit the availability of community-based services. The implementation of this demonstration will support a more robust and coordinated continuum of care for beneficiaries with SMI, SED, or SUD diagnoses. The remaining concerns from the two organizations were predicated upon a misunderstanding of the nature and scope of the CMS 1115 authority. CMS received two comments from individuals in support of the demonstration.

After carefully reviewing the public comments submitted during the federal comment period, CMS has concluded that the demonstration is likely to advance the objectives of Medicaid.

**Other Information**

CMS's approval of this demonstration project is conditioned upon compliance with the enclosed list of waiver and expenditure authorities and the STCs defining the nature, character, and extent of anticipated federal involvement in the demonstration. The award is subject to our receiving your written acknowledgement of the award and acceptance of these STCs within 30 days of the date of this letter.

Your project officer for this demonstration is Ms. Felicia Pailen. She is available to answer any questions concerning your section 1115 demonstration. Ms. Pailen's contact information is as follows:

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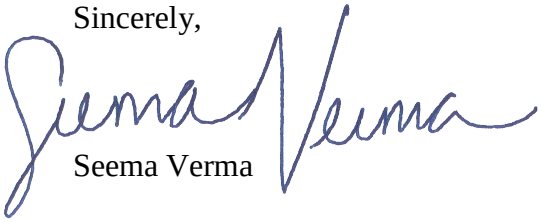
Center for Medicaid and CHIP Services
Mail Stop: S2-25-26
7500 Security Boulevard
Baltimore, MD 21244-1850
Email: Felicia.Pailen@cms.hhs.gov

If you have questions regarding this approval, please contact Ms. Terese DeCaro, Acting Director, State Demonstrations Group, Center for Medicaid and CHIP Services, at (410) 786-9686.

Sincerely,



Seema Verma

Enclosures

cc: Deborah Read, State Monitoring Lead, Medicaid and CHIP Operations Group