DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-01-16
Baltimore, MD 21244-1850

Children and Adults Health Programs Group

March 31, 2023

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

Dear Deputy Commissioner Bassiri:

This letter is in response to New York's request, received February 7, 2023, for a waiver under section 1902(e)(14)(A) of the Social Security Act (the Act) that will protect beneficiaries in addressing the challenges the state faces as part of a transition to routine operations when the COVID-19 Public Health Emergency (PHE) ends. Section 1902(e)(14)(A) allows for waivers "as are necessary to ensure that states establish income and eligibility determination systems that protect beneficiaries." Such waivers are time-limited and are meant to promote enrollment and retention of eligible individuals by easing the administrative burden states may experience in light of systems limitations and challenges.

The ongoing COVID-19 pandemic and implementation of federal policies to address the PHE have disrupted routine Medicaid and Children's Health Insurance Program (CHIP) eligibility and enrollment operations. Medicaid and CHIP enrollment has grown to historic levels due in large part to the continuous enrollment requirements that states implemented as a condition of receiving a temporary 6.2 percentage point federal medical assistance percentage increase under section 6008 of the Families First Coronavirus Response Act (P.L. 116-127).

Consistent with the March 3, 2022 Centers for Medicare & Medicaid Services (CMS) State Health Official (SHO) letter #22-001, "*Promoting Continuity of Coverage and Distributing Eligibility and Enrollment Workload in Medicaid, the Children's Health Insurance Program (CHIP), and Basic Health Program (BHP) Upon Conclusion of the COVID-19 Public Health Emergency*," New York has requested that CMS provide authority under section 1902(e)(14)(A) of the Act to temporarily extend the timeframe permitted for the state to take final administrative action on all Medicaid fair hearings conducted by the Office of Temporary and Disability Assistance (OTDA), including, but not limited to, fair hearings related to non-Modified Adjusted Gross Income (non-MAGI) eligibility and benefits and services. The state anticipates severe operational and systems challenges in the timely completion of eligibility and enrollment actions, including conducting fair hearings, in large part due to an unprecedented caseload of renewals that the state will need to process, coupled with significant OTDA staffing shortages and an existing backlog of fair hearing requests accumulated at OTDA during the PHE. Given these OTDA staffing limitations, the existing fair hearing backlog, and the unprecedented number of eligibility actions that the state will need to process during the unwinding period, the state anticipates an extraordinary volume of fair hearings that will exceed ODTA's capacity to take final administrative action on all fair hearing requests within the 90-day time limit allowed under 42 C.F.R. § 431.244(f)(1).

Under section 1902(e)(14)(A) of the Act, your request to temporarily extend the timeframe permitted for the state to take final administrative action on fair hearing requests is approved, as described and subject to the conditions below.

Extended Timeframe to Take Final Administrative Action on Fair Hearing Requests

The authority provided in accordance with this letter will enable New York, during the period of time specified below, to temporarily extend the timeframe permitted for the state to take final administrative action on fair hearing requests heard by OTDA. This authority and the assurances below do not apply to fair hearings conducted by the New York State Department of Health, which include, but are not limited to, fair hearings related to MAGI eligibility, and which will continue to be conducted under standard fair hearing procedures. As a condition of this authority granted in this letter, New York assures that it will:

- Not delay resolving expedited fair hearings described in 42 C.F.R. § 431.224(a);
- Provide benefits pending the outcome of a fair hearing decision to all beneficiaries who request a fair hearing within the reasonable time provided by the state under 42 C.F.R. § 431.221(d) and regardless of whether the beneficiary has requested benefits pending the outcome of their fair hearing;
- If a beneficiary requests a fair hearing after the date of action and within the reasonable time provided by the state, reinstate benefits back to the date of action;
- Take final administrative action within the maximum 90 days permitted under the regulations for fair hearing requests where benefits cannot be provided pending the outcome of the fair hearing, such as a fair hearing challenging a denial of eligibility for an applicant;
- Not recoup from the beneficiary the cost of benefits provided pending final administrative action, even if the agency's action is sustained by the hearing decision; and
- Not use this authority as a justification to delay taking final action, and only exceed the 90 days permitted for taking final agency action under 42 CFR § 431.244(f)(1) to the extent to which the state is unable to take timely final agency action on a given fair hearing request.

The authority provided in accordance with this letter applies to all Medicaid fair hearings governed by the rules at 42 CFR § 431 subpart E, excluding requests for an expedited fair hearing in accordance with 42 C.F.R. § 431.224(a) and any fair hearing request where benefits cannot be provided pending the outcome of the fair hearing. The authority provided in accordance with this letter applies to the Medicaid population in the state.

The authority provided in this letter is effective April 1, 2023, and remains effective until the end of the 23rd month after that date.

The authority provided in this letter is subject to CMS receiving your written acknowledgement of this approval and acceptance of this new authority and the terms described herein within 30 days of the date of this letter.

We look forward to our continuing work together as part of a transition to routine operations. If you have questions regarding this waiver approval, please contact Melissa McChesney in the Division of Medicaid Eligibility Policy, at melissa.mcchesney@cms.hhs.gov.

Sincerely,

Sarah deLone, Director,
Children and Adults Health Programs Group