



February 25, 2022

Dan Tsai
Director, Center for Medicaid and CHIP Services
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, Maryland 21244-1850

Dear Director Tsai:

On behalf of the National Association of Medicaid Directors, the National Association of State Directors of Developmental Disabilities Services, and ADvancing States, we are writing to request that CMS extend the March 31, 2024 deadline for states to expend funds attributable to the increased FMAP for HCBS authorized by Section 9817 of ARPA. Our associations collectively represent the government agencies responsible for administering the publicly funded health care and long-term services and supports (LTSS) for older adults and people with disabilities in every state and territory.

As you know, Section 9817 represents the single largest infusion of investment into HCBS since the inception of waivers. Our members collectively are working hard to identify investments that will have lasting impacts, despite the one-time nature of the funds. However, the time horizon for both planning and spending for this effort is quite short in the usual arc of expenditures for state agencies. CMS and the states had to develop implementation guidance and spending plans swiftly, and states are increasingly cognizant of the current time limitation for spending these dollars.

We recognize that CMS is working hard to process all spending plans and the requisite authorities to effectuate the plans, but the volume is unprecedented, and your obligation to ensure adherence to the MOE requirements has required more time than states were anticipating. Similarly, the changes to the CMS-64 reporting form were not finalized until October, leading to delays in the ability of states to draw down the funding. Based on our analysis of CMS data for the quarter ending December 31, 2021, we conclude that only 19 states have begun to accrue the enhanced funding.

As a result, the period of time in which states can utilize these funds is diminishing, and for many states, the compressed timeline may cause challenges in implementing their spending plans as effectively as possible. Many state agencies were directed by their legislatures to wait for CMS approval before initiating activities and are just now beginning the initiatives included in the plans. Additionally, a number of the infrastructure-related proposals will require states to go through procurement processes, which will lead to more time before the work can commence. Due to all of these factors, some states are concerned that they will not be able to spend all of the



dollars and completely implement their initiatives. Without an extension, there is a significant risk that the nation will not fully realize the transformative intent of this historic opportunity. We recognize that CMS leadership has indicated states can individually request changes to the 2024 deadline, and has discussed the option for a good faith extension through 2025.¹ However, an extension made available for all states will provide certainty about the time horizon, allow for an appropriate planning and implementation period, and create consistency across the country.

We recognize that states that continue to make expenditures beyond March 31st will remain subject to Maintenance of Effort (MOE) and non-supplementation requirements until they exhaust their ARPA funds. While this may prove a barrier for some states, others may determine that this trade-off allows them to best maximize the impact of their Section 9817 funds. Most importantly, an extension of the time period to use the funding will not also extend the MOE for states that elect to fully expend their funds prior to the new Federal deadline. We believe that allowing states this option will ensure that the enhanced FMAP for HCBS expenditures are utilized in the most effective way possible.

Sincerely,

Martha A. Roherty
Executive Director
Advancing States
241 18th Street, South
Suite 403
Arlington, VA 22202-3414
202-320-7419 (cell)
202-898-2578 (office)

Mary P. Sowers
Executive Director
NASDDDS
301 N Fairfax Street, Suite 101
Alexandria, VA 22314-2633
703-683-4202 ext 110 (office)
703-414-9953 (cell)

Matt Salo
Executive Director
NAMD
601 New Jersey Avenue, NW
Suite 740
Washington, DC 20001
202-599-8360

¹ CMS June 29, 2021 Medicaid and CHIP all-state call:
<https://www.cms.gov/files/zip/covid19allstatecall06292021.zip>