CENTERS FOR MEDICARE AND MEDICAID SERVICES
Administrator Decision

In the case of:

Longevity Health Plan of North Carolina, Inc.

Review of: Docket No. H-23-00019

Plan Contract No. H5374

Dated: August 18, 2023

This case is before the Administrator, Centers for Medicare & Medicaid Services (CMS), for review of the decision of the CMS Hearing Officer is pursuant to 42 C.F.R. § 422.692**.** Longevity Health Plan of North Carolina submitted a request for Administrator review. The parties were notified of the Administrator's intention to elect to review the CMS Hearing Officer's decision. No additional arguments were submitted. Accordingly, this case is now before the Administrator for final agency review.

Longevity Health Plan of North Carolina (LHP-NC) currently offers an Institutional Special Needs Plan (I-SNP)[1] in 43 counties in North Carolina. For the 2024 CMS contract cycle, the LHP-NC filed a Medicare Advantage/Prescription Drug (MA/PD) application to expand operations to four additional counties, Franklin, Hertford, Nash and Scotland Counties, in North Carolina. Throughout the application cycle, LHP-NC was on notice that it had insufficient provider networks in Franklin, Hertford, and Nash Counties. CMS also found LHP-NC's 27 exception requests failed to meet the requirements in 42 C.F.R. § 422.116(f)(1). CMS identified available providers located within the time and distance criteria that the LHP-NC failed to include on its exception request submission or HSD submission. LHP-NC submitted revised Provider and Facility HSD Tables, and revised exception request submissions. CMS subsequently, denied the expansion application due to LHP-NC continuing to fail the network adequacy requirements and to submit valid exceptions that meet the criteria for approval. CMS found that LHP-NC did not submit valid

[1] I-SNPs are SNPs that restrict enrollment to MA eligible individuals who, for 90 days or longer, have had or are expected to need the level of services provided in a long-term care (LTC) skilled nursing facility (SNF), a LTC nursing facility (NF), a SNF/NF, an intermediate care facility for individuals with intellectual disabilities (ICF/IDD), or an inpatient psychiatric facility.

rationales for not contracting with providers identified by CMS on their initial exception request denial. (*See, e.g.,* CMS Exhibits, C-13, C14, C-15).

LHP-NC requested review by the CMS Hearing Officer. The issue before the CMS Hearing Officer was whether CMS' denial of LHP-NC's service area expansion application for the MA/MA-PD contract, based on LHP-NC's failure to meet CMS' provider network adequacy requirements, was inconsistent with regulatory requirements. The CMS Hearing Officer Hearing Officer Decision granted CMS' Motion for Summary Judgment in each case. The Hearing Officer found that there were no material facts in dispute and that the record did not clearly establish that LHI-NC provided the materials that CMS required to grant the exception requests. Specifically, the record does not clearly establish that LHP-NC as-submitted exception requests provided rationales for not contracting with available providers that CMS found were within its network adequacy criteria or that the LHP-NC as-submitted exception requests demonstrated evidence or other justifications to support a local pattern of care rationale. The Hearing Officer also found that the LHP-NC had not proven, by a preponderance of the evidence, that CMS' denial of its application, based on both network deficiencies and denied exception requests, was inconsistent with regulatory requirements. Thus, the Hearing Officer upheld CMS' denial of LHP-NC's service area expansion request.

The LHP-NC submitted a request for Administrator review. LHP-NC did not dispute any of the factual findings or the legal findings. Instead, LHP-NC argued that many providers do not want to contract with a I-SNP as I-SNPs offer too limited utilization to be worth the time of some providers for purposes of contract development and that it is, therefore, demonstratable that many of the providers in the provider supply file are not available to it. LHP-NC stated that it has contracted with other providers and facilities that are currently available and accessible to most enrollees. It also argued that consistent with the local pattern of care, it has a Model of Care. Where LHP-NC lacks a contract with a less commonly used specialist, as needed, enters into a single case agreement with the specialist to ensure member access. LHP-NC states that public policy considerations support its application. LHP-NC argued that the I-SNP's focus has been on a historically underserved population and that it leverages a Model of Care that decreases the fragmentation in service delivery for their members who are frail, vulnerable and have complex needs approval of the exception is in the best interest of beneficiaries. The LHP-NC requested that the Administrator use his or her discretionary contractual authority to allow the exceptions required to qualify its application for approval.

After a review of the record and all the parties' submissions, the Administrator hereby affirms and adopts the CMS Hearing Officer legal and factual findings in the decision of this case. None of the legal or factual findings are in dispute, but rather LHI-NC, requests a waiver from the CMS policy that does not consider "inability to contract" as a valid rationale for an exception to the network adequacy criteria. CMS maintains that the non-interference provision at section1854(a)(6) of the Act prohibits CMS from requiring any MA organization to contract with a particular entity or individual to furnish items and services or require a particular price structure for payment under such a contract. CMS will consider a local pattern of care rationale for an exception to the network adequacy criteria when there are other factors present, that demonstrate that network access is consistent with or better than the original Medicare pattern of care applicants. In this case, CMS also found that LHI-NC did not demonstrate in the exception requests, with evidence or other

justifications, to support a local pattern of care rationale for not meeting network adequacy requirements.

LHP-NC points to cases where the Administrator has used his or her discretionary contractual authority to allow a Plan to cure its application and argues equally compelling policy reasons apply in this case. While pointing to an Administrator decision which granted an I-SNP the opportunity to cure, the LHP-NC did specifically note the involvement of such a broad and extensive waiver proposed by LHP-NC. LHP-NC also recognized that:

> [O]ne reason that CMS has not set different access standards for I-SNPs, is that once an MA-PD application is approved, the organization is not limited in the types of plans it can offer. Therefore, the I-SNP is required to meet access requirements throughout each county of its service area even in areas where the I-SNP does not have network nursing facilities. We believe that nothing under the current regulations would prevent CMS from placing a limitation on I-SNP sponsors that, while demonstrating that they can provide access to their facility-based members, do not meet the broader community-based access standards. Such a limitation would prevent them from offering non-I-SNP plans until the broader access standard is met. In addition, such a limitation would help plans like Longevity that exclusively focus on serving institutionalized beneficiaries and cannot use other plan types to encourage participation by providers unlikely to be used by their I-SNP members.

While the Administrator recognizes LHI-NC's arguments concerning the importance of certain policy objectives and challenges of certain types of I-SNFs, the Administrator finds the application of a broad waiver policy proposed by LHP-NC is not suitable to be implemented in the first instance on a case-by-case basis, by use of the Administrator discretionary contractual authority on appeal. Accordingly, the CMS Hearing Officer Decision is hereby affirmed and adopted.

Decision

The CMS Hearing Officer decision is affirmed.

THIS CONSTITUTES THE FINAL ADMINISTRATIVE DECISION OF THE SECRETARY OF HEALTH AND HUMAN SERVICES

Date: October 2, 2023

Jonathan Blum
Principal Deputy Administrator
Centers for Medicare & Medicaid Services