December 10, 2014

Senator Kathy Campbell, Chair
Health and Human Services Committee
P.O. Box 94604
Lincoln, NE 68509-4604

RE: LB690 Report of the 2014 Legislative Session

Dear Senator Campbell and members of the Health and Human Services Committee,

DHHS submitted a grant application to the Centers for Medicare and Medicaid (CMS) for the Balancing Incentive Payment Program on July 31, 2014, as enacted in Section 10202 of the federal Patient Protection and Affordable Care Act.

DHHS received notification of the award approval from CMS on September 11, 2014.

The award notice is included as an attachment to this report.

The award notice was provided to DHHS in PDF format therefore it cannot be provided in a Word document.

Please let me know if you have any questions.

Respectfully,

Courtney Miller
Deputy Director, Programs
Division of Medicaid & Long-Term Care
Department of Health and Human Services

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-14-26
Baltimore, Maryland 21244-1850

CMS
CENTERS FOR MEDICARE & MEDICAID SERVICES
CENTER FOR MEDICAID & CHIP SERVICES

Disabled & Elderly Health Programs Group

SEP 11 2014

Courtney Miller, Deputy Director
Division of Medicaid and Long-Term Care
State of Nebraska, Department of Health and Human Services
301 Centennial Mall South, 3rd Floor PO Box 95026
Lincoln, NE 68509-5026

Dear Deputy Director Miller:

I am pleased to inform you that the Centers for Medicare & Medicaid Services (CMS) has awarded Nebraska the State Balancing Incentive Payment Program (hereafter referred to as the "Balancing Incentive Program") grant under Section 10202 of the Affordable Care Act.

The Balancing Incentive Program provides a strong financial incentive to stimulate greater access to non-institutionally based long-term services and supports (LTSS.) The passage of the Balancing Incentive Program reflects Congress' recognition of the demographic and fiscal imperatives to reshape our long-term care system to meet the needs of our beneficiaries and assure the future viability of the system.

The period of performance for this grant award is October 1, 2014 through September 30, 2015. Nebraska will receive an enhanced match rate of 2% for non-institutional LTSS. Your award is $8.1 million which is based upon your projected expenditures and is dependent on the actual amount spent on non-institutional LTSS and the implementation of the required structural changes. This funding will be available through the end of the Period of Performance or until the entire $3 billion appropriation for the Balancing Incentive Program has been expended, whichever occurs first.

Please review the attached terms and conditions. In addition to the general terms and conditions, this grant award contains programmatic and grant specific terms and conditions. Your assigned CMS Project Officer, Barbara Holt, Ph.D. will schedule a call in the next few days to discuss the details of your award and to answer any questions you may have concerning the award. By drawing grant funds from your account, you have accepted the terms and conditions of this grant award.

Thank you for your commitment to improving the long-term services and supports that are so critical to the lives of thousands of beneficiaries. We look forward to working with you throughout the grant period.

Sincerely,

Barbara C. Edwards

Barbara C. Edwards
Director

Enclosures

Documents regarding your Balancing Incentive Program Grant Award:

1. **Terms and Conditions** - This legal document cites the regulations governing the grant and sets forth the general requirements, assurances, reporting requirements, and other terms and conditions that apply specifically to the grant.
   - General Terms & Conditions
   - Programmatic Terms & Conditions

cc:
Chad Frank, Project Director, Nebraska Long Term Service and Supports
Jennifer Burnett, Director, CMS Division of Community Systems Transformation
Barbara Holt, Ph.D., CMS Project Officer
James Scott, CMS Associate Regional Administrator
Debbie Abshire, CMS Technical Director, Budget and Grants

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Disabled and Elderly Health Programs Group
Division of Community Systems Transformation
7500 Security Boulevard
Baltimore, Maryland 21244-1850

CMS
CENTERS FOR MEDICARE & MEDICAID SERVICES
CENTER FOR MEDICAID & CHIP SERVICES

CMS STANDARD TERMS AND CONDITIONS FY 2014

Terms of Award

With the acceptance of a grant award from CMS, the grantee has the responsibility to be aware of and comply with the terms and conditions of award.

Individual awards are based on the application submitted to, and as approved by, CMS and are subject to the terms and conditions incorporated either directly or by reference in the following:

- The grant program legislation and program regulation cited in the Notice of Grant Award.
- The restrictions on the expenditure of Federal funds in the appropriation acts, to the extent those restrictions are pertinent to the award.
- 45 CFR Part 92 as applicable.
- The Notice of Award including all terms and conditions (standard and special) cited on the document or attachments.
- DHHS Grants Policy Statement (at http://www.hhs.gov/grantsnet)

45 CFR Part 74 and 45 CFR Part 92 (Regulations Governing CMS Grants)

Regulations found at Title 45, Code of Federal Regulations (CFR) Part 92, are the rules and requirements that govern the administration of Department of Health and Human Services (DHHS) grants.

These regulations are a term and condition of award. Grantees must be aware of and comply with the regulations. (http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title45/45cfr92_main_02.tpl.)

Cost Principles

Cost Principles of allowable and unallowable expenditures for CMS grantees are provided in the following document:

- **State and Local Governments:** OMB Circular A-87 ("Cost Principles for State, Local, and Indian Tribal Governments")

Administrative Standards

In addition to the cost principles, OMB has established administrative standards and audit requirements for organizations receiving Federal assistance. These administrative standards are contained in the following document:

- **State and Local Governments:** OMB Circular A-102 ("Grants and Cooperative Agreements with State and Local Governments")

- **Audits of States, Local Governments, and Nonprofit Organizations:** OMB Circular A-133

Grant Payment

Payments under these awards are made available through the Payment Management System (PMS). PMS is administered by the Division of Payment Management http://www.dpm.psc.gov. Grantees should contact PMS directly for instructions on how to obtain payments. Inquiries should be directed to:

Director, Division of Payment Management, OS/ASAM/PSC/FMS/DPM
P.O. Box 6021
Rockville, MD 20852
Telephone: 1-877-614-5533

Reporting Requirements

Final Progress and Data Report - The final reports are due within 90 days after the project period date of the last year of the grant. A draft final report should be submitted to the CMS Project Officer for comments. CMS's comments should be taken into consideration by the grantee for incorporation into the final report. The final report should include detailed information regarding the implementation of the required structural changes, any optional changes the state has elected to make to create a more balanced LTSS system, and a detailing of the increase in community-based LTSS expenditures.

The final progress report may not be released or published without permission from the CMS Project Officer within the first four (4) months following the receipt of the report by the CMS Project Officer.

The final report will contain a disclaimer that the opinions expressed are those of the grantee and do not necessarily reflect the opinion of CMS.

Failure to submit timely reports (i.e., financial, progress, or other required reports) may result in withholding financial assistance payments, suspension, termination or denial of refunding. A history of such unsatisfactory performance may result in designation of "high risk" status for the grantee organization and may jeopardize potential future funding from DHHS.

Use of Federal Funding

When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds, including but not limited to state and local governments and recipients of Federal research grants shall clearly state (1) the percentage of total costs of the program or project which will be financed with Federal money, (2) the dollar amount of Federal funds for the program or project, and (3) the percentage and dollar amount of the total costs or the program or project that will be financed by nongovernment sources.

Project and Data Integrity

The grantee shall protect the confidentiality of all project-related information that identifies individuals.

The grantee shall assume responsibility for the accuracy and completeness of the information contained in all technical documents and reports submitted. The CMS Project Officer shall not direct the interpretation of the data used in preparing these documents or reports.

Audit Requirements

Audit requirements for Federal award recipients are defined in OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations.

An organization is required to have a non-Federal audit if, during its fiscal year, it expended a total of $500,000 or more in Federal awards. Federal awards are defined in OMB Circular A-133 to include Federal financial assistance and Federal cost reimbursement contracts received both directly from a Federal awarding agency as well as indirectly from a pass-through entity.

OMB Circular A-133 now requires that all auditees submit a completed data collection form (SF-SAC) in addition to the audit report. For questions and information concerning the submission process, please visit http://harvester.census.gov/sac/ or you may call the Federal Audit Clearinghouse (888-222-9907).

Audit reports shall be submitted online via http://harvester.census.gov/sac/.

Fraud and Abuse

The HHS Office of the Inspector General (OIG) maintains a toll-free number (1-800-HHS-TIPS [1-800-447-8477]) for receiving information concerning fraud, waste, or abuse under grants and cooperative agreements. Information also may be submitted by e-mail to hhstips@oig.hhs.gov or by mail to Office of the Inspector General, Department of Health and Human Services, Attn: HOTLINE, 330 Independence Ave., SW, Washington DC 20201. Such reports are treated as sensitive material and submitters may decline to give their names if they choose to remain anonymous.

Certification of Filing and Payment of Federal Taxes

As required by the Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriation Act, 2008 (Public Law 110-161, Division G, Title V, section 523), as a financial assistance recipient entering into a grant or cooperative agreement, the grantee certifies that:

(1) All Federal tax returns have been filed during the three years preceding this certification;

AND

(2) There has been no conviction of a criminal offense pursuant to the Internal Revenue Code of 1986 (U.S. Code – Title 26, Internal Revenue Code);

AND

(3) Not more than 90 days prior to this certification, been notified of any unpaid Federal tax assessment for which the liability remains unsatisfied, unless the assessment is the subject of an installment agreement or offer in compromise that has been approved by the Internal Revenue Service and is not in default, or the assessment is the subject of a non-frivolous administrative or judicial proceeding.

Trafficking In Persons

a. **Provisions applicable to a recipient that is a private entity.**

   1. You as the recipient, your employees, sub-recipients under this award, and sub-recipients' employees may not—

      i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;

      ii. Procure a commercial sex act during the period of time that the award is in effect; or

iii. Use forced labor in the performance of the award or sub-awards under the award.

2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a sub-recipient that is a private entity –

   i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or

   ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—

      A. Associated with performance under this award; or

      B. Imputed to you or the sub-recipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement)," as implemented by our agency at 2 CFR part 376.

b. **Provision applicable to a recipient other than a private entity.** We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a sub-recipient that is a private entity—

   1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or

   2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—

      i. Associated with performance under this award; or

      ii. Imputed to the sub-recipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement)," as implemented by our agency at 2 CFR part 376

c. **Provisions applicable to any recipient.**

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.

2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:

    i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and

    ii. Is in addition to all other remedies for noncompliance that are available to us under this award.

3. You must include the requirements of paragraph a.1 of this award term in any sub-award you make to a private entity.

d. **Definitions.** For purposes of this award term:

1. "Employee" means either:

    i. An individual employed by you or a sub-recipient who is engaged in the performance of the project or program under this award; or

    ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

2. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

3. "Private entity":

    i. Means any entity other than a state, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.

    ii. Includes:

A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).

B. A for-profit organization.

4. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102)

Federal Financial Accountability and Transparency Act (FFATA) Subaward and Executive Compensation Reporting Requirement

This award is not subject to the Transparency Act subaward and executive compensation reporting provisions of 2 CFR Part 170 that require prime grant awardees report against sub-grants awarded. All funds awarded under the Balancing Incentive Program are for long-term services and supports and sub-grants are unallowable.

Use of Funds

All funds awarded under the Balancing Incentive Program are for non-institutionally-based long-term supports and services for the balancing incentive period. Use of additional funds as a result of the Balancing Incentive Program is to provide new or expanded offerings of non-institutionally based long-term services and supports under the state Medicaid program. The state must provide a detailed accounting of how these funds have been expended, if requested by CMS.

Requirements for CCR and DUNS

a. Requirements for CCR
Unless your entity is exempt from this requirement under 2 CFR 25.110, it is incumbent upon you, as the recipient, to maintain the accuracy/currency of your information in the CCR until the end of the project. Additionally, this term requires your entity to review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

b. Requirements for DUNS numbers:
If you are authorized to make subawards under this award, you:
- Must notify potential subrecipients that no entity may receive a subaward from you unless the entity has provided its DUNS number to you.
- May not make a subaward to an entity unless the entity has provided its DUNS number to you.

BALANCING INCENTIVE PROGRAM
PROGRAMMATIC TERMS AND CONDITIONS

Structural Changes

The state shall implement, no later than September 30, 2015, the three structural changes required by the statute: No Wrong Door/Single Entry Point system, conflict-free case management, and a core standardized assessment instrument. Guidance on the development and implementation of these structural changes is included in the Balancing Incentive Program User Manual. The state may not target specific populations in the implementation of the structural changes – these systems must be available to all populations receiving long-term services and supports (LTSS) within the state by the end of the program period.

Community-Based LTSS Spending Targets

The state shall achieve, no later than September 30, 2015, the spending targets outlined by the authorizing statute. The state is to achieve a minimum of 50% of the total LTSS spending in non-institutional (home and community-based) settings. Total LTSS spending is the sum of all institutionally-based long-term services and supports and all non-institutionally- based long-term services and supports, as set forth in section 10202(f)(1) of the Affordable Care Act.

Maintenance of Eligibility

The state must ensure that the eligibility standards, methodologies, or procedures for determining eligibility for non-institutionally based long term care services and supports under its Medicaid State Plan, or under its Medicaid waiver or demonstration programs, are not more restrictive during this period than those in effect for such purposes on December 31, 2010. The state may not restrict such eligibility for specific populations, even while simultaneously increasing access for other populations.

Balancing Incentive Program Funding

The state will receive a 2% enhanced FMAP on all community-based LTSS identified by CMS. The enhanced FMAP is payable to the state on a quarterly basis through the end of the program period on September 30, 2015, or when the entire $3B appropriation has been expended, whichever occurs soonest. This use of this enhanced funding should meet the following criteria:

1. Must be used to provide increased offerings of or access to non-institutional long-term services and supports;
2. Must be used for the benefit of Medicaid recipients; and,
3. Must not be a prohibited use of Medicaid funding.

Work Plan

The state shall submit a final workplan to CMS within six months from the date of initial application. The final workplan will include the current status of the system and milestones and deliverables to measure the state's progress towards full implementation of the required structural changes. In addition, states must identify the amount of projected funds to be earned through participation in the Balancing Incentive Program, outline the planned use for these funds through the end program period, and describe to CMS how these funds meet the three requirements noted in the above section 'Balancing Incentive Program Funding.' Upon approval of this workplan by CMS, the state will make agreed upon progress towards the deliverables and milestones outlined in the workplan in order to continue receiving the enhanced matching payments.

Suspension or Termination of Program Participation by CMS

Performance Issues: If at any point during the Balancing Incentive Payment Program grant period, CMS determines that the state is not making progress towards the implementation of the required structural changes or the required spending targets, CMS will notify the state that its participation in the program may be temporarily or permanently suspended and set forth the milestones that CMS expects the state to achieve to continue participation in the Balancing Incentive Payment Program. Such notice will provide at least a 30-day period for the state to submit a corrective action plan, request reconsideration of the initial determination, or both. After that notice period, CMS will suspend the payments of the enhanced FMAP until CMS either approves the state's corrective action plan or concludes the reconsideration by withdrawing the initial determination. If CMS approves the state's corrective action plan, payments of the enhanced FMAP will be available for the period of suspension.

Maintenance of Eligibility: If CMS determines that a state has enacted policies that restrict such eligibility, CMS will terminate the state's participation in the Balancing Incentive Payment Program as of the effective date such policies were enacted by the state, subject to reinstatement if the state submits State plan, waiver or demonstration project that restore such eligibility. CMS will promptly notify the state of the CMS determination to terminate the state's program participation, and the effective date of the termination. The initial determination will be final after 30 days. Prior to the date the determination becomes final, CMS will end continued state access to increased FMAP payments, will work with the state to resolve any disputed issues, and will withdraw the initial determination if warranted. In order to restore program participation after a final determination, CMS will require that the state submit state plan or waiver amendments indicating that the restrictions have been restored, along with the effective date of the changes.

Reporting Requirements

Progress and Data Reports: The state shall submit a quarterly progress report through the use of a web-based reporting platform designated by CMS. This report will be due no later than 45 days following the end of each quarter. CMS reserves the right to require the state to provide additional details and clarification on the content of each report. This report provides detailed information on the state's progress towards the achievement of milestones and deliverables outlined in the state's approved workplan, updates on the collection of data and quality outcomes measures, a breakdown of how the enhanced funding payments are spent, and progress toward achieving the required spending benchmarks.

Financial Reporting and Money Follows the Person (MFP): States participating in the Money Follows the Person Rebalancing Demonstration should report to CMS, through the quarterly web-based report, the amount spent on community-based LTSS that has been removed from the CMS 64 as required by the MFP grant. This includes services identified as "qualified HCBS" for the MFP program, but does not include demonstration or supplemental services. Expenditures related to Money Follows the Person are not eligible to receive the Balancing Incentive Program enhanced FMAP, but can be used in calculations to show the state is moving expenditures towards the spending targets.

Financial Reporting: States will use the standard CMS 64 form process to report all community-based LTSS expenditures to CMS on a quarterly basis. The payment of the enhanced FMAP will be through the PMS system based on the amounts reported. States providing LTSS through managed care delivery systems must report out, through a feeder form on the CMS 64, the portion of managed care expenditures that is spent on both institutional and community-based long-term services and supports.

Coordination with Money Follows the Person

If the state participates in the Money Follows the Person Rebalancing Demonstration, the goals and operating policies of the two grant programs must be consistent and aligned with each other. For example, MFP benchmarks related to HCBS and institutional expenditures must be consistent with the corresponding expenditure targets in the Balancing Incentive Program. Likewise, reporting on actual HCBS and institutional expenditures on the MFP ABCD Financial Forms and the MFP Maintenance of Effort must be consistent with the quarterly reports submitted on expenditures for the Balancing Incentive Program.

Governing Requirements

All the requirements in the statute (Section 10202 of the Patient Protection and Affordable Care Act), the grant solicitation, the CMS Standard Grant Requirements, and additional written Policy Guidance issued by CMS are governing components of this award. Governing components also include future written Policy Guidance issued by CMS that further interpret applicable program requirements.

STATE-SPECIFIC TERMS AND CONDITIONS – NEBRASKA

1. **Balancing Incentive Program Work Plan Lead Person(s).** Please confirm or update the lead person (s) responsible for each deliverable in the preliminary structural change workplan template. Please confirm or submit the updated workplan template to the NE Balancing Incentive Program CMS Project Officer by October 13, 2014.

2. **Preliminary Budget for Structural Changes.** The state must submit a preliminary budget that includes the funding sources for the establishment of the structural changes: Conflict-Free Case Management, No Wrong Door/Single Entry Point System and Core Standardized Assessment Instruments. The State must include a description of the new or expanded offerings of such services that the State will provide and the projected costs of such services. Please submit this deliverable to the NE Balancing Incentive Program CMS Project Officer by October 13, 2014.