CLASP
The Center for Law and Social Policy

VIA ELECTRONIC TRANSMISSION

December 20, 2023

The Honorable Xavier Becerra
Secretary of Health and Human Services
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

Re: North Carolina Medicaid Reform Section 1115 Demonstration Project

Dear Secretary Becerra,

The Center for Law and Social Policy (CLASP) is a national, nonpartisan nonprofit advancing anti-poverty policy solutions that disrupt structural and systemic racism and sexism and remove barriers blocking people from economic security and opportunity. We work at the federal and state levels, supporting policy and practice that makes a difference in the lives of people living in conditions of poverty. CLASP works to develop and implement federal, state, and local policies (in legislation, regulation, and implementation) that reduce poverty, improve the lives of people with low incomes, and create pathways to economic security for everyone. That includes directly addressing the barriers people face because of race, ethnicity, gender, disability, and immigration status. Through high-quality analysis grounded in data and on-the-ground experience, effective advocacy, a strong public voice, and hands-on technical assistance, CLASP develops and promotes new ideas, mobilizes others, and provides guidance to government leaders and advocates to help them implement strategies that improve the lives of people across America. CLASP works to amplify the voices of directly impacted workers and families and help public officials design and implement effective programs.

CLASP wishes to lend our specific insights and expertise in support of the following proposals:

- Healthy Opportunities pilot;
- Multi-year continuous eligibility for young children;
- Two-year continuous eligibility for children ages 6 to 18;
- Pre-release services for justice-involved populations.

Our detailed comments are below. We strongly believe that the proposals detailed in North Carolina's 1115 amendment demonstration aligns with the state and CMS's shared goals of strengthening access to whole-person, coordinated care. *CLASP urges CMS to approve these parts of North Carolina's waiver request.*

Initiative 2A: Healthy Opportunities Pilot

CLASP strongly supports North Carolina's proposal to expand its Health Opportunities Pilot statewide and expand the program's eligibility criteria to include a larger portion of the state's overall Medicaid population. The Pilot's focus on the social and structural barriers to health is particularly valuable in a state where one in five children live in food insecure households and nearly half of all women experience intimate partner violence.[1] Reducing these non-medical barriers to health aligns with the state's goal of centering whole-person health. *CLASP urges CMS to approve this part of North Carolina's waiver request.*

However, we urge the state to consider an additional domain of nonmedical drivers of health—immigration status. The eligibility criteria for immigrant families—particularly mixed-status immigration families—remains unclear under the expanded HOP program. Pregnant women who are lawfully present non-citizens are eligible for full Medicaid without a five-year waiting period if they are otherwise eligible. However, they are no longer eligible for Medicaid postpartum until after the five-year waiting period has passed. How would the NCDHHS consider the eligibility of an enrolled, pregnant, non-citizen with permanent residence for continuous Pilot services like rental assistance if Medicaid eligibility ends during the period of receiving these services? A recent study by the Urban Institute found that immigrant families in North Carolina face "the universal structural barriers that many program applicants confront in navigating program enrollment in addition to unique challenges specific to their immigration status and language backgrounds."[2] CLASP urges NCDHHS to consider the non-medical barriers to health that its eligibility rules and language accessibility practices create for immigrant communities and work toward solutions outlined by the Urban Institute report, including language access needs beyond Spanish, partnership with immigrant-serving CBOs and community health workers, diversifying Health and Human Services agency staff, simplifying program enrollment and retention processes, and state action to expand eligibility to additional immigrant populations.

Initiative 2B: Continuous Enrollment for Children

CLASP strongly supports North Carolina's amendment to provide continuous enrollment to young through age five, extend the continuous enrollment period to 24 months for children and youth ages six through 18, and offer continuous enrollment to youth who aged out of foster care prior to January 1, 2023 until age 26. These requests for continuous enrollment align with North Carolina's overall approach to providing enrollees with stability and access to preventative health care. Furthermore,

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[1] Nicole Rapfogel and Jill Rosental, "How North Carolina Is Using Medicaid To Address Social Determinants of Health," Center for American Progress, February 2022, Accessed at https://www.americanprogress.org/article/how-north-carolina-is-using-medicaid-to-address-social-determinants-of-health/.

[2] Hamutal Bernstein et al., "Supporting North Carolina's Immigrant Families," Urban Institute, November 2023, Accessed at https://www.urban.org/research/publication/supporting-north-carolinas-immigrant-families.

continuous enrollment provisions will decrease administrative casework for the agency. *CLASP urges CMS to approve this part of North Carolina's waiver request.*

Continuous enrollment can help mitigate the disproportionate impact of churn and uninsurance on children. North Carolina, like many other states, are seeing high levels of procedural disenrollment during the Medicaid unwinding process.[3] Providing continuous coverage will reduce churn by eliminating the burden of reporting information during a certification period and other burdensome administrative practices and reducing the likelihood of caseworker error. CLASP has long advocated for the elimination of administrative burdens within public benefit programs.[4] However, the administrative strain of the Medicaid unwinding process on state Medicaid agencies only highlights problems that have long existed within the program.

The types of administrative burdens eliminated by continuous enrollment tend to fall disproportionately on people of color, who are more likely to rely on Medicaid for health insurance. This disproportionality is particularly true among children. Although Hispanic/Latino and Black children only made up 26% and 14% of all children, respectively, they collectively represent almost 55% of children insured by Medicaid or CHIP in 2020.[5]

Continuous enrollment is especially important for the healthy development of young children in low-income households. Children with unaddressed conditions such as asthma, vision, hearing impairment, nutritional deficiencies, and mental health challenges have greater barriers to thriving in kindergarten and beyond.[6] To catch early warning signs of these problems, the American Academy of Pediatrics recommends that young children receive at least 15 well-child visits in their first six years of life.[7] Ensuring that children under six have stable coverage would improve access to the necessary preventive care and developmental screenings that occur during these visits and set the stage for better long-term outcomes.[8] North Carolina's continuous coverage proposals are exactly the type of policy

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[3] KFF, "Medicaid Enrollment and Unwinding Tracker," Updated December 13, 2023, Accessed at https://www.kff.org/report-section/medicaid-enrollment-and-unwinding-tracker-state-enrollment-and-unwinding-data/?state=North%20Carolina.

[4] Suzanne Wikle, "Administrative Burdens Exacerbate Inequities and Must Be Reduced," August 2021, https://www.clasp.org/blog/administrative-burdens-exacerbate-inequities-and-must-be-reduced/.

[5] Centers for Medicare & Medicaid Services (CMS), "Race and ethnicity of the national Medicaid and CHIP population in 2020," July 2023, https://www.medicaid.gov/sites/default/files/2023-08/2020-race-etncity-data-brf.pdf.

[6] Delaney Gracy et al., "Health Barriers to Learning: The Prevalence and Educational Consequences in Disadvantaged Children, A Review of the Literature," January 2017, https://learningportal.iiep.unesco.org/en/library/health-barriers-to-learning-the-prevalence-and-educational-consequences-in-disadvantaged.

[7] American Academy of Pediatrics, "Recommendations for Preventive Pediatric Health Care," Updated April 2023, https://downloads.aap.org/AAP/PDF/periodicity_schedule.pdf.

[8] Elisabeth Wright Burak, "Promoting Young Children's Healthy Development in Medicaid and CHIP," Georgetown University Center for Children and Families, https://ccf.georgetown.edu/2018/10/17/promoting-young-childrens-healthy-development-in-medicaid-and-the-childrens-health-insurance-program-chip/.

experimentation for which section 1115 waivers are intended. CLASP believes there is much to be learned from North Carolina's proposal to better understand how continuous coverage over a large range of incomes can impact children's lives and alleviates health inequities.

Initiative 2C: Coverage For Pre-Release Services for Justice-Involved Individuals

CLASP supports North Carolina's goal of smoothing the transition from incarceration back to the community and addressing the racially disparate impact of poor health outcomes due to incarceration on Black, Hispanic, and Native American adults. North Carolina's proposal is a particularly valuable policy to test because it ensures justice-involved individuals transitioning back into community settings have access to services that address not only medical need but also the non-medical drivers of health. We also applaud North Carolina's pre-release proposal opting for a 90-day pre-release period, giving eligible individuals the largest allowable span of time in which to benefit from this program. Nevertheless, CLASP has a few concerns regarding North Carolina's proposed eligibility definitions, included benefits, and implementation plan that we would like CMS to consider before approving this portion of New Mexico's waiver request.

Eligibility

CLASP supports eliminating all legal barriers to Medicaid and other essential services for people who have contact with the criminal legal system. Although North Carolina's proposal is a step in the right direction, we are concerned that the eligibility criteria for this proposal is unclear and could create unintended eligibility gaps. The eligibility criteria on Page 19 states that "All adults and youth who are incarcerated in a participating correctional setting and are ***enrolled*** [emphasis added] in Medicaid will be eligible to access pre-release services."[9] The list of participating correctional settings includes a subset of county- and tribal-operated jails. However, North Carolina currently terminates Medicaid eligibility for adults in county-operated jails.[10] By defining the eligibility criteria as only those enrolled in—rather than the broader definition of otherwise eligible for—Medicaid, North Carolina may potentially exclude many in incarcerated in jails who should be included in this important demonstration. We urge CMS to require clarification regarding this proposal's eligibility criteria and its alignment with North Carolina's Medicaid Manual to ensure it is equitable and includes a timely and clearly defined appeal process.

Benefits

CLASP appreciates North Carolina's decision to prioritize offering case management, medication for opioid use disorder (MOUDs) and a minimum 30-day supply of prescription medication while phasing in additional services. However, it is unclear how MOUDs, counseling/behavioral therapies, or other

[9] N.C. Dep't of Health & Human Servs., "North Carolina Medicaid Reform Section 1115 Demonstration Renewal Application," October 2023, Available at https://www.medicaid.gov/sites/default/files/2023-11/nc-medicaid-reform-extns-req-pa.pdf.

[10] N.C. Dep't of Health & Human Servs., Div. of Medical Assistance, Family and Children's Medicaid Manual §3360 (Updated November 2020), available at https://policies.ncdhhs.gov/divisional/health-benefits-nc-medicaid/adult-medicaid/policies-manuals/ma-3360.pdf.

medications can be provided without physical and behavioral clinical consultation services, which the state has indicated will be phased in over the course of the five-year demonstration period. CLASP believes that basic services—including but not limited to physical and behavioral health clinical consultation services, medications and medication administration, durable medical equipment upon release—should be included from the start of the demonstration.

We also urge North Carolina to include the full Medicaid benefits package and any additional targeted substance use, mental health, or reentry-specific services in its implementation plan. This includes dental and any vision services Medicaid enrollees would be eligible for outside of the carceral setting. Although substance use disorder (SUD) is a serious health condition that warrants the attention of North Carolina's attention, it is not the only one that can severely affect the health outcomes of formerly incarcerated individuals. Incarcerated populations are more likely to have chronic health conditions such as high blood pressure, asthma, cancer, arthritis, and infectious diseases (e.g., tuberculosis, hepatitis C, and HIV) than the general public. All of these conditions can be debilitating and even fatal if not medically monitored. To truly and effectively smooth an incarcerated individual's transition back into the community, Medicaid coverage should prioritize the health care needs of the individual, regardless of diagnosis.

Implementation

CLASP's support for this proposal also assumes an implementation plan that prioritizes the rights and privacy of systems-involved populations and does not expand the reach and influence of the criminal legal system into the lives of those transitioning back into the community. Below, we will outline some potential concerns regarding North Carolina's proposed implementation plan and address the following recommendations:

- Use of capacity-building funds to prioritize community-based care over funding for carceral facilities;
- Ensure Medicaid implementation is separate from any law enforcement, correctional, or community supervision operations;
- Protect sensitive data for systems-impacted individuals;
- Outline and track how Medicaid demonstration will divert enrollees from entering justice system;
- Meaningfully engage community advocates, providers, and justice-involved individuals at all levels of the program's design and implementation.

CLASP urges CMS to ensure that no Medicaid spending is permitted to directly fund or subsidize law enforcement or correctional agencies in the state, or private entities that perform similar functions. The $315 million requested for capacity building should prioritize building partnerships with community-based providers so that incarcerated individuals have continuity of care upon their release. Facility-based hiring of providers and care coordinators should still be associated with community-based providers and not the carceral facility. Further, we urge CMS and state policymakers to ensure that case management services associated with Medicaid and other wraparound supports are also separated from any law enforcement, correctional, or community supervision agency. For example, probation and

parole officers should not be involved in connecting transitioning individuals with health services or have a say in their access to other wraparound services associated with this proposal.

Additionally, North Carolina should outline the steps it will take to protect sensitive data for systems-impacted individuals. We urge the state of North Carolina to explain how personal data used for Medicaid enrollment will be used. We urge North Carolina to outline affirmative steps to ensure that sensitive data are not shared with or otherwise accessible to law enforcement, correctional agencies, or commercial third parties.

Finally, while the state is requesting authority to cover services delivered while individuals are in confinement, the state should also explain how Medicaid is or will be used to support efforts to divert Medicaid enrollees from entering or re-entering the justice system. We urge North Carolina to meaningfully engage community advocates, providers, and a diverse cohort of justice-involved individuals at all stages of designing and implementing this proposal to ensure it is maximally effective and does not produce unintended harms for those it is seeks to serve. For more information, please see our report on how state community supervision systems can impede or support economic opportunity, and our recommendations for how states can implement a "community repair" policy approach instead.[i]

CLASP encourages North Carolina and CMS to consider expanding this policy to all justice-involved individuals prior to their release, not just those in certain carceral settings.

Thank you for the opportunity to comment on this important issue. If you have further questions, please contact Juliana Zhou at jzhou@clasp.org.

Sincerely,

Juliana Zhou
Policy Analyst
Center for Law and Social Policy

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[i] Clarence Okoh and Isabel Coronado, "Relocating Reentry: Divesting from Community Supervision, Investing in 'Community Repair'," September 2022, https://www.clasp.org/publications/report/brief/relocating-reentry-divesting-from-community-supervision-investing-in-community-repair/.