MEET THE NEED NC
Changing the I/DD landscape across the state

policy update
news on public policy services & supports for people with I/DD

State and Federal Policy Updates
September 29, 2023



Provided by Sarah Pfau, JD, MPH, Senior Consultant at CCR Consulting

Medicaid Expansion Update

In March of 2023, the NC General Assembly enacted a law that authorized Medicaid Expansion with a contingency that it could not actually be implemented until the General Assembly also enacted a State budget. On September 22, the General Assembly passed a budget and sent it to Governor Cooper for signature. Governor Cooper released a statement the same day indicating that he would not sign the budget into law because he does not support some of the provisions in it. He also noted that he would not *veto* the budget because he supports Medicaid Expansion going forward. Procedurally, this means that like other bills, a bill neither vetoed nor signed becomes law by default within 10 days of being presented to the Governor. Therefore, the State budget will become law and the provisions within it will take effect (unless otherwise noted for individual provisions that may have delayed effective dates) on October 2, 2023.

On September 25, NC DHHS released this press release to announce the December 1, 2023 go-live date for Medicaid Expansion in North Carolina.

DMH/DD/SUS Clinical Coverage Policy Updates

There are no *new* State-funded policy service definitions posted for public notice and comment at this time. However, DMH/DD/SUS did recently announce the following as follow-up to Joint Communication Bulletin # 449. State-funded Community Living and Supports services will be expanded to individuals **ages 3 and up** years of age for the I/DD and TBI Benefit Plan **effective October 1, 2023.**

Termination of NCTracks Codes under the IDD/TBI Benefit Plan on Sept. 30, 2023	
Name of Service	NCTracks Code
Family Living Low Family Living Moderate Family Living High	YM740 YP750 YM755
Group Living Low Group Living Moderate Group Living High	YP760 YP770 YP780
Residential Supports	YM850
Supervised Living Low	YP710
Supervised Living Moderate	YP720
Supervised Living 1-6	YM811, YM812, YM813, YM814, YM815 and YM816

Termination of NCTracks Codes under the IDD/TBI Benefit Plan on Dec. 31, 2023	
Name of Service	**NCTracks Code**
Day/Evening Activity	YP660
Developmental Day	YP610
Developmental Therapy – Paraprofessional	H2014UM
Developmental Therapy Paraprofessional – Group	H2014U1
Developmental Therapy Professional	H2014
Drop-In Centers	YP690 and YP692
Financial Supports	YM600
Independent Living	YM700
Personal Assistance – Individual	YP020
Personal Care	YM050
Therapeutic Leave Level II – Therapeutic Foster	YA254

Care Therapeutic Leave Level II - Group Home Therapeutic Leave Level III - 4 beds or less Therapeutic Leave Level III - 5 beds or less Therapeutic Leave Level IV - 4 beds or less Therapeutic Leave Level IV - 5 beds or less	YA255 YA256 YA257 YA258 YA259
Wilderness Camp	YA241

DMH/DD/SUS does not have a State-funded service requirement for current individuals accessing services to obtain updated psychological assessments to access the updated service definitions. However, LME/MCOs should retain documentation to support the individual meeting the applicable benefit plan and service criteria. A DMH communication bulletin is forthcoming.

NC Medicaid Clinical Coverage Policy Updates

Proposed Changes to Private Duty Nursing Services Clinical Policy | NC Medicaid (ncdhhs.gov)
Private Duty Nursing (PDN) Clinical Policy 3G-1 and 3G-2, Section 6.3 currently notes NC Medicaid shall not cover PDN if it is provided by the beneficiary's near relative (spouse, child, parent, grandparent, grandchild, or sibling, including corresponding step and in-law relationships) or by an individual who serves as the beneficiary's legally responsible person.

NC Medicaid researched the legality of a near relative or a legally responsible person providing skilled nursing services to PDN eligible beneficiaries and concluded it is permissible if the individual providing the skilled nursing service has a valid and current nursing license and is operating within their scope of practice.

1915(i) NC Medicaid State Plan Option Clinical Coverage Policy Updates

NC DHHS has posted two new, finalized waiver-specific clinical coverage policies:

- 1915(i) Individual and Transitional Support (ITS)
- 1915(i) Community Transition
- Effective Oct. 1, 2023, the 1915(i) Clinical Coverage Policy 8H-2, *Individual Placement and Support* (IPS) will post to NC Medicaid's Program Specific Clinical Coverage Policies webpage and the State-Funded IPS service definition will post to the NC Mental Health, Developmental Disabilities and Substance Abuse Services' Service Definitions webpage. A reimbursement rate of $26.40 per 15-minute increments has been assigned for Individual Placement and Support services.

Please contact Stephanie Wilson at stephanie.wilson@dhhs.nc.gov if you have questions regarding Medicaid 1915(i) clinical coverage policies. Please contact Nicole Ness at nicole.ness@dhhs.nc.gov if you have questions regarding the State-Funded IPS Service Definition.

Mandated Reduction in the Number of LME/MCOs: "LME/MCO Consolidation" Underway

On August 10th, 2023 Sandhills LME/MCO published a press release announcing a proposed consolidation with Eastpointe LME/MCO. The consolidation was under review at NC DHHS for pending approval. However, the State budget has changed the status of that proposal review:

1. The State budget includes extensive language regarding a mandatory reduction in the number of LME/MCOs at the discretion of NC DHHS Secretary. The current number of six LME/MCOs must be reduced by at least one LME and no more than two LMEs. This consolidation and new LME/MCO regions will be decided and initiated within 90 days of the budget becoming law. The State budget requires Tailored Plan go-live for the four or five LME/MCOs in place after the consolidation to be in place no later than July 1, 2024.

2. On 9/26, NC DHHS released a statement regarding planned implementation of the LME/MCO consolidation language in the budget. "The consolidation plan included in the budget will supersede the proposal from Sandhills and Eastpointe. The Department is ending its evaluation of that proposal and will begin a comprehensive consolidation evaluation as instructed."
    a. The consolidation will increase the number of individuals in each health plan, which provides a larger fiscal foundation and market share to ensure a robust network to meet the needs of beneficiaries.
    b. The consolidation will also help ease provider administrative burden by reducing the number of health plans with which to contract.
    c. DHHS is also focusing on accountability, continuity of services, and access to services during this process.

***Timothy B. et al. v. Kody Kinsley* Update**

September News Article: Kinsley objects to latest request in federal suit over NC foster children's mental health (carolinajournal.com)

Lawsuit Summary:
Case 1:22-cv-01046
Filed 12/6/2022 in U.S. District Court (federal court) in the Middle District of NC
Complaint: 2022.12.06 - Complaint.pdf (disabilityrightsnc.org)

- "This action seeks to end ongoing discrimination by the North Carolina Department of Health and Human Services ("DHHS") against children with disabilities placed in child welfare custody ("foster care") who are unnecessarily segregated from their home communities and routinely isolated in heavily restrictive, and often clinically inappropriate, institutional placements known as psychiatric residential treatment facilities ("PRTFs")."
- "This civil rights [class] action seeks only declarative and prospective injunctive relief on behalf of Named Plaintiff children. . ."

- "Plaintiffs challenge DHHS's systemic failures to ensure that children with disabilities in foster care are cared for in the most integrated community-based setting appropriate to their needs, and that children in PRTFs are timely and appropriately discharged to such settings. Plaintiffs seek to remedy DHHS's ongoing statutory violations on behalf of children who are entitled to be, and deserve to be, safely cared for in their communities."
    - The Complaint outlines the dozens of foster care and PRTF placements that each named Plaintiff has experienced over a certain number of years.
    - The Complaint outlines documented abuse and neglect in the PRTFs where the Plaintiffs reside and documented abuse and neglect that the named Plaintiffs have experienced individually. The Complaint emphasizes that DHHS continues to place foster care youth in these facilities where abuse and neglect have been documented and reported by DHSR.
    - Regarding "systemic failures," the Complaint mentions DHHS broadly and Division of Health Services Regulation (DHSR) and Department of Social Services (DSS) specifically.

***Samantha R. et al. v. North Carolina Department of Health and Human Services* Update**

In November of 2022, in relation to a 2017 Disability Rights North Carolina lawsuit, *Samantha R., et al. v North Carolina and the NC Department of Health and Human Services,* an NC Superior Court judge filed an Order requiring NC DHHS to:

1) Divert and transition individuals from institutionalization;

2) Increase access to Home- and Community-based Services via reductions in the Registry of Unmet Needs waiting list for the North Carolina 1915(c) Innovations Waiver;

3) Adress the Direct Support Professional workforce deficit; and

4) Implement quarterly progress reporting to the Court.

- In February of 2023, the same judge granted an NC DHHS motion for a stay of the Order while the lawsuit appeal is pending in the NC Court of Appeals.
- In May of 2023, Disability Rights North Carolina filed a Motion to Modify the November 2022 Order and remove a 2028 cessation date for new, long-term admissions to ICF-IID facilities. According to DRNC: "The Motion asks the judge to change a provision of his November 2022 Order so that it does not apply to ICFs (except for the state-operated Developmental Centers). Specifically, the Order provides that new long-term admissions to certain settings would end in 2028, while allowing short-term admissions and respite. We filed the Motion because of community concerns that alternative community-based services would not be available in time for those who would prefer them, and that those who want to remain may lose the option to stay if their ICF closes, either because of the lack of long-term admissions or in anticipation of that prospect."
- In early August, the Superior Court judge held a hearing and denied the Motion to Modify.
- A mediation in the Court of Appeals occurred on August 29th. However, we do not have insight regarding the outcome of the meeting between the parties.

In recent months, DRNC has been meeting with stakeholders including beneficiaries, guardians, and LME/MCOs to identify ways that people with I/DD living in ICFs can live in the highest quality, most integrated way possible. Based on the focus group sessions, DRNC recommended the formation of a group for family members of people living in ICF settings. This group will not be affiliated with DRNC. Parent Carol Conway has agreed to organize and convene the group. If you are, or may be, interested, please reach out to Carol at carol.ann.conway@gmail.com. The group will decide for itself on a scope and direction.

Legislative Updates:

Although we have a State budget, the NC General Assembly's 2023 Long Session has not yet adjourned sine die. They are, however, primarily focused on voting redistricting at this time. Three non-budget bills of interest have become law during the session:

S.L. 2023-10 AN ACT TO PROVIDE THAT THE EASTERN NORTH CAROLINA SCHOOL FOR THE DEAF, THE NORTH CAROLINA SCHOOL FOR THE DEAF, AND THE GOVERNOR MOREHEAD SCHOOL FOR THE BLIND ARE GOVERNED BY BOARDS OF TRUSTEES AND TO PROVIDE FOR THE DUTIES OF THE BOARDS AND ADMISSION PROCESS FOR SCHOOLS FOR THE DEAF AND BLIND.

S.L. 2023-92 AN ACT TO MAKE VARIOUS CHANGES TO THE EMERGENCY MANAGEMENT ACT AND OTHER PROVISIONS GOVERNING EMERGENCY MANAGEMENT, AS RECOMMENDED BY THE DIVISION OF EMERGENCY MANAGEMENT OF THE DEPARTMENT OF PUBLIC SAFETY.

Includes the repeal of a provision that previously required the establishment of a voluntary model registry for use by political subdivisions in identifying functionally and medically fragile persons in need of assistance during an emergency.

S.L. 2023-115 AN ACT TO RETAIN ADULT DEVELOPMENTAL AND VOCATIONAL PROGRAMS AND COMMUNITY REHABILITATION PROGRAMS.

State Budget: Provisions of Interest

Innovations Waiver Slots

Section 9E.2.(a) pg. 228: Increase the number of slots by 350, with CMS approval, over the next two years with an appropriation of $10M per year when approved by CMS. The appropriation structure will allow the $10M / year to carry forward into the NC Medicaid base budget in the *next* two-year budget cycle also. *Note: the NCGA has simultaneously *eliminated* the Group Homes Stabilization and Transition Funding of $10M / year that was legislated in the 2021-2022 two-year budget cycle.

Innovations Waiver Direct Care Worker Wages

Section 9E.15. pg. 229: "It is the intent of the General Assembly to assist in increasing the hourly wages of direct care workers who provide services to Medicaid beneficiaries receiving services through the North Carolina Innovations waiver program. . .by an industry average rate of six dollars and fifty cents

($6.50) per hour above the North Carolina industry average hourly wage. . ." The corresponding appropriation is $60M/year for two consecutive years, and the appropriation structure will allow the $60M / year to carry forward into the NC Medicaid base budget in the *next* two-year budget cycle. Although the appropriation is a "win," the original ask was $90M / year. Entities eligible to lobby will therefore continue to pursue an increase during the 2024 short session and/or in the 2025 long session. Furthermore, there is no 'cost of living adjustment' built into the wage increase legislation. Another thing to consider is that State employees will receive a cumulative 7% raise over the two-year budget cycle (4% in SFY2024 + 3% in SFY2025). State employees include Direct Care Workers employed in State-operated facilities, so that will increase the inherent disparity in direct care wages across State government and non-State government employees.

Relatives Providing Care to Minors on The Innovations Waiver

SECTION 9E.18.(a) pg. 233: DHHS required to seek CMS approval to amend NC Medicaid Clinical Coverage Policy 8-P "North Carolina Innovations" to allow Community Living and Support services to be provided by a relative of a Medicaid beneficiary residing in the same home as the beneficiary when that beneficiary is < 18 years of age and when no other provider is available to provide these services.

CAP/C and CAP/DA

9E.16.(c) pg. 232: CAP/C and CAP/DA to transition to Medicaid managed care and Tailored Plan oversight specifically, by January 1, 2025.

TBI Waiver

9E.16.(d) pg. 232: TBI Waiver to be expanded statewide by January 1, 2025.

Personal Care Services Rates

Section 9E.12. pg. 229: DHHS will *maintain* the COVID-19 Public Health Emergency enhanced rates of $23.84/hour for PCS with $10M in reserved federal funds from the American Rescue Plan Act and $100M in State funding in SFY2024 and SFY2025. These rates apply to PCS for NC Medicaid beneficiaries enrolled in CAP/C, CAP/DA, CAP/CO, and Medicaid Direct (all of which are currently carved out of managed care).

Private Duty Nursing Rates

Section 9E.12A. pg. 229: DHHS will *increase* the Medicaid rate for private duty nursing services from $45/hour to $52/hour with $10M / year in State funding in SFY2024 and SFY2025.

Durable Medical Equipment

Section 9E.13B. pg. 229: Upon receiving CMS approval, DHHS will *increase* Durable Medical Equipment (DME) rates for 12 months, with a cap of $1M in State expenditures (there is a federal match for each dollar spent). The $1M will come from reserved federal funds from the American Rescue Plan Act.

Centers for Medicare and Medicaid Services (CMS) Update re: Non-Emergency Medical Transportation

Please see the document linked below. It includes specific sections re: HCBS, ADA paratransit, resources for LEP individuals, and more. It also includes detailed information about beneficiary rights, and covered and non-covered services.

CMS State Medicaid Director letter: SMD 23-006 - Assurance of Transportation: A Medicaid Transportation Coverage Guide

Reminder: in NC, non-emergency medical transportation (NEMT) used to be administered at the County DSS level and reported out to the State Medicaid agency. Now, NC Medicaid managed care Standard Plans (4 statewide + 1 regional commercial plans) and the LME/MCOs (future Tailored Plans) are responsible, via their contracts with DHHS, for administering NEMT for their enrolled members. One exception: for the Tribal Option, County DSS offices still administer NEMT.

- Here is the most current, 3/2023 DHHS Fact Sheet: download (ncdhhs.gov)
- And here are some DHHS detailed case scenarios for members enrolled in Standard Plans, LME/MCOs, and the Tribal Option: download (ncdhhs.gov)

U.S. HHS Press Release re: Rehabilitation Act Section 504 Proposed Rule

HHS Issues New Proposed Rule to Strengthen Prohibitions Against Discrimination on the Basis of a Disability in Health Care and Human Services Programs | HHS.gov

"The rule, Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance, updates critical provisions that help persons with disabilities access health and human services under Section 504 of the Rehabilitation Act of 1973. . . HHS is proposing to amend the regulations to update them and clarify obligations in several crucial areas not explicitly addressed in the current regulations, and to improve consistency with the Americans with Disabilities Act, the Americans with Disabilities Amendments Act, amendments to the Rehabilitation Act, and significant case law."

State and National Policy News Articles of Interest

DOI partners to form multi-agency Cooperative Disability Investigations Unit | NC DOI

"CDI's primary mission will be to uncover illegal acts by investigating statements and activities that raise suspicion of disability fraud by claimants, medical providers, interpreters or other service providers … .The N.C.-based Cooperative Disability Investigations (CDI) Program will be operated and staffed by the United States Social Security Administration's Office of the Inspector General, the SSA's regional office in Atlanta, Georgia, the N.C. Department of Insurance's Criminal Investigations Division and the North Carolina Disability Determination Services Division (NCDDS), which is a part of the N.C. Department of Health and Human Services (NC DHHS)."

Supreme Court to Weigh ADA Protections - Disability Scoop

"The high court will hear oral arguments next week in a case known as Acheson Hotels, LLC v. Laufer. At issue is whether individuals with disabilities can sue a business under the ADA if they don't actually intend to visit."

In About-Face, NIH Designates Disability As A Health Disparity - Disability Scoop

"The label applies to groups that 'experience significant disparities in their rates of illness, morbidity, mortality and survival, driven by social disadvantage, compared to the health status of the general population,'. . . Disability advocates have argued that the classification would open the door to funding for research on the disparities experienced by people with disabilities, encourage recruitment of researchers with disabilities as well as research participants with disabilities."

Annual Assistive Technology Expo Set for Oct. 5 | NCDHHS