

July 20, 2016

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Director for the Center for Medicaid and CHIP Services (CMCS)  
Centers for Medicare and Medicaid Services

Via electronic submission

RE: Comments on Medicaid Reform Section 1115 Demonstration

Dear Ms. Wachino:

Thank you for the opportunity to provide written comments on the Medicaid transformation waiver proposal. The North Carolina Justice Center has had the opportunity to review the North Carolina Medicaid and NC Health Choice Section 1115 Waiver Application, and given the scope of the changes proposed and the incongruent level of detail provided about how those changes will be achieved, the North Carolina Justice Center urges CMS to withhold approval of the application until the State provides additional details and resolves outstanding issues. The Justice Center has identified several areas where the waiver can be enhanced to ensure access to affordable and quality health care. The Justice Center believes the following three issue areas are critical for ensuring that Medicaid reform promotes and supports the health and well-being of all North Carolina residents:

1. Closing the Coverage Gap by expanding Medicaid
2. Beneficiary protections
3. Caregiver rights and protections

The following are recommendations the Justice Center urges CMS to press the North Carolina Department of Health and Human Services (DHHS, or “the Department”) to consider as it enters this stage of Medicaid transformation.

### **Medicaid Expansion**

First, the Justice Center strongly believes in the full implementation of the Patient Protection and Affordable Care Act (ACA). For three years, North Carolina legislators have failed to expand Medicaid to 500,000 residents in the Coverage Gap, and by not incorporating this decision into the Medicaid reform plan, the State fails to meet key objectives of its demonstration application. Expanding Medicaid will increase coverage and health outcomes for low-income communities in North Carolina, strengthen and stabilize providers serving Medicaid beneficiaries, and positively affect the State’s Medicaid budget and overall economy.

Medicaid expansion has a clear positive impact on improving consumers’ access to care and promoting health outcomes. Research has shown that over 300,000 North Carolinians in the Coverage Gap have no other options

for obtaining health coverage, leaving them uninsured.<sup>1</sup> Closing the Coverage Gap will allow these consumers to access coverage and access care, ultimately preventing 1,000 unnecessary deaths annually; increasing access to useful medications to nearly 30,000 people with diabetes; reducing reports of depression among 144,000 people; and promoting preventive screenings for approximately 40,000 women.<sup>2,3</sup>

The waiver application makes several expenditure requests to ensure that providers continue to receive payments for uncompensated care as the state enters a managed care system (see expenditure request numbers four through six in *Table A: Waiver and Expenditure Authorities Requested*). The State could transition most of the Medicaid population in North Carolina to managed care without an 1115 waiver, suggesting that the State is seeking waiver authority to support costs associated with uncompensated care from individuals in the Coverage Gap. Through Medicaid expansion, North Carolina would receive enhanced federal funding to ensure safety-net providers, rural health providers, hospitals, and public health providers can continue to offer quality care. Considering both the experience of states like Florida and Texas and that low-income pool (LIP) and disproportionate share hospital (DSH) payments decrease as states are expected to adopt Medicaid expansion, closing the Coverage Gap is the prudent solution to these challenges.<sup>4,5</sup> Without expansion, North Carolina hospitals and safety net providers continue to struggle due to a lack of revenue and resources. The University of North Carolina's Cecil G. Sheps Center for Health Services Research reports that since 2010, three rural hospitals have closed in North Carolina.<sup>6</sup> Another index reports there are 16 vulnerable rural hospitals in the state. Without expansion, the State will struggle to maintain access for Medicaid patients as the health care infrastructure erodes. If these vulnerable hospitals were to close, North Carolina would lose over 3,000 health care related jobs and nearly 5,000 community jobs. More importantly, there could be over 350,000 fewer patient encounters.<sup>7</sup> This could inhibit network adequacy throughout the state, especially in rural areas.

But Medicaid expansion not only prevents providers from collapsing. The Georgetown Center for Children and Families found that Medicaid expansion allowed federally qualified health centers and hospitals to hire new staff, create new facilities, and expand services for their patients. These providers were able to use the additional capital from Medicaid expansion to invest in service delivery improvements, such as improved care coordination and integration of behavioral health services into primary care settings, which enhanced the quality of care they provided to patients.<sup>8</sup> The waiver seeks funding for Delivery System Reform Incentive Payment (DSRIP) programs to help providers prepare for the transition and improve their practices, yet state policymakers have thus far refused to tap into existing federal funds as the ACA intended. Given the experiences in other states, North Carolina should expand Medicaid in order to achieve these objectives.

In addition to providing numerous health benefits for beneficiaries and supporting providers throughout the state, expanding Medicaid will help contain costs, a stated goal of North Carolina's Medicaid Reform proposal.

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<sup>1</sup> <http://www.nciom.org/wp-content/uploads/2013/01/Medicaid-summary-FINAL.pdf>

<sup>2</sup> <http://healthaffairs.org/blog/2014/01/30/opting-out-of-medicaid-expansion-the-health-and-financial-impacts/>

<sup>3</sup> <https://aspe.hhs.gov/sites/default/files/pdf/190506/BHMedicaidExpansion.pdf>

<sup>4</sup> [http://thefloridavoter.org/wp-content/uploads/2016/01/LIP-Report\\_State\\_FINAL\\_Jan-20-2016.pdf](http://thefloridavoter.org/wp-content/uploads/2016/01/LIP-Report_State_FINAL_Jan-20-2016.pdf)

<sup>5</sup> <http://www.modernhealthcare.com/article/20150902/BLOG/150909969>

<sup>6</sup> <http://www.shepscenter.unc.edu/programs-projects/rural-health/rural-hospital-closures/>

<sup>7</sup> <http://www.ivantageindex.com/north-carolina/>

<sup>8</sup> [http://ccf.georgetown.edu/wp-content/uploads/2016/05/Medicaid\\_hospitals-clinics-June-2016.pdf](http://ccf.georgetown.edu/wp-content/uploads/2016/05/Medicaid_hospitals-clinics-June-2016.pdf)

Failure to expand Medicaid forces Coverage Gap consumers who have chronic medical needs to rely upon urgent and emergency care, which is more costly than the care they could receive with health coverage.<sup>9</sup> In states that have expanded Medicaid, the use of cost-efficient primary and preventive care has increased.<sup>10</sup>

Without expansion, North Carolina not only misses out on new efficiencies and cost savings, but also sacrifices opportunities to improve the statewide economy. Each year that North Carolina fails to expand Medicaid, the state misses out on \$2 billion in federal funding.<sup>11</sup> North Carolina is failing to create 43,000 jobs statewide by rejecting full Medicaid expansion.<sup>12</sup> Total business activity in North Carolina will be \$21 billion less in 2020 if policymakers fail to close the Coverage Gap.<sup>13</sup>

We commend the Department for expanding coverage to parents of children placed into the foster care system. However, the Justice Center believes that complete expansion is the solution to protecting and promoting the health of all children and families. As the waiver is currently written, the expansion covers only income-eligible parents of children in foster care. The Center for Children and Families at Georgetown University states that over half of families in the coverage gap have school-aged children. Closing the Coverage Gap would help improve the financial stability of many families and increase access to physical and behavioral care for all parents, caregivers, and children. More importantly expanding access to parents increases the odds that over 140,000 children will have increased access to health care, increased education attainment, enhanced earning potential, and will experience fewer emergency department visits later in life.<sup>14</sup>

## **Beneficiary Protections**

Second, any demonstration application that CMS approves ought to improve, or at the very least maintain, quality of care and access to care for Medicaid beneficiaries. The existing Community Care of North Carolina (CCNC) primary care case management system has been lauded nationally and within the state for its practice supports and innovations in improving care coordination for Medicaid beneficiaries. By dismantling this system, providers expect to lose these supports, jeopardizing the quality of care that Medicaid beneficiaries will receive. Moreover, the application boasts North Carolina's strong provider participation in the Medicaid program, noting that approximately 90% of primary care providers accept Medicaid patients. However, by dismantling the popular and successful CCNC system, and by introducing a multilayered managed care model with up to 15 new payors throughout the state (including up to 5 Prepaid Health Plans in each region), the proposal is likely to reduce this participation. The administrative costs to providers of having to contract, credential, and bill with multiple new PHPs, as well as the uncertain future of the practice supports and care coordination previously

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<sup>9</sup> <http://www.rwjf.org/en/library/research/2015/04/states-expanding-medicaid-see-significant-budget-savings-and-rev.html>

<sup>10</sup> <http://healthaffairs.org/blog/2015/08/28/michigan-the-path-to-medicaid-expansion-in-a-republican-led-state/>

<sup>11</sup> <http://www.conehealthfoundation.com/app/files/public/4202/The-Economic-and-Employment-Costs-of-Not-Expanding-Medicaid-in-North-Carolina.pdf>

<sup>12</sup> <http://www.conehealthfoundation.com/app/files/public/4202/The-Economic-and-Employment-Costs-of-Not-Expanding-Medicaid-in-North-Carolina.pdf>

<sup>13</sup> <http://www.conehealthfoundation.com/app/files/public/4202/The-Economic-and-Employment-Costs-of-Not-Expanding-Medicaid-in-North-Carolina.pdf>

<sup>14</sup> <http://ccf.georgetown.edu/ccf-resources/many-working-parents-families-north-carolina-benefit-medicaid-coverage/>

provided by CCNC, will drive many private providers out of the system, resulting in reduced access for beneficiaries.

Beneficiaries' access to appropriate care may also be limited by the State's refusal to deem Ryan White medical providers as essential providers. As a result, the Justice Center is concerned that PHPs may opt not to contract with such providers, resulting in inadequate access to appropriate and necessary care for beneficiaries who are living with HIV and/or AIDS. The Department's claim to plan to encourage contracting with Ryan White providers through its contracts with PHPs does not fully guarantee this appropriate beneficiary protection.

The waiver mentions utilizing telemedicine to address accessibility and network adequacy concerns throughout the state, especially in rural areas. While telemedicine may promote innovations in health care, the Justice Center has concerns about the adoption and use of telemedicine beyond supplemental care in rural areas. Bearing in mind that many rural counties already experience workforce shortages and that rural hospitals are especially vulnerable without Medicaid expansion, there is concern that beneficiaries will not receive the care they need. Further, a recent report states that insurers are reluctant to rely on telemedicine to address network adequacy. Considering the lack of concrete regulatory guidance and even potential for inadequate infrastructure to support substantial telemedicine, we have concerns about the costs associated with this care.<sup>15</sup>

Altogether, the waiver lacks detail regarding how beneficiaries will be protected throughout the transition. The Justice Center urges CMS to require a detailed description of how Medicaid beneficiaries will be protected from being denied or delayed care. The reform plan should include protocols for monitoring prior approval wait times, examining provider networks to ensure patients have adequate access, holding companies to their contract terms, establishing a complaint system to track problems, and adding employees to pursue fines and file lawsuits. There should also be a formal advisory committee consisting of patients, families, caregivers, and patient advocates to provide input to the Department about the implementation of managed care. Further, we recommend ongoing beneficiary, caregiver, and advocate engagement through regularly held focus groups and committee meetings throughout the entire transformation and implementation process.

The waiver also lacks appropriate details regarding the beneficiary enrollment and auto-enrollment processes. The reform model should streamline and simplify processes for beneficiaries rather than complicate them; however, the application proposes a two-step eligibility and enrollment process for beneficiaries, who must have their Medicaid eligibility determined first by their county Department of Social Services office, then enroll in a PHP through the assistance of an enrollment broker. CMS ought to encourage the state to facilitate these processes more smoothly in such a way that encourages active plan selection by beneficiaries. As the proposal is currently structured, the burdensome eligibility and enrollment processes (which are already failing to meet timeliness standards)<sup>16</sup> will likely result in many beneficiaries auto-enrolled into a PHP through passive plan selection. The State has noted that it will aim to preserve beneficiary relationships with primary care providers through its auto-enrollment algorithm. While we commend the Department for stating that it attempt to

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<sup>15</sup> <http://www.rwjf.org/en/library/research/2016/04/can-telemedicine-help-address-concerns-with-network-adequacy-.html>

<sup>16</sup> [http://www.ncleg.net/PED/Reports/documents/MedicaidEligibility/Medicaid\\_Eligibility\\_Final\\_Report.pdf](http://www.ncleg.net/PED/Reports/documents/MedicaidEligibility/Medicaid_Eligibility_Final_Report.pdf)

preserve primary care relationships, we urge CMS to press the State for more detail about the logic it will use to auto-enroll new beneficiaries for which it has no claims history. We recommend that such an algorithm consider factors such as a PHP's success in providing measurable quality care.

Given the drastic changes being proposed, as well as the proven merits of North Carolina's existing Medicaid program, we urge CMS to require a detailed description of how this demonstration will not only be evaluated, but compared to baseline. The Justice Center believes that this proposal must include a clear evaluation plan so that policymakers, beneficiaries, providers, and advocates can understand the strengths and challenges of the new model, especially as it compares to CCNC. Understanding whether the new managed care system is more cost-effective, improves upon current beneficiary experience, and whether it achieves the quadruple aims is critical. The comparative evaluation should use measures that are valid, reliable, and useful to CMS' national reports.

### Caregiver Wages

Third, the Justice Center wants to commend the Department for its clear intent to improve the coordination, delivery, and quality of Long-term Service and Supports (LTSS) for Medicaid-only individuals, especially its focus on care delivered inside the home. While we applaud the goals for supporting *family* caregivers, we also wish to call attention to the important role played by *professional* caregivers in providing homecare to seniors. Specifically, we urge the Department to consider strong minimum standards for the wages paid to the professionals who provide LTSS services to Medicaid-only individuals. Industry studies suggest that higher wages will reduce employee turnover and increase the stability of care provided to seniors, in turn improving the quality of care provided to seniors.

Despite rapid growth in the demand for their services, home healthcare workers are some of the lowest paid in the state's economy.<sup>17</sup> The average wages for the three frontline home healthcare occupations—Personal care aides, Home health aides, and even more skilled Nursing assistants are all well below the state's average wage of \$15.63 an hour. Specifically, Home health aides earn just \$9.03 an hour, while Personal care aides earn \$9.18—wages so low that many workers in these occupations have to work second and third jobs to financially support their families. These low wages increase worker turnover and threaten the stability of care seniors need by creating a revolving door of caregiving that threatens the quality of care seniors receive.

Over the past five years, industry analysts have increasingly concluded that low caregiver wages are related to the sharp decline in the rate at which North Carolina's Medicaid system reimburses provider agencies for the LTSS services they provide to Medicaid recipients.<sup>18</sup> In 2011, this reimbursement rate was reduced from \$15.52 an hour—a rate close to the national average—to \$13.88, the fourth lowest in the nation. In response, caregiver providers received fewer dollars to cover the same level of services, in turn reducing profits and squeezing wages. Under the type of capitated care envisioned in the waiver application, there is an opportunity to increase the reimbursements to providers while improving the wages of those professionals delivering the care. PHPs will

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<sup>17</sup> <http://www.ncjustice.org/sites/default/files/CAREGIVERS-Fair%20Pay%20for%20Quality%20Care2.pdf>

<sup>18</sup> <http://www.ncjustice.org/sites/default/files/CAREGIVERS-Fair%20Pay%20for%20Quality%20Care2.pdf>

now have the opportunity to bundle together LTSS and non-LTSS services in ways that lower costs and increase the value of services provided.

In this new care environment, North Carolina can ensure that some of these innovation-related savings are passed along to caregivers in the form of better wages by setting a strong minimum standard for the compensation provided to these workers. Specifically, the State should require the PHPs to ensure that all LTSS-related reimbursements to provider agencies include a specific carve-out for workers' wages, such that the agency employees actually performing the work receive a specified percentage of each hourly reimbursement. We suggest setting this carve-out such that workers can earn a minimum of \$11 an hour.

Again, we thank you for this opportunity to comment on North Carolina's waiver application. If you have questions or would like discuss these comments further, please contact Nicole Dozier at 919.856.2146 or [Nicole@ncjustice.org](mailto:Nicole@ncjustice.org).

Sincerely,



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