PHE Sunset 1/16/2022

WAIVERS, POLICY FLEXIBILITIES, RATES

Preparing for PHE Waivers to Sunset

- Public Health Emergency (PHE)

SOURCE OF FEDERAL AUTHORITY	EXPIRATION OF FEDERAL AUTHORITY*
COVID-19 1115 Waiver	Expires at the end of the Public Health Emergency + 60 days
1135 Waivers	Expires at the end of the Public Health Emergency
Medicaid Disaster SPAs	Expires at the end of the Public Health Emergency
CHIP Disaster SPA	Expires the latter of the end of the Public Health Emergency or the state-dec
Concurrence Letter	Expires at the end of the Public Health Emergency
Appendix Ks (applicable to 1915(c) waivers)	Expires six months after the Public Health Emergency ends

*NC Medicaid has the authority to end prior to the end of the end of the federal expiration date.

Preparing for Rate Increases to Sunset

- 12/16 DHB Medicaid COVID-19 Special Bulletin notes that most of the COVID temporary rate increases (5% or 5% + 10%) will end on 12/31/2021
  - Exception: DHB is *extending* the rate increases for ICF-IIDs, SNFs, PCS, CAP/C & CAP/DA, and HCBS services but only through January 31, 2022.
- In January 2022 "NC Medicaid will review the need and available funding for these continuing rate increases prior to the end of the month."
- LME/MCOs must continue the temporary COVID-19 payment increases for ICF-IID and HCBS services covered in the LME/MCO program.
- Standard Plans must continue the temporary COVID-19 payment increases for Skilled Nursing Facilities, PCS, PDN, and HCBS services.

Federal Updates

COVID-RELATED REGULATIONS AND GUIDANCE

Suspended Federal Vaccine Regulations

CMS Omnibus COVID-19 Health Care Staff Vaccination

- Published 11/5/2021 in the Federal Register
- Preempts State law
- Requires 100% employee vaccination unless medical or religious exemptions apply
- Applies only to Medicare and Medicaid-certified providers & suppliers regulated under Conditions of Participation and Conditions for coverage
- 12/6/2021: employees must have first primary vaccination
- 1/4/2022: employees must have second primary vaccination (when applicable); boosters not required

Federal District Court national Preliminary Injunction on 11/30/2021 (no end date) and 12/2/2021 CMS Memo to State Survey Agencies

NEW: nationwide preliminary injunction stay on 12/15; now limited to 25 states *excluding NC* – waiting for new CMS Guidance

OSHA Vaccination and Testing

- Published 11/5/2021 in the Federal Register
- Requires employee vaccination OR weekly testing + face coverings
- Applies to private employers with ≥ 100 employees in *all industries*
- **NOTE**: the June 2021 OSHA Healthcare ETS is still in effect!

OSHA suspending implementation per an 11/12/2021 Federal District Court national Preliminary Injunction until the consolidated, multi-state lawsuits are resolved

U.S. EEOC: COVID As A Disability

- Covid Can Be a Disability Under Anti-Bias Law, EEOC Says (1) (bloomberglaw.com)
- See 12/15/2021 **New Section "N"** in the EEOC Guidance
  - Three possible definition categories of "disability" (actual, of record, regarded as)
    - Individuals must meet either the "actual" or "of record" definitions to be eligible for a reasonable accommodation (not all employees will qualify).
    - A pre-existing condition caused or worsened by COVID-19 can potentially qualify.
  - Employers may ask employees to provide reasonable documentation about disability and/or a need for reasonable accommodation.
  - Individualized assessments are necessary to determine whether the effects of a person's COVID-19 substantially limit a major life activity. Determinations will be on a case-by-case basis that applies existing legal standards to the facts of a particular individual's circumstances.

Build Back Better Act Provisions

- NOT yet law; passed in House and may go before Senate in January.

- Current enhanced FMAP in NC (which reflects the 2020 FFCRA 6.2% increase) is 73.85% for the federal Fiscal Year 10/1/2021 – 9/30/2022.
- *Without* the BBBA, the 6.2% increase would remain in place as long as the federal Public Health Emergency (PHE) is in place and technically until the end of the calendar quarter in which the PHE ends. *If the BBBA is passed it will delink enhanced FMAP from the PHE:*
  - First incremental decrease of enhanced FMAP to 3.0% on 4/1/2022
  - Second incremental decrease of enhanced FMAP to 1.5% on 7/1/2022
  - Hard stop of the 6.2% FMAP increase by 9/30/2022

- Corollary to the 6.2% FMAP increase is mandatory Medicaid program "continuous enrollment" for individuals during the PHE. CMS published two Guidance letters in 12/2020 and 5/2021. The May 2021 SHO Letter includes two new, significant requirements:

1. States have up to 12 months after the month in which the PHE ends to complete pending eligibility and enrollment actions (was previously 6 months).
   a. *If the BBBA is enacted*, states will be authorized to begin disenrolling individuals from the Medicaid program beginning no earlier than 4/1/2022.
2. States *must* complete eligibility redeterminations (including verifications, renewals) *after* the PHE ends for *all* individuals enrolled even if the State previously made eligibility redeterminations within the past six months during the PHE. Previously CMS had given the States the option to not do another redetermination as long as they had done one within the past six months.
   a. *This is going to impose a significant administrative burden on the local DSSs.*

Key New Law

NC LEGISLATION

Session Law 2021-180: Appropriations Act
Medicaid Operations Provisions

- **DHB 9D.8A.** Establishes a *non-reverting* HCBS Fund through 6/30/2025 using the enhanced FMAP under ARPA. Funds TCLI, State-County SA, enhanced PDN rates, enhanced HCBS DSP wages, and Waiver slot increases.

- **DHB 9D.9.** Waives the $100 Medicaid provider application and recredentialing fee for SFY2022 and SFY2023 *[NOTE: federal $631 CY2022 fee still applies]*.

- **DHB 9D.10.** Requires a CMS-approved SPA for a 7/1/2022 Medicaid co-payment increase to $4.00 [NOTE 1: *will yield a corresponding provider reimbursement decrease;* NOTE 2: *AI/AN exempt*; NOTE 3: *5% threshold*].

Session Law 2021-180: Appropriations Act
Medicaid Operations Provisions

- **DHB 9D.16.** Authorizes qualified claims run out and non-claims run out expenses (PI, IT, Healthy Opportunities, TP Health Homes, and more)for which the Medicaid Transformation fund may be used, with a cap of $800M and a requirement to deposit corresponding FFP into the fund.

- **DHB 9D.18.** Requires DHB to evaluate in-house administrative functions and staffing needs under Medicaid Transformation and report to the JLOC on 3/1/2022 (*planned* changes)and 3/1/2024 (*implemented* changes).

- **DHB 9D.21.** Requires charter schools approved as public schools and providing Medicaid-reimbursable medical services to pay the non-federal share.

Session Law 2021-180: Appropriations Act
LME/MCO Operations Provisions

- **DHB 9D.17.** Authorizes LME/MCOs to have autonomy in choice of nationally recognized accreditation organization during the four-year Tailored Plan contracts. Prohibits accrediting organization from having a business interest in the LME within he past 2 years.

- **DMH 9F.3.** SINGLE-STREAM FUNDING FOR DMH/DD/SAS COMMUNITY SERVICES [*Funds at 90% of SFY2015 levels and prohibits LME funding cuts to HCBS and Olmstead services; does not prohibit individual adverse determinations*].

Session Law 2021-180: Appropriations Act
Covered Medicaid Services Provisions

- **DHB 9D.13.** Expands Medicaid postpartum coverage for the MPW eligibility group from 60 days to 12 months but sunsets 3/21/2027.

- **DHB 9D.13A.** Creates a Medicare Economic Index to serve as a basis for annual increases in newly created hospital assessment components to pay for the postpartum coverage State share, HCBS services, and more.

- **DHB 9D.14.** Requires DHHS to apply for CMS approval to maintain Medicaid eligibility for parents whose children are temporarily in the foster care system, as long as parents make reasonable efforts to comply with court-ordered reunification plans.

Session Law 2021-180: Appropriations Act
Covered Medicaid Services Provisions

- **DHB 9D.19.** Requires DHB to cover podiatrist-prescribed orthotic and prosthetic DME. Affects Clinical Coverage Policies 5A-1 and 5B.

- **DHB 9D.19A.** Requires the Standard Plans to reimburse for drug ingredient and dispensing costs at 100% of the Medicaid FFS rate until 6/30/2023.

- **DHB 9D.22.** Requires DHB to implement (by 7/1/2022 with a SPA) an outpatient services CCP and billing code(s) for hospitals to use for Medicaid Direct or TP beneficiaries who: have been under care for ≥ 30 continuous hours; are not otherwise covered under a CCP; and need PRTF or Group Home admission *or* HCBS services arranged. Covered services will include crisis stabilization/support, nursing, & medical status monitoring, medication management, and discharge plan coordination with LME/MCOs. Hospitals will bill FFS for Medicaid Direct beneficiaries or negotiated rates for LME/MCO-enrolled beneficiaries (*or* "most prevalent semiprivate room rate at the applicable hospital" as the default if rate negotiations fail). [NOTE: *"transitions of care" and "care coordination"*]

Session Law 2021-180: Appropriations Act
Facilities Regulation Provisions

- **DHSR 9E.4.** MODIFICATION OF CERTIFICATE OF NEED EXEMPTION FOR LEGACY MEDICAL CARE FACILITIES

- **DHSR 9E.4A.** TEMPORARY CERTIFICATE OF NEED EXEMPTION [*acute care hospitals*]

- **DHSR 9E.6.** ADULT CARE HOME ACCREDITATION PILOT PROGRAM [NOTE: *Cecil G. Sheps Center lead with stakeholders NCSLA, AARP, county DSS Directors, & more; "would deem adult care homes eligible for ongoing licensure and exempt accredited adult care homes from routine inspections if they meet required standards and requirements."]*

- **DHSR 9E.7.** ADULT CARE HOME INFECTION PREVENTION REQUIREMENTS [*Broadens language to "infectious diseases" and mandates written infection prevention and control policies and certain procedures and trainings*]

Session Law 2021-180: Appropriations Act
1915(c) Waiver Slots Provisions

- **DHB 9D.11.** Adds a *minimum of* 114 CAP/DA waiver slots by 6/30/2022.

- **DHB 9D.12.** Incrementally adds 1,000 new Innovations Waiver slots by 7/1/2022 with a proposed new slot allocation methodology and requisite SPA.
  - *Authorizes DHHS to apply for a CMS Waiver to modify the Innovations Waiver funding and slot allocation (e.g., acuity tiers) to address the RUN.*

Session Law 2021-180: Appropriations Act
Workforce Provisions

- **DHB 9D.12A.** Requires a 3/1/2022 DHB legislative report re: plans & recommendations for workforce adequacy for a potential *additional* 1,000 Innovations slots that the 2023-2025 biennium NCGA could authorize.

- **DHB 9D.15.** Authorizes rate increases to ICF-IID and ICF Group Home providers with a requirement that they put 80% toward increased DSPs wages with a $15/hr. goal. Requires accounting and documentation with recoupment as a possible sanction.

- **DHB 9D.15A.** Authorizes rate increases to HCBS providers for increased DSP and PDN wages with a $15/hr. goal for DSPs.

Session Law 2021-180: Appropriations Act
Workforce Provisions

- **DHB 9D.15B.** Authorizes a PDN rate increase to $11.25/15 min.

- **DHB 9D.15C.** Requires DHHS to submit an annual legislative report *for five years* on the Innovations Waiver direct care workforce to quantify employers and workforce and identify any wage increase needs.

Session Law 2021-180: Appropriations Act
Workforce Provisions

- **[Salaries & Benefits] 39.2** Authorizes and appropriates funding for two one-time bonus payments ($1,000 and $500) to qualifying permanent, full-time *or* part-time **State and local education employees**. Bonuses to be paid by 1/31/2022 and prorated for part-time employees. Only employees earning < $75K *or* working in law enforcement, a 24-hr. State-operated residential or treatment facility, or DPS Adult Correction and Juvenile Justice Division and employed as of 1/1/2022 are eligible for the $500 bonus.

- **[Salaries & Benefits] 39.21** Authorizes and appropriates funding for one-time bonus pass through payments to eligible Medicaid and NC Health Choice providers (*1915(c) waivers; PCS; SNFs; ICF-IIDs and ICF Group Homes; PRTFs*) for qualifying full-time or part-time direct care workers (employed for same employer from 3/10/2020 – 8/1/2021) who are ***not* State employees**. Bonuses not to exceed lesser of formula-based calculation or $2,000 but *not* prorated for part-time employees. Requires provider administrative documentation and attestation by 1/31/2022 for passthrough payments from DHHS by 3/1/2022.

Session Law 2021-180: Appropriations Act
MH-SUD Provisions

- **DPI 7.19.(e).** Requires the Department of Public Instruction, in consultation with DHHS, to award grants to public school units to partner with community orgs to offer respite, therapy, peer mentoring, and other crisis services.

- **DMH 9F.1.** USE OF OPIOID SETTLEMENT FUNDS [*support transportation, employment, housing, and treatment for individuals recovering and individuals in the criminal justice system*]

- **DMH 9F.2.** CONTRACT TO IMPLEMENT ELECTRONIC HEALTH RECORDS AT STATE PSYCHIATRIC HOSPITALS

- **DMH 9F.3A.** ADDICTION TREATMENT FUNDS *[$500K for SFY2022 only, specific to Surry Co.*]

- **DMH 9F.4.** LOCAL INPATIENT PSYCHIATRIC BEDS OR BED DAYS [*Funding, use, distribution, and management of beds statewide*] – "ensure that any local inpatient psychiatric beds or bed days purchased. . .are utilized solely for individuals who are medically indigent. . . may use up to ten percent (10%) of the funds for the purchase of local inpatient psychiatric beds or bed days to pay for facility-based crisis services and nonhospital detoxification services . . .regardless of whether the individuals are medically indigent.

Session Law 2021-180: Appropriations Act
MH-SUD Provisions

- **DMH 9F.5.** FUNDS FOR OVERDOSE MEDICATIONS *[$100K/year to purchase Opioid antagonists]*
- **DMH 9F.6.** YOUTH TOBACCO ENFORCEMENT FUNDING *[$300K/year to the Alcohol Law Enforcement Division of DPS for statewide compliance checks]*
- **DMH 9F.9.** USE OF DOROTHEA DIX HOSPITAL PROPERTY FUNDS FOR NEW LICENSED INPATIENT BEHAVIORAL HEALTH BEDS *[$4.2M to increase inpatient BH bed capacity in highest need rural areas. Exempt from CON but not licensure requirements]*
- **DMH 9F.11.** BEHAVIORAL HEALTH URGENT CARE PILOT PROGRAM *[$1.5M/year specific to Recovery Innovations, Inc. in Onslow Co. requires Trillium LME to base a new "in lieu of" service on the State def. and requires both LMEs and Standard Plans to reimburse for BHUC services]*
- **DMH 9F.15.** SUPPORT COUNTY CRISIS BEHAVIORAL HEALTH PROGRAM JOINT PARTNERSHIPS *[$25M specific to Forsyth and Mecklenburg Counties for hospital ER diversion in partnership with LMEs, BH crisis centers, & local hospitals]*

Session Law 2021-180: Appropriations Act
MH-SUD Provisions

- **DPH 9G.10** USE OF JUUL SETTLEMENT FUNDS [*Creates the Youth Electronic Nicotine Dependence Abatement Fund as a non-reverting special fund for: tobacco cessation media campaigns; evidence-based media and education prevention campaigns; data monitoring of youth tobacco/nicotine exposure and use; and project staffing. Requires annual legislative reports*.]

- **ORH 9B.8.** FUNDS FOR THE STATEWIDE TELEPSYCHIATRY PROGRAM [*$1.5M in non-recurring SFY2022 funds for the ECU Center for Telepsychiatry and e-Behavioral Health for the statewide telepsychiatry program NC-STeP for virtual psychiatric assessments and consultations*].

- **ORH 9B.8A.** VIRTUAL BEHAVIORAL HEALTH SERVICES GRANT PROGRAM [*$10M in non-recurring SFY2022 funds for competitive grants to hospitals to fund expanded telepsychiatry capabilities to respond to the COVID-19 public health emergency by allowing patients being served in primary care settings to access hospital-based virtual psychiatric assessments and consultations*].

Session Law 2021-180: Appropriations Act
IDD Provisions

- **DMH 9F.12.** SUPPLEMENTAL SHORT-TERM ASSISTANCE FOR GROUP HOMES [*$1.8M*]

- **DMH 9F.13.** TEMPORARY ADDITIONAL FUNDING ASSISTANCE FOR INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH INTELLECTUAL DISABILITIES [*$12.6M one-time payment to the LME/MCOs to distribute to ICF-IIDs on a per diem basis to help with COVID-19 PHE costs - NO details re: timing of distribution or allocation to the LME/MCOs*]

- **DMH 9F.14.** GROUP HOME STABILIZATION AND TRANSITION INITIATIVE [*$10M/year for increased LME PMPMs to develop new "in lieu of" services and rate methodologies and maintain the per person rate structure; Group Homes with all Innovations residents are ineligible for this funding*]

Session Law 2021-180: Appropriations Act
TBI Provisions

- **DMH 9F.7.** RESUME FUNDING FOR THE ADULT AND PEDIATRIC TRAUMATIC BRAIN INJURY PILOT PROGRAM

- **DMH 9F.7A.** INCREASE FUNDING FOR TRAUMATIC BRAIN INJURY SERVICES

- **DMH 9F.8.** FUNDS FOR STUDENT ATHLETE CONCUSSION AND TRAUMATIC BRAIN INJURY PREVENTION AND CARE [*$100K/year specific to Mt. Olive Family Medicine Center Concussion Clinic*]

Session Law 2021-180: Appropriations Act
Child Welfare Provisions

- **DSS 9I.11.** Eff. 1/1/2022, increases the foster care and adoption assistance rates 8% -12% by age category ($514; $654; $698) and covers the county share of cost *only* in SFY2022.

- **DSS 9I.12.** Requires DSS, in collaboration with DMH, to implement a two-year child welfare & behavioral health pilot for a trauma-informed, integrated health foster care model in Davie, Forsyth, Rockingham, & Stokes counties [NOTE: *spans Vaya, Partners, Sandhills*].

Session Law 2021-180: Appropriations Act
Child Welfare Provisions

- **DSS 9I.13.** Requires DSS to incrementally (through 3/24) establish and staff 7 regions for regional supervision of child welfare and social services (2017 Rylan's Law requirement)and establish a statewide CPS hotline. [NOTE: *concurrent Medicaid eligibility redeterminations in 2022*]

- **DSS 9I.15.** Requires DSS to resume deployment of the North Carolina Families Accessing Services through Technology (NC FAST) system, as it relates to case management functionality for child welfare, by 10/1/2022. Requires DSS procurement for licensing and placement automation specifically.

- **ORH 9B.8B.** SCHOOL-BASED VIRTUAL CARE PILOT PROGRAM TO ADDRESS HEALTH DISPARITIES IN HISTORICALLY UNDERSERVED AREAS DISPROPORTIONATELY IMPACTED BY THE COVID-19 PUBLIC HEALTH EMERGENCY [*$1M in non-recurring SFY2022 funds to Atrium Health to equally fund 10 school-based virtual care pilot programs in historically underserved areas in Anson and Forsyth Counties. Will use telehealth services to facilitate student access to health care services and resources that improve health outcomes via care coordination efforts of local providers].*

Session Law 2021-180: Appropriations Act
Public Health Emergency (PHE) Provision

Section19E.6. Emergency Management Act Revisions

- Requires Governor to acquire concurrence from the Council of State within 48 hours of notice before declaring a *statewide* state of emergency.
  - Statewide emergency defined as ≥ 2/3 of the 100 counties
- Council of State: Lt. Gov., Secretary of State, State Auditor, Treasurer, Attorney General, Commissioner Of Insurance, Commissioner Of Labor, etc.
- Statewide state of emergency will expire:
  - Within 30 days if no Council of State concurrence.
  - Within 60 days if Council of State concurrence.
  - *Can only be extended with NCGA legislative action.*