

VIA ELECTRONIC TRANSMISSION

January 27, 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: New Mexico Centennial Care 2.0 - Extension Request Demonstration

Dear Secretary Becerra,

The Center for Law and Social Policy (CLASP) appreciates the opportunity to comment on New Mexico's request for a five-year extension of its Centennial Care 2.0 Section 1115 waiver demonstration project. CLASP is a national, nonpartisan, organization working to reduce poverty, promote economic security, and advance racial equity. CLASP works at both the federal and states levels, supporting policy and practice that makes a difference in the lives of people living in conditions of poverty. CLASP has worked extensively with state advocates over the past eight years, with a focus on the administrative burden in public benefit programs – with an emphasis on Medicaid – and how to reduce those burdens. From this work, we bring to these comments a perspective of the value the proposed changes can bring.

CLASP supports New Mexico's waiver application, particularly its proposals in support of the state's goal to identify groups that have been historically and intentionally disenfranchised and address health disparities through strategic program changes to enable an equitable chance at living healthy lives. Our detailed comments are below. CLASP strongly supports New Mexico's request to provide continuous enrollment for young children up to age six who are eligible for Medicaid. The request for continuous enrollment aligns with New Mexico's overall goal of advancing health equity and reducing disparities, provides enrollees with stability, and decreases administrative costs. *CLASP urges CMS to approve this part of New Mexico's waiver request.*

Eligibility Proposal #1: Provide Continuous Enrollment for Children up to Age Six

Continuous eligibility can help mitigate the disproportionate impact of churn and uninsurance. Additionally, it directly addresses the churn issues raised by New Mexico's own data on Page 34 of the waiver renewal application: approximately 43.8% percent of MAGI children experience coverage gaps in a given year, in a state with a higher proportion of children in poverty than the national average, with children of color disproportionately affected.ⁱ A new report from the Kaiser Family Foundation found that although annual renewal increases churn rates for children of all racial and ethnic groups, the effect

particularly strong for Hispanic children.ⁱⁱ Considering Hispanic children make up 30.1% of all children living in poverty in New Mexico,ⁱⁱⁱ this proposal addresses a critical health equity need within the state. 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.

For the past two years, The Families First Coronavirus Response Act (FFCRA) maintenance of effort requirement has kept children with Medicaid continuously enrolled in coverage and played a major role in keeping the national child uninsurance rate at an all-time low of 3.7 percent.^{iv} A new report from the Georgetown University Center for Children and Families estimates that 6.7 million children will lose coverage once states begin to unwind their Medicaid continuous enrollment protections later this year.^v During this time, New Mexico's proposal will be especially important and will enable the state to evaluate the ongoing benefits of continuous enrollment at a time when the administrative strain of redetermination on the State of New Mexico Human Services Department will be at an all-time high.

Administrative burdens, such as those eliminated by a continuous enrollment policy, fall disproportionately on people of color, who are more likely to rely on Medicaid for health insurance. In 2019, Black and Latino people made up less than a third of the total United States population but accounted for more than half of Medicaid and CHIP enrollees.^{vi} Systemic racism affecting education, employment, housing, and transportation makes people of color more likely to be unemployed or work in jobs with low wages and limited access to employer-provided coverage.^{vii} In 2021, 73 percent of workers earning low wages did not have access to health care through their jobs.^{viii} Black and Latinx workers have higher rates of part-time employment than white workers, and 77 percent of part-time workers did not have access to health coverage through their employers. In 2018, 55.4 percent of Black workers had private health insurance, compared to 74.8 percent of white workers.^{ix}

Among Medicaid enrollees, low-wage and part-time workers, and workers with multiple jobs, are especially burdened by documentation requirements. They often have to gather and submit pay stubs, provide documentation of changes in income, and prove job loss or other changes in employment. Obtaining and submitting the required documents is often difficult for part-time workers and individuals with unstable work hours who have income that varies week-to-week. Workers in the "gig economy" (which is made up of a disproportionate share of Black and Latinx workers) struggle to prove their income since they don't receive a traditional paycheck, have income that may change substantially each month, and have to include complicated documentation of their employment expenses to show their countable income.^x

Continuous coverage is especially important for the healthy development of young children. Children with unaddressed conditions such as asthma, vision, hearing impairment, nutritional deficiencies, and mental health challenges are unable to thrive in kindergarten and beyond.^{xi} 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.^{xii} 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.^{xiii}

New Mexico's continuous enrollment proposals are exactly the type of policy experimentation for which section 1115 waivers are intended. CLASP believes there is much to be learned from New Mexico's

proposal to better understand how continuous enrollment impacts people’s lives and alleviates health inequities.

Eligibility Proposal #2: Expand Home and Community-Based services Community Benefit (CB) Enrollment Opportunities through Additional Waiver Slots

CLASP strongly supports New Mexico’s proposal to permanently add 1,000 enrollment “slots” to its Home and Community-Based Services (HCBS) Community Benefit program, as part of its goal to eliminate the HCBS CB waitlist by the end of 2028. For people living with disabilities, HCBS provides long-term services and supports in the individual’s home, rather than in institutional settings. Providing these services to people in their own homes and communities can reduce social isolation for people with disabilities and is also cheaper than receiving such care in institutional settings.^{xiv}

Current Medicaid HCBS policy is outdated, ableist, and doesn’t meet the needs of our community members with disabilities. Medicaid provides access to institutional long-term services and supports as a mandatory benefit, but HCBS services are an optional benefit. This means it is largely up to states to decide who they provide HCBS services to, rather than ensuring it is available for all individuals who need it. Unfortunately, HCBS is extremely underfunded and not available to everyone who needs it. As of 2021, an estimated 18,750 individuals^{xv} Some individuals remain on the waitlist for close to a decade, trying to access the HCBS services that they need.

The administrative barriers to accessing HCBS services can have harmful downstream effects for those stuck waiting for services. When people with disabilities are forced to wait for their HCBS services, their loved ones may have to cut work hours to provide such care for their family member, or they may be forced to live in an institution rather than in their community. For non-citizens, institutionalization can even affect their immigration status down the line. Under the current rules for determining inadmissibility on public charge grounds, long-term institutionalization at government expense can be counted against an individual applying for permanent residence, but use of HCBS cannot. However, because HCBS services are often unavailable due to underfunding and prohibitively long waitlists, immigrants with disabilities who rely on Medicaid are placed in the impossible situation of having to choose between institutionalization to meet their immediate health needs or a path to citizenship for themselves and their families in the future. Although CLASP believes that access to HCBS supports should be a guaranteed service for people with disabilities,^{xvi} we applaud New Mexico’s goal of eliminating its HCBS waiting list by 2028 through administrative means.

Benefit Proposal #3: Medicaid Services for High-Need Justice Involved Populations 30 Days before Release

CLASP supports New Mexico's goal of smoothing the transition from incarceration back to the community. New Mexico'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 social determinants of health.

CLASP supports eliminating all legal barriers to Medicaid and other essential services for people who have contact with the criminal legal system. Although New Mexico’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 43 create a two-track system that defines “eligible beneficiaries” (i.e., adults, the aged/disabled/blind, former foster care youth, pregnant individuals, and youth under 19 who are incarcerated in state prisons, local jails, youth correctional facilities, DOH forensic unit state hospitals, tribal holding facilities, or tribal jails during the 30 days before release) as separate from the “high-need” individuals that the State plans to target (i.e., those with SMI, SED, SUD, and/or intellectual/developmental disability). Diabetes death is one of the selected health statistics mentioned in Table 10 in the background for this proposal; however, it is unclear whether an “eligible beneficiary” with diabetes would be able to enroll in Medicaid through this proposal if they do not also qualify as “high need.” We urge CMS to require clarification regarding the determination of who is or is not a high-need individual to ensure it is equitable and includes a timely and clearly defined appeal process.

Our 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. CLASP urges CMS to support New Mexico's proposal to make Medicaid services available to systems-involved people transitioning into community settings. However, we urge 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. 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. Second, New Mexico should outline the steps it will take to protect sensitive data for systems-impacted individuals. We urge the state of New Mexico to explain how personal data used for Medicaid enrollment will be used. Further, we urge New Mexico 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. Third, 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 Turquoise Care enrollees from entering the justice system. Finally, we urge the state 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.^{xvii}

CLASP encourages New Mexico and CMS to consider expanding this policy to all justice-involved individuals prior to their release, not just those who meet the diagnostic criteria for “high-need” outlined in the waiver.

We have included numerous citations to supporting research, including direct links to the research. We direct CMS to each of the materials we have cited and made available through active links, and we request that the full text of each of the studies and articles cited, along with the full text of our comment, be considered part of the formal administrative record for purposes of the Administrative Procedure Act. If CMS is not planning to consider these materials part of the record as we have requested here, we ask that you notify us and provide an opportunity to submit copies of the studies and articles into the record.

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
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Center for Law and Social Policy

ⁱ State of New Mexico Human Services Department, “Turquoise Care Section 1115 Medicaid Demonstration Waiver Renewal Request (formerly Centennial Care 2.0),” December 2022, <https://www.medicaid.gov/medicaid/section-1115-demonstrations/downloads/nm-centennial-care-pa5.pdf>.

ⁱⁱ Elizabeth Williams, Bradley Corallo, Jennifer Tolbert, Alice Burns, and Robin Rudowitz, “Implications of Continuous Eligibility Policies for Children’s Medicaid Enrollment Churn,” December 2022, <https://www.kff.org/medicaid/issue-brief/implications-of-continuous-eligibility-policies-for-childrens-medicaid-enrollment-churn/>.

ⁱⁱⁱ New Mexico Voices for Children, “2020 New Mexico KIDS COUNT Data Book: Building on Resilience,” February 2021, <https://www.nmvoices.org/wp-content/uploads/2021/02/KidsCount-DataBook2020-web.pdf>.

^{iv} Aiden Lee, et. al., “National Uninsured Rate Reaches All-Time Low in Early 2022,” HHS Assistant Secretary for Planning and Evaluation (ASPE) Office of Health Policy, August 2022, <https://aspe.hhs.gov/sites/default/files/documents/15c1f9899b3f203887deba90e3005f5a/Uninsured-Q1-2022-Data-Point-HP-2022-23-08.pdf>.

^v Joan Alker, Aubrianna Osorio, and Edwin Park, “Number of Uninsured Children Stabilized and Improved Slightly During the Pandemic,” December 2022, <https://ccf.georgetown.edu/2022/12/07/number-of-uninsured-children-stabilized-and-improved-slightly-during-the-pandemic-2/>.

^{vi} Patricia Boozang and Adam Striar, “The End of the COVID Public Health Emergency: Potential Health Equity Implications of Ending Medicaid Continuous Coverage,” State Health and Value Strategies, September 17, 2021, <https://www.shvs.org/the-end-of-the-covid-public-health-emergency-potential-health-equity-implications-of-ending-medicaid-continuous-coverage/>.

^{vii} Anthony P. Carnevale, et al., “The Unequal Race For Good Jobs: How Whites Made Outsized Gains in Education and Good Jobs Compared to Blacks and Latinos,” Georgetown University Center on Education and the Workforce, 2019, <https://cew.georgetown.edu/cew-reports/raceandgoodjobs/>.

^{viii} U.S. Department of Labor: Bureau of Labor Statistics, “News Release: Employee Benefits in the United States – March 2021,” September 23, 2021, <https://www.bls.gov/news.release/pdf/ebs2.pdf>.

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- ^{ix} Christian E. Weller, “African Americans Face Systematic Obstacles to Getting Good Jobs,” Center for American Progress, December 5, 2019, <https://www.americanprogress.org/article/african-americans-face-systematic-obstacles-getting-good-jobs/>.
- ^x Edison Research and Marketplace, “The Gig Economy,” December 2018, <http://www.edisonresearch.com/wp-content/uploads/2019/01/Gig-Economy-2018-Marketplace-Edison-Research-Poll-FINAL.pdf>.
- ^{xi} Delaney Gracy et al., “Health Barriers to Learning: The Prevalence and Educational Consequences in Disadvantaged Children, A Review of the Literature,” January 2017, <https://www.childrenshealthfund.b-cdn.net/wpcontent/uploads/2017/02/HBL-Literature-Review-2-2-2017.pdf>.
- ^{xii} American Academy of Pediatrics, “Recommendations for Preventive Pediatric Health Care,” March 2021, https://downloads.aap.org/AAP/PDF/periodicity_schedule.pdf.
- ^{xiii} 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-childrenshealthy-development-in-medicaid-and-the-childrens-health-insurance-program-chip/>.
- ^{xiv} Erica L. Reaves and MaryBeth Musumeci, “Medicaid and Long-Term Services and Supports: A Primer,” December 2015, <https://www.kff.org/medicaid/report/medicaid-and-long-term-services-and-supports-a-primer/>.
- ^{xv} KFF State Health Facts, “Medicaid HCBS Waiver Waiting List Enrollment, by Target Population and Whether States Screen for Eligibility,” Accessed January 2023, <https://www.kff.org/medicaid/state-indicator/medicaid-hcbs-waiver-waiting-list-enrollment-by-target-population-and-whether-states-screen-for-eligibility/>.
- ^{xvi} Ashley Burnside, “Congress Must Make Critical Investments in Home and Community-Based Services,” April 2022, <https://www.clasp.org/blog/congress-must-make-critical-investments-in-home-and-community-based-services/>.
- ^{xvii} 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/>.