

## CASE STUDY

# Integrating legal services into North Carolina's Medicaid Waiver

Focus on the Healthy Opportunities Pilot (HOP) program

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### Overview

States are increasingly exploring the use of Medicaid authorities to cover services that address health-related social needs<sup>1</sup>. As a result, there is growing interest in utilizing Medicaid funds to facilitate legal aid, especially when provided through medical-legal partnership (MLP). MLP is an evidence-based health care delivery model that embeds lawyers as specialists in health care settings to directly resolve specific health-related social needs for individual patients, while also helping clinical and non-clinical staff navigate system and policy barriers and transform institutional practices

North Carolina has actually created a pathway to ensure that health-harming legal needs and legal services are not overlooked in its strategies to manage its Medicaid program effectively and efficiently. This case study focuses on North Carolina's Healthy Opportunities Pilot (HOP) program, one element of North Carolina's Section 1115 Medicaid demonstration waiver, and how certain legal services for beneficiaries are covered through this program. It also offers key lessons from MLP advocates who helped shape and implement this program.

# BACKGROUND: PATHWAYS FOR EXPANDING SERVICES COVERED BY MEDICAID

Medicaid is an entitlement program jointly funded by states and the federal government to provide coverage for medical care and supports for over 76 million low-income adults, children, pregnant women, elderly adults, and people with disabilities<sup>2</sup>. States have flexibility in administering their Medicaid programs, but they must obtain approval from the Centers for Medicare & Medicaid Services (CMS) for their State Medicaid Plan. This plan, required of each state, details how the state intends to administer its Medicaid program in accordance with federal laws. States are permitted to design and manage their Medicaid programs within the federal requirements and options defined by law.

A state can administer its Medicaid benefits through managed care plans, on a fee-for-service basis, or both. In a managed care model, a state Medicaid agency pays each contracted managed care plan a per member, per month fee (capitated payment) to cover the costs of benefits and provider payments for its managed care population. On the other hand, in a fee-for-service model, the state pays providers directly for each service rendered to Medicaid beneficiaries.

There are several approaches to change which services are covered under a state's Medicaid program. One common approach is a state plan amendment (SPA)<sup>3</sup>, which describes permanent changes to a state's Medicaid program, including any changes in federal or state law. A state is required to submit its SPA to CMS for review and approval. Alternatively, a state can make temporary changes to its Medicaid program through a Section 1115 demonstration waiver<sup>4</sup> (herein referred to as "Section 1115 waiver") and waiver authorities in Section 1915 of the Social Security Act<sup>5</sup>. Through these waivers, a state negotiates with CMS to waive certain requirements in order to test a new program or policy. Waivers must be budget neutral and when approved, they are typically approved for a period of up to five years.

## LEARN MORE

### MEDICAID 101 RESOURCES

1. [MACPAC](#)<sup>6</sup>
2. [Congressional Research Service](#)<sup>7</sup>
3. [Kaiser Family Foundation](#)<sup>8</sup>

### MEDICAID SECTION 1115 WAIVER RESOURCES

1. [National Health Law Program](#)<sup>9</sup>
2. [MACPAC](#)<sup>10</sup>



# North Carolina's Healthy Opportunities Pilot (HOP) program

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In October 2018, as part of its approval of North Carolina's Section 1115 waiver<sup>11</sup>, CMS provided authority to expend up to \$650 million in state and federal Medicaid funding to support a new HOP program<sup>12</sup>. The program was widely recognized as an unprecedented approach to use Medicaid funds to pay for community-based services, including legal assistance, to address "health determinants" for Medicaid managed care enrollees<sup>13</sup>.

The HOP program has three broad goals:

1. Improve health outcomes;
2. Improve health care utilization and/or reduce costs; and
3. Increase integration across health and social services organizations.

As MLP advocates know, HOP's third goal has long been a central feature of MLP programs across the country.

HOP funds are used to:

- Cover the cost of 29 federally-approved Pilot services<sup>14</sup> that address enrollees' needs related to housing, food, transportation, and interpersonal safety;
- Strengthen the ability of human service organizations to deliver Pilot services in three regions<sup>15</sup>, which include 33 mostly-rural counties; and
- Support capacity-building for three regional "Network Lead" organizations.

Eligibility criteria for HOP services are complicated. To qualify, a Medicaid enrollee must live in one of the HOP-designated counties, have at least one qualifying physical or behavioral health condition

(which vary by population and age), and have at least one social risk factor (as defined by specific screening tools). The CMS estimated that the HOP program would serve between 25,000 and 50,000 Medicaid enrollees during the demonstration approval period of November 1, 2019, through October 31, 2024<sup>16</sup>.

## How legal services are incorporated into HOP

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### Scope of legal services

One of the HOP services is "Linkages to Health-Related Legal Supports." It assists HOP participants who need legal help to secure and/or maintain healthy and safe housing and mitigate or eliminate exposure to interpersonal violence or toxic stress. The service definition for "Linkages to Health-Related Legal Supports" includes provisions related to duration, "short sessions that generally total no more than 10 hours," and frequency, "as needed when minimum eligibility criteria are met".

For example, HOP funds may cover:

- Analyzing specific facts, documents, applicable laws, and program rules relevant to an enrollees' current or potential legal problem;
- Identifying potential resources, tools, and strategies;
- Helping enrollees understand their legal rights and options;
- Advising enrollees about potential legal options; and
- Helping enrollees to prepare "pro se" (without counsel) documents.

The scope of HOP-funded legal assistance is limited to providing basic advice and counsel. If an individual referred for HOP-funded legal services requires more extensive legal services, those must be supported with non-Pilot resources. (See pages 35-36 of the full guidance<sup>17</sup> for more information).

# MEDICAID & LEGAL SERVICES IN NORTH CAROLINA

## AT-A-GLANCE



### WHAT'S THE STATE MEDICAID DELIVERY SYSTEM MODEL?

Managed care



### WHAT'S THE MEDICAID PATHWAY FOR LEGAL SERVICES?

Healthy Opportunities Pilot (HOP), part of a Section 1115 waiver<sup>18</sup>. Initial waiver period November 1, 2019 - October, 31, 2024. Waiver renewal request pending<sup>19</sup>.



### WHO'S ELIGIBLE FOR LEGAL SERVICES?

It's complicated. See the "North Carolina's Healthy Opportunities Pilot (HOP) program" section of this case study for eligibility details.



### WHAT'S SUPPORTED?

Legal services to: (1) maintain and secure healthy and safe housing; and (2) to mitigate or eliminate exposure to interpersonal violence or toxic stress.



### CAN LEGAL SERVICES BE REIMBURSED?

Yes, but only "brief advice and counsel."



### WHAT'S THE REIMBURSEMENT RATE/CAP?

\$25.30 for a 15-minute interaction<sup>20</sup>

## Initial sources of HOP funding to support legal services

Organizations providing HOP services have had access to two types of funding.

### FEE-FOR-SERVICE FOR DIRECT SERVICES TO HOP PARTICIPANTS<sup>21</sup>

Organizations providing HOP-funded legal assistance, including Legal Aid of North Carolina (LANC)<sup>22</sup> (which serves all 33 HOP counties) and Pisgah Legal Services<sup>23</sup> (which serves the 18 HOP counties in the western North Carolina HOP region) bill the HOP participant's health plan for that assistance. Currently HOP legal assistance is reimbursed at a rate of \$25.30 for each 15-minute interaction<sup>24</sup>.

## CAPACITY-BUILDING FUNDING

The North Carolina Department of Health and Human Services (NCDHHS) is required to provide up to \$100 million to support capacity-building for the three HOP regional lead organizations and the human services organizations that are contracted to provide HOP services in their regions<sup>25</sup>.

These funds provide essential support for a wide range of costs that cannot be directly attributed to a single HOP client. Contrary to how some people describe them, HOP capacity-building funds are not merely important for start-up activities. Most human service organizations need access to operating funds to comply with their ongoing contractual obligations. These include participating in training and learning collaboratives, invoicing for HOP services, evaluation and quality improvement activities, compliance, and other costs that are required to ensure that HOP direct services staff have access to the tools, technology, and other resources they need to assist HOP participants.

# Lessons learned from MLP advocates in North Carolina

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MLP advocates from LANC played critical roles in the development and implementation of the HOP program. **Madlyn Morreale, Eunice Lee-Ahn, and Erin Bennett** from LANC shared their perspectives about several “lessons learned” from this work.

## 01.

**Cultivate partnerships, build on existing MLP relationships, and “show up” at every opportunity to shape and improve your state’s efforts to use Medicaid funding to address social drivers of health.**

Long before North Carolina applied for the Section 1115 waiver in 2018, many of the state’s health leaders were aware of LANC’s commitment to addressing social drivers of health. Its first MLP was established in 2007, and within a few years their statewide MLP program included a wide range of clinics, hospitals, academic medical centers, and health system settings.

Before the state submitted its waiver application, it sought input from a variety of organizations. The Managing Attorney of LANC’s MLP program was invited by the State Health Director to join a technical advisory group to develop the standardized screening tool that all Medicaid plans would be required to use to identify potential unmet social needs for every Medicaid managed care member. Staff from LANC’s MLP also participated in several stakeholder meetings convened by the NCDHHS.

Before finalizing the list of HOP services that would be proposed to CMS, the NCDHHS convened focus groups to identify potential evidence-based services in each of the priority domains. They invited LANC to participate in several focus groups about potential HOP services related to housing and interpersonal violence/toxic stress. The NCDHHS also invited LANC to provide input about how its MLP program has been providing “closed-loop” referrals since its inception and to review drafts of the HOP service definitions.

After CMS approved the waiver, LANC’s MLP advocates worked closely with many of the organizations that applied to serve as regional network leads. Once those contracts were awarded, LANC began to lay the groundwork to apply to provide legal assistance in every county within the three HOP regions.

## 02.

### Think carefully about the implications of how legal services are categorized within Medicaid waivers.

In the months before the NCDHHS submitted its Section 1115 waiver proposal, legal assistance was embedded within two of the four priority domains for HOP services: housing and interpersonal violence/toxic stress. While referral to legal services is directly mentioned in the service definitions of several HOP services, at the final hour, the state created a separate service for “Linkages to Health-Related Legal Supports” and moved those services to a fifth, often-forgotten “cross-domain” category.

An unintended consequence of this last-minute change has been that legal services providers must work even harder to help care managers and other human service organizations understand the critical role that access to legal services can play in enhancing outcomes for HOP participants who are referred for other housing and interpersonal violence-related HOP services.

## 03.

### Understand and communicate the “true cost” of providing legal assistance to Medicaid enrollees; it is essential to sustainability.

As described above, HOP funds currently only support providing basic legal advice and counsel. For LANC, which receives more than 400,000 requests for assistance each year, using Medicaid funding to support that “upstream” legal work is invaluable.

However, many HOP-referred clients need more extended services which currently cannot be supported with HOP funds. Unless legal services providers truly limit their services for HOP-referred

individuals to advice and counsel, they will need to secure new, additional resources to provide HOP-referred individuals with the extended legal service that they may need to fully resolve their health-related legal needs. These additional resources are critical to sustainably participate in the HOP program.

Before signing contracts to provide legal services to Medicaid enrollees, it is essential that legal services providers fully understand the “true cost” of their services. Not doing so could mean that those organizations would eventually need to use other funds to meet their contractual obligations.

In North Carolina, before HOP services were launched, CMS had to approve how each service would be reimbursed (e.g., fee-for-service, cost-based reimbursement, or on a per member per month basis) and the rate or cap for each service. As part of the contracting process with the regional network leads, human service organizations wishing to participate in the HOP program had to agree to accept the terms of the HOP fee schedule.

As noted previously, CMS and the NCDHHS also recognized that most organizations would require capacity-building funds to support the costs of participating in the HOP program and complying with a wide range of requirements contained in their HOP contracts. In North Carolina, many human service organizations did not fully understand the “permissible” uses for capacity-building funds and the budgets included in their HOP contracts were significantly lower than what those organizations truly needed to participate in the program.

The CMS and NCDHHS anticipated that human service organizations would eventually no longer require capacity-building funds and that the HOP fee schedule would adequately reimburse organizations that provide HOP services. Unfortunately, this has not been the case for most, if not all, human service organizations participating in the HOP program. Some human service organizations have yet to receive sufficient HOP referrals to achieve any economy of scale. Other human service organizations have had to pause their HOP services while waiting for health plans to reimburse them for services that had been previously authorized. And most, if not all, human service organizations have had to rely on other sources of financial support to cover the ongoing operational costs of complying with their HOP contracts that are covered by the CMS-approved fee schedule.

For these reasons, it is critical that legal services organizations understand the true cost of not only providing a Medicaid-funded service, but also the costs of their contractual obligations. While this analysis is essential, merely covering costs does not, on its own, ensure that organizations can scale up their services and rely on Medicaid funds as a potential source of sustainable funding.

# WHAT'S NEXT FOR NORTH CAROLINA

The initial term of North Carolina's Section 1115 waiver, including the HOP program, is scheduled to end on October 31, 2024. Last fall, the NCDHHS submitted an application to renew the waiver<sup>26</sup>, including the HOP program, for another five years. If approved by CMS, the HOP program would expand from 33 to all 100 counties in North Carolina. Eligibility for HOP services would also expand significantly to include many new populations of Medicaid enrollees, including, for example:

- All pregnant women enrolled in Medicaid;
- Adults ages 21 and older who have one or more chronic conditions;
- Individuals “at risk of” a chronic condition across all eligibility categories;
- Individuals who have recently been released from incarceration;
- Individuals who are currently or have recently been impacted by natural disasters; and
- Children and youth who receive adoption assistance.

## ENDNOTES

- 1 Centers for Medicare & Medicaid Services. Section 1115 Demonstrations. Health Related Social Needs. Accessed from <https://www.medicaid.gov/medicaid/section-1115-demonstrations/health-related-social-needs/index.html>.
- 2 Centers for Medicare & Medicaid Services. February 2024 Medicaid & CHIP Enrollment Data Highlights. Accessed from <https://www.medicaid.gov/medicaid/program-information/medicaid-and-chip-enrollment-data/report-highlights/index.html>.
- 3 Centers for Medicare & Medicaid Services. Medicaid State Plan Amendments. Accessed from <https://www.medicaid.gov/medicaid/medicaid-state-plan-amendments/index.html>.
- 4 Medicaid and CHIP Payment and Access Commission (MACPAC). Waivers. Accessed from <https://www.macpac.gov/medicaid-101/waivers/>.
- 5 Social Security Act § 1115, 42 U.S.C. § 1315.
- 6 Medicaid and CHIP Payment and Access Commission (MACPAC). Medicaid 101. Accessed from <https://www.macpac.gov/medicaid-101/>.
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- 9 McKee, C. & Perkins, J. (2021). Primer: State Plan Amendments v. Section 1115 Waivers. National Health Law Program. Accessed from <https://healthlaw.org/wp-content/uploads/2021/06/Primer-on-SPA-v.-1115-FINAL.pdf>.
- 10 Medicaid and CHIP Payment and Access Commission. (2016). Characteristics of Key Medicaid Managed Care SPAs and Waivers. Accessed from <https://www.macpac.gov/characteristics-of-key-medicaid-managed-care-spas-and-waivers/>.

- 11 “North Carolina Medicaid Reform Demonstration” (project number 11-W00313/4) approval (October 2018). Accessed from <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/nc/Medicaid-Reform/nc-medicaid-reform-demo-demo-ap-pvl-20181019.pdf>.
- 12 NC Department of Health and Human Services. Healthy Opportunities Pilots. Accessed from <https://www.ncdhhs.gov/about/department-initiatives/healthy-opportunities/healthy-opportunities-pilots>.
- 13 *Supra note 4*, page 10.
- 14 NC Department of Health and Human Services. NC Medicaid Managed Care Healthy Opportunities Pilot Fee Schedule and Service Definitions. Updated 2023. Accessed from <https://www.ncdhhs.gov/healthy-opportunities-pilot-fee-schedule-and-service-definitions/open>.
- 15 NC Department of Health and Human Services. Healthy Opportunities Network Leads and Regions Map. Accessed from <https://www.ncdhhs.gov/healthy-opportunities-pilots-map-pdf/download?attachment>.
- 16 *Supra note 4*, page 32.
- 17 *Supra note 7*.
- 18 NC Department of Health and Human Services. NC Section 1115 Demonstration Waiver. Accessed from <https://medicaid.ncdhhs.gov/meetings-notices/proposed-program-design/nc-section-1115-demonstration-waiver>.
- 19 NC Department of Health and Human Services. (2023). North Carolina Medicaid Reform Section 1115 Demonstration Project (11-W00313/4) Renewal. Accessed from <https://www.medicaid.gov/medicaid/section-1115-demonstrations/downloads/nc-medicaid-reform-extns-req-pa.pdf>.
- 20 *Supra note 12*.
- 21 *Supra note 4*, page 35.
- 22 Legal Aid of North Carolina. <https://legalaidnc.org/>.
- 23 Pisgah Legal Services. <https://www.pisgahlegal.org/>.
- 24 *Supra note 7*, page 3.
- 25 *Supra note 4*, page 36.
- 26 *Supra note 16*.

#### ABOUT THE NATIONAL CENTER FOR MEDICAL-LEGAL PARTNERSHIP

The National Center for Medical-Legal Partnership helps health organizations leverage legal services as a standard part of the way they respond to patients’ social needs.

Email: [ncmlp@gwu.edu](mailto:ncmlp@gwu.edu)

Website: [medical-legalpartnership.org](https://medical-legalpartnership.org)

X (formerly Twitter): [@National\\_MLP](https://twitter.com/National_MLP)

#### ABOUT LEGAL AID OF NORTH CAROLINA

Legal Aid of North Carolina is a statewide, nonprofit law firm that provides free legal services in civil matters to low-income people in order to ensure equal access to justice and to remove legal barriers to economic opportunity.

Website: [legalaidnc.org](https://legalaidnc.org)

Facebook: [LegalAidNC](https://www.facebook.com/LegalAidNC)

X (formerly Twitter): [@LegalAidNC](https://twitter.com/LegalAidNC)

Instagram: [LegalAidNC](https://www.instagram.com/LegalAidNC)