§ 108D-40. Populations covered by PHPs.

(a) Capitated PHP contracts shall cover all Medicaid program aid categories except for the following categories:

(1) Recipients who are enrolled in both Medicare and Medicaid for whom Medicaid coverage is limited to the coverage of Medicare premiums and cost sharing.

(2) Qualified aliens subject to the five-year bar for means-tested public assistance under 8 U.S.C. § 1613 who qualify for emergency services under 8 U.S.C. § 1611.

(3) Undocumented aliens who qualify for emergency services under 8 U.S.C. § 1611.

(4) Medically needy Medicaid recipients.

(5) Recipients who meet the definition of Indian under 42 C.F.R. § 438.14(a) shall have the option to enroll voluntarily in PHPs.

(5a) Repealed by Session Laws 2021-62, s. 4.8(c), effective July 1, 2021.

(6) Presumptively eligible recipients, during the period of presumptive eligibility.

(7) Recipients who participate in the North Carolina Health Insurance Premium Payment (NC HIPP) program.

(8) Recipients enrolled under the Medicaid Family Planning program.

(9) Recipients who are inmates of prisons.

(10) Recipients being served through the Community Alternatives Program for Children (CAP/C).

(11) Recipients being served through the Community Alternatives Program for Disabled Adults (CAP/DA).

(12) Recipients with a serious mental illness, a serious emotional disturbance, a severe substance use disorder, an intellectual/developmental disability, or who have survived a traumatic brain injury and who are receiving traumatic brain injury services, who are on the waiting list for the Traumatic Brain Injury waiver, or whose traumatic brain injury otherwise is a knowable fact, until BH IDD tailored plans become operational, at which time this population will be enrolled with a BH IDD tailored plan in accordance with G.S. 108D-60(a)(10), except for recipients described in subdivision (14) of this subsection. Except as provided in G.S. 108D-60(a)(11), recipients described in this subdivision shall have the option to voluntarily enroll with a PHP operating a standard benefit plan, provided that (i) a recipient electing to enroll with a PHP operating a standard benefit plan would only have access to the services covered by standard benefit plans and would no longer have access to the services excluded from standard benefit plans under G.S. 108D-35(b)(1) and (ii) the recipient's informed consent shall be required prior to the recipient's enrollment with a PHP operating a standard benefit plan. Recipients in this category shall include, at a minimum, recipients who meet any of the following criteria:

a. Individuals with a serious emotional disturbance or a diagnosis of severe substance use disorder or traumatic brain injury.

b. Individuals with a developmental disability as defined in G.S. 122C-3(12a).

c. Individuals with a mental illness diagnosis who also meet any of the following criteria:

1. Individuals with serious mental illness or serious and persistent mental illness, as those terms are defined in the 2012

settlement agreement between the Department and the United States Department of Justice, including individuals enrolled in and served under the Transition to Community Living Initiative settlement agreement.

2. Individuals with two or more psychiatric hospitalizations or readmissions within the prior 18 months.

3. Individuals who have had two or more visits to the emergency department for a psychiatric problem within the prior 18 months, except as provided in this sub-subdivision. After any individual who is enrolled with a PHP has a second visit to the emergency department for a psychiatric problem within the prior 18 months, the individual shall remain enrolled with the PHP until the Department provides a comprehensive assessment to determine whether the individual should be disenrolled from the PHP and receive more comprehensive care through an LME/MCO or an entity operating a BH IDD tailored plan. This assessment shall be completed within 14 calendar days following discharge after the second visit. If the result of the assessment is that the individual does not meet the criteria for disenrolling from the PHP, then the individual shall not be included in the category of recipients with a serious mental illness for purposes of this subsection, unless the individual has a subsequent visit to the emergency department for a psychiatric problem within 12 months after completion of the assessment.

4. Individuals known to the Department or an LME/MCO to have had one or more involuntary treatment episodes within the prior 18 months.

d. Individuals who, regardless of diagnosis, meet any of the following criteria:

1. Individuals who have had two or more episodes using behavioral health crisis services within the prior 18 months, except as provided in this sub-sub-subdivision. After any individual who is enrolled with a PHP experiences a second episode of behavioral health crisis, the individual shall remain enrolled with the PHP until the Department provides a comprehensive assessment to determine whether the individual should be disenrolled from the PHP and receive more comprehensive care through an LME/MCO or an entity operating a BH IDD tailored plan. This assessment shall be completed within 14 calendar days following discharge after the second episode using behavioral health crisis services. If the result of the assessment is that the individual does not meet the criteria for disenrolling from the PHP, then the individual shall not be included in the category of recipients with a serious mental illness, a serious emotional disturbance, a severe substance use disorder, an intellectual/developmental disability, or who have survived a traumatic brain injury and who are receiving traumatic brain injury services, who are on the waiting list for the Traumatic Brain Injury waiver, or whose

traumatic brain injury otherwise is a knowable fact for purposes of this subsection, unless the individual has a subsequent episode using behavioral health crisis services within 12 months after completion of the assessment.

2. Individuals receiving any of the behavioral health, intellectual and developmental disability, or traumatic brain injury services that are covered by LME/MCOs under the combined 1915(b) and (c) waivers and that shall not be covered through a standard benefit plan in accordance with G.S. 108D-35(1).
3. Individuals who are currently receiving or need to be receiving behavioral health, intellectual and developmental disability, or traumatic brain injury services funded with State, local, federal, or other non-Medicaid funds, or any combination of non-Medicaid funds, in addition to the services covered by Medicaid.
4. Children with complex needs, as that term is defined in the 2016 settlement agreement between the Department and Disability Rights of North Carolina.
5. Children aged zero to three years old with, or at risk for, developmental delay or disability.
6. Children and youth involved with the Division of Juvenile Justice of the Department of Public Safety and Delinquency Prevention Programs who meet criteria established by the Department of Health and Human Services.
7. Individuals who receive the services described in G.S. 108D-35(b)(1)q. and G.S. 108D-35(b)(1)r. The Department shall monitor the service utilization of recipients who are enrolled in a standard benefit plan to identify individuals who receive these services and shall enroll the identified individuals in a BH IDD tailored plan the month after they are identified, unless the recipient already has become enrolled in a BH IDD tailored plan or the recipient elects to remain in the standard benefit plan.

(13) Recipients in the following categories shall not be covered by PHPs for a period of time to be determined by the Department that shall not exceed five years after the date that capitated PHP contracts begin:

a. Recipients who (i) reside in a nursing facility and have so resided, or are likely to reside, for a period of 90 days or longer and (ii) are not being served through the Community Alternatives Program for Disabled Adults (CAP/DA). During the period of exclusion from PHP coverage for this population as determined by the Department in accordance with this subdivision, if an individual enrolled in a PHP resides in a nursing facility for 90 days or more, then that individual shall be excluded from PHP coverage on the first day of the month following the ninetieth day of the stay in the nursing facility and shall be disenrolled from the PHP.
b. Recipients who are enrolled in both Medicare and Medicaid and for whom Medicaid coverage is not limited to the coverage of Medicare premiums and cost sharing. This sub-subdivision shall not include

recipients being served through the Community Alternatives Program for Disabled Adults (CAP/DA).

c. Repealed by Session Laws 2023-134, s. 9E.22(h), effective October 3, 2023.

(14) Until the CAF specialty plan becomes operational, recipients who are (i) children enrolled in foster care in this State, (ii) receiving adoption assistance, or (iii) former foster care youth until they reach the age of 26. When the CAF specialty plan becomes operational, recipients described in this subdivision will be enrolled in accordance with G.S. 108D-62.

(b) If a recipient in any of the categories excluded from PHP coverage under G.S. 108D-40 is eligible to receive a service that is not available in the fee-for-service program but is offered by a PHP, the recipient may be enrolled in a PHP. (2015-245, s. 4; 2016-121, s. 2(b); 2018-48, s. 1; 2018-49, s. 5; 2019-81, ss. 12, 14(a); 2020-88, s. 12(b); 2021-62, s. 4.8(b), (c); 2022-74, ss. 9D.14(a), 9D.15(z); 2023-134, s. 9E.22(h).)