CMS Opens Door for Pre-Release Services for Justice-Involved Populations: Health Care and Justice System Implications

Cohosted by the Center for Health Care Strategies and the Council of State Governments Justice Center

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Center for Health Care Strategies

Dedicated to strengthening the U.S. health care system to ensure better, more equitable outcomes, particularly for people served by Medicaid.

Together with our partners, our work advances:

- **Effective models for prevention and care delivery** that harness the field’s best thinking and practices to meet critical needs.

- **Efficient solutions for policies and programs** that extend the finite resources available to improve the delivery of vital services and ensure that payment is tied to value.

- **Equitable outcomes for people** that improve the overall wellbeing of populations facing the greatest needs and health disparities.
We are a national nonprofit, nonpartisan organization that combines the power of a membership association, serving state officials in all three branches of government, with policy and research expertise to develop strategies that increase public safety and strengthen communities. We bring people together, drive the criminal justice field forward with original research, build momentum for policy change, and provide expert assistance.
Agenda

• Welcome and Introductions
• Health Care Access for the Reentry Population: Current Landscape and New Opportunities
• Panel Discussion: Making the Most of New Health Coverage Opportunities for the Reentry Population
• Moderated Q&A
Today’s Presenters

**Allison Hamblin, MSPH**  
President and CEO  
Center for Health Care Strategies

**Liz Buck, MPA**  
Senior Program Officer  
Center for Health Care Strategies

**Autumn Boylan, MPH**  
Deputy Director  
Office of Strategic Partnerships  
California Dept. of Health Care Services

**Brenda Grealish, MA**  
Executive Officer  
Council on Criminal Justice and Behavioral Health, California Dept. of Corrections and Rehabilitation

**Ayesha Delany-Brumsey, PhD**  
Behavioral Health Division Director  
Council of State Governments Justice Center

**Vikki Wachino, MPP**  
Executive Director  
Health and Reentry Project
Health Care Access for the Reentry Population: Current Landscape and New Opportunities

Liz Buck, MPA, Senior Program Officer, Center for Health Care Strategies
Autumn Boylan, MPH, Deputy Director, Office of Strategic Partnerships, California Department of Health Care Services
Health care needs of people involved in the criminal legal system

• Structural racism, a lack of low barrier housing, and poor coordination between behavioral health, housing, corrections, and social service systems contribute to disproportionate numbers of BIPOC and people with behavioral health needs in correctional systems.

→ Higher rates of serious mental illness, substance use disorder, chronic health conditions, and infectious diseases compared to general population.

→ Compounding risks and needs (including homelessness) make it more difficult to access health care services following release from jail/prison.

→ Significant health inequities for people with criminal legal involvement:
  • Black men comprise about 13% of population but **35% of those incarcerated**.

*Partnerships between Medicaid, managed care, providers, and community-based organizations are key to providing services for this population.*
Historical and Current Landscape

- The Affordable Care Act significantly expanded health care coverage for people with criminal legal involvement.
- The vast majority of states are suspending coverage rather than terminating coverage for people who are incarcerated.
- Select states (OH, NM) are requiring Medicaid managed care organizations to coordinate care for people leaving correctional facilities.
- The SUPPORT (Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities) Act required a national stakeholder group to inform report and 1115 demonstration process (2018).
- ASPE report to Congress on Promising Practices for Individuals Returning to the Community (Jan 2023).
California’s Waiver Heralds New Avenues for Expanding Pre-Release Coverage

• On January 26, 2023, the Centers for Medicare & Medicaid Services approved California’s historic 1115 waiver, which covers a set of services 90-day pre-release services through Medicaid.

• Why is this significant?
  → Partially waives the inmate exclusion policy, which prohibits the use of Medicaid funds for people who are incarcerated.
  → Correctional services in jails/prisons vary in quality and face less regulation than health care services offered in the community.
  → The two weeks following release is often the most dangerous for people leaving jails/prisons.
California’s 1115 Re-Entry Demonstration Waiver

CalAIM Justice-Involved Initiative

Autumn Boylan, MPH, Deputy Director, Office of Strategic Partnerships, California Department of Health Care Services
The Justice-Involved Reentry Initiative is One Component of the CalAIM Justice-Involved Initiative

CalAIM justice-involved initiatives support justice-involved individuals by providing key services pre-release, enrolling them in Medi-Cal coverage, and connecting them with behavioral health, social services, and other providers that can support their re-entry.

**Initiatives Include:**

- **Pre-Release Medi-Cal Application Processes**
- **Behavioral Health Linkages**
- **Enhanced Care Management**
- **Justice Re-Entry and Transition Providers**
- **90 Days Services Pre-Release (1115 Waiver)**
- **Community Supports**

**Re-entry**
Eligibility Criteria for Pre-Release Services

Medi-Cal-eligible individuals who meet the pre-release access screening criteria may receive targeted Medi-Cal pre-release services in the 90-day period prior to release from correctional facilities. DHCS developed detailed definitions for qualifying criteria, based on extensive stakeholder feedback (See Appendix).

### Medi-Cal Eligible:
- Adults
- Parents
- Youth under 19
- Pregnant or postpartum
- Aged
- Blind
- Disabled
- Current children and youth in foster care
- Former foster care youth up to age 26

### CHIP Eligible:
- Youth under 19
- Pregnant or postpartum

### Criteria for Pre-Release Medi-Cal Services

Incarcerated individuals must meet the following criteria to receive in-reach services:

- Be part of a Medicaid or CHIP Eligibility Group, and
- Meet one of the following health care need criteria:
  - Mental Illness
  - Substance Use Disorder (SUD)
  - Chronic Condition/Significant Clinical Condition
  - Intellectual or Developmental Disability (I/DD)
  - Traumatic Brain Injury
  - HIV/AIDS
  - Pregnant or Postpartum

**Note:** All incarcerated youth are able to receive pre-release services and do not need to demonstrate a health care need.
Covered Pre-Release Services

The pre-release services authorized under the Justice-Involved Reentry Initiative include the following services currently covered under DHCS’s Medicaid and CHIP State Plans. DHCS worked extensively with stakeholders to develop definitions for each of the covered services (See Appendix).

- Reentry case management services;
- Physical and behavioral health clinical consultation services provided through telehealth or in-person, as needed, to diagnose health conditions, provide treatment, as appropriate, and support pre-release case managers’ development of a post-release treatment plan and discharge planning;
- Laboratory and radiology services;
- Medications and medication administration;
- Medications for addiction treatment (MAT), for all Food and Drug Administration-approved medications, including coverage for counseling; and
- Services provided by community health workers with lived experience.

In addition to the pre-release services specified above, qualifying members will also receive covered outpatient prescribed medications and over-the-counter drugs (a minimum 30-day supply as clinically appropriate, consistent with the approved Medicaid State Plan) and durable medical equipment (DME) upon release, consistent with approved state plan coverage authority and policy.
Pre- and Post-Release Care Management to Support Re-Entry

Correctional facilities and community-based care managers will play a key role in re-entry planning and coordination, including notifying implementation partners* of release date, if known, supporting pre-release warm handoffs, facilitating behavioral health linkages, and dispensing medications and/or DME upon reentry.

<table>
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<tr>
<th>Enhanced Care Management (ECM)</th>
<th>Behavioral Health Linkages</th>
<th>Warm Handoff Requirement</th>
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| Individuals who meet the CalAIM pre-release service access criteria will qualify for ECM Justice Involved Population of Focus and **will be automatically eligible for ECM until a reassessment is conducted by the managed care plan (MCP), which may occur up to six months after release.** | To achieve continuity of treatment for individuals who receive behavioral health services while incarcerated, DHCS will require correctional facilities to:  
  » Facilitate referrals/linkages to post-release behavioral health providers (e.g., non-specialty mental health, specialty mental health, and SUD).  
  » **Share information with the individual's health plan** (e.g., MCPs, SMHS, DMC-ODS) or program (i.e., DMC). | Prior to release, the pre-release care manager must do the following:  
  » **Share transitional care plan** with the post-release care manager and MCP.  
  » **Schedule and conduct a pre-release care management meeting** (in-person or virtual) with the member and pre- and post-release care managers (if different) to:  
    » Establish a trusted relationship.  
    » Develop and review care plan with member.  
    » Identify outstanding service needs. |

*Implementation partners include social services departments, post-release care manager (if different from pre-release care manager, MCPs, and county behavioral health agencies*
Funding from the PATH Justice-Involved Capacity Building Program will provide implementation grants to correctional facilities (or their delegates), county behavioral health agencies, community-based providers, probation officers, sheriff’s offices, and other implementation stakeholders.

Funding is intended to support eligible entities as they stand-up processes, protocols, and IT system modifications that are necessary to implement or modify processes to support the provision of pre-release services.

This funding can be used for investments in personnel, capacity, or IT systems that are needed to effectuate pre-release service processes.

DHCS will provide detailed guidance on PATH applications.

The approved CalAIM 1115 waiver authorizes $410 million for PATH Justice-Involved Capacity Building Program to support collaborative planning and IT investments intended to support implementation of pre-release and reentry planning services in the 90 days prior to release.
Questions? Email CalAIMJusticeAdvisoryGroup@dhcs.ca.gov
On the Horizon: CMS Guidance for Additional States Seeking Pre-Release Coverage

Section 1115 Waivers Requesting Waiver of Inmate Exclusion Policy, as of February 7, 2023

Medicaid-eligible inmates who could receive pre-release services through waiver
- Approved (inmates that meet health criteria)
- Pending (all Medicaid-eligible inmates)
- Pending (inmates that meet health criteria)

- Expected guidance from CMS forthcoming
- Opportunities for additional states to shape prospective programs
- Opportunities for additional states to design/submit waivers

NOTE: In Massachusetts, adult inmates who meet health criteria and ALL youth inmates would be eligible for pre-release services.
SOURCE: KFF analysis of Section 1115 waivers posted to Medicaid.gov
PANEL DISCUSSION

Making the Most of New Health Coverage Opportunities for the Reentry Population
Questions?
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