ISSUE BRIEF

Paving the Path to Healthier Reentry:

How New Medicaid Policies Can Improve Mental Health and Substance Use Support as People Return to Communities

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October 2023

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THE HEALTH AND REENTRY PROJECT

NAMI
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ACKNOWLEDGMENTS

This brief was made possible by support provided by the National Alliance on Mental Illness (NAMI), Arnold Ventures, and Charles and Lynn Schusterman Family Foundation.

The findings expressed herein are the authors' alone and do not necessarily reflect the views of the funders.

The authors are grateful to John O'Brien for his comments on a draft of this report.

INTRODUCTION

State and federal governments have begun to change Medicaid policy in an effort to improve the physical health, mental health, and wellbeing of people who are incarcerated. These changes, which focus on supporting the health of people returning to communities after leaving state prisons, jails, and youth correctional facilities, are historic. They represent the first changes to a prohibition on Medicaid coverage of services for people who are incarcerated that has been in place since 1965. New Medicaid policies have great potential to benefit people with mental health conditions and substance use disorder (SUD), who are overrepresented in the criminal justice system and may have experienced significant gaps in access to services before, during, or after incarceration. They also have the potential to greatly benefit people with physical health conditions.

This brief describes the changes that state and federal governments are making and their potential implications for people with mental health conditions and SUD. It focuses on changes being made in specific states through Medicaid demonstration waiver authority that focus on providing services at reentry. It also discusses national changes made through recent federal legislation that take effect in 2025. Finally, this brief describes legislative proposals that Congress is considering to further expand Medicaid's role as people leave carceral facilities. It concludes by identifying next steps for these policies.

BACKGROUND

Each year, over a million people are incarcerated in state prisons across the country, over 500,000 in local jails, over 200,000 in federal facilities, and 36,000 in youth correctional facilities.[1,2] Jails experience considerable turnover in their population: nearly 7 million people moved through jails in 2021.[3] Black and Latino people are significantly overrepresented in the carceral population in relation to their racial groups' proportions of the general population.[4] Nearly half of adults in America, approximately 113 million people, have an immediate family member who has been incarcerated for at least one night, and 6.5 million have an immediate family member who is *currently* incarcerated.[5]

BASICS OF THE CARCERAL SYSTEM

"Incarceration" is a term that refers to being confined in a prison, jail, or youth correctional facility.

- **Prisons** are state or federal facilities that house people convicted of crimes who are serving longer sentences, usually one year or more. (The policies discussed in this brief will largely not affect federal prisons since they are mostly changes to state law, affecting state prisons only.)[6]

- **Jails** are county-based correctional facilities that house people who are serving sentences of one year or less, or those who are detained while their cases await official judgment by the court system. Jails tend to experience far greater turnover and provide less predictable release dates than prisons.[7]
- **Youth correctional facilities** (sometimes referred to as juvenile justice centers) are specialized detention centers for youth under age 18 who have been sentenced or whose cases are awaiting trial.[8]

The Impact of Incarceration on Health

In comparison to the general population, people who are incarcerated in jails and prisons are disproportionately affected by chronic health conditions, such as asthma, diabetes, and heart disease, and infectious diseases, such as hepatitis B or C and HIV.[9] People with mental health conditions and SUD are also overrepresented in the carceral system, likely due to a complex mix of social factors that lead to higher rates of contact with law enforcement and arrest than others in the community.[10, 11] These factors include laws about what activities are criminalized and how those laws are enforced; poor access to treatment and support, which can increase the risk of crisis situations; high rates of homelessness; co-occurring SUD that result in illicit substance use; and social stigma and bias against people with mental health conditions.[12] People with co-occurring mental illness and SUD experience arrest rates 12 times higher than those without either diagnosis. Black adults with a dual diagnosis are more likely to be arrested compared to white adults with the same dual diagnosis,[13] even though the prevalence of dual diagnosis is higher among white adults.[14]

KEY STATISTICS ON MENTAL HEALTH AND INCARCERATION

- An estimated 44% of adults incarcerated in jails and 37% of people incarcerated in prisons had a previous mental health condition, with rates higher for women than for men.[15, 16]
- More than 50% of youth in youth correctional facilities meet the criteria for an SUD[17] and approximately 70% have a mental health condition.[18]
- Youth who are incarcerated are nearly 10 times more likely to experience psychosis than the general population.[19]
- An estimated 63% of people incarcerated in prisons and 58% in jails are diagnosed have a SUD as compared to approximately 5% of the general population.[20]

Common diagnoses for incarcerated adults include major depressive disorder, bipolar disorder, psychotic disorders such as schizophrenia, and post-traumatic stress disorder.[21] Being incarcerated can exacerbate pre-existing conditions and cause people to develop new mental health conditions due to violence, trauma, difficulty accessing treatment, and other negative experiences. Suicide is the leading cause of death in jails, with one study from 2015 to 2020 finding that it accounted for 35% of all jail deaths. The same study found that 59% of jail deaths were related to behavioral health issues, including suicide, overdose, and drug withdrawal.[22]

Opportunities to Improve Physical and Mental Health as People Reenter Communities

Physical and mental health needs continue during "reentry," the time period when people return to their communities after incarceration. Reentry is a high-risk time: Studies show that people leaving incarceration are over 12 times more likely to die than the general population in the two weeks following release, from causes that include homicide, suicide, heart disease, and cancer.[23] Death by overdose during reentry is a particular risk. Estimates place the risk of opioid overdose death at 40 to 129 times higher than the general population in the two-week period following release, depending on the study and location.[24, 25] Without support and connections to community health care services post-release, people can struggle to access outpatient medical care, including care for mental health conditions and SUD, resulting in poor health outcomes and higher rates of emergency department and hospital admissions.[26, 27] People with mental health conditions also face a higher risk of reincarceration and repeatedly moving in and out of the carceral system.[28]

Despite these risk factors, rates of access to mental health and SUD treatment in carceral settings are generally low,[29] and rates of access to treatment upon release from jail and prison are similarly poor.[30] Improving access to mental health treatment at reentry can support better outcomes, reduce the risk of reincarceration, and improve people's long term outcomes following incarceration.[31]

NEW CHANGES TO MEDICAID'S ROLE DURING INCARCERATION

The federal government recently made the first policy changes to Medicaid's inmate exclusion policy, which prohibits Medicaid from covering services provided during incarceration, since Congress first established the Medicaid program in 1965. One major policy change authorizes states to use Medicaid, as well as the Children's Health Insurance Program (CHIP), to cover the cost of some services provided prior to release to people in prisons, jails, and youth correctional facilities. This change can be carried out on a state-specific basis through Medicaid waivers. A second significant policy change modifies Medicaid's role for youth and applies nationwide. These policy changes aim to strengthen access to and continuity of care as people return to communities following incarceration. The new policies are groundbreaking and hold potential for significant impact on the health of people who are incarcerated and their communities.

MEDICAID BASICS

Medicaid is an entitlement program that guarantees coverage of health and long-term care for people with low incomes who qualify, including children, adults, people with disabilities (including people with certain mental illnesses), seniors, and pregnant women. Operating as a joint program between state and federal governments, Medicaid covered more than 90 million people as of 2022.[32] The federal government, specifically the Centers for Medicare and Medicaid Services (CMS), is responsible for administering and overseeing the program. States make policy decisions regarding eligibility, benefits, delivery system, provider payment, and other areas within federal standards. For this reason, Medicaid programs vary a great deal from state to state. Medicaid is funded by both the federal government and state governments, with the federal government contributing most of the funding and matching state spending at a rate that varies by state, population, and services.

MEDICAID INMATE EXCLUSION POLICY

Medicaid is the leading financing and coverage source for many health services in the United States, including mental health and substance use services. However, Medicaid has historically played a strictly limited role for people who are incarcerated due to a provision in the Medicaid law known as the "inmate exclusion," which has prevented Medicaid from covering services other than community inpatient hospital care for people who are incarcerated, even though people who are incarcerated remain eligible for and may remain enrolled in Medicaid.[33] This exclusion has left financing and oversight of health care services in prisons and jails in the hands of state and local governments. Authorizing Medicaid to cover some services in prisons and jails will make those services eligible for state and federal Medicaid matching payments, and the state and federal Medicaid policy requirements that accompany them.

Medicaid's New Reentry Demonstration Opportunity

The most notable change to Medicaid's role at reentry is taking place through Medicaid demonstration waivers. In April 2023, the Centers for Medicare and Medicaid Services (CMS) released guidance on a new Medicaid Reentry Section 1115 Demonstration Opportunity that would, for the first time, allow state Medicaid programs to cover a set of services for people who are incarcerated. Congress required CMS to issue this guidance in the 2018 SUPPORT for Patients and Communities Act with a goal of improving the health and wellbeing of people leaving state prisons, jails, and youth correctional facilities by covering care and connections to community care during the pre-release period.

SECTION 1115 MEDICAID DEMONSTRATION WAIVERS

Section 1115 Medicaid demonstration waivers authorize state Medicaid programs to operate beyond the bounds of federal law with the approval of CMS, provided that the change serves the objectives of the Medicaid program. These waivers occur through a demonstration authority in Section 1115 of the federal Medicaid law, and are often referred to as "1115 waivers." The process for obtaining an 1115 waiver can be lengthy and complex: States develop a proposal to use state Medicaid in a way that departs from federal law and must negotiate with CMS over the specific terms of the demonstration before approval. Waiver proposals are subject to a public input process at the state and federal levels, and the ultimate agreement between the state and CMS is codified in a waiver agreement with specific terms and conditions.

The primary elements of the new waiver policy are as follows:

Coverage period and Medicaid enrollment requirements. States may provide services during a period of up to 90 days before a person's release from incarceration. States must help people apply for Medicaid if they would like to do so; suspend, rather than terminate, Medicaid benefits when they are incarcerated; and reactivate their coverage at the time of release. Quickly reactivating benefits promotes continuity of insurance coverage and can prevent treatment interruption by helping people access new services immediately during the community reentry process.

Pre-release services and eligibility for benefits. States can define what groups of Medicaid or CHIP beneficiaries are eligible for services, ranging from all eligible people to a specific population, such as people with certain chronic conditions or people with SUD. The guidance sets a minimum of three services that states must cover in their benefit package in order to be approved for a waiver: case management, medication-assisted treatment (MAT), and a 30-day supply of all prescription medications upon release. (These three services are discussed in detail in the following section.) States have flexibility to provide benefits above and beyond this service floor, as well as to deciding which correctional facilities provide Medicaid-covered pre-release services and whether services are provided by community or correctional providers.

Reinvestment plan and implementation support. States must submit a plan to CMS that explains how any federal funding that replaces existing state and local funding for carceral services will be reinvested to increase access to care. Reinvested funds can also be used to develop new or enhance existing services in carceral settings, build health information technology or data sharing capacity, expand community capacity and support for people post-release, or otherwise directly support people reentering the community and lower the risk of reincarceration.

How Reentry Waivers Can Support People with Mental Health and Substance Use Conditions

Given the high rates of physical and mental health conditions and SUD among people who are incarcerated, expanding coverage and access to care at reentry could improve health outcomes and reduce the risk of reincarceration.[34] Research shows that access to Medicaid benefits during this crucial period can improve people's ability to maintain continuous care, adhere to treatments, manage chronic health conditions, access other needs such as housing and employment, and increase the overall probability of successful long-term stability.[35, 36]

The three benefits that CMS requires states to cover in their reentry waivers have specific potential to benefit people with mental health conditions and SUD:

Case management for reentry. Case management can facilitate a smooth transition between being incarcerated and living in the community. It can promote connections to health and social resources to maintain people's wellbeing. CMS guidance describes several key elements of the reentry case management benefit:

- a comprehensive assessment to identify medical, educational, social, and other needs;
- development of a care plan based on the assessment;
- referral and coordination to help people connect with appropriate community services and resources; and
- monitoring and follow up, including communication with a person's community providers and social support system.

People leaving incarceration may need to address multiple urgent needs — such as accessing housing, food, and employment, as well as reconnecting with family and other social supports — as they reintegrate into the community. Housing access can be a particular concern, due to both housing shortages in many states and policies that exclude people who have histories that include SUD.[37] Reentry case managers help facilitate access to services for these and other health-related social needs by ensuring warm handoffs to community providers. The relationship and trust developed with a case manager can also help people advocate for their needs and take an active and engaged role in their own care.[38] For people with high levels of need related to mental health conditions, case management is associated with improvements in psychiatric symptoms, overall quality of life, and mental quality of life.[39] At the community level, case management has been associated with a decrease in emergency room visits and hospitalizations, improved treatment adherence, and a reduction in the overall cost of health care services.[40]

Medication-assisted treatment (MAT). MAT is an evidence-based treatment for SUD that encompasses both mental health counseling and FDA-approved medications that treat opioid use disorder (methadone, suboxone, and naltrexone) and alcohol use disorder (naltrexone, disulfiram, and acamprosate). Not all people with SUD can benefit from MAT. However, for those who can benefit, making MAT available during incarceration can reduce the risk of relapse and death both during incarceration and upon release. People who begin MAT while

incarcerated are less likely to relapse and more likely to continue treatment after reentry. In contrast, those who receive MAT prior to incarceration and cannot continue treatment while incarcerated are less likely to resume treatment after reentry.[41]

Thirty days of medication. Providing access to 30 days of medication at the time of release supports people's physical and mental health as they transition to community prescribers. Continuity of medication can reduce post-release emergency department visits and other health crises, especially for people with complex health or mental health needs who may be at risk of a rapid decline without daily medication.

California and Washington Lead the Way

CMS has approved reentry waiver proposals submitted by two states, California and Washington. California's waiver amendment, the Justice-Involved Initiative, is a part of the state's larger slate of Medicaid reforms approved in January 2023.[42] The approval of these changes predated the release of national guidance from CMS and represented the first time that the agency authorized Medicaid to cover pre-release services. California's changes take effect beginning on April 1, 2024. Washington's reentry waiver, the Reentry Initiative, was approved in June 2023 as part of a renewal of the state's Medicaid Transformation Project.[43] Washington's policies take effect on July 1, 2025.

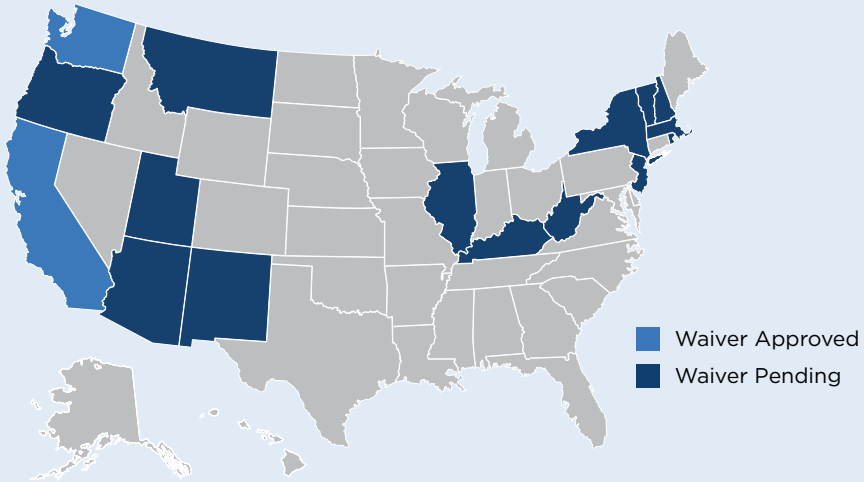
The reentry approaches in California and Washington are similar. Both states plan to provide Medicaid-covered services in the 90 days prior to a person's release from state prisons, jails, or youth correctional facilities. However, there are notable differences in their approach to eligible populations and implementation of services. In California, all incarcerated youth will be eligible, but Medicaid-eligible adults must have a qualifying condition in order to obtain pre-release services. In its eligibility requirements, the state is targeting people with high levels of need by explicitly including people who have mental illness, SUD, and other health conditions and disabilities. California has also chosen to go beyond the minimum benefit package outlined in the CMS guidance in an effort to ensure that people with complex needs, especially those with mental health conditions or SUD, experience a smooth transition to the community.[44]

Additionally, in California, people transitioning back to the community following incarceration are eligible for post-release services that support their health and social needs during reentry. Two such programs, the Enhanced Care Management benefit and Community Supports, are designed to provide comprehensive coordination and connection to services that address health, including mental health and SUD services, as well as health-related social needs such as housing.[45]

In contrast to California, Washington will allow any Medicaid-eligible person who is incarcerated to access Medicaid-covered pre-release services. The state's approach to eligibility may help address health, mental health, and health-related social needs for people who have not been formally diagnosed or who are otherwise likely to have unmet needs. Like California, Washington's approach to benefits goes beyond case management, MAT, and medications and will include many of the same services designed to support people with complex needs.

PENDING 1115 WAIVER PROPOSALS AS OF SEPTEMBER 2023

FIGURE 2. STATES SEEKING REENTRY WAIVERS, AS OF SEPTEMBER 2023[46]



As of September 2023, 14 additional states had submitted waiver proposals to CMS to provide Medicaid-covered pre-release services. Some of these states are currently in the process of revising their proposals to more closely align with the recently released national guidance, however, unless noted, this section will refer to the currently submitted waiver proposals. The pending proposals vary in how they define the length of the pre-release period, who is eligible for services, and what benefits are provided.[47]

For example:

- Three states, Oregon, Rhode Island, and Vermont, have proposed to cover all Medicaid-eligible people who are incarcerated, while others target specific physical and mental health conditions or social needs.
- Some states, including Massachusetts, Rhode Island, Utah, and Vermont, propose to provide the full benefit package that is available under the state plan, while others seek to cover more limited services, usually encompassing case management, mental health care, and SUD treatment.

Most state waiver proposals prioritize people with mental health conditions and SUD as eligible for pre-release services. All proposals include people with serious mental illness or serious emotional disturbance as eligible for services, although the actual diagnoses these terms include are generally not defined in the waiver language. Some states have chosen to focus in on one issue related to mental health or SUD, such as:

- Kentucky and West Virginia have chosen to make *only* people with a SUD diagnosis eligible and the services those states' benefits packages include are all related to SUD treatment.
- Arizona's waiver proposal focuses specifically on people with a health or behavioral health condition who are also at risk of homelessness, offering housing case management, tenancy supports, and connections to health services.
- In their draft of an updated waiver proposal, Massachusetts proposes to invest in its community-based behavioral health crisis system in order to increase community mental health capacity and divert people with mental health conditions from criminal justice involvement.

Going beyond these states' proposals, there are additional mental health services that states could connect people to following incarceration. For example, Assertive Community Treatment (ACT) serves some people with serious mental illnesses or SUD and is linked to reductions in psychological symptoms, hospitalizations, and emergency department use.[48] For youth with complex needs and criminal justice involvement, multisystemic therapy (MST) is an evidence-based family and community intervention that has been shown to reduce rearrests and decrease substance use, among other positive outcomes.[49] Other interventions connect people with supportive housing upon release, addressing housing instability and connecting people with mental health and related services. Supportive housing has been associated with reduced use of hospital and emergency room services.[50] A supportive housing intervention could build on the housing-at-release approach that Arizona proposed in its waiver.

National Statutory Changes for Youth Leaving the Justice System

Congress enacted the first nationwide changes to Medicaid's role in incarceration in the Omnibus Consolidated Appropriations Act of 2023. This act requires states, beginning in early 2025, to cover screenings, service referrals, and case management for incarcerated youth for 30 days prior to their release and for at least 30 days following release. It also gives states the option to cover some Medicaid services for youth who are in pretrial detention. These changes define youth as people under age 21, as well as former foster care youth, who remain eligible for Medicaid until they reach age 26. Thus, the policy change affects young people in jails and state prisons in addition to those in youth correctional facilities. Given the prevalence of mental health conditions, SUD, and trauma among youth who are incarcerated, policy changes that increase care and support for this population have potential to make a positive impact. Mental health treatment for this population can also impact public safety outcomes by reducing recidivism rates.[51]

MEDICARE SPECIAL ENROLLMENT PERIOD

CMS recently made a significant regulatory change to help eligible people leaving incarceration obtain Medicare coverage, the federal health insurance that covers people aged 65 and over, some younger people with disabilities (including some with mental health disabilities), and people with end-stage renal disease. CMS created a special Medicare enrollment period for people recently released from jails and prisons, effective January 1, 2023. This special enrollment period allows people to enroll in Medicare in the 12 months following their release without facing any late enrollment penalties.[52]

Proposed Federal Legislation

Congress is considering making additional and potentially broader national policy changes to Medicaid's role when people are incarcerated. Three pieces of federal legislation have been introduced in both the House and Senate during the 118th Congress: The Reentry Act (2023), the Due Process Continuity of Care Act (2023), and the Humane Correctional Health Care Act (2023). The House and Senate versions of the Reentry Act and the Due Process Continuity of Care Act, and the House version of the Humane Correctional Health Care Act, all have bipartisan lead sponsors.

- The Reentry Act would amend the Medicaid inmate exclusion to require that Medicaid cover services provided to eligible people who are incarcerated during the 30-day period prior to release from prison or jail. (Similar legislation proposed in previous sessions of Congress was called the Medicaid Reentry Act.)
- The Due Process Continuity of Care Act would amend the Medicaid inmate exclusion to allow for Medicaid coverage of health care services for pre-trial detainees.
- The Humane Correctional Health Care Act would end the Medicaid inmate exclusion, meaning that Medicaid and CHIP would cover health services for eligible people who are incarcerated.

MEDICAID AND REENTRY: MOVING FORWARD

Next steps for these policies include additional action by CMS, states, and potentially Congress. In the coming months, CMS will consider reentry waiver proposals from states and work with them to negotiate approval. CMS will also issue policy guidance on how to implement the statutory changes that pertain to Medicaid services for youth leaving carceral settings. The timeline for issuing this guidance is unclear, but the policies take effect in early 2025.

At the state level, additional governments may submit waiver proposals. Some states that had previously submitted proposals to CMS are revising them to align more closely with federal guidance and successfully approved waivers in California and Washington. In states whose reentry waivers are approved, implementation will be complex, requiring engagement and coordination from a broad range of stakeholders, including government officials, leaders in the health and criminal justice sectors, people who live in communities disproportionately affected by crime and incarceration, and people with lived experience of incarceration.

Significant logistical and operational considerations will need to be addressed to ensure that the new policies are implemented effectively.

Finally, Congress may act on pending federal policy. The prospects for passage of the Reentry Act, the Due Process Continuity of Care Act, and the Humane Correctional Health Care Act are unclear in the current Congress, but it is possible that Congress will move forward with these pieces of legislation. As of September 2023, Congress continues to examine these and other reentry-related proposals.

CONCLUSION

New reentry policies at the state and federal levels represent groundbreaking opportunities to change the way people with mental health conditions and SUD experience the transition from being incarcerated to living in the community. The implementation of changes to Medicaid's role during reentry in California and Washington, CMS approval of additional states' waiver applications, and the implementation of nationwide federal changes together chart a path to addressing high rates of substance use, overdose deaths, and mental health conditions among highly vulnerable populations. These practical improvements in quality, coordination, and continuity of care during reentry hold great potential to positively impact the health and wellbeing of people, their families, and their communities.

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