

Leveraging Medicaid to Establish Meaningful Health Care Connections for Justice-Involved Populations Q&A

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Introduction

States are advancing a number of strategies to extend Medicaid coverage and improve access to care for justice-involved populations—including juveniles and adults—both immediately prior to and following release from prison or jail. It bears noting that, absent a waiver, inmates are not eligible for Medicaid outside of services provided in an inpatient setting. However, after release, many individuals are eligible for Medicaid, and this is especially true in states that have expanded their Medicaid programs.

State Medicaid agencies are responding to the considerable health care needs of this population, and the related social and economic costs: incarcerated individuals have nine to 10 times the rate of hepatitis C and eight to nine times the rate of HIV infection as compared to the general population. An estimated 80 percent of individuals released from prison in the United States each year have a substance use disorder (SUD), or chronic medical or psychiatric condition. People with SUD returning to the community are at extraordinarily high risk of death immediately following release: in the two weeks following community re-entry, justice-involved individuals have been found to have a death rate that is nearly 13 times that of the general population, with a more than 100-fold higher risk of death from overdose.¹

There are a number of strategies states can deploy to connect justice-involved populations to coverage and ensure access to medication and physical and behavioral health care services as they re-enter the community. On June 18, 2019, State Health & Value Strategies and Manatt Health presented a webinar which reviewed strategies states might pursue to facilitate Medicaid coverage, care management, and physical and behavioral health services for this population, and the circumstances under which states might be able to secure federal Medicaid funding to implement these strategies. For the webinar slides, click [here](#).

The following Q&A was developed to respond to questions received during the webinar.

Does the SUPPORT ACT include new requirements and opportunities for state Medicaid programs with respect to justice-involved populations?

Yes. Signed into law on October 18, 2018, the SUPPORT Act (formally referenced as the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act) includes a number of provisions intended to address access to Medicaid coverage and care for the justice-involved population.²

Specifically, the SUPPORT Act prohibits states from terminating Medicaid eligibility when an individual under age 21 (or under age 26 if enrolled in the former foster care Medicaid eligibility category) is an inmate of a public institution. Instead, states may suspend coverage for the duration of incarceration, but must conduct a redetermination of eligibility prior to their release without requiring a new application. The SUPPORT Act also directs that states timely process new applications that are submitted on behalf of juveniles and former foster care youth who were not enrolled in Medicaid prior to becoming incarcerated.

The law also directs the Department of Health and Human Services (HHS) to convene a stakeholder group to develop best practices for ensuring continuity of coverage and relevant social services for individuals who are incarcerated and transitioning to the community. By October 24, 2019, HHS is required to issue a State Medicaid Director letter that includes guidance on 1115 demonstration projects to provide select Medicaid services during the transition period prior to release, which per the SUPPORT Act may not be greater than 30 days.

Has HHS released the guidance to states on 1115 demonstrations for pre-release Medicaid coverage? Have any states received approval for these demonstrations?

HHS has not released guidance on 1115 demonstrations to provide Medicaid services to individuals prior to their release from a jail or prison. However, several states are already seeking 1115 demonstration authority to provide Medicaid coverage for 30 days prior to an inmate's release. Washington, D.C. recently submitted a waiver request to provide limited services to inmates 30 days pre-release.³ New York state has indicated that it will submit an 1115 waiver amendment application seeking to provide care management, clinical consultation, and medication management to inmates 30 days pre-release.⁴ To date, no state has received 1115 demonstration authority to provide Medicaid coverage to inmates 30 days pre-release.

What does it mean to “suspend” coverage for incarcerated individuals?

States can opt to suspend, rather than terminate, Medicaid coverage for beneficiaries who are incarcerated, which enables faster enrollment in or reinstatement of coverage when individuals re-enter the community. Sixteen states plus Washington, D.C. suspend Medicaid for the duration of incarceration, and an additional 15 states suspend Medicaid for a specific period of time (e.g., 30 days or up to one year) during incarceration.⁵ Under new SUPPORT Act requirements, all states will be required to suspend coverage for juvenile justice populations and former foster care youth who are inmates.

How are states operationalizing suspension of coverage?

When a state suspends Medicaid coverage upon incarceration, an inmate's Medicaid eligibility is maintained, but federal financial participation (FFP) is only available for services provided in an inpatient setting of 24 hours or more. States effectuate the suspension in one of two ways:

- › States that **suspend eligibility** maintain the enrollee's Medicaid eligibility, but no benefits are covered under this status. When an inmate is hospitalized the state Medicaid agency must take action to have Medicaid reinstated for the purpose of covering the hospitalization.
- › States that **suspend benefits** (sometimes referred to as “reclassification”) maintain the enrollee's Medicaid eligibility and their status is reclassified in the eligibility and enrollment system so that only inpatient hospitalizations are covered. When an inmate is hospitalized the state does not need to take any additional action.

What other strategies are states using prior to release to facilitate Medicaid coverage as someone is re-entering the community?

In order to ensure Medicaid coverage is activated immediately upon release into the community, states may consider conducting Medicaid eligibility determinations pre-release or as part of the intake process:

- › *Pre-Release:* Many states commence the Medicaid eligibility and enrollment process 30 to 45 days prior to the individual's release date. States can use application assistors—including Medicaid or justice agency staff or community-based enrollers—to help uninsured individuals apply for and enroll in Medicaid prior to release.⁶
- › *Intake Process:* A few states conduct Medicaid eligibility determinations as part of the incarceration intake process. Once determined eligible, state Medicaid and justice agencies would need to work together to ensure that coverage or benefits are suspended until after release.

How are states leveraging their Medicaid managed care plans to do pre-release “in-reach”?

A growing number of states have added provisions to their Medicaid managed care contracts requiring plans to conduct “in-reach” pre-release to facilitate and manage the transition of inmates back to the community. Specific requirements include conducting a pre-release assessment of physical, behavioral, and social service needs, scheduling health care appointments, and making referrals to social service providers.⁷ Plans or providers send a clinician, such as a social worker or care manager, into a jail or prison or set up a video conference to meet with the inmate prior to release and to establish trusting relationships. For example, Ohio requires its five contracted managed care plans to conduct prison in-reach, which includes pre-release enrollment into Medicaid for all eligible inmates and a pre-release care management needs assessment.⁸

What are states doing to address social determinants of health (SDOH) for justice-involved populations enrolled in Medicaid?

Despite the serious health conditions affecting justice-involved populations, many people who are re-entering the community are focused on meeting immediate essential needs, like finding a home and food, before they prioritize medical treatment or filling prescriptions. Some states are requiring their Medicaid managed care plans or health homes, if they have them, to conduct outreach and comprehensive assessments, including assessment for social needs, for people re-entering the community. Some states also require that plans refer these members to social supports and to networks of community based organizations that can provide needed services.⁹ New York’s Brooklyn Health Home operated by Maimonides Medical Center, provides care management services for Medicaid beneficiaries with significant behavioral health issues and chronic physical conditions, including a large number of people who have a history of incarceration. 400 community-based care managers from 24 agencies spend 70 to 80 percent of their time in the field working directly with clients to find housing, nutrition services, and medical treatment.¹⁰ Prior to release, the Brooklyn Health Home monitors its members who are incarcerated in New York City’s jail, Rikers Island, through close coordination with jail health service staff. Within 30 days following release, a Health Home care manager will conduct an in-person comprehensive needs assessment to identify needed care and services and to develop a care plan.

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State Health and Value Strategies (SHVS) assists states in their efforts to transform health and health care by providing targeted technical assistance to state officials and agencies. The program is a grantee of the Robert Wood Johnson Foundation, led by staff at Princeton University's Woodrow Wilson School of Public and International Affairs. The program connects states with experts and peers to undertake health care transformation initiatives. By engaging state officials, the program provides lessons learned, highlights successful strategies and brings together states with experts in the field. Learn more at www.shvs.org.

ABOUT MANATT HEALTH

This Q&A was prepared by Kinda Serafi and Patricia Boozang. Manatt Health integrates legal and consulting expertise to better serve the complex needs of clients across the healthcare system. Our diverse team of more than 160 attorneys and consultants from Manatt, Phelps & Phillips, LLP and its consulting subsidiary, Manatt Health Strategies, LLC, is passionate about helping our clients advance their business interests, fulfill their missions, and lead healthcare into the future. For more information, visit <https://www.manatt.com/Health>.

Endnotes

1. Krawczyk N, Picher CE, Feder KA et al. Only One in Twenty Justice-Referred Adults in Specialty Treatment for Opioid Use Receive Methadone or Buprenorphine *Health Affairs* 2017;36(12): <https://www.healthaffairs.org/doi/abs/10.1377/hlthaff.2017.0890>. Published December, 2017. Accessed August 28, 2019.
2. The Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT) for Patients and Communities Act, October 2018.
3. *District of Columbia Proposed Section 1115 Behavioral Health Transformation Demonstration*. Medicaid.gov website. <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/dc/dc-behavioral-health-transformation-pa.pdf>.
4. State Health & Value Strategies. (Producer). (2019, June 18)., *Leveraging Medicaid to Establish Meaningful Health Care Connections for Justice-Involved Populations* [Video webinar]. Retrieved from https://www.shvs.org/wp-content/uploads/2019/05/Justice-Involved-Populations-6_18_19.pdf.
5. Families USA. *Medicaid Suspension Policies for Incarcerated People: 50 State Map*. Families USA website. <https://familiesusa.org/product/medicaid-suspension-policies-incarcerated-people-50-state-map#map>. Published July, 2016. Updated July 12, 2016. Accessed August 28, 2019.
6. Janetta, J, Dorn S, Kurs E. et al. *Strategies for Connecting Justice-Involved Populations to Health Coverage and Care*. Washington, DC: Urban Institute; March 2018. <https://www.urban.org/research/publication/strategies-connecting-justice-involved-populations-health-coverage-and-care>. Accessed August 28, 2019.
7. Ohio Department of Medicaid. Ohio Medical Assistance Provider Agreement for Managed Care Plans. Ohio Department of Medicaid website. <http://www.medicaid.ohio.gov/Portals/0/Providers/ProviderTypes/Managed%20Care/Provider%20Agreements/ManagedCare-PA-201801.pdf?ver=2017-12-21-132810-680>. Updated January 1, 2018. Accessed August 28, 2019.
8. Jannetta J, Wishner J, Peters R. *Ohio's Medicaid Pre-Release Enrollment Program*. Washington, DC: Urban Institute; 2017. https://www.urban.org/sites/default/files/publication/88051/ohio_medicaid_1.pdf. Accessed August 28, 2019.
9. Machledt D. *Addressing the Social Determinants of Health Through Medicaid Managed Care*. New York, NY: The Commonwealth Fund; 2017. https://www.commonwealthfund.org/sites/default/files/documents/___media_files_publications_issue_brief_2017_nov_machledt_social_determinants_medicaid_managed_care_ib_v2.pdf. Accessed August 28, 2019.
10. Guyer J, Serafi K, et al. *State Strategies for Establishing Connections to Health Care for Justice Involved Populations: The Central Role of Medicaid*. Commonwealth Fund; January 2019. https://www.commonwealthfund.org/sites/default/files/2019-01/Guyer_state_strategies_justice_involved_Medicaid_ib_v2.pdf.