



Medicaid Changes Needed for Criminal Justice Reform

Recommendations for States

This brief is for public safety leaders, state Medicaid agency personnel, and policymakers who work on issues related to criminal justice and behavioral health. It is applicable in states considering or in the process of applying for a Section 1115 Medicaid waiver or making other modifications to their Medicaid program. The information provided herein is intended to support and inform changes to state Medicaid programs that can be leveraged to further criminal justice reform efforts, with a specific focus on shifting from institutional to community-based care.

State Medicaid program design

Each state has its own Medicaid program that articulates covered services and populations, along with other features and parameters. States can add, remove, and modify services via state plan amendments (SPAs) and using other tools. They can also apply for a Section 1115 waiver, allowing them to cover and receive federal reimbursement for services, settings, and/or populations not otherwise allowed under federal Medicaid rules.

Why does state Medicaid program design matter to criminal justice reform efforts?

Criminal justice reform efforts continue in earnest across the country, aiming to safely divert people from justice system involvement and incarceration, and to prevent rearrest and reincarceration following release from prison and jail. States and local jurisdictions are leading broad efforts to shift from a focus on institution-based to community-based healthcare. The extremely high prevalence of chronic substance use and mental health conditions among individuals in the justice population, combined with new, near-universal eligibility for Medicaid under the Affordable Care Act (ACA), means there is significant opportunity to build community-based systems that can meet this population's complex healthcare needs and help prevent criminal behaviors linked to untreated or undertreated behavioral health conditions.

Building on the minimum requirements for covered services and populations put forth by the federal Centers for Medicare & Medicaid Services (CMS), states have substantial latitude to develop their own Medicaid programs and add optional services that best meet the needs of their population and circumstances. They can employ an array of tools and mechanisms—including Medicaid waivers, SPAs, and administrative rule changes—to support community capacity enhancement, thereby leveraging federal Medicaid resources toward achieving criminal justice reforms.

Recommendations for states


The following are recommendations for states seeking to maximize federal resources through changes to their Medicaid program in support of criminal justice reform efforts.

- **Cover case management for individuals with substance use disorders.** At least 65 percent of individuals involved in the justice system are affected by substance use disorders.¹ Yet case


management for individuals with substance use disorders is an optional Medicaid service² overlooked by many states when designing their Medicaid programs, leaving a large population without access to these critical services. Case management is a recognized best practice in the substance use treatment field—and when combined with treatment—helps produce better outcomes than treatment alone.³

States can file an SPA with CMS to include this as a covered service in their Medicaid program. They also can cover it in managed care plans without filing an SPA, authorized by new federal parity rules issued by CMS.⁴

- **Permit Medicaid administrative claiming (MAC) for public safety agencies and their contractors.** Public safety agencies and their contractors may be permitted to participate in MAC for activities such as outreach, Medicaid application assistance, and case management.⁵
 - California permits justice agencies—by virtue of being units of local government—to participate in MAC for Medicaid application assistance and other activities.⁶ They are also allowed to draw down MAC dollars for applications completed 30 days prior to release from a correctional institution.⁷
 - Washington State permits King County (Seattle) juvenile probation officers to participate in MAC for Medicaid application assistance activities.⁸

 *For more details regarding MAC, refer to the resource issued by the Community Oriented Correctional Health Services (COCHS)⁹ or the CHJ issue brief Medicaid Administrative Claiming for Justice Agencies in this series.*

- **Create health homes for people involved in the justice system.** Health homes facilitate the delivery of quality care for complex, chronic conditions at an enhanced federal match rate. To maximize outcomes, participating health plans and providers should be those with experience serving people involved in the justice system. Further, states should consider auto-assigning Medicaid enrollees who have recently been discharged from jail or prison to health insurance plans that have implemented partnerships with justice system agencies and providers.
 - New York implemented justice-specific health homes in 2012.¹⁰
 - Illinois has proposed to auto-assign individuals being released from Cook County Jail to CountyCare—a managed care organization owned and operated by the Cook County Health and Hospitals System.¹¹

 *For more details regarding health homes, refer to the Health Home Information Resource Center¹² (managed by CMS) or the CHJ issue brief Health Homes for Justice Populations in this series.*

- **Permit pre-release planning to be funded by Medicaid.** Under federal law, services provided to incarcerated individuals cannot be paid for with federal Medicaid funds. This is referred to as the “inmate exclusion.” However, through filing a Section 1115 waiver, states can propose to CMS that this exclusion be waived so that treatment planning and linkage to services during the discharge process from jail or prison can be funded through Medicaid.
 - New York and Illinois recently included this in their respective 1115 waiver applications.^{14,15}
 - COCHS released an issue brief urging CMS to reconsider the “inmate exclusion,” arguing the antiquatedness of the provision.¹⁶

 *For more information regarding Section 1115 waivers, refer to CMS’ website.¹⁷*

- **Request that public safety agencies be permitted to act as presumptive eligibility (PE) determiners.** PE offers a more rapid alternative to the traditional Medicaid application process. Making correctional agencies eligible to carry out presumptive eligibility determinations will allow immediate coverage upon release from jail or prison rather than in the following days or weeks.
 - New Mexico currently allows public safety agencies to be “PE determiners.”¹⁸
 - Maryland’s proposed 1115 waiver application includes a request to allow PE for individuals leaving jail and prison in the state.¹⁹



For more information on presumptive eligibility, refer to CMS’ website²⁰ or the CHJ issue brief Presumptive Eligibility for Individuals in the Justice System in this series

- **Grant individuals leaving correctional institutions access to long-term services and supports.** Home and Community-Based Services (HCBS) waivers grant specific populations at risk of institutionalization access to services that help keep them in the community. Standard services include but are not limited to: case management, supported employment, in-home services, day and residential habilitation, and respite care. States can also propose other types of services—medical and non-medical—tailored to the needs of the target population. Traditionally, states have used HCBS waivers to cover populations such as the elderly or people with intellectual disabilities. States can also propose to offer these services to individuals with physical, mental health, or substance use conditions who are transitioning from correctional institutions into their communities.
 - Illinois has considered applying for a 1915c waiver for its correctional population as a part of the state’s broader Health and Human Services Transformation initiative.²¹



For more information on HCBS Waivers, refer to CMS’ website²² or CHJ’s issue brief Home and Community-Based Services for the Justice Population in this series.

About the Center for Health and Justice at TASC

TASC, Inc. (Treatment Alternatives for Safe Communities) provides evidence-based services to reduce rearrest and facilitate recovery for people with substance use and mental health issues. Nationally and internationally, TASC’s Center for Health and Justice offers consultation, training, and public policy solutions that save money, support public safety, and improve community health.

TASC’s Medicaid Policy Series is designed to help leaders maximize the opportunities of Medicaid expansion in order to more swiftly and effectively connect justice populations to healthcare services in the community. The lead author of the series is TASC Administrator of Medicaid Policy and Program Development Sherie Arriazola.

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Endnotes

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- ¹³ SSA § 1905(a)(29), see 42 USC § 1396d(a)(29)(A); 42 CFR 435.1010; 42 CFR 435.1009(a)(1).
- ¹⁴ New York State, Office of Governor Andrew M. Cuomo. (2016). *Governor Cuomo marks national re-entry week by seeking to expand medical coverage for individuals leaving incarceration [Press Release]*. Retrieved from <https://www.governor.ny.gov/news/governor-cuomo-marks-national-re-entry-week-seeking-expand-medical-coverage-individuals-leaving>.
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