Section 1115 Demonstration Opportunity to Support Reentry for Justice-Involved Populations: Review of CMS Guidance and States' Approaches

Presented to NVHR Grassroots Advocacy Call

June 15, 2023, 3:00 – 4:00 p.m. ET

***Objective*: Provide an overview of CMS' Reentry Section 1115 Demonstration guidance, identify opportunities for Hepatitis C treatment, and share states' current approaches.**

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Context Setting

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Federal Context

On April 17, 2023, CMS released a State Medicaid Director Letter (SMDL), "Opportunities to Test Transition-Related Strategies to Support Community Reentry and Improve Care Transitions for Individuals Who Are Incarcerated."

- The SMDL implements section 5032 of the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act (SUPPORT Act), which directed the U.S. Department of Health and Human Services (HHS) to **issue guidance on how states can design section 1115 demonstrations to provide services to justice-involved individuals prior to release** in order to support their reentry into the community.
- The SMDL outlines the **opportunity for states to waive the inmate exclusion** and receive federal financial participation (FFP) for expenditures for certain pre-release healthcare services provided to individuals who are incarcerated and otherwise eligible for Medicaid, prior to their release.

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CMS
CENTERS FOR MEDICARE & MEDICAID SERVICES
CENTER FOR MEDICAID & CHIP SERVICES

SMD# 23-003

RE: Opportunities to Test Transition-Related Strategies to Support Community Reentry and Improve Care Transitions for Individuals Who Are Incarcerated

April 17, 2023

Dear State Medicaid Director:

The Centers for Medicare & Medicaid Services (CMS) is issuing the following guidance for designing demonstration projects under section 1115 of the Social Security Act (the Act) (42 U.S.C. § 1315) to improve care transitions for certain individuals who are soon-to-be former inmates of a public institution (hereinafter referred to as incarcerated individuals, except when quoting from statute) and who are otherwise eligible for Medicaid. This letter also provides guidance to interested states about development and submission of the associated section 1115 demonstration application.

This guidance continues to implement section 5032 of the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act (SUPPORT Act) (Pub. L. No. 115-271), Promoting State Innovations to Ease Transitions Integration to the Community for Certain Individuals. As mandated in section 5032, the Department of Health and Human Services (HHS) convened a stakeholder group to develop best practices for states to ease health care-related transitions for incarcerated individuals to the community and to develop a Report to Congress (RTC). On December 1, 2022, HHS transmitted the RTC to Congress.[1] Additionally, section 5032 directs the Secretary of HHS, through the Administrator of CMS, to issue this State Medicaid Director Letter (SMDL) regarding opportunities to design demonstration projects under section 1115 of the Act to improve care transitions for incarcerated individuals exiting a public institution and who are otherwise eligible for Medicaid, and to base this guidance on best practices identified in the RTC.

As provided in section 1115 of the Act, the Secretary of HHS may waive certain provisions of section 1902 of the Act and/or provide authority for federal matching of expenditures that otherwise would not be eligible for federal financial participation (FFP) under section 1903 of the Act, where the Secretary determines that the demonstration project is *likely to assist in promoting the objectives of Medicaid*. While CMS reviews every section 1115 demonstration

[1] https://aspe.hhs.gov/sites/default/files/documents/d48c8a9f6bf4990295428a30aa73bfd1/health-care-reentry-transitions.pdf

Source: CMS, Opportunities to Test Transition-Related Strategies to Support Community Reentry and Improve Care Transitions for Individuals Who are Incarcerated

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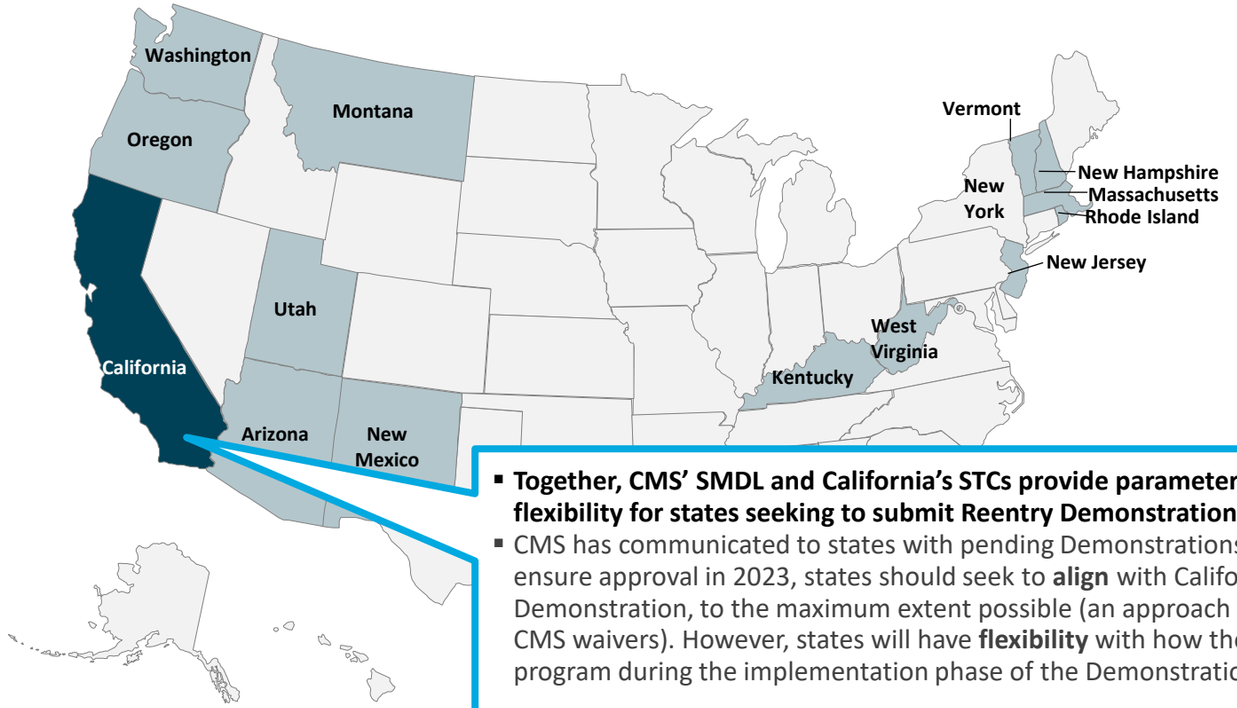
Reentry Demonstration Submissions

To date, 15 states have submitted Reentry Demonstration requests; California was the first state to receive approval in January 2023, in advance of the release of the SMDL.



- **Together, CMS' SMDL and California's STCs provide parameters and areas of flexibility for states seeking to submit Reentry Demonstration requests.**
- CMS has communicated to states with pending Demonstrations that in order to ensure approval in 2023, states should seek to **align** with California's approved Demonstration, to the maximum extent possible (an approach similar to other recent CMS waivers). However, states will have **flexibility** with how they operationalize their program during the implementation phase of the Demonstration.

Key
- Approved
- Pending

Source: See Slide Notes

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CMS Guidance on Key Reentry Demonstration Elements

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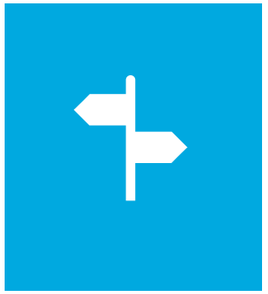
Eligible Individuals

States may propose a broadly defined Demonstration population that includes otherwise eligible, soon-to-be former incarcerated individuals.



- States have the **flexibility** to define their populations of focus (e.g., adults and youth in prisons, jails and youth correctional facilities) for pre-release services and to establish eligibility criteria (e.g., individuals with SUD and/or SMI).
- If states establish an **eligibility criteria**, they will need to set up a screening process within the correctional facility, and should be mindful of establishing identification criteria for individuals who may have conditions that are currently undiagnosed.

- States may also consider making all **Medicaid-enrolled individuals** in participating carceral facilities eligible for pre-release services.

- States also need to **define which Medicaid eligibility groups will be covered** (e.g., expansion adults, pregnant individuals, children and youth, the aged, and/or the disabled) and **whether Children's Health Insurance Program (CHIP) populations will be included**.

State Examples of Eligible Populations

The following are examples of approaches states plan to take with establishing eligibility criteria.

California: Medicaid eligible adults with 1) mental illness; 2) SUD; 3) a chronic condition; 4) intellectual/developmental disability (I/DD); 4) traumatic brain injury (TBI); 5) HIV/AIDS; or 6) are pregnant or postpartum. All Medicaid/CHIP eligible youth (no behavioral health/chronic condition criteria).

Kentucky: Medicaid eligible individuals who meet SUD criteria through assessment competed by Department of Correction staff and have a confirmed SUD diagnosis.

New York: Individuals with a history of SUD, serious mental illness (SMI), HIV/AIDS, Hepatitis C, sickle cell disease, and/or chronic disease.

Washington: All Medicaid eligible individuals.

Source: See Slide Notes.

Eligible Facilities

CMS gives states flexibility to provide coverage of pre-release services in state or local correctional facilities (e.g., state prisons, jails, and/or youth correctional facilities).

- States may seek to provide services in **all eligible correctional facilities statewide or they can choose to only provide services in a subset** of correctional facilities.
- States may also develop a **phased approach** to implementing reentry services across correctional facilities throughout the duration of the Demonstration. States that seek to provide services to only a subset of facilities will need a waiver of the Social Security Act's requirements that services be provided statewide.
- Participating states will conduct a **readiness assessment** of carceral settings before implementing the demonstration in those locations.
- CMS clarifies that Reentry Demonstrations will **not be approved for services provided in federal prisons**.
- CMS has indicated that it will not approve expenditure authority to **provide pre-release services for individuals in an institution for mental disease (IMD).**

Example:

If a state elects to implement pre-release services in its county jails and there are 25 jails in the state, a state could choose to implement the Demonstration in only 12 of the 25 jails.

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State Examples

The following are examples of approaches states plan to take for eligible facilities.

California: State prisons, county jails, and youth correctional facilities.

Massachusetts: State prisons, jails and residential programs under the Department of Youth services.

Montana: State prisons.

West Virginia: State prisons and regional jails.

Source: See Slide Notes.

Scope of Covered Services—Mandatory Benefits

CMS requires states to provide a minimum benefit package of three covered services under the Demonstration:

Covered Benefit	Description
Case Management to Assess and Address Physical and Behavioral Health Needs, and Health-Related Social Needs (HRSN)	▪ Pre-release case management is a required reentry service to assess and address physical and behavioral health needs and HRSNs. ▪ Care managers are expected to conduct a comprehensive needs assessment; develop a care plan; ensure a warm handoff to post-release care manager (if different); conduct referral activities for post-release such as scheduling appointments and connect individuals to services upon reentry into the community; and provide on-going monitoring and follow-up activities to ensure the care plan is implemented.
Medication Assisted Treatment (MAT)	▪ MAT is a required minimum service for all types of SUD as clinically appropriate, with accompanying counseling. CMS defines MAT as medication in combination with counseling/behavioral therapies, as appropriate and individually determined, and should be available for all types of SUD (e.g., both opioid and alcohol use disorders), as clinically appropriate. ▪ Coverage of MAT under a state plan includes all U.S. Food and Drug Administration–approved medications for opioid use disorder, including buprenorphine, methadone, and naltrexone, and acamprosate and naltrexone for alcohol use disorder.
30-day Supply of All Prescription Medications At Point of Release	▪ Provision of clinically-appropriate medication(s) upon release may be as either a pre-release demonstration service or as a post-release Medicaid service furnished outside the scope of the demonstration.

Note: CMS will likely not approve a proposal to cover the full scope of state plan services.

Scope of Covered Services—Optional Benefits

In addition to the minimum set of services, states have flexibility to cover other important physical and behavioral health services that support reentry into the community, such as:

- Screening for common health conditions within the incarcerated population, such as blood pressure, diabetes, Hepatitis C, and HIV;
- Family planning services;
- Rehabilitative or preventive services, including those provided by community health workers;
- Treatment for Hepatitis C; and
- Provision of durable medical equipment and/or supplies.

States that seek approval of pre-release services beyond the minimum benefit package will need to provide justification in their Demonstration applications for how such services promote the objectives of the Demonstration and support a smooth reentry into the community.

Note: States that do not provide all covered outpatient drugs during the pre-release period may not seek federal or supplemental state-specific rebates under section 1927 for any of the pre-release drugs covered under the demonstration.

California: Scope of Covered Services

California, in addition to covering the minimum set of services, will provide several additional services.

Pre-Release Services

- Care 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 during the pre-release period.
- MAT for all FDA-approved medications, including coverage for counseling.
- ★ Services provided by community health workers with lived experience.

Post-Release Services

Qualifying members will also receive upon release, consistent with approved state plan coverage authority and policy:

- **Covered outpatient prescribed medications, over-the-counter drugs** (a minimum 30-day supply as clinically appropriate), and
- **Durable medical equipment (DME).** ★

★ **Additional Services**

Source: CMS, California 1115 Waiver Approval Letter.

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Pre-Release Timeframe

States have the flexibility to provide coverage of pre-release services for up to 90 days before the incarcerated individual's expected date of release.

30 Days Prior to Re-Entry

- States will evaluate in the Demonstration application hypotheses related to improving care transitions for soon to be released individuals.

Between 30 and 90 Days Prior to Re-Entry

- States must include in their Demonstration application one or more additional hypotheses related to the longer duration of services, to be approved at the Secretary's discretion.

State Examples

The following are examples of approaches states plan to take for duration of coverage.

California: 90 days.

Arizona: 30 days.

New Hampshire: 45 days.

New Jersey: 60 days.

Source: See Slide Notes.

Participating Providers

States have flexibility to allow in-reach/community-based providers, embedded carceral health providers or both to provide reentry services. In-reach providers may provide services in person or via telehealth.

In-Reach Providers

- May provide services **in person or via telehealth**.

Carceral Providers

- The state will need to describe the **handoff processes** that will be conducted with community-based providers to support reentry.
- States that choose to allow embedded carceral health providers in this demonstration will also need to **ensure that they comply with Medicaid provider participation policies** as established by the state.

States will need to evaluate the experiences of carceral and community providers, including challenges encountered, as they develop relationships and facilitate the transition of individuals into the community.

Medicaid Eligibility and Enrollment

As a threshold requirement, CMS requires states to establish pre-release eligibility and enrollment processes to all individuals eligible for Medicaid within the carceral facility upon the individual's incarceration, throughout the period of incarceration, and no later than 45 days before expected release.

- **States may not terminate Medicaid coverage upon entry into a correctional facility and must set up eligibility suspension processes.**
- States that do not have these pre-release eligibility and enrollment processes in place will be provided a **two-year implementation glide path** to either implement suspension processes or develop an alternative approach to ensure only pre-release services are provided during incarceration and full benefits are available as soon as possible upon release.

- For new enrollees who may have a **short incarceration period** (e.g., individuals who are in jail prior to sentencing), CMS will permit correctional facilities to serve as **presumptive eligibility-qualified entities** to make presumptive eligibility determinations prior to a person's release.
- States that pursue this option will need to consider **follow-up processes** with this population once they are released into the community to ensure full eligibility determinations are completed and coverage is not lost.

Implementation Plan

Milestone 1. Increase and maintain Medicaid coverage through application, renewal, and suspension (not termination) processes.
Milestone 2. Cover and ensure access to the minimum set of pre-release services by setting up a process to identify individuals eligible for pre-release services, providing the minimum set of pre-release services, ensuring pre-release care managers have knowledge of community-based providers and services, and delivering quality healthcare services.
Milestone 3. Promote continuity of care by setting up a person-centered care plan prior to release; facilitating timely access to post-release healthcare medications and services; implementing processes, including contract modifications, if necessary, that reflect clear requirements for managed care plans; and ensuring pre-release case managers coordinate a warm handoff (a simple referral is not sufficient) with post-release case managers if they are not the same provider.
Milestone 4. Connect to post-release services by monitoring whether the individual received the services in the community as described in their care plan, including long-term services and supports and HRSNs such as housing and employment supports.
Milestone 5. Ensure cross-system collaboration by describing how the Medicaid agency and correctional facilities will confirm they are ready to ensure the provision of pre-release services; engaging stakeholders, including individuals who are incarcerated, probation departments, correctional facilities, providers, and community-based organizations; and monitoring the healthcare needs and services received through data sharing and monitoring.

Federal financing for pre-release services is contingent upon CMS approval of the implementation plan.

Reinvestment Plan

As a condition of approving Demonstrations that seek federal financing for any existing carceral healthcare services that are currently funded with state and/or local dollars, CMS is requiring states to reinvest the total amount of federal matching funds received through the demonstration.

As part of the demonstration's implementation plan, states will need to submit a reinvestment plan that **describes how funds that replace currently expended state or local dollars will be reinvested**.

Reinvestments that are focused on **improving community-based physical and behavioral health services, health information technology and data sharing, and community-based provider capacity** are all allowable.

The amount a state pays to cover new, enhanced, or expanded pre-release services authorized under the demonstration **may also count toward the state's reinvestment obligation**.

CMS will not approve a reinvestment plan under which funds would be used to build prisons, jails, or other carceral facilities, or to pay for prison- or jail-related improvements other than those for direct and primary use in meeting the healthcare needs of individuals who are incarcerated.

Discussion

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