

CMS Approves Provision of Services to Incarcerated Individuals

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CMS approves amendment to California's 1115 waiver to allow for pre-release services to incarcerated individuals

On January 26, 2023, the Centers for Medicare & Medicaid Services (CMS) approved an [amendment](#) to California's (State) CalAIM 1115 Waiver for the Reentry Demonstration Initiative, which will provide pre-release services to incarcerated individuals. Under what is known as the "inmate exclusion", federal Medicaid funds have not been available to pay-for-services while an individual is incarcerated, except when they are inpatients in a medical institution.

For the first time, CMS has approved the provision of additional services to eligible incarcerated individuals up to 90 days prior to release. This major approval may be replicated elsewhere as requests are pending in several other states, such as Arizona, Massachusetts, and Oregon.

As part of the SUPPORT Act, CMS was directed to issue a State Medicaid Director Letter (SMDL) regarding 1115 Waiver opportunities for soon-to-be-released inmates that would otherwise be eligible for Medicaid. CMS stated in the State approval that it will be releasing the required SMDL soon.

California Eligibility and Services

To be eligible for pre-release services, an individual must be:

1. Eligible for Medicaid ("Medi-Cal") or who would be eligible for the Children's Health Insurance Program, if not for their incarceration status
2. Up to 90 days away from an expected release
3. From a State prison, county jail, or youth correctional facility

Adults must meet certain health-related criteria, such as having a mental illness, a substance use disorder (SUD), or a chronic condition. However, individuals incarcerated in youth correctional facilities do not need to meet any health-related criteria.

A variety of services are authorized for eligible individuals, including case management, clinical consultation to inform a post-release treatment plan, lab and radiology services, and medications and medication administration. In addition, services may include Medication Assisted Treatment for all types of SUD with accompanying counseling. Beneficiaries can also receive medications and durable medical equipment as they exit the facility.

As part of the demonstration, the State must not terminate Medicaid coverage for individuals entering a correctional facility. Instead, the State must suspend coverage. If an individual was not enrolled upon entry, the State must ensure such an individual receives assistance completing and submitting a Medi-Cal application.

Additionally, facilities that wish to participate will have to demonstrate readiness prior to participation.

California Funding and Budget Neutrality

The Reentry Demonstration Initiative was added to the Providing Access and Transforming Health (PATH) Initiative that was already in existence as part of the State's 1115 Waiver. About \$561 million is available for initiative planning and implementation for Program Years 1-3.

The State also received approval to receive funding for Designated State Health Programs (DSHP). DSHP authority allows a state to receive federal match for pre-existing state-funded programs and use the savings to fund Medicaid programs. The State received DSHP authority to fund PATH, including the Reentry Demonstration Initiative. However, to the extent that the covered services were already provided by the qualified entities, the State is required to reinvest all new federal dollars in a manner acceptable to CMS, including funding the non-federal share of new waiver services.

As for budget neutrality, CMS is treating the reentry population as a hypothetical expenditure, eliminating the need for the State to use budget neutrality savings to support the new initiative.

Next Steps for California

The 1115 Waiver approval states that the delivery of reentry services will be on a phased-in approach. The State must submit a draft Reentry Demonstration Initiative Implementation Plan no later than 120 days after the approval of the amendment. The Implementation Plan must contain the specific process by which the State will meet five particular milestones. Additionally, the Implementation Plan must include a Reentry Demonstration Initiative Reinvestment Plan that will, in part, define the amount of reinvestment that must be made over the course of the demonstration.

The State can begin to claim federal financial participation for services once the Implementation Plan is approved. According to the waiver, Special Terms and Conditions, the expected start of reentry services is April 1, 2024.

Questions for Your Specific State?

Please contact [Kim Donica](#), [Michal Rudnick](#), [Jon Villasurda](#) or your Mercer policy specialist to discuss the potential impact of this new justice-related population opportunity on your specific state program. You may also email us at mercergovernment@mercergov.com.

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