Pre-Release Medicaid Coverage and New Opportunities to Combat Hepatitis C

Introduction

Almost one third of the total population of people living with hepatitis C in the United States are incarcerated at some point each year. Even though effective cures for hepatitis C have been available for more than a decade, access to care remains elusive for many incarcerated people. To end the epidemic, this must change. A promising strategy to improve access to care for people transitioning out of incarceration is to enable access to Medicaid benefits and critical services before release.

On January 26, 2023, California was the first state to receive a federal waiver to offer a targeted set of Medicaid services to incarcerated individuals.[i] Washington received a similar approval[ii] in July 2023, and 14 other states have filed similar requests aimed at improving access to care for people transitioning out of incarceration. The Centers for Medicare and Medicaid Services (CMS) have also released long-awaited guidance offering a roadmap for other states to follow suit.[iii] This moment presents a unique opportunity to disrupt the spread of hepatitis C and overcome barriers to care by leveraging pre-release coverage to improve access before and after release from correctional facilities.

Hepatitis C and Carceral Facilities

Hepatitis C is a widespread condition that is disproportionately concentrated among people who experience incarceration. Experts believe that at least 2.4 million people in the United States are living with hepatitis C,[iv] and up to 30% of these individuals spend time in a carceral facility in any given year.[v] High rates of incarceration among people who inject drugs, lack of access to harm reduction services, and increased instances of housing instability all contribute to these disparate rates and present significant obstacles to increasing treatment access.[vi] Despite these statistics, carceral settings have been slow in adopting and implementing policies to facilitate comprehensive hepatitis C testing and treatment with curative medications.

Section 1115 Waivers for Pre-Release Coverage

Ordinarily, the Medicaid Inmate Exclusion Policy (MIEP) prohibits states from drawing down federal financial participation for health care services for people incarcerated in prisons and jails, except when they are hospitalized for 24 hours or more. However,

in 2018, Congress passed legislation asserting that states could use Section 1115 waivers to develop programs that would test whether enabling eligible incarcerated people to access Medicaid benefits for a period of time prior to release could improve care transitions and health outcomes.[vii] Congress also mandated that CMS create federal guidance for these programs. Now, the release of the guidance, along with California's and Washington's approval, provide states more details regarding the potential scope of these programs and guidelines on how to design them.

What is a Medicaid Section 1115 Waiver?

Section 1115 waivers allow state Medicaid programs to test new ways to cover, deliver, and finance services, including through programs that may not normally be permitted under federal rules. Waivers must be approved by CMS and typically last for three to five years. Waivers must also further the objective of Medicaid, which is to provide health coverage for low-income people.

Although states have broad discretion to design their Section 1115 waivers, CMS has given a clear framework and floor for pre-release coverage programs. The CMS guidance makes clear that states must include, at minimum, (1) case management services to address physical and behavioral health needs along with health-related social needs, (2) a combination of medication and counseling for people with Substance Use Disorder (SUD), and (3) a 30 days' supply of prescription medications provided upon release. Initially, California, Washington, and the states with pending applications varied widely in terms of the length of time pre-release for which Medicaid services will be provided, who will be eligible for the programs, and the scope of the benefits that will be provided.[viii] However, between the information provided in California's approval and the CMS guidance, it is clear that states may seek to provide Medicaid benefits for up to 90 days before release, and may offer these benefits to anyone within the state carceral system who meets Medicaid eligibility requirements.

States should use these demonstration waivers to combat hepatitis C within their correctional facilities, and CMS has encouraged them to do so. The CMS guidance specifically states, "we recognize that there may be other important physical and behavioral health services that states request to cover on a pre-release basis, such as... treatment for Hepatitis C." Moreover, in considering activities related to coordinated care, the CMS guidance again points to hepatitis C as a condition for which states will want to ensure the "ability to bi-directionally share data with public health entities and community providers." Thus, CMS is clearly recommending that states utilize these waivers as a tool to fight hepatitis C.

To increase the likelihood that Section 1115 waivers for pre-release Medicaid coverage are designed and implemented for maximum effectiveness in the fight against hepatitis C, states should consider the following:

Recommendations for Leveraging Pre-Release Coverage to Combat Hepatitis C in Prisons and Jails

- **States should request 90-day coverage, and if a state chooses to target its waiver to a subset of all incarcerated people eligible for Medicaid or a subset of services, it should explicitly designate hepatitis C as a qualifying condition for eligibility under the waiver and ensure hepatitis C testing and treatment are covered benefits.** CMS has encouraged states to make these waivers open to a "broadly defined" population that includes all individuals otherwise eligible for Medicaid who are expected to be released from incarceration soon. However, states have the flexibility to target their pre-release coverage waivers more narrowly, for example, by focusing on individuals with chronic conditions or limiting the services available pre-release. States that choose narrower options should ensure that individuals with hepatitis C are included in the demonstration program, and that hepatitis testing and treatment be covered as a pre-release service. A state that limits eligibility should also ensure that its proposal, or other carceral health care policies operating in tandem, are designed to identify individuals who may have as-yet-undiagnosed hepatitis C.

- **States should collaborate with correctional facilities to enhance data sharing with public health entities and community-based organizations.** Data sharing allows for enhanced coordination between stakeholders and reduces barriers to care for people reentering the community. Moreover, inter-agency coordination and data sharing with state departments of public health will help connect new pre-release coverage programs with larger public health efforts as departments of public health play a key role in response, control, and surveillance of infectious disease. The CMS guidance specifically highlights the necessity of data sharing between correctional facilities, health care providers, and community-based organizations.[ix] CMS is even willing to provide increased, temporary funding to help states implement better data sharing practices. Given the heightened protections surrounding private health information, correctional facilities will not only need infrastructure to be able to gather and monitor this data—they will also need to implement procedures to readily share health information with relevant providers to support the continuity of care from incarceration to release.

- **States should ensure the availability of clinical education and provider training for both community-based and carceral providers to implement hepatitis C screening, diagnosis, and treatment.** Stigma and bias play a key role in the ongoing prevalence of hepatitis C. Carceral health care systems should ensure that all providers working with pre-release individuals are provided resources to understand how this interplay can deter treatment, adherence, and care.[x] In addition to arming providers with tools to dispel myths and misconceptions about substance use and people who use drugs, it is especially important that patients have access to culturally responsive and relevant services. Moreover, all care providers should have a working knowledge of whether and to what extent diagnosis and treatment are covered under the Medicaid demonstration. As hepatitis C policies continue to evolve, providers should be given adequate support to implement future policy changes and the resources to understand future developments in treatment.

- **States should increase funding to evidence-based interventions for injection drug use, including but not limited to peer support and community health workers, harm reduction services, and patient education campaigns.** The approved California proposal offers the opportunity to utilize a promising model that embeds people with lived experience of incarceration within community-based, primary care teams to work as community health workers.[xi] Doing so increases the likelihood of patients being able to build trusting relationships with their providers while also increasing opportunities in the workforce for people who have been incarcerated. Further, CMS has also made clear that pre-release Medicaid coverage waivers are not intended to shift the cost of health care from correctional facilities to Medicaid. In furtherance of this goal, CMS has conditioned the approval of federal matching funds for these 1115 waivers on the creation of a reinvestment plan. Each state must provide a detailed plan accounting for how matched state funds will be used to further support people reentering the community. These plans offer a promising opportunity to invest in supports that reduce criminal justice involvement and recidivism. Given the overwhelming connection between hepatitis C and injection drug use, states should prioritize funding for programs that are proven to improve access to care and health outcomes for people who use drugs.

- **States should monitor for adverse changes in access to care following the implementation of pre-release coverage.** While pre-release coverage is one tool to combat hepatitis C, it must not be the only tool that a correctional facility employs. Pre-release coverage is an especially useful tool for those incarcerated in jails as many are often there for short periods of time that do not exceed the

pre-release window, but correctional facilities should make every effort to test and treat all people who are incarcerated as quickly as possible to reduce transmission, morbidity, and mortality. All incarcerated people should be affirmatively offered testing for hepatitis C at intake and at routine intervals. Incarcerated people with a current hepatitis C infection should be offered treatment with curative medications expeditiously, ideally within 12 weeks.[xii] For states with 1115 waivers, correctional facilities must not delay access to testing and treatment until the pre-release period. States should ensure that all incarcerated people, especially those whose stay is anticipated to be brief, are tested for hepatitis C routinely and treated for hepatitis C as quickly as possible.

Sources

i Centers for Medicare & Medicaid Services, *Letter to Jacey Cooper, State Medicaid Director, California Department of Health Care Services* (January 26, 2023), https://perma.cc/EKB9-AAVB.

ii Centers for Medicare & Medicaid Services, *Letter to Charissa Fotinos, State Medicaid Director, Washington Healthcare Authority* (June 30, 2023), https://perma.cc/MHS7-9ZJB.

iii Centers for Medicare & Medicaid Services, *Opportunities to Test Transition-Related Strategies to Support Community Reentry and Improve Care Transitions for Individuals Who Are Incarcerated* (April 17, 2023), https://perma.cc/Y6MN-DJZB.

iv *See* State of Medicaid Access, Center for Health Law and Policy Innovation, Harvard Law School & National Viral Hepatitis Roundtable (June 2023), https://stateofhepc.org/; *See also* Brian R. Edlin, et al., *Toward a more accurate estimate of the prevalence of hepatitis C in the United States*, 62 Hepatology 1353 (2015), https://pubmed.ncbi.nlm.nih.gov/26171595/ (indicating that estimates of Hepatitis C prevalence are likely even higher than reports suggest).

v Tessa Bialek & Matthew J. Akiyama, *Policies for Expanding Hepatitis C Testing and Treatment in United States Prisons and Jails* (2023), https://www.globalhep.org/sites/default/files/content/resource/files/2023-04/ClearinghouseWhitePaper2-Hepatitis-C-Testing-and-Treatment-inUS-Jails-and-Prisons.pdf.

vi *Supra* Note 1.

vii SUPPORT for Patients and Communities Act, H.R. 6, 115th Cong. (2018), https://www.congress.gov/bill/115th-congress/house-bill/6.

viii *Medicaid Waiver Tracker: Approved and Pending Section 1115 Waivers by State*, Kaiser Family Foundation (June 5, 2023), https://perma.cc/8AFY-AMHK.

ix Centers for Medicare & Medicaid Services, *Opportunities to Test Transition-Related Strategies to Support Community Reentry and Improve Care Transitions for Individuals Who Are Incarcerated* (April 17, 2023) at 25, *https://perma.cc/Y6MN-DJZB*.

x Alysse G. Wurcel, et al., *"I'm not gonna be able to do anything about it, then what's the point?": A broad group of stakeholders identify barriers and facilitators to HCV testing in a Massachusetts jail,* https://pubmed.ncbi.nlm.nih.gov/34038430/.

xi *See e.g.* Transitions Clinic Network, Transitions Clinic Network Model (last accessed 2023), https://transitionsclinic.org/transitions-clinic-model/.

xii *Supra* Note 2.