

VIA ELECTRONIC TRANSMISSION

February 9, 2024

The Honorable Xavier Becerra
Secretary of Health and Human Services
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

Re: TEAMKY Health Demonstration

Dear Secretary Becerra,

The Center for Law and Social Policy (CLASP) is a national, nonpartisan nonprofit advancing anti-poverty policy solutions that disrupt structural and systemic racism and sexism and remove barriers blocking people from economic security and opportunity. We work at the federal and state levels, supporting policy and practice that makes a difference in the lives of people living in conditions of poverty. CLASP works to develop and implement federal, state, and local policies (in legislation, regulation, and implementation) that reduce poverty, improve the lives of people with low incomes, and create pathways to economic security for everyone. That includes directly addressing the barriers people face because of race, ethnicity, gender, disability, and immigration status. Through high-quality analysis grounded in data and on-the-ground experience, effective advocacy, a strong public voice, and hands-on technical assistance, CLASP develops and promotes new ideas, mobilizes others, and provides guidance to government leaders and advocates to help them implement strategies that improve the lives of people across America. CLASP works to amplify the voices of directly impacted workers and families and help public officials design and implement effective programs.

CLASP's vision for re-entry requires the prioritization of community repair and an active disinvestment from community supervision.¹

In the context of Medicaid policy, that means ensuring that re-entry demonstration programs connect the largest population of Medicaid-eligible incarcerated people to as broad of set of benefits as possible. Additionally, new funding opportunities should strengthen community-based services and peer provider networks while avoiding becoming another outlet for carceral expansion. There is an abundance of studies that find that trauma-informed re-entry programs

¹ Clarence Okoh and Isabel Coronado, "Relocating Reentry: Divesting from Community Supervision, Investing in 'Community Repair'," September 2022, <https://www.clasp.org/publications/report/brief/relocating-reentry-divesting-from-community-supervision-investing-in-community-repair/>.

focused on holistic wellbeing and social support are key to positive reentry outcomes for formerly incarcerated individuals.²

CLASP supports Kentucky's four stated goals of:

- Goal 1: Improve access to services by increasing coverage, continuity of coverage, and appropriate service uptake for eligible incarcerated adults and YDC-placed youth;
- Goal 2: Improve coordination, communication, and connections between correctional systems, Medicaid systems and processes, managed care plans, and community-based service providers delivering enhanced services to maximize successful reentry post-release;
- Goal 3: Reduce the number of avoidable emergency department visits and inpatient hospitalizations and reduce all cause deaths; and
- Goal 4: Increase additional investments in health care and related services to improve quality of care for Medicaid beneficiaries in carceral setting and post-release reentry community services.

However, we believe that more should be done to address racialized health inequities, prioritize person-centered and trauma-informed approaches in program design, and target workforce investments to community-based providers instead of providers based in the carceral setting. CLASP has some concerns regarding Kentucky's proposed eligibility, included benefits, and implementation plan that we would like CMS to consider before approving the Commonwealth's waiver request.

Eligibility

CLASP appreciates Kentucky's broad definitions of eligibility to all adults who would be eligible for Medicaid if not for their incarceration status in one of Kentucky's state prisons and all youth who would be eligible for Medicaid or CHIP if not for their having been adjudicated and placed in one of Kentucky's Youth Development Centers (YDCs). However, **CLASP encourages Kentucky to make full use of the federally allowed 90-day pre-release eligibility period and that jails should also have the choice to opt-in to this re-entry demonstration and that the amendment.**

Individuals detained in jail settings are also not able to access health services paid for by Medicaid according to the Medicaid Inmate Exclusion Policy (MIEP) yet face similar rates of negative health outcomes post-release as those leaving prison settings. Furthermore, the Commonwealth has one of the highest imprisonment rates in the world and the number of individuals detained in Kentucky county jails is more than double that of those incarcerated in state prisons.³ For this demonstration to meet Kentucky's stated goal of maximizing successful reentry post-release, it must address the health needs of the majority of eligible Kentuckians being released from carceral settings. That includes working with stakeholders, especially individuals with lived experiences, who understand the unique health needs of those leaving jail setting. The Substance Abuse and Mental Health Services Administration (SAMHSA)'s evidence-based best practices for successful reentry for individuals with mental health conditions and/or substance use disorders, which Kentucky cited in its rationale for the proposed amendment

² Ebony N. Russ et al., "Prison And Jail Reentry And Health" Health Affairs, October 2021, <https://www.healthaffairs.org/doi/10.1377/hpb20210928.343531/>.

³ Derek Aaron, "Local Jails Seeing Rise in Inmate Populations," WJRS, July 2022, <https://lakercountry.com/2022/07/local-jails-seeing-rise-in-inmate-populations/>.

explicitly includes individuals leaving jail settings.⁴ In fact, according to the U.S. Department of Justice, individuals sentenced to a jail setting are more likely to meet the criteria for drug dependence or abuse than those incarcerated in state prisons.⁵

The shorter nature of jail stays means that there is often variable access to physical and behavioral health care, and pre-release coordination with community-based care for people leaving jail settings is less likely than for people in prison settings.⁶ However, those in jail settings may benefit more from coordination to community-based care, as those in jail settings tend to be located geographically closer to their home communities than those in prison settings. Given the larger population size, equal demonstrated health need, and geographic feasibility of connecting with community-based care, CLASP urges Kentucky to include individuals leaving jail settings in the Commonwealth's proposed amendment.

Benefits

CLASP appreciates Kentucky's holistic approach to health by including case management services pre- and post-release to address physical health, behavioral health, and health-related social needs. However, it is unclear how case management, counseling/behavioral therapies, or other medications can be provided without physical and behavioral clinical check-up and consultation services. CLASP urges Kentucky to include the full Medicaid benefits package and any additional targeted substance use, mental health, or reentry-specific services in its implementation plan, including but not limited to physical and behavioral health clinical consultation services, medications and medication administration, and durable medical equipment (DME) immediately upon release (not merely prescriptions for DME). This also includes dental and any vision services Medicaid enrollees would be eligible for outside of the carceral setting. Although substance use disorder (SUD) is a serious health condition that warrants the attention of Kentucky Department for Medicaid Services (DMC), it is not the only one that can severely affect the health outcomes of formerly incarcerated individuals. Incarcerated populations are more likely to have chronic health conditions such as high blood pressure, asthma, cancer, arthritis, and infectious diseases (e.g., tuberculosis, hepatitis C, and HIV) than the general public.⁷ All of these conditions can be debilitating and even fatal if not medically monitored. To truly and effectively smooth an incarcerated individual's transition back into the community, Medicaid coverage should prioritize the health care needs of the individual, regardless of diagnosis.

Implementation

⁴ Substance Abuse and Mental Health Services Administration (SAMHSA), "Best Practices for Successful Reentry From Criminal Justice Settings for People Living With Mental Health Conditions and/or Substance Use Disorders," 2023, <https://store.samhsa.gov/sites/default/files/pep23-06-06-001.pdf>.

⁵ Jennifer Bronson, Ph.D., Jessica Stroop, Stephanie Zimmer, and Marcus Berzofsky, Dr.P.H., "Drug Use, Dependence, and Abuse Among State Prisoners and Jail Inmates, 2007-2009" Bureau of Justice Statistics, U.S. Department of Justice, June 2017, <https://perma.cc/ZE6J-RT25>

⁶ Amy L. Solomon et al., "Life After Lockup: Improving Reentry from Jail to the Community," Urban Institute, May 2008, <https://www.ojp.gov/pdffiles1/bja/220095.pdf>.

⁷ Laura M. Maruschak, Marcus Berzofsky, Dr.P.H., and Jennifer Unangst, "Medical Problems of State and Federal Prisoners and Jail Inmates, 2011-12," Bureau of Justice Statistics, U.S. Department of Justice, February 2015, <https://bjs.ojp.gov/content/pub/pdf/mpsfj1112.pdf>.

CLASP's support for this proposal also assumes an implementation plan that prioritizes the rights and privacy of systems-involved populations and does not expand the reach and influence of the criminal legal system into the lives of those transitioning back into the community. Below, we will outline some potential concerns regarding the Commonwealth's proposed implementation plan and address the following recommendations:

- Use of capacity-building funds to prioritize community-based care over funding for carceral facilities;
- Ensure Medicaid implementation is separate from any law enforcement, correctional, or community supervision operations;
- Protect sensitive data for systems-impacted individuals;
- Outline and track how Medicaid demonstration will divert enrollees from entering justice system;
- Meaningfully engage community advocates, providers, and justice-involved individuals at all levels of the program's design and implementation.

Kentucky's proposed amendment states that Department of Corrections (DOC) providers will offer pre-release MAT services and prescribe medication and/or DME. CLASP urges CMS to ensure that no Medicaid spending is permitted to directly fund or subsidize law enforcement or correctional agencies in the Commonwealth, or private entities that perform similar functions. Any workforce or capacity building of facility-based providers and care coordinators should be in partnership with community-based provider organizations and not associated with the DOC. Further, we urge CMS and Kentucky policymakers to ensure that case management services associated with Medicaid and other wraparound supports are also separated from any law enforcement, correctional, or community supervision agency. For example, probation and parole officers should not be involved in connecting transitioning individuals with health services or have a say in their access to other wraparound services associated with this proposal.

Additionally, Kentucky should outline the steps it will take to protect sensitive data for systems-impacted individuals. We urge Kentucky to explain how personal data used for Medicaid enrollment will be used. We urge Kentucky to outline affirmative steps to ensure that sensitive data are not shared with or otherwise accessible to law enforcement, correctional agencies, or commercial third parties.

Finally, while the Commonwealth is requesting authority to cover services delivered while individuals are in confinement, the Commonwealth should also explain how Medicaid is or will be used to support efforts to divert Medicaid enrollees from entering or re-entering the justice system. We urge Kentucky to meaningfully engage community advocates, providers, and a diverse cohort of justice-involved individuals at all stages of designing and implementing this proposal to ensure it is maximally effective and does not produce unintended harms for those it seeks to serve. For more information, please see our report on how state community supervision systems can impede or support economic opportunity, and our recommendations for how states can implement a "community repair" policy approach instead.

Thank you for the opportunity to comment on this important issue. If you have further questions, please contact Juliana Zhou at jzhou@clasp.org.

Sincerely,

Juliana Zhou
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Center for Law and Social Policy