

VIA ELECTRONIC TRANSMISSION

November 10, 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: Louisiana Reentry 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 a 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 ⁽²⁰²¹⁾

CLASP supports Louisiana's stated waiver goals of:

- Increasing coverage, continuity of coverage, and appropriate service uptake through assessment of eligibility and availability of coverage for benefits in carceral settings 90-days prior to release;
- Improving access to healthcare services prior to release and improving transitions and continuity of care into the community upon release and during reentry;
- Improving coordination and communication between correctional systems, Medicaid systems, managed care plans, and community-based providers;
- Increasing additional investments in healthcare and related services, aimed at improving the quality of care for beneficiaries in carceral settings and in the community to maximize successful reentry post-release;
- Improving connections between carceral settings and community services upon release to address physical health, behavioral health, and health-related social needs (HRSN);
- Reducing all cause deaths in the near-term post-release;
- Reducing overdose deaths occurring within 12 months of release; and
- Reducing the number of ED visits and inpatient hospitalizations among recently incarcerated Medicaid beneficiaries through increased receipt of preventive and routine physical and behavioral healthcare.

CLASP believes that Louisiana's proposed pre-release Medicaid waiver demonstration, in combination with the state's existing Pre-Release Enrollment Program and policy of suspending rather than termination Medicaid enrollment upon incarceration, will improve the health and wellbeing outcomes of incarcerated individuals transitioning back into the community. We also applaud Louisiana for their stated commitment to utilize infrastructure investments to support the provision of pre-release services by community-based providers.

However, CLASP has some concerns regarding Louisiana's implementation plan that we would like CMS to consider before approving the state's waiver request. We believe that more must be done to prioritize the rights and data privacy of participating individuals in the implementation plan Louisiana has outlined. Furthermore, CLASP would like to see a more concrete plan for investing in community-based providers and to actively include community members with lived experiences in an advisory and oversight board for this program. Ensuring that stakeholders with lived experiences of re-entry after incarceration are given a central role in the implementation of this demonstration is especially important given Louisiana's intention to conduct research on this demonstration's impact on recidivism.

Eligibility

CLASP appreciates Louisiana's broad definitions of eligibility, which includes all individuals who are inmates in a public institution and are either enrolled in Medicaid or enrolled/eligible for CHIP. Additionally, we also applaud Louisiana for opting for the maximum federally allowed pre-release

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/>.

eligibility period of 90 days. However, we believe that for this demonstration to most effectively improve transitions and continuity of care into the community, individuals *eligible* for Medicaid must also be included in the demonstration's eligibility definition.

Louisiana has one of the highest and racially disparate imprisonment rates in the world. The number of individuals incarcerated in Louisiana is almost two times the national average and over 65% are Black. However, unlike other states, the majority of incarcerated individuals in Louisiana are imprisoned in jails, which typically hold people for shorter lengths of time. Like those in prison facilities, individuals detained in jail settings are also barred from receiving health services paid for by Medicaid by the Medicaid Inmate Exclusion Policy (MIEP) and generally offered fewer health care services because of the shorter duration of their incarceration. And yet, these individuals face similar rates of negative health outcomes post-release as those leaving prison settings. Approximately 28% of the state prison population are estimated to have a mental illness, 10% have been diagnosed with a serious mental illness, and roughly 73% of those in state custody suffer from some form of substance use disorder.³

Although Louisiana's existing Pre-Release Enrollment Program assists individuals eligible for Medicaid with enrollment prior to their release from a prison facility, there is currently no such service for individuals prior to release from jail facilities, who are often held on a pretrial basis. This leave Medicaid-eligible individuals being released from Louisiana jails uniquely cut out of state efforts to health care access for re-entering individuals. Health access for Louisianans leaving jails is a major health equity issue, considering that as of March 2020, Louisiana's pretrial incarceration rate is the highest of any state on record since 1970 and the state's jails have increasingly served as treatment centers of only resort for individuals with mental illnesses but few options for treatment.^{4,5} The differential access to Medicaid enrollment assistance for individuals exiting prison versus jail settings is also a racial equity issue. Louisiana's incarcerated Hispanic and Asian populations are far more likely to be located in jail facilities instead of prison facilities.⁶

To maximize the impact of this demonstration phase Louisiana must address the health needs of eligible Louisiana residents released from prisons and jails alike. Although Louisiana is prioritizing its prisons in the implementation process, we hope that the state will consider the unique gaps in health access for those exiting the state's jails when it begins implementing this demonstration in jails. For jails especially, 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

³ Louisiana Department of Health, "Reentry Demonstration Section 1115 Waiver Application," September 2024, Accessed at <https://www.medicaid.gov/medicaid/section-1115-demonstrations/downloads/la-renty-dmnrtrn-aplctn.pdf>.

⁴ ACLU of Louisiana, "Justice Can't Wait: An Indictment of Louisiana's Pretrial System," March 2020, Accessed at <https://www.laclu.org/en/press-releases/new-aclu-louisiana-report-shows-sharp-increase-people-awaiting-trial-behind-bars>.

⁵ Alena Maschke, "There's a mental health crisis in Louisiana jails," *The Current*, October 2024, Accessed at <https://thecurrentla.com/2024/theres-a-mental-health-crisis-in-louisiana-jails/>.

⁶ Prison Policy Initiative, "Louisiana profile," Accessed at <https://www.prisonpolicy.org/profiles/LA.html>.

less likely than for people in prison settings.⁷ 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 Louisiana to support as many jails as possible to participate in the waiver demonstration. **CLASP urges CMS to work with Louisiana to make this demonstration open to Medicaid-eligible individuals exiting the jail system.**

Implementation

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. Although data integration between Louisiana's Department of Health (LDH) and Department of Public Safety & Corrections (DPS&C) is a necessary part of implementing this waiver demonstration, **CLASP urges CMS to seek more information about how Louisiana plans to protect sensitive data for systems-impacted individuals, explain how personal data used for Medicaid enrollment will be used, and how the state plans to ensure that the private Medicaid and health data of individuals released from incarceration are not used for correctional, research, or surveillance purposes without explicit, uncoerced, and informed consent from enrollees. Additionally, we also ask that CMS work with Louisiana to ensure meaningful community engagement.**

The proposed demonstration waiver outlines a number of ways in which enrollee information will be collected and shared for the purposes of facilitating Medicaid applications and renewals, conducting program evaluation, studying the demonstration's impact on recidivism. The proposed demonstration does not, however, outline the ways in which enrollees' private information will be safeguarded against misuse or use for purposes unrelated to the provision of healthcare services. 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. CLASP strongly believes that any workforce development funding should be used to invest in community-based or affiliated providers. However, any LDPS&C employees with access to enrollees' health information must also undergo regular HIPAA and not be associated with law enforcement or correctional duties.

Additionally, Louisiana's waiver request states that LDH and LDPS&C intend to conduct research regarding their re-entry demonstration's impact on recidivism. This is concerning in light of the lack of information about data protection in the state's waiver request, considering public health and bioethics experts have raised concerns in the past about another opioid-related LDPS&C research partnership

⁷ Marsha Regenstein and Sara Rosenbaum, "What the Affordable Care Act means for people with jail stays," *Health Affairs*, March 2014, Accessed at <https://www.healthaffairs.org/doi/10.1377/hlthaff.2013.1119>.

failing to uphold basic ethical, safety, and legal protections that are essential to medical research with human subjects.⁸

Finally, we urge CMS request that Louisiana 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 is 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.⁹

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
Policy Analyst
Center for Law and Social Policy

⁸ Melissa Healy, “Louisiana tried to help prisoners fight opioid addiction. Here’s why doctors objected,” *Los Angeles Times*, November 2019, Accessed at <https://www.latimes.com/science/story/2019-11-21/prisoners-opioid-addiction-naltrexone>.

⁹ Okoh and Coronado.