CENTER for HEALTH LAW and POLICY INNOVATION
HARVARD LAW SCHOOL

NVHR
National Viral Hepatitis Roundtable

November 29, 2023

Chiquita Brooks-LaSure, Administrator
Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
200 Independence Avenue, S.W., Room 3140
Washington, D.C. 20201

Re: MassHealth Section 1115 Demonstration Waiver Amendment Request Submitted October 2023

Dear Administrator Brooks-LaSure:

The Center for Health Law and Policy Innovation of Harvard Law School (CHLPI) and National Viral Hepatitis Roundtable (NVHR) write in support of Massachusetts' pending proposal to provide 90 days of prerelease Medicaid services to individuals leaving incarceration. We appreciate this opportunity to comment on the proposal and to highlight the ways in which Massachusetts' and similar proposals will help end our national HIV and hepatitis C epidemics.

CHLPI advocates for reforms to improve the health of underserved populations, with a focus on the needs of low-income people living with or at risk for chronic illness. Our program has a long history of supporting innovative programs that combat HIV and hepatitis C, including through changes to state Medicaid programs. For example, we collaborate with NVHR on the Hepatitis C: State of Medicaid Access project, which grades state Medicaid programs in all 50 states and the District of Columbia on their progress to remove administrative barriers to curative hepatitis C medications. NVHR is a coalition of patients, health care providers, community-based organizations, and public health partners fighting for an equitable world free of viral hepatitis.

CHLPI and NVHR believe pathways to prerelease Medicaid coverage for people experiencing incarceration present great opportunity to increase access to and continuity of care for people living with HIV and hepatitis C, as discussed in more detail below.

1. **CMS should approve Massachusetts' proposal to provide pre-release services to certain individuals in public institutions for 90 days prior to their release.**

We strongly support Massachusetts' proposal to extend Medicaid coverage to all individuals in County Correctional and state Department of Corrections facilities—including many people living with HIV, hepatitis C, and other chronic conditions—for up to 90 days prior to their release. The proposal will help facilitate transitions in medical care for these individuals, including the streamlining of service and medication delivery, to promote better health outcomes post-incarceration, such as reduced emergency room visits, hospitalizations, and overdose deaths.

Individuals in carceral settings are five to seven times more likely to have HIV than the general population.[1] Many people learn of their HIV diagnosis for the first time while they are in prison or jail.[2] Furthermore, HIV infection in carceral settings reflects the same racial disparities that we see both in the HIV epidemic more broadly and in the criminal justice system: Black men are five times more likely to be diagnosed with HIV in prison compared to white men.[3] Similarly, hepatitis C is disproportionately concentrated among people who experience incarceration. At least 2.2 million people in the United States are living with hepatitis C,[4] and up to 30% of these individuals spend time in a carceral facility in any given year.[5] The main mode of transmission of HCV is the use of contaminated needles for injection drug use,[6] and high incidences of housing instability, along with stigma against people who use drugs, further impede access to HCV treatment.

Appropriate access to health care in the initial weeks and months following release from incarceration is especially crucial. People are in a period of significant transition, and the likelihood of disruption is high. Despite Medicaid being "a key source of coverage for this high needs, high-risk population, facilitating access to much needed physical and behavioral health services,"[7] justice-involved individuals face complex barriers to accessing care upon release. Medicaid enrollment and coverage reinstatement delays, provider shortages, difficulties establishing care, and challenges relaying medical histories are common. Health risks are further exacerbated by difficulties meeting basic health-related social needs, such as housing. This lack of access to health care and challenges meeting basic needs makes linkage to community care difficult and increases the likelihood of worsening disease progression. For example, research shows that newly released individuals with HIV present to emergency rooms in far higher numbers

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[1] The Center for HIV Law and Policy, *Prisons and Jails*, https://www.hivlawandpolicy.org/issues/prisons-and-jails.
[2] *Id.*
[3] Shufang Sun, Natasha Crooks, Rebecca Kemnitz & Ryan P. Westergaard, *Re-entry experiences of Black men living with HIV/AIDS after release from prison: Intersectionality and implications for care*, 211 Social Science & Medicine 78 (2018), doi: 10.1016/j.socscimed.2018.06.003.
[4] *See* Karon C Lewis, Laurie K Barker, Ruth B Jiles, & Neil Gupta, Estimated Prevalence and Awareness of Hepatitis C Virus Infection Among US Adults: National Health and Nutrition Examination Survey, January 2017–March 2020, 77 Clin Infect Dis 10 (2023), doi: 10.1093/cid/ciad411.; *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/ (estimates of hepatitis C prevalence are likely even higher than reports suggest).
[5] Tessa Bialek & Matthew J. Akiyama, 2023. *Policies for Expanding Hepatitis C Testing and Treatment in United States Prisons and Jails*. https://www.globalhep.org/sites/default/files/content/resource/files/2023-04/ClearinghouseWhitePaper2_Hepatitis_C_Testing_and_Treatment_in_US_Jails_and_Prisons.pdf.
[6] Dept. of Health & Hum. Servs, *Hepatitis C Basics*, https://www.hhs.gov/hepatitis/learn-about-viral-hepatitis/hepatitis-c-basics/index.html.
[7] Jhamirah Howard, et al., *ASPE Issue Brief: The Importance of Medicaid Coverage for Criminal Justice Involved Individuals Reentering Their Communities*, 6 (2016), https://aspe.hhs.gov/sites/default/files/migrated_legacy_files//146076/MedicaidJustice.pdf.

than the general population, for reasons that may be preventable through outpatient care.[8]

Extending Medicaid coverage to incarcerated individuals 90 days prior to release, especially when combined with 30 days of medication after release, has the potential to improve continuity of care post-release and encourage health equity in several ways. First, it will allow for the resolution of administrative issues related to enrollment and reinstatement of care prior to release and, therefore, the first day that care in the community is needed. Second, it will allow transitions of care to begin earlier, making them more streamlined and timelier, and minimizing harmful disruptions in care and treatment. Community providers and coordinators can establish relationships with members, thereby facilitating members' access to critical health and treatment information prior to release. Third, individuals may be able to complete screening and treatment for hepatitis C while incarcerated, when they are in a stable location with access to a secure place to keep their medication. Further, since MassHealth proposes to include access to up to 90 days of medication at release, when clinically appropriate, individuals who cannot complete the full course of hepatitis C treatment while incarcerated can continue their care. Access to medications upon release will also be critical for helping people with HIV to remain on their medications, avoiding potentially dangerous treatment interruptions.

Certain other aspects of MassHealth's proposal bear specific mention:

1) MassHealth's commitment to outreach prior to the pre-release window will maximize the utility of the window and promote the likelihood of better health outcomes. MassHealth's proposal promises to, "conduct pre-release outreach, along with eligibility and enrollment support, well in advance of the 90-day pre-release timeframe."[9] Preliminary outreach and coordination will enhance the impact of the broad arrangement of services, both pre- and post-release, by minimizing the amount of time within the coverage period dedicated to enrollment and other administrative tasks unrelated to treatment and linkage to outside providers.

2) We strongly approve of MassHealth's proposal to provide necessary durable medical equipment (DME) upon release. The provision of DME upon reentry assists people reentering from incarceration by preparing them at the outset with the medical supports necessary to manage their chronic conditions, especially those with mobility limitations. Assisting with the immediate and pressing needs of people reentering the community furthers the likelihood that a person can prioritize other health needs, such as adherence to viral illness medication and follow-up with providers.

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[8] Alfredo G. Puing, Xilong Li, Josiah Rich & Ank E. Nihawan, *Emergency department utilization by people living with HIV released from jail in the US South*, 8 Health & Justice (2020), doi:10.1186/s40352-020-00118-2.

[9] Commonwealth of Massachusetts, Executive Office of Health and Human Services, 2023. *MassHealth Section 1115 Demonstration Amendment Request Submitted to CMS.*

3) We applaud MassHealth's proposed reliance on a variety of community-based health workers, such as recovery coaches, peer support specialists, and doulas to meet the varying needs of justice-involved populations. Such services can soften the transition between carceral health care and community-based health care by providing social-emotional support, care coordination, patient advocacy, and other needs that traditional health care delivery models do not necessarily incorporate.

4) We strongly support MassHealth's choice to include opportunities for reinvestment in "services to support health transitions and/ or diversion from criminal justice involvement."[10] The letter to state Medicaid Directors, "*Opportunities to Test Transition-Related Strategies to Support Community Reentry and Improve Care Transitions for Individuals Who Are Incarcerated*," supports MassHealth's decision to explicitly include opportunities for reinvestment in upstream, non-carceral interventions.[11] Incarceration itself is a social-determinant of health linked to disparate health outcomes for a number of systemically marginalized populations, including, but not limited to, Black, indigenous, and other people of color, people with disabilities, LGBTQ+ populations, people who are unhoused, and people from low-income communities.[12] Investment in evidence-based health interventions to address unmet medical and social needs in these communities with help reduce health disparities in these populations, and MassHealth's proposed 1115 waiver offers a promising opportunity to do so.

Pre-release coverage has the potential to greatly improve access to treatment and continuity of care post-release for individuals living with HIV and hepatitis C. We therefore encourage CMS to approve Massachusetts' proposal.

2. CMS should approve the proposal to implement the demonstration through a phased implementation approach beginning July 1, 2025, per the request of MassHealth.

We urge CMS to approve MassHealth's proposal to implement the demonstration through a phased implementation approach beginning July 1, 2025, as CMS has recently done in California and Washington.[13] Research shows that previous incarceration is correlated with a tendency to rely on emergency departments at a much

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[10] *Id.*

[11] Centers for Medicare & Medicaid Services, 2023. *Opportunities to Test Transition-Related Strategies to Support Community Reentry and Improve Care Transitions for Individuals Who Are Incarcerated* ("For example, the reinvestment plan could include investments [involving] adding or expanding **mobile crisis services**, trained peer supports, Medicaid health homes, and long-term services and supports to beneficiaries with chronic conditions and complex health-related circumstances") (emphasis added).

[12] U.S. Department of Health and Human Services, 2020. *Incarceration*. Healthy People 2030. https://health.gov/healthypeople/priority-areas/social-determinants-health/literature-summaries/incarceration/.

[13] Centers for Medicare & Medicaid Servs., State Medicaid Director Letter (Jan. 26, 2023), https://www.medicaid.gov/sites/default/files/2023-01/ca-calaim-ca1.pdf

higher rate than the general population.[14] Reducing reliance on emergency services is especially crucial at this time in Massachusetts, where emergency departments are already under tremendous strain due challenges including workforce shortages, financial losses, and capacity constraints exacerbated by the COVID-19 pandemic.[15] Supporting reentry services through a phased implementation approach beginning July 1, 2025, will help decrease the burden on Massachusetts' emergency departments while improving health care for formerly incarcerated individuals, especially those living with HIV and hepatitis C.

Sincerely,

Elizabeth Kaplan
Director of Health Care Access
Center for Health Law and Policy Innovation

Adrienne Simmons
Director of Programs
National Viral Hepatitis Roundtable

[14] Joseph W. Frank, Jeffrey A. Linder, William C. Becker, David A. Fiellin, and Emily A. Wang, *Increased Hospital and Emergency Department Utilization by Individuals with Recent Criminal Justice Involvement: Results of a National Survey*, 29 J Gen Intern Med (2014), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4139534/.

[15] Massachusetts Health & Hospital Association, *An Acute Crisis: How Workforce Shortages are Affecting Access and Costs*, (2022), https://mhalink.informz.net/mhalink/data/images/An%20Acute%20Crisis%20-%20MHA%20Workforce%20Report.pdf.