

# Health Care in Motion

Timely, Substantive Updates on Policy Shifts · Actionable Advocacy to Protect Health Care

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## Medicaid Section 1115 Waivers for Reentry: Updates and Resources

A person's transition from incarceration back to the community is fraught with competing, complex social and behavioral health needs, as well as staggering rates of overdose and other adverse health events. This period can be especially challenging for people with HIV and other chronic health conditions, given the risks associated with interruptions in care. New Medicaid Section 1115 waivers seek to improve these transitions by allowing people leaving incarceration to access certain Medicaid benefits for a period prior to reentry. Read on to learn more about these waivers, including recent updates and what to expect next.

### Background and Minimum Waiver Requirements

The Social Security Act of 1965, which established Medicaid, [explicitly excluded](#) "inmate[s] of a public institution" from accessing the program. This policy has come to be called the Medicaid Inmate Exclusion Policy (MIEP). Historically, the MIEP was not seen as a significant barrier to care because the number of justice-involved individuals was much smaller and, before the Affordable Care Act, Medicaid eligibility was more limited, meaning those individuals would have been unlikely to qualify for Medicaid even without justice involvement. But the ACA's Medicaid expansion, coupled with rapidly rising [rates of incarceration](#), has meant that the Medicaid Inmate Exclusion Policy has become a major roadblock in access to care for the millions of individuals who interact with the correctional system annually.

The MIEP is especially concerning because justice-involved individuals face [significant health challenges](#) upon release: one study found that 1 in 70 were hospitalized within a week of release, and 1 in 12 were hospitalized within 90 days of release. Justice involved individuals were twice as likely to die

### A New Way Home: CHLPI Medicaid & Reentry Symposium

On April 1, 2024, CHLPI hosted a symposium at Harvard Law School that brought together over 100 attendees including people with lived experience, state and federal Medicaid policy makers, members of the justice system, community-based organizations, providers, and others to talk about the potential of these waivers. Panelists and keynote speaker Vikki Wachino of the [Health and Reentry Project](#) explored themes such as the opportunity these waivers represent to better address health-related social needs; the need to meaningfully involve diverse stakeholders in program design and implementation; and how creative approaches to reinvestment can support communities disproportionately impacted by incarceration. [Click here](#) to view recordings of the sessions and other resources, including a [primer](#) on Section 1115 waivers for Medicaid pre-release coverage.

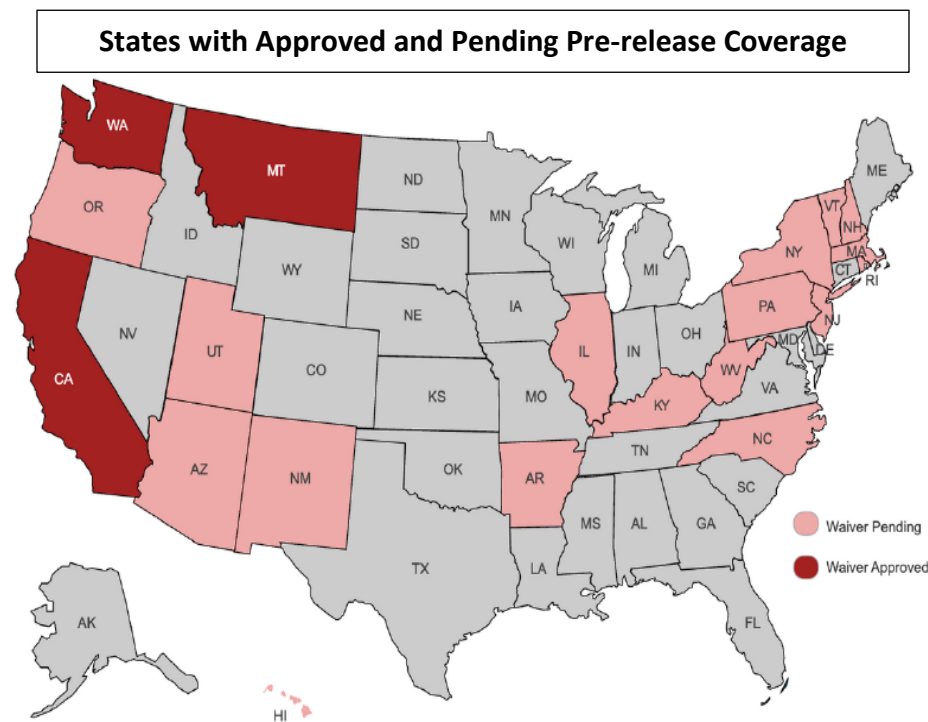
within 60 days of release as someone who had never been incarcerated, and exponentially more likely to [experience an overdose](#) in the period following release.

Federal leadership is finally beginning to address this crisis. In 2018, Congress passed the SUPPORT Act, which included authority for CMS to waive the MIEP under Section 1115 of the Social Security Act for individuals soon to be released from incarceration. CMS issued [guidance](#) in 2023 outlining how interested states could apply for this waiver by offering to cover a set of pre-release services for people incarcerated in jails, prisons, and youth correctional services. These services would include, at minimum, case management, medication assisted treatment (MAT) with accompanying counseling, and a 30-day supply of medication upon release. States are also allowed to go beyond these services. CMS’s guidance also requires states to reinvest any state or local funds saved on carceral health care expenses in programs to improve access to or quality of health care for justice-involved populations.

In March 2024, Congress passed [legislation](#) designed to further improve the health care coverage of justice-involved individuals, including requiring Medicaid programs to suspend rather than terminate enrollment when an individual is incarcerated, providing funding for reentry programs, and asking CMS to issue further guidance for states looking to improve access to health care for individuals upon reentry.

## Which States Have Approved and Proposed Waivers

So far, CMS has approved three Medicaid pre-release coverage waivers, for California, Washington, and Montana. [California](#) plans to provide a targeted set of Medicaid services to Medicaid-eligible adults and youths who are incarcerated in state prisons, jails, and youth correctional facilities for up to 90 days prior to release. Eligible adults must meet one or more medical criteria to qualify, such as HIV, substance use disorder, or pregnancy. Similar to California, [Washington](#) will cover all Medicaid-eligible adults and youths who are incarcerated for a targeted set of services, including physical and behavioral health assessments, lab work, care coordination, and medication, for up to 90 days prior to release. Washington will not impose any medical eligibility criteria. [Montana](#)’s program will be more limited, and will provide some Medicaid services, including case management, physical and mental health clinical consultations, and MAT, for adults with mental health or substance use disorders



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who are incarcerated in Montana’s state prisons for up to 30 days prior to release. All of these programs will include funds to help build capacity and deliver services.

These waivers are picking up momentum, with [22 states](#) having submitted proposals to CMS so far and more working on proposals behind the scenes. The map above shows a snapshot as of April 2024 of the states with approved waivers and with waivers that are awaiting approval by the federal Centers for Medicare and Medicaid Services (CMS). CHLPI expects CMS to approve more state proposals later this year.

## What’s Next?

These waivers will be especially difficult to implement, with many technical challenges including enabling state prison and county jail systems to bill Medicaid for inmate health services for the first time. In addition, for these waivers to meet their full potential, states must ensure that many stakeholders are adequately informed of and participating in the implementation process, particularly the people impacted by these programs, prisons and jails, community-based organizations, medical providers, and managed care organizations. These waivers therefore have required long implementation processes—for example, CMS approved Washington’s waiver in June of 2023, and Washington expects its carceral facilities to begin offering pre-release Medicaid coverage in July of 2025.

As California, Washington, and Montana continue their implementation processes, and other states’ waivers are proposed and approved, it will be crucial for advocates to monitor the design and implementation of these waivers to ensure maximum benefit for communities disproportionately impacted by incarceration. For example, since case management is a mandatory component of the waivers, these services should be provided to the greatest extent possible by people with lived experience who are embedded in communities with high levels of justice involvement. Community members should also have meaningful input into how state reinvestment dollars are spent.

CHLPI will continue to monitor and analyze these developments and to share resources for advocates related to these waivers. Watch this space and our Medicaid & Reentry Symposium page for updates.

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