Colorado Medical Assistance Alternate Plan for Criminal Justice Populations

C.R.S. 25.5-4-505.2.b mandates: "An alternative plan developed by the state department [HCPF] to ensure improved access to care and continuity of care for individuals involved in the criminal justice system who are being released from incarceration that details how the state department plans to ensure continuity of care for individuals being released from jail or prison"

Submitted: October 19, 2023

COLORADO
Department of Health Care Policy & Financing

Contents

I. Executive Summary

The Department of Health Care Policy and Financing (HCPF) was directed by the state General Assembly through Senate Bill 22-96 to complete an analysis to determine if the state should seek authority to provide Medicaid coverage for people in jails, prisons and juvenile facilities prior to release. In April 2023, the Centers for Medicaid and Medicare Services (CMS), released new guidance on how states can develop a plan to cover incarcerated individuals during their transition out of incarceration in a way most likely to be approved as a state demonstration. The state used the federal and state guidance to develop this report and the accompanying analysis to determine if Colorado should seek federal authority to provide screening, brief intervention, medication assisted treatment, prescribed medications and care coordination services through the medical assistance program.

Through this analysis HCPF has determined seeking federal authority to offer pre-release services would benefit Colorado citizens and that the program would be financially beneficial to state and local governments. However, HCPF has also determined it is inappropriate to seek additional Federal authority without additional legislative and budget authorities. Most specifically, this program requires budget adjustments across state Departments and approval for state budget changes to ensure program success. This program would allow Colorado to draw down significant federal funds which would completely cover the cost of the program expansion and operations, as the state is already paying for many of these services with general funds through the Department of Corrections and the Behavioral Health Administration. The analysis identified that providing Medicaid coverage for reentry services in state-operated facilities (state prisons and juvenile justice facilities) would result in cost savings to be reinvested into health services for the identified populations. Further analysis and planning would be required to ensure that Medicaid coverage for reentry services would be needed in order to ensure the benefit would not result in additional state expenditure.

HMA estimated 5,500 releases annually from prisons and juvenile youth facilities with projected total computable Medicaid expense of $8 million annually; $6 million of the $8 million can be funded through federal funds as a part of the Section 1115 Demonstration, while $2 million of the $8 million will be funded through state funds only. The state is currently investing an estimated $5 million in reentry activities within prisons and juvenile youth facilities, resulting in

roughly $3 million in existing state funds that could be reinvested in new programs over time.

HMA estimates 110,500 releases from county jails occur annually and projects $76 million in Medicaid treatment costs, with $56 million of the costs funded through federal funds; this means the remaining $20 million must be funded through state funds. The Behavioral Health Administration (BHA) currently funds related transitional services in jails with $16 million in general fund through their Jail Based Behavioral Health Services (JBBS) program; the funds can be used to cover a portion of the state funds need to cover transitional services in jails. HMA's attempt to ascertain expense information for transitional services from the 61 county and municipal jails in Colorado but only 4 jails responded. With such a low response rate HMA extrapolated from the information available and estimates that jails spend $33 million annually on transitional services. With the $16 million from JBBS and the estimated $33 million in jail expenses to cover the state portion of funds needed for Medicaid to cover transitional services in jails, there could be $29 million in existing state funds that could be reinvested in new programs. While the jail analysis is informational, without comprehensive information from the jail on their actual spend, the analysis lacks confidence.

The federal guidance requires that any savings that result from implementation for this program be reinvested into serving Medicaid populations and health related social needs. HCPF worked with stakeholders and other state partners and has identified that this reinvestment could be most appropriately used on housing supports, care coordination and peer supports, data and technology to improve outcomes, and an expansion of community based mental health and substance use care with a focus on those with serious mental illness and chronic substance use disorder. Without authorization from the Colorado General Assembly authorizing adjustments of existing general funds, the only way HCPF could implement pre-release coverage would be to cut existing programs and benefits. Therefore, HCPF recommends not seeking federal authorization unless the Department has the budgetary support and authorization for the complex financing needed to implement this impactful program.

II. Introduction and Background

In February 2023, the Department of Health Care Policy and Finance (HCPF) began evaluating the continuity of Medical Assistance services for Coloradans leaving jail or Department of Corrections facilities as mandated by Senate Bill 22-196

(establishing C.R.S. 25.5-4-505). HCPF contracted Health Management Associates (HMA), a national healthcare consulting firm, to evaluate the current system for persons leaving carceral settings, enabling recommendations based on as accurate information as possible. There are two potential scenarios under SB 22-196:

1. HCPF determines the state should request federal authority, HCPF must request the Centers for Medicare & Medicaid Services (CMS) approval through Section 1115 Reentry Demonstration authority. If the requested federal authority is granted, HCPF would provide the benefits.

2. HCPF determines that the state should not request federal authority, HCPF must submit a report to the Joint Budget Committee of the General Assembly that includes an alternate plan to ensure continuity of care for individuals being released from jail or prison.

This evaluation titled Federal Authority to Support Health-Related Reentry Services, (provided separately from this document) reports on the current efforts to support individuals within the criminal justice system in Colorado, existing benefits currently offered for individuals on work release or transitioning out of carceral settings, offers potential improvements within the existing criminal justice care continuum and analyzes the case for Colorado to seek additional federal authority to provide Medical Assistance services.

A. Criminal Justice Involved Population Health

As of April 30, 2023, Colorado correctional institutions reported an inmate population of approximately 31,000 individuals. About 70-80% of these individuals have a substance use disorder, mental health diagnosis, or chronic health condition, which has required the corrections system to become the de facto primary provider of behavioral health and substance use disorder (SUD) services for justice-involved individuals[1]. In the first two weeks following release, this population experiences heightened mortality rates and is 129 times more likely to die of an overdose compared to the general population[2]. This transitional two-week period after release equates to 7.2% of all Colorado hospital expenditures

[1] Criminal Justice Federal Authority Project: Specifications for Different Federal Authority Solutions, 2023-8. April 2023
[2] Binswanger IA, Stern MF, Deyo RA, Heagerty PJ, Cheadle A, Elmore JG, Koepsell TD. Release from prison--a high risk of death for former inmates. N Engl J Med. 2007 Jan 11;356(2):157-65. doi: 10.1056/NEJMsa064115

and 8.5% of all emergency room visits[3]. Those individuals with SUD diagnosis are 80% more likely to recidivate.

A disproportionate number of incarcerated individuals are minorities, specifically Black, Hispanic and Indigenous[4]. Existing health disparities affecting these underserved populations are compounded by the disproportionate number of incarcerated Black individuals. The justice-involved population and the minority populations' healthcare outcomes are interconnected.

B. Medicaid Eligibility

Most individuals transitioning from correctional settings to the community qualify for Medicaid: in Colorado, up to 81% of individuals exiting carceral settings may be eligible for Medicaid services[5] and most of these individuals fall below the federal poverty level.[6] Given the high risk of overdose and high acuity health needs, continuous health care is critical during the first two weeks following release. However, simply enrolling in the Medicaid program will not address reentry issues successfully. Services that address health conditions, health-related social needs (HRSNs) and the complete continuum of services for addiction and behavioral health conditions provide the most significant opportunities for successful reentry post-incarceration into our communities.

C. Cost savings for reinvestment with a waiver

HMA projects $62M of the $84M will be funded through federal funds as a part of the 1115 Demonstration opportunity, while $22M of the $84M will be funded through state funds only. Currently, the state is investing an estimated between $21 and $54M in reentry activities within correctional facilities. This allows for up to $32M in existing state funds which could be reinvested in new programs over time. With an 1115 waiver, the federal guidance requires that any cost savings to current programming be reinvested into services for individuals transitioning from correctional settings. With new Federal Financial Participation (FFP) (for both services and administrative support), the State's overall expenditures for justice-involved persons reentering the community are anticipated to decrease over time via streamlined cost-efficiencies across Medicaid and correctional health program

[3] US Department of Justice Medical Problems of State and Federal Prisoners and Jail Inmates, 2011–12. January 2015.
[4] Punishment Beyond Prisons 2023: Incarceration and Supervision by State.
[5] Bronson J, Berzofsky M. Indicators of Mental Health Problems Reported by Prisoners and Jail Inmates. US Department of Justice. Published June 2017.
[6] The Pew Charitable Trusts. Collateral Costs: Incarceration's Effect on Economic Mobility. Accessed May 16, 2023.

expenditures such as the Department of Corrections (DOC) and Jail Based Behavioral Health Services (JBBS) that provide a portion of these benefits today.

Section 1115 Demonstration Benefit Medicaid Expense Projection: Comparison to Current Other State Program Expenditures				
	State Prisons	County Jails	Juvenile Youth Facilities	Total
Total Computable Medicaid Cost (a)	**$7,805,108**	**$76,345,779**	**$173,408**	**$84,324,294**
Federal Share (a1)	*$5,759,169*	*$56,338,079*	*$89,592*	*$62,186,840*
State Share (a2)	*$2,045,939*	*$20,007,699*	*$83,815*	*$22,137,454*
Current Reentry Expense Estimate (b)	**$5,037,488**	**$49,274,266**	**$111,919**	**$54,423,673**
Current DOC Expense Estimate (b1)	*$5,037,488*	*$0*	*$0*	*$5,037,488*
Current JBBS Expense (b2)	*$0*	*$16,000,000*	*$0*	*$16,000,000*
Current Other Expense Estimate (b3)	*$0*	*$33,274,266*	*$111,919*	*$33,386,185*
Overall State Funding Change: (a2) – (b)	**$(2,991,549)**	**$(29,266,566)**	**$(28,104)**	**$(32,286,219)**

HCPF is confident in HMA's analysis as it relates to the potential $3 million in cost savings for prisons and juvenile youth facilities. With a total computable Medicaid expense of $8 million annually, under an 1115 waiver the federal funding portion would be $6 million; this means the state must cover $2 million. With the state is already investing $5 million in transitional services, $3 million of which would be available to reinvest in new programs.

HCPF has less confidence in HMA's cost state only projections for transitional services in jails, as HMA was only able to obtain expenditure information from 4 out of the 61 jails in the state. HMA estimates that adding Medicaid transitional services to jail will cost $76 million. Under an 1115 waiver $56 million of these costs would be covered by federal funds, requiring the state to cover $20 million. The state can use the $16 million in state general fund allocated to the BHA for the JBBS program; this leaves an additional $4 million that must be covered by the state. HMA used the expenditure information they were able to obtain for the jails and extrapolated the data to estimate that the jail currently spends $33 million on transitional services, however this estimate could include county funds and need further analysis to understand the state required funds and any cost savings that could be captured for reinvestment.

Additional funding opportunities under an 1115 waiver initiative could help the state establish information technology and data sharing needed to bill Medicaid

with participating carceral facilities. This administrative funding is separate from budget neutrality and is subject to state share in accordance with federal financial requirements. CMS is permitting broad flexibility in state identification of IT/infrastructure needs, at enhanced FFP rates (i.e., 90/10 or 75/25) for certain administrative activities.

An 1115 waiver for the criminal justice population allows states flexibility to propose a broadly defined reentry demonstration for soon to be released incarcerated individuals. Within this broad flexibility, Colorado can determine if it wants to target all justice-involved Medicaid eligible individuals or only certain individuals with specific health conditions (e.g., SUD or behavioral health diagnosis), identify a staggered roll out based on facility type, and determine any other allowable limitations for applicable population, geographic locations, and length of coverage (i.e., less than 90 days).

D. Options for Reinvestment Priorities

Aa condition of approving an 1115 waiver that seeks federal financing for any existing carceral health related services currently funded through state dollars, CMS requires state reinvestment plan to reinvest the total amount of federal matching funds through the waiver. Reinvestment opportunities that focus on improving community based physical or behavioral health services, health related social needs, information technology and data sharing infrastructure, or provider capacity. Administrative functions may also be included as part of the reinvestment plan to include hiring and training staff to assist with implementation plans. Also, outreach activities, educational opportunities and stakeholder engagement may be included as part of the state's plan. CMS is strongly encouraging states to pursue reinvestment plans that include Health Related Social Needs (HRSN) such as housing, employment assistance, or nutritional programs.

E. Department Determination on Seeking Authority

Colorado has an opportunity to provide medical services to this vulnerable population. With improved health care services for those who are justice-involved, communities across the state could see a reduction in those health conditions contributing to recidivism, mortality and costs.

The benefits of an 1115 waiver for this population will improve our communities and bend the cost curve over time for Colorado. However, pursuing an 1115

waiver without state funding authority to capture existing general funds to use to meet the state match is only possible at the expense of other critical Health First Colorado programs.

III. Alternative Plan

As outlined in SB 22-196, if HCPF determines applying for a waiver is inappropriate, HCPF is required to provide an alternate plan. Without state funding authority to expand services prior to release, the alternative of ensuring improved access to health care and care coordination is to improve existing programs. Ongoing efforts include improving coordination between the Accountable Care Collaborative (ACC) program and the criminal justice system and programming administered by the Behavioral Health Administration.

A. Supporting Justice-Involved Members Via the Accountable Care Collaborative (ACC) Program

To address the health needs of Coloradans being released from state prisons, HCPF hosts monthly meetings with the RAEs/MCOs (Regional Accountable Entities/Managed Care Organizations), the Department of Corrections (DOC) and community partners to problem-solve and share best practices. A data-sharing agreement gives the RAEs access to a list of members released from DOC facilities to coordinate services post-release. RAEs/MCOs utilize this data to guide in-person outreach in prisons and establish agreements with providers to reach members and provide post-release care. DOC supports this work by ensuring that individuals are enrolled in Medicaid, their coverage is active upon release and frequently scheduling post-release appointments with community providers.

The rate of members receiving behavioral health services within 14 days of release is part of the Performance Pool pay-for-performance metric set. As a result of these efforts, the engagement rate increased from 10% in January 2020 to over 26% by March 2023 (the most recent available data). During that same time, the rate of members receiving medication-assisted therapy (MAT) for SUD within 14 days of release increased from just under 2% to over 6%. In compliance with HB23-1300, HCPF will seek federal authority by April 1, 2024, to expand continuous eligibility for people post-release from a DOC facility. This initiative supports this population in consistent coverage and access to behavioral and physical health services upon through extended Medicaid eligibility, but does not address access to services prior to release.

HCPF also has a data-sharing agreement with the Colorado Judicial Branch to support members on probation. Work began on an automated data-sharing process in FY 2022–23 that would better enable RAEs to reach out to members on probation. Implementation of the automated data-sharing process is expected in FY 2023–24 and collaboration with the Judicial Branch is ongoing.

Coordinating with jails is complex due to shorter and less predictable stays and variation among facilities. Each county jail has different contacts, processes, sizes and needs. The ACC has been focusing primarily on care coordination for enrolled members, but work is ongoing to establish enrollment and post-release care coordination processes. The variance between individual jail operations and frequent staff turnover means that relationship building and education are continuous components of this work.

For juveniles, Section 5121 of the Consolidated Appropriations Act of 2023 (federal omnibus budget bill) requires the expansion of a limited set of benefits 30 days prior to release for juveniles post-adjudication, effective January 1, 2025. HCPF, the Division of Youth Services (DYS), RAEs/MCOs and providers are collaborating to implement these requirements.

The Department is utilizing American Rescue Plan Act (ARPA) funds to gather feedback and update guidance for partner organizations such as county human service offices. HCPF is working on an update to the Criminal-Justice Involved Populations Toolkit for Counties, initially published in 2016, which clarifies roles and responsibilities and establishes processes for Medicaid enrollment prior to release.

The ACC program continues this collaborative work formally linked to criminal justice systems (DOC, jails, probation, DYS). Ongoing ACC improvement efforts and ACC Phase III work will also positively impact justice-involved members. Examples include better coordination between ACC care coordination and care coordination provided within the Department's waiver programs offered by case management agencies (CMAs), increased access to high-intensity outpatient services and improvement in substance use disorder (SUD) treatment for adults and youth.

B. Behavioral Health Administration (BHA) Funded Services for Criminal Justice-Involved Populations

Individuals involved in the criminal justice system are supported by behavioral health services provided through the BHA, including Jail Based Behavioral Health Services (JBBS), the HIE (Health Information Exchange) Medication Consistency Program, Law Enforcement Assisted Diversion (LEAD) programs, Co-Responder programs, Offender Behavioral Health Services (OBHS) treatment programs, the Strategic Individualized Remediation Treatment (STIRT) program and new grant-funded services provided through SB22-196.

JBBS programs operate within city and county jails to provide behavioral health services to individuals while incarcerated and during the transition into community after release. JBBS services include substance use disorder (SUD) treatment, mental health treatment, medication-assisted treatment (MAT) and pre-sentence reentry coordination. In addition to the services provided through JBBS, the HIE Medication Consistency Program aims to support successful transitions back to the community by ensuring that individuals have continuous access to the same set of effective medications.

LEAD programs divert individuals from the traditional criminal justice pathway to immediate services. In a similar effort, Co-Responder Programs identify calls for police service where behavioral health appears to be a relevant factor. The law enforcement officer and the behavioral health specialist's combined expertise aims to improve the de-escalation of situations, deflect individuals away from involvement with the criminal justice system and unnecessary hospitalizations and link them to appropriate services.

OBHS and STIRT programs improve access to community services for justice-involved individuals. OBHS funding aims to ensure justice-involved individuals have access to effective community-based services that address their behavioral health needs and other factors correlated with their justice system involvement. The STIRT program is a continuum of care that includes short-term residential treatment and outpatient treatment for adults 18 years of age or older, who are involved in the criminal justice system and are at risk of returning to jail or prison, or being removed from specialty court programming, due to technical violations of the terms and conditions of their probation, parole, or court program. The program is designed to address substance use disorders and criminogenic behaviors and mental health concerns when appropriate.

Additional services are being expanded by grant funding provided through SB22-196 to be distributed by the BHA. SB 22-196 established the early intervention, deflection and redirection from the criminal justice system grant program to fund programs and strategies that prevent people with behavioral health needs from becoming involved with the criminal justice system or that redirect individuals in the criminal justice system with behavioral health needs from the system to appropriate services. Twenty-nine different entities will be awarded $49M in total, distributed across the various programs. Examples of grant-funded activities include the expansion of Co-Responder programs, expansion of resource navigators within the court system, increasing recovery support services and social development support services.

IV. Proposed Timeline

HCPF is developing a strategic plan for the Department to work with the programs and services being implemented by the ACC and BHA. By April of 2024, HCPF will develop and execute the criminal justice strategic plan outlining the work with justice-involved Medicaid members. HCPF will continue monitoring the Department of Correction matrix (the Performance Pool pay-for-performance metric set) ensuring justice-involved individuals are connected with Medicaid programs and services post-release. This plan will continue into ACC Phase III by July 1, 2025.

V. Conclusion

The State of Colorado could benefit from granting HCPF the budget authority to pursue federal authority to offer pre-release services to incarcerated individuals prior to release. If Colorado received the budget authority necessary to pursue and implement an 1115 waiver, that would allow Medicaid to provide transitional services to eligible individuals up to 90 days prior to discharge from a carceral setting. Justice-involved individuals and those at risk of incarceration would see improved outcomes for their successful reintegration, reduced likelihood of recidivism, improved physical and behavioral health, and reduced risk of death or overdose after release. Investing in transition services for incarcerated populations would offer Colorado cost savings for reinvestment, while reducing high-cost acute health care utilization. HCPF should, however, work with jails to complete a more comprehensive expenditure analysis to better understand how much money the state could reinvest, and partner with local governments and stakeholders to design an appropriate and allowable program.

HCPF is dedicated to serving Colorado and will continue to seek out the most effective policies using the taxpayer dollars with which we are entrusted. Without the budget authority to pursue an 1115 waiver, HCPF will continue with current programs and services for justice-involved individuals as outlined in this alternative plan.