BUREAU OF JUSTICE ASSISTANCE

FROM CORRECTIONS TO COMMUNITY: NAVIGATING THE NEW MEDICAID SECTION 1115 DEMONSTRATION OPPORTUNITY, PART 1

JULY 19, 2023

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Presenters

- Nancy Kirchner, Technical Director, Center for Medicaid and CHIP Services (CMCS), Centers for Medicare & Medicaid Services (CMS), U.S. Department of Health and Human Services
- Ruby Qazilbash, Deputy Director, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice
- Hallie Fader-Towe, Interim Director, Behavioral Health Division, The Council of State Governments Justice Center

Agenda

- Welcome and Introduction to OJP and BJA
- Overview of the Medicaid Demonstration Opportunity
- Opportunities for Corrections
- Q&A

Learning Objectives

Identify opportunities for covering pre-release services under the demonstration opportunity and how the demonstration can support continuity of care for individuals with physical and behavioral health needs during reentry.

Highlight potential benefits from the demonstration opportunity, including for corrections agencies and people who are incarcerated and reentering into the community.

Poll

I am (please select the choice that best reflects your role):

- In a leadership role in state corrections
- Working in state corrections
- In a leadership role in local corrections
- Working in local corrections
- In a leadership role in behavioral health
- Working in behavioral health
- Other

SECTION 1

WELCOME AND INTRODUCTION TO OJP AND BJA

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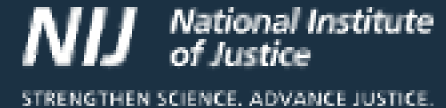
What is the Office of Justice Programs?

- The Office of Justice Programs (OJP) provides grant funding, training, research, and statistics to the criminal justice community.
- OJP is one of three grant-making components within the Department of Justice along with the **Office on Violence Against Women (OVW)** and the **Office of Community Oriented Policing Services (COPS)**.

BJA – Bureau of Justice Assistance

BJS – Bureau of Justice Statistics

NIJ – National Institute of Justice



OVC – Office for Victims of Crime

OJJDP – Office of Juvenile Justice and Delinquency Prevention

SMART – Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking

U.S. Department of Justice Bureau of Justice Assistance

Mission: BJA's mission is to provide leadership and services in grant administration and criminal justice policy development to support state, local, and tribal justice strategies to achieve safer communities. BJA works with communities, governments, and nonprofit organizations to reduce crime, recidivism, and unnecessary confinement, and promote a safe and fair criminal justice system.

https://bja.ojp.gov/

Karhlton F. Moore, BJA Director

How BJA Supports the Field

Fund

Invest diverse funding streams to accomplish goals.

Educate

Research, develop, and deliver what works.

Equip

Create tools and products to build capacity and improve outcomes.

Partner

Consult, connect, and convene.

SECTION 2

OVERVIEW OF THE MEDICAID DEMONSTRATION OPPORTUNITY

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CENTERS FOR MEDICARE & MEDICAID SERVICES

Medicaid Reentry Section 1115 Demonstration Opportunity

This communication was printed, published, or produced and disseminated at U.S. taxpayer expense. The information provided in this document is intended only to be a general informal summary of technical legal standards. It is not intended to take the place of the statutes, regulations, or formal policy guidance that it is based upon. This document summarizes current policy and operations as of the date it was presented. We encourage readers to refer to the applicable statutes, regulations, and other interpretive materials for complete and current information.

Medicaid Basics

- Implementing legislation
  - *Title XIX of the Social Security Act*
- Jointly funded partnership program between federal and state governments
- State-administered program that must follow federal rules
- Policies and programs vary from state to state

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Medicaid Basics (continued)

Subject to CMS Approval State Medicaid Agencies

- Determine the extent of who is eligible;
- Establish their own eligibility standards;
- Determine the services available and the amount, duration, and scope of services;
- Determine the delivery system for services;
- Set payment rates for services; and
- Administer the day-to-day operations.

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Section 1115 Demonstration Authority

- Section 1115 of the Social Security Act gives the Secretary of Health and Human Services authority to approve experimental, pilot, or demonstration projects that are likely to assist in promoting the objectives of the Medicaid and CHIP programs.
- CMS performs a case-by-case review of each state proposal to determine whether its stated objectives are aligned with those of Medicaid/CHIP.
- CMS also considers whether proposed waiver and/or expenditure authorities are appropriate and consistent with federal policies.
- Demonstrations must be “budget neutral” to the federal government, which means that, during the project, federal Medicaid expenditures will not be more than federal spending without the demonstration.
- Generally, section 1115 demonstrations are approved for an initial five-year period. States commonly request and receive additional five-year extension approvals.

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Background on Reentry Section 1115 Demonstration Opportunity

- Medicaid and "inmates of a public institution":
  - Medicaid regulations at 42 Code of Federal Regulations (CFR) 435.1010 define an inmate of a public institution as **"a person living in a public institution"** and define a public institution as **"an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control."**
  - **A correctional institution is considered a public institution** and may include state or federal prisons, local jails, detention facilities, or other penal settings (such as boot camps, wilderness camps).
  - CMS considers an individual of any age to be an "inmate" **if the individual is in custody and held involuntarily through operation of law enforcement authorities** in a public institution.

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Background on Reentry Section 1115 Demonstration Opportunity (continued)

- Medicaid inmate of a public institution payment exclusion:
  - Individuals who are held involuntarily in a public institution may be eligible for and enrolled in Medicaid, but **federal Medicaid funds may not be used to pay for services** for such individuals while they are incarcerated.
  - This is commonly called the "inmate payment exclusion" and applies to all Medicaid services, with an exception for inpatients in a medical institution (inpatient hospitals, nursing facilities, etc.).

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Background on Reentry Section 1115 Demonstration Opportunity (continued)

Section 5032 of the SUPPORT Act: The Medicaid Reentry Act

- Directs the secretary of HHS to convene a stakeholder group to **develop best practices and submit a report to Congress (RTC)** summarizing those best practices.
- Directs the secretary to **issue a State Medicaid Director letter (SMDL)** based on those best practices to inform the design of a section 1115 demonstration opportunity.

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Background on Reentry Section 1115 Demonstration Opportunity (continued)

- Numerous studies show incarcerated individuals **experience high rates of physical and behavioral health conditions**:
  - Approximately **37 percent of people in prisons** and **44 percent in jails** have a **history of mental illness**.
  - The **rate of substance use disorders (SUDs)** in incarcerated individuals may be as high as **65 percent in prisons**.
- **Improving health care transitions** for incarcerated individuals is critically important.
- Many of these individuals are Medicaid eligible.
- **Access to services pre- and post-release** may provide these individuals with more stability.

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Guidance: Demonstration Goals

To improve health care transitions for incarcerated individuals returning to the community, the Reentry Section 1115 Demonstration Opportunity will address the following goals:

- **Increase coverage, continuity of coverage, and appropriate service uptake**;
- **Improve access to services**;
- **Improve coordination and communication**;
- **Increase additional investments in health care and related services**;
- **Improve connections between carceral settings and community services**;
- **Reduce all-cause deaths**; and
- **Reduce emergency department (ED) visits and inpatient hospitalizations**.

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Guidance: Quality and Health Equity

- States should consider how to **advance quality of care and close health disparity gaps** by
  - **Promoting access** to coverage, care, transitions to the community, and quality of services and
  - **Addressing** health-related social needs (HRSN).
- CMS strongly encourages states **to engage individuals with lived experience of incarceration** in the demonstration design and implementation.

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Guidance: Eligible Individuals

- Medicaid-eligible individuals who are currently incarcerated, but close to release, may be included in this demonstration.
  - This could include current Medicaid-eligible beneficiaries as well as individuals who are eligible but are not currently enrolled.
- States have the **flexibility to target the population further** and should establish identification criteria.
  - For example, states may target the population to individuals with specific conditions, such as a SUDs, serious mental illnesses (SMIs), etc.
  - As states develop identification criteria and processes, they should be mindful of establishing identification criteria for individuals with undiagnosed conditions.

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Guidance: Medicaid Eligibility and Enrollment

- States **should work with correctional facility partners** to start the application process and help already incarcerated individuals apply for Medicaid. The state should assist with applications upon incarceration and **no later than 45 days before** the individual's expected date of release.
- Once enrolled, states are expected to **suspend and not terminate eligibility.**
  - Suspending (rather than terminating) eligibility supports the goals of ensuring that states limit coverage and payment to authorized Medicaid benefits and services during incarceration and making coverage and payment for full Medicaid benefits and services available as soon as possible upon release.
  - States that cannot do suspension now may propose alternative policies and procedures while they implement suspension. A glide path of up to two years to implement this fully may be provided.

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Guidance: Carceral Settings

- States **may include individuals in state and/or local jails, prisons, and/or youth correctional facilities** for pre-release services.
  - States have the **discretion** to propose the **types of carceral settings** and **individual carceral facilities for participation**.
  - States **may propose a phased approach** to adding carceral facilities.
  - Participating states will **conduct a readiness assessment of carceral settings** before implementing the demonstration in those locations.
- States may include individuals in federal prisons to help them submit Medicaid application(s).
  - However, **federal prisons are otherwise not included** in the demonstration as a setting in which pre-release services are provided.

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Guidance: Scope of Health Care Services

States **are expected to include the following** as a minimum for pre-release services:

- **Case management** to assess and address physical and behavioral health needs, and health-related social needs (HRSN);
- **Medication-assisted treatment (MAT)** services, as clinically appropriate, with accompanying counseling for all types of SUD; and
- **A 30-day supply of all prescription medications,** as clinically appropriate based on the medication dispensed and the indication, provided to the individual immediately upon release from the correctional facility.

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Guidance: Scope of Health Care Services (continued)

States are encouraged to consider **covering additional services**.

- Examples include family planning services and supplies, peer supporters and community health workers with lived experience, behavioral health services, and treatment for Hepatitis C.
- Additional services should be **based on the needs** of the carceral populations.
- States should **provide justification** for such services and must capture those services in the demonstration monitoring and evaluation.

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Guidance: Details about Scope of Health Care Services

- Case management **includes the activities coverable under the targeted case management services benefit**.
  - Pre-release case management **should build a bridge** to post-release physical health, behavioral health, and HRSN services.
  - The **case manager may be different** between pre- and post-release services.
    - A **warm hand-off is necessary** to ensure continuity of services.
- For states to be **permitted** under this demonstration opportunity to **seek pharmacy rebates**, **all covered outpatient drugs must be provided** pre-release and meet the Medicaid Drug Rebate program section 1927 requirements.
  - To the extent a state **provides less than full outpatient drug coverage**, including only MAT drugs, the state **may not seek rebates** for any of the pre-release drugs provided under the demonstration.

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Guidance: Providers of Pre-Release Services

- States may cover services **in-person, via telehealth, or both**.
- "In-reach" pre-release services by community providers is preferred by CMS.
- States may use **pre-release carceral and/or community providers**.
  - Generally, states relying on carceral health care providers to furnish pre-release services **are expected to ensure that the providers comply with Medicaid provider participation requirements** set by the state.

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Guidance: Pre-Release Timeframe

- States generally will be expected to cover demonstration services beginning **30 days immediately prior** to the individual's expected date of release.
- CMS will consider approving demonstration authority to begin coverage up to **90 days prior** to the expected release date.
- If a state requests a pre-release service **timeframe longer than 30 days**, the state should incorporate into its statement of the demonstration purpose **one or more elements to be tested** for that additional period.

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Guidance: Administrative Information Technology System Costs

State Medicaid agency (SMA) information technology (IT) system costs **may be eligible for enhanced federal financial participation (FFP)** that meets required criteria through an Advanced Planning Document.

- This may include IT systems that support data sharing between SMAs, correctional agencies, carceral facilities, Medicaid providers, and other systems (such as housing or other HRSN data systems or sources).
- Enhanced FFP may be claimed for **new systems or improvements to existing systems**.
- If states have questions related to IT topics and IT system expenditures, CMS encourages states to contact their Medicaid Enterprise Systems State Officer.

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Guidance: Transitional, Non-Service Expenditures

States **may request time-limited support** in the form of federal funding from CMS for certain new expenditures required by states, correctional facilities, and health care providers **to implement and expand service provision and coordination** with community providers.

- Examples include development of new business or operational practices, workforce development and outreach, education, and stakeholder convening.

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Guidance: Reinvestment Plan

- CMS **does not expect to approve** state proposals for any existing carceral health care services that are currently funded with state or local dollars **unless:**
  - **The state agrees** to **reinvest the total amount** of federal matching funds received for such services under the demonstration into activities or initiatives that **increase access to or improve the quality** of
    - **Health care services** for individuals who are incarcerated or were recently released from incarceration or
    - **Health-related social services** that may help divert individuals from criminal justice involvement.
- States **are expected to include a reinvestment plan** in the implementation plan that
  - **Outlines the aggregate amount of federal matching funds for carceral health care services that are currently funded with state or local dollars** that is being requested and
  - **Where reinvestments** will be made.

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Guidance: Reinvestment Plan (continued)

- Any investment in carceral health care **is expected to**
  - **Add to or improve the quality of health care services and resources** for incarcerated individuals and
  - **Supplement, not supplant, existing state or local spending** on such services and resources.
- Examples of reinvestments include, but are not limited to, the following:
  - Improved access to behavioral and physical health care services in the community
  - Improved health information technology and data sharing
  - Increased community-based provider capacity that is particularly attuned to the specific needs of and able to serve justice-involved or individuals at risk of justice involvement
- The state's share of expenditures for new, enhanced, or expanded pre-release services approved under the demonstration can be considered an allowable reinvestment.
- CMS **will not approve a reinvestment plan** under which funds are used to build prisons, jails, or other carceral facilities; used for non-health-related improvements for such facilities; or increases the profits of private carceral facilities.

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Guidance: Implementation Plan, Monitoring, and Evaluation

- States **must submit an implementation plan**, subject to CMS approval.
- CMS is developing an implementation plan template for states to use.
- Matching federal funds for services provided during individuals' stays in carceral settings will be contingent on CMS approval of the state's implementation plan.
- **States will be required to conduct systematic monitoring and robust evaluation** of the demonstration.
  - CMS will **identify a set of monitoring metrics** and **provide evaluation design guidance**.
  - States will be expected to **describe their plans for monitoring** in a Monitoring Protocol, and report on a **quarterly and annual basis,** as well as complete a Mid-Point Assessment.
  - The state's monitoring and evaluation will test the goals and milestones identified in the approved demonstration project, including state-specific nuances to implementation that CMS approves.

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Emerging Interest in Section 1115 Reentry Demonstration Opportunity

- CMS approved the first Reentry Section 1115 Demonstration Opportunity, California, on January 26, 2023.
- Washington's Reentry Section 1115 Demonstration Opportunity was approved on June 30, 2023.
- Fourteen other states have applied:
  - Arizona, Illinois, Kentucky, Massachusetts, Montana, New Hampshire, New Jersey, New Mexico, New York, Oregon, Rhode Island, Utah, Vermont, and West Virginia
- An application to CMS to pursue this Section 1115 opportunity is subject to 1115 transparency requirements for public notice and tribal consultation.

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SECTION 3

OPPORTUNITIES FOR CORRECTIONS

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Barriers to Successful Reentry

- Adults in the criminal justice system and youth in the juvenile justice system have more complex health issues, including physical as well as mental health and co-occurring substance use disorders (behavioral health needs) compared to people without justice system involvement.
- People with behavioral health needs have higher rates of recidivism compared to people without behavioral health needs in the justice system.
- People reentering the community after incarceration are at increased risk of overdose and overdose death compared to the general public.
- People of color have higher incarceration rates and recidivism rates compared to White people.

U.S. Department of Justice, Bureau of Justice Statistics (BJS), *Indicators of Mental Health Problems Reported by Prisoners and Jail Inmates, 2011-12* (Washington, DC: BJS, 2017); U.S. Department of Justice, Bureau of Justice Statistics (BJS), *Drug Use, Dependence, and Abuse Among State Prisoners and Jail Inmates, 2007-2009* (Washington, DC: BJS, 2020); U.S. Department of Justice, Bureau of Justice Statistics (BJS), *Jail Inmates in 2018* (Washington, DC: BJS, 2020); Greg A. Greenberg and Robert A. Rosenheck, "Jail Incarceration, Homelessness, and Mental Health: A National Study," *Psychiatric Services* 59, no. 2 (2008): 170–177, https://ps.psychiatryonline.org/doi/10.1176/ps.2008.59.2.170; Daniel M. Hartung, Caitlin M. McCracken, Thuan Nguyen, Katherine Kempany, and Elizabeth Needham Waddell, "Fatal and nonfatal opioid overdose risk following release from prison: A retrospective cohort study using linked administrative data," Journal of Substance Use and Addiction Treatment, 147; Ingrid A. Binswanger et al., "Mortality After Prison Release: Opioid Overdose and Other Causes of Death, Risk Factors, and Time Trends from 1999 to 2009," Annals of Internal Medicine 159 no. 9 (2013): 592-600.

How the Office of Justice Programs and the Bureau of Justice Assistance Support Reentry

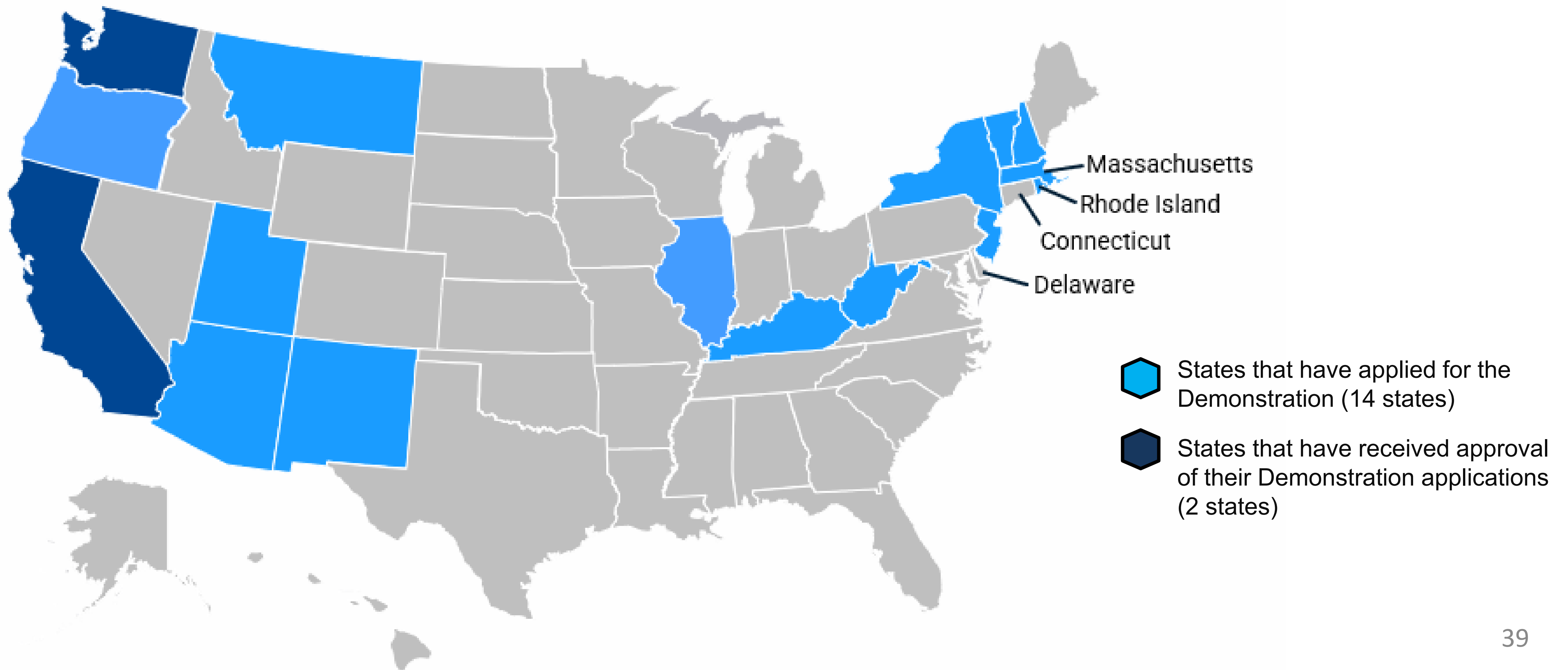
- Funding grant programs through the Second Chance Act, Comprehensive Opioid Stimulant and Substance Use Program, Justice and Mental Health Collaboration Program, and other programs that support the implementation of evidence-based practices such as medication-assisted treatment (MAT), jail and prison in-reach, provision of pre-release and post-release case management, etc.

- Building a knowledge base and developing resources for the field to support continuity of care for people reentering the community, including connecting people to health care; crisis response; and other emerging topics

Opportunities for Improved Outcomes

- Studies demonstrate connections between increased Medicaid access and reductions in recidivism.
- The new Demonstration opportunity is focused on improving coordination and continuity of care between and across carceral and community systems.
- Correctional facilities can benefit from participation in the demonstration through additional support for resident transitions and successful engagement in community services and care.

Opportunities for States to Leverage Medicaid to Support People in the Justice System



Considerations for Corrections Agencies to Prepare for the Opportunity

- Corrections agencies are critical partners for designing Medicaid Reentry Section 1115 Demonstrations.
- States must develop their proposals following requirements for public notice and public comment for 1115 Demonstrations.
- Corrections agencies may be at the early stages of readiness or may already be implementing evidence-based practices relevant for Reentry Section 1115 Demonstrations.
- Corrections agencies may wish to survey their current practices, policies, and agreements for providing health care services to prepare for participation in their state's 1115 Demonstration.

"1115 Transparency Requirements," Medicaid.gov, accessed July 6, 2023, https://www.medicaid.gov/medicaid/section-1115-demonstrations/1115-transparency-requirements/index.html.

What Can Corrections Leaders Do After Today's Webinar?

Focus Areas | How We Work | Resources | Events | Who We Are

WHO WE ARE

Medicaid Directors

Medicaid Directors oversee Medicaid and CHIP programs governed by federal rules but tailored to the needs of each state. The 56 members of the association represent all 50 states, the District of Columbia and all U.S. territories. You can find a downloadable pdf here.

"Medicaid Directors," National Association of Medicaid Directors, accessed June 26, 2023, https://medicaiddirectors.org/who-we-are/medicaid-directors/.

- Build partnerships with state Medicaid directors, if those relationships are not already in place.
- Identify your state Medicaid director. The National Association of Medicaid Directors (NAMD) lists Medicaid directors by state.
- Attend follow-up webinar, planned for mid-August, which will focus on building partnerships between corrections and key state entities, including Medicaid, and in which representatives from states will discuss their experience planning for this 1115 Demonstration opportunity in their state (date and registration to follow).

SECTION 4

QUESTIONS AND ANSWERS

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Poll

As a result of today's webinar, (please select the choice that best reflects your intention):

- Connect: I will identify and reach out to my state Medicaid agency.
- Continue to collaborate: I am already working with my state Medicaid agency on a reentry demonstration.
- Learn more: I will look for additional training opportunities and relevant resources.
- Undecided: I do not have a clear sense of what to do next.
- Other