



Testimony in Support of LD 1204, *An Act to Improve the Health of Maine Residents by Closing Gaps in the MaineCare Program for Incarcerated Persons*

April 12, 2023

Good afternoon Senator Baldacci, Representative Meyer, and members of the Joint Standing Committee on Health and Human Services. My name is Alex Carter, I use she/her pronouns, and I am a Policy Advocate at Maine Equal Justice, a nonprofit legal aid provider working to increase economic security, opportunity, and equity for people in Maine. I am testifying today in support of LD 1204, an impactful health care bill with strong bipartisan support.

Individuals involved in our criminal-legal system are disproportionately low income and often have complex healthcare needs.¹ These include multiple chronic conditions, higher rates of COVID-19 infection,² mental illness and substance use disorders.³ A lack of behavioral health services and in-patient treatment in the state contributes to many individuals cycling into and out of our prisons and county jails in what has sadly been referred to as Maine's *de facto* mental health system.⁴ Incarceration can also disrupt continuity of care and health insurance coverage which is critical for the treatment and management of persistent health conditions.

As the majority of those incarcerated are low income, most are eligible for Medicaid. However, federal law limits the services that can be covered for individuals in a jail or prison to inpatient hospital or nursing home stays for 24-hours or more outside of a correctional facility. The state and counties are therefore responsible for delivering health care to those in their custody, including individuals who qualify for Medicaid prior to incarceration. While federal matching funds cannot be used for the cost of most services, this so-called "inmate exclusion policy" does not prohibit eligibility for and enrollment in Medicaid.⁵ States have the option to suspend rather than terminate coverage while someone is incarcerated and many states, including

¹ https://www.commonwealthfund.org/sites/default/files/2020-11/PDF_Camhi_Medicaid_role_health_justice_system_exhibits.pdf

² <https://www.kff.org/coronavirus-covid-19/issue-brief/key-issues-to-watch-for-justice-involved-populations-covid-19-vaccines-medicaid/>

³ <https://www.kff.org/medicaid/issue-brief/how-connecting-justice-involved-individuals-to-medicaid-can-help-address-the-opioid-epidemic/>

⁴ <https://www.usccr.gov/files/pubs/2019/07-30-Maine-Criminalization-Mental-Health.pdf>

⁵ https://www.kff.org/report-section/health-coverage-and-care-for-the-adult-criminal-justice-involved-population-issue-brief/#endnote_link_123913-29

Maine, have worked in recent years to mitigate gaps in care and coverage for those involved in our criminal-legal system.

Thanks to the previous work of the Maine legislature and now Speaker Talbot Ross, Maine law already prohibits termination of MaineCare benefits as a result of incarceration and requires the state Department of Corrections (DOC) to ensure individuals receive assistance to apply for and renew MaineCare benefits during the term of their incarceration. LD 1204 would provide necessary clarification that the current statute applies to all correctional facilities, county jails, and regional jails and directs the DOC to enter into a memorandum of understanding with all counties that have a jail to facilitate such enrollment assistance.

In keeping with the amendment proposed by Speaker Talbot Ross, we encourage the Department of Health and Human Services (DHHS) to seek a waiver to reinstate MaineCare coverage for eligible individuals prior to their release. Section 1115 Medicaid demonstration waivers allow states to pilot new approaches and waive certain provisions of Medicaid law to further the objectives of the program and promote health.⁶ The Biden Administration has also indicated an interest in states proposing pilots to reduce health disparities, including initiatives for those involved in our criminal-legal system.

There is a growing national movement to request 1115 waivers to the inmate exclusion policy. California recently became the first state to have their waiver request approved by the Center for Medicare and Medicaid Services (CMS) to cover a package of reentry services, 90 days prior release. This includes physical and behavioral health services, case management, and medication-assisted treatment to help prevent adverse health outcomes upon release and many drivers of recidivism. Fourteen additional states, including many in New England, have pending waiver requests that vary in terms of the pre-release coverage period, and the scope of benefits and populations they seek to cover.⁷

Multiple studies show that people are more likely to use the emergency room post incarceration and to experience serious health events, including drug overdose and death.⁸ Improving coverage and care transitions for those prior to release not only improves health outcomes, but it also positively impacts community health, reduces recidivism linked to untreated mental health and substance use disorders, and reduces state and local health care spending. Maine should join our neighbors in seeking a 1115 waiver for critical reentry services.

For the health and wellbeing of all Maine residents, we ask you to vote ought to pass with the Speaker's proposed amendment on LD 1204.

⁶ <https://www.medicaid.gov/medicaid/section-1115-demonstrations/index.html>

⁷ <https://www.kff.org/policy-watch/section-1115-waiver-watch-how-california-will-expand-medicaid-pre-release-services-for-incarcerated-populations/>

⁸ <https://healthandjusticejournal.biomedcentral.com/articles/10.1186/2194-7899-2-5>

Table 1

Pending Section 1115 Waivers Requesting Waiver of Inmate Exclusion Policy, as of February 7, 2023

	Eligibility criteria	Services provided pre-release	Coverage initiation
<u>Arizona</u>	Inmates with serious behavioral and physical health conditions at high risk of experiencing homelessness upon release	Housing-related case management, tenancy supports, linkages with physical and behavioral health providers, medication	30 days prior to release
<u>Kentucky</u>	Inmates with an SUD diagnosis	SUD treatment services, medication management, MCO selection	Members will be covered FFS during incarceration (including pre-trial), then transitioned to an MCO 30 days prior to release
<u>Massachusetts</u>	Inmates with a chronic condition, mental health condition, or SUD	Full set of Medicaid State Plan benefits	30 days prior to release for adults; through duration of commitment for youth
<u>Montana</u>	Inmates with SUD, SMI or SED	Limited community-based clinical consultation services, in-reach care management services, and a 30-day supply of medication	30 days prior to release
<u>New Hampshire</u>	Inmates with SUD, OUD or SED	Care coordination services, including MCO enrollment, peer recovery supports or counseling, and new prescribing appointments with community behavioral health providers	45 days prior to release
<u>New Jersey</u>	Inmates with a behavioral health diagnosis	Up to four behavioral health care management visits	60 days prior to release
<u>New Mexico</u>	Inmates with SMI, SUD, SED, or I/DD	Enhanced care management and coordination, medication-assisted treatment, 30-day supply of medication, and durable medical equipment	30 days prior to release
<u>New York</u>	Inmates with two or more chronic diseases or one single qualifying condition of Hepatitis C, HIV/AIDS, SMI, I/DD, sickle cell disease, or SUD	Care management and discharge planning, clinical consultant services, peer services, sexual and reproductive health information and connectivity, and medication management plan development and delivery of certain high priority medications	30 days prior to release

Oregon	All inmates	Care management and discharge planning, clinical consultant services, peer services, sexual and reproductive health information and connectivity, and medication management plan development and delivery of certain high priority medications	Full duration of commitment for individuals in jail; 90 days prior to release for individuals in state prisons
Rhode Island	All inmates	Full set of Medicaid State Plan Benefits and pre-release supports (including managed care enrollment, care coordination services, and services to target social determinants of health)	30 days prior to release
Utah	Inmates with chronic physical or behavioral health condition, mental illness or OUD	Full set of Medicaid State Plan benefits	30 days prior to release
Vermont	All inmates	Full set of Medicaid State Plan benefits	90 days prior to release
Washington	All inmates	Limited package including physical and behavioral health assessments, lab work, care coordination, and medication	30 days prior to release
West Virginia	Inmates with SUD	Limited package including in-reach care management, consultations, HIV/HCV screening and treatment, and medications	30 days prior to release

NOTE: * In Kentucky, members would be covered through fee-for-service Medicaid during incarceration, then transitioned to an MCO 30 days prior to release. Waivers would apply to inmates in state and county correctional facilities in all states in table except for Montana and New Hampshire, where the waiver would only apply to inmates of state prisons and in Oregon, where eligibility criteria and services apply to jail and prison inmates. SUD is "substance use disorder"; SMI is "serious mental illness"; SED is "serious emotional disturbance"; MCO is "managed care organization"; OUD is "opioid use disorder"; I/DD is "intellectual or developmental disability"



SOURCE: KFF analysis of Section 1115 waiver requests posted to Medicaid.gov (waiver request for each state linked in table) • [PNG](#)