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CMS
CENTERS FOR MEDICARE & MEDICAID SERVICES
CENTER FOR MEDICAID & CHIP SERVICES

SHO# 24-006

RE: Provision of Medicaid and CHIP Services to Incarcerated Youth - FAQs

December 19, 2024

Dear State Health Official:

The Centers for Medicare & Medicaid Services (CMS) is issuing this letter and attached frequently asked questions (FAQs) to provide additional guidance to states on section 5121 of the Consolidated Appropriations Act, 2023 (CAA, 2023) (P.L. 117-328), which was signed into law on December 29, 2022.[1] This guidance supplements State Health Official (SHO) Letter #24-004, released on July 23, 2024.[2]

As explained in SHO #24-004, section 5121 of the CAA, 2023 amends sections 1902(a)(84) and 2102 of the Social Security Act (the Act) and lifts the Medicaid payment and Children's Health Insurance Program (CHIP) eligibility exclusions for certain state plan services provided to eligible juveniles who are within 30 days of the date on which they are scheduled to be released from a public institution following adjudication. It also modifies CHIP eligibility requirements for children who become incarcerated and creates a new exception at 2110(b)(7) that considers children who are within 30 days prior to release as no longer subject to the CHIP inmate eligibility exclusion. All provisions are effective January 1, 2025.

The attached FAQs address state compliance with section 5121 of the CAA, 2023 when an eligible juvenile is incarcerated in federal custody, including in a federal prison. The FAQs also address state Medicaid and CHIP program obligations when carceral facilities are unable to or refuse to support implementation of the coverage, eligibility and enrollment activities required under section 1902(a)(84) and 2102(d) of the Act. Finally, the FAQs address situations in which the state Medicaid and CHIP programs ensure provision of the services required under section 5121 of the CAA, 2023 during the pre-release period but carceral facilities choose not to bill Medicaid and CHIP.

[1] https://www.congress.gov/bill/117th-congress/house-bill/2617/text.
[2] www.medicaid.gov/federal-policy-guidance/downloads/sho24004.pdf

CMS is committed to working closely with states to support the successful implementation of section 5121 of the CAA, 2023. States should direct questions regarding Medicaid to their state lead, and direct questions regarding CHIP to their CHIP project officer.

Sincerely,

/s/

Daniel Tsai
Deputy Administrator and Director

1. **Q: Do sections 1902(a)(84)(D) and 2102(d)(2) of the Social Security Act (the Act), as added by section 5121 of the Consolidated Appropriations Act, 2023 (CAA, 2023) require states to provide for pre-release services for Medicaid and CHIP eligible juvenile beneficiaries who are incarcerated in federal custody including in federal prisons?**

   A: Sections 1902(a)(84)(D) and 2102(d)(2) of the Act do not specify or provide authority to exclude certain types of carceral facilities where an eligible juvenile who is an inmate of a public institution would receive the required services. Accordingly, CMS interprets "public institution" in these provisions of the statute to mean, and therefore to apply to, all types of carceral facilities where an eligible juvenile may be confined as an inmate of a public institution, including in federal prisons.

   CMS understands from the Federal Bureau of Prisons (BOP) that they will not participate in Medicaid and CHIP because the BOP is responsible for the health care of individuals who are in federal custody. However, it is nonetheless possible for state Medicaid and CHIP agencies to achieve compliance with sections 1902(a)(84)(D) and 2102(d)(2) of the Act with respect to eligible juveniles who are incarcerated in federal custody including in federal prisons.

   Specifically, section 1902(a)(84)(D)(i) of the Act requires states to provide "any" screening and diagnostic services (including a behavioral health screening or diagnostic service) "in the 30 days prior to the release of such eligible juvenile from such public institution (or not later than one week, or as soon as practicable, after release from the public institution)." The language in the parenthetical provides states flexibility to comply with the mandate in section 1902(a)(84)(D)(i) of the Act after the release from a public institution. Therefore, states will be in compliance with this provision if the required services are provided in the first week post release or as soon as practicable after release.

   Similarly, section 1902(a)(84)(D)(ii) of the Act requires that, for eligible juveniles, in the 30-days prior to release and for at least the 30 days following release from public institutions, states must provide for targeted case management services, including certain referrals "(where feasible)." We interpret the language in the parenthetical as modifying the obligation to provide targeted case management services in the specified time period. Accordingly, states will not be out of compliance with the requirements in section 1902(a)(84)(D)(ii) of the Act if it is not feasible for states to provide for targeted case management services to eligible juveniles incarcerated in federal custody including in federal prisons because the BOP will not participate. We have therefore concluded that it will not be feasible for eligible juveniles incarcerated in federal custody including in federal prisons to receive the services under section 1902(a)(84)(D)(ii) prior to release. These interpretations also apply to CHIP because section 2102(d)(2) indicates that CHIP services should be implemented "in the same manner" as described in section 1902(a)(84)(D).

It is important to note that section 1902(a)(84)(D) requires that state Medicaid programs provide for the required screening and diagnostic services as soon as practicable post-release when these services are not furnished pre-release. Furthermore, section 1902(a)(84)(D)(ii) requires that states provide for targeted case management services for at least 30-days following release. Similarly for CHIP, section 2102(d)(2) generally provides that a separate CHIP must provide screening, diagnostic, and case management services, including referrals, as covered under the CHIP state plan (or waiver of such plan) to children within 30 days of their release and indicates that the provision should be implemented "in the same manner" as described in section 1902(a)(84)(D). Therefore, states should work closely with the BOP to ensure that eligible juveniles are connected to a Medicaid and CHIP case manager immediately upon release and receive all necessary screening and diagnostic services as soon as practicable following release.

2. **Q: What if a carceral facility is unable to or refuses to participate in Medicaid and CHIP or coordinate with the Medicaid and CHIP programs (e.g., providing services or supporting eligibility and enrollment activities)?**

   A: CMS strongly encourages state Medicaid and CHIP programs to work closely with carceral facilities in their state to ensure eligible juveniles receive both eligibility and enrollment support (e.g., screening for eligibility and/or assistance with submitting applications) and the required services during the pre- and post-release period. In order to comply with sections 1902(a)(84)(D) and 2102(d)(2) of the Act to provide services pre-release, generally Medicaid and CHIP eligible individuals would need to either already be enrolled prior to release or apply and be determined eligible for Medicaid or CHIP while an inmate. States should conduct pre-release outreach to potentially eligible juveniles well in advance of the 30-day pre-release period and again within 30-days of pre-release, along with making eligibility and enrollment support available to all incarcerated youth in both juvenile and adult facilities. Specifically, states should work with their correctional facility partners to establish procedures to start the application process and assist incarcerated youth who are not already enrolled in Medicaid with applying for Medicaid upon incarceration and during the period of incarceration, with a goal of application submission no later than 90 days before the individual's expected date of release to allow for application processing time. Children may only be found eligible for CHIP within 30 days prior to their release from the carceral facility.

   However, as discussed above in the response to question 1, section 1902(a)(84)(D) of the Act requires that the state shall have in place a plan and in accordance with that plan, provide for the required screening and diagnostic services during the pre-release period or "as soon as practicable" following release as described in section 1902(a)(84)(D)(i). The statute also stipulates that a state must provide for targeted case management services for eligible juveniles in Medicaid during the pre-release period and for at least 30 days following release "where feasible" as described in section 1902(a)(84)(D)(ii). Similarly, section 2102(d)(2) specifies that a separate CHIP must also provide screening, diagnostic, and case management services, including referrals, as covered under the CHIP state plan

(or waiver of such plan) to children who are within 30 days of their release and indicates that the provision should be implemented "in the same manner" as described in section 1902(a)(84)(D). However, we note that section 2102(d)(2) does not require CHIP to provide case management services for at least 30 days after release like Medicaid. Upon release, children are entitled to the full array of CHIP state plan benefits. Therefore, the expectation is that they will continue to receive case management services (if available under the CHIP state plan) when they are released.

By requiring the provision of the required screening and diagnostic services pre-release and/or as soon as practicable post release and targeted case management services only where it is feasible to do so, the statute recognizes that it may not be possible to furnish the required services during the pre-release period in every circumstance and/or in all carceral facilities.[3] Therefore, as discussed in response to question 1, CMS interprets section 1902(a)(84)(D)(i) as giving states flexibility to provide the required screening and diagnostic services as soon as practicable post release. Further, CMS interprets section 1902(a)(84)(D)(ii) of the Act as only requiring provision of the required services during the pre-release period when it is feasible to do so. This interpretation also applies to CHIP because section 2102(d)(2) generally provides that CHIP services should be implemented "in the same manner" as described in 1902(a)(84)(D).

Factors that states could take into account when determining whether it is feasible for carceral facilities to provide the required services include, but are not limited to limitations in physical location capability, lack of health care staff, facility refusal to allow community-based provider presence or telehealth, short stays in the carceral facility, or low Medicaid census. For example, an eligible juvenile may be incarcerated for a very short period post-adjudication and/or released unexpectedly, which may make it impracticable to provide some or all of the required services during the pre-release period; or a local jail may refuse to participate or cooperate with a state Medicaid and/or CHIP program, thus making it impossible to provide the required services during the pre-release period. In these instances, a state may determine that it is not feasible to provide for the required services during the pre-release period. States should maintain clear documentation for each facility and/or circumstances where the state determines that it is not feasible to provide for the required services during the pre-release period.

CMS recommends that states maintain such documentation within their internal operational plan required under section 5121 of the CAA, 2023, indicating where implementation has not been feasible, including the reason why the state has determined it is not feasible. States that are implementing coverage via a section 1115 reentry demonstration and are utilizing their Implementation Plan as their internal operational plan should maintain this information in an appendix to the Implementation Plan that is

[3] Correctional facilities have a constitutional obligation to provide adequate medical care to incarcerated and detained individuals as long as they remain in custody. See, e.g., Estelle v. Gamble, 429 U.S. 97, 102-05 (1976); Minix v. Canarecci, 597 F.3d 824, 831 (7th Cir. 2010).

maintained by the state and made available to CMS upon request. Examples of documentation could include describing the steps the state took to engage the facilities, how many times the state engaged, and any applicable correspondence, data, analyses, or documented decisions. CMS may request additional information from the state supporting this decision, including but not limited to supporting documentation such as the internal operational plan and supplemental documentation regarding each facility and/or circumstances where the state determines that it is not feasible to provide for the required services during the pre-release period.

States should also add language to their Medicaid and CHIP state plan indicating where it is not feasible to provide services pre-release. For instance, states may indicate that it is not feasible to provide pre-release services in certain facilities, such as particular jails and/or prisons, and indicate that a list with accompanying rationales is available upon request.

With respect to eligibility and enrollment activities, states must accept and process Medicaid or CHIP applications from, or on behalf of, inmates of public institutions at any time during their incarceration and process those applications promptly, in accordance with sections 1902(a)(84)(C) and 2102(d)(1)(C) of the Act. If a particular carceral facility refuses to cooperate with the Medicaid and CHIP programs (for example, by refusing to assist with Medicaid or CHIP eligibility and enrollment support), a state will still have met its requirements under sections 1902(a)(84)(C) and 2102(d)(1)(C) of the Act, as long as it has a process in place to accept and process all Medicaid and CHIP applications from individuals in a carceral facility. We also note that the Medicaid requirement established by the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act (SUPPORT Act) (P.L. 115-271) to conduct a pre-release redetermination of eligibility for eligible juveniles, without requiring a new application, continues to apply. For more discussion, including requirements around redeterminations and continuous eligibility, see SMDL #21-002, SHO #23-004, and SHO #24-004.

As noted above, sections 1902(a)(84)(D)(i) and 2102(d)(2) require that state Medicaid and CHIP programs provide for screening and diagnostic services as soon as practicable post-release when these services are not furnished pre-release. Furthermore, section 1902(a)(84)(D)(ii) requires that states provide for targeted case management services for at least 30-days following release. Therefore, states should work closely with all carceral facilities, even those that refuse to participate during the pre-release period, to ensure that eligible juveniles are connected to a Medicaid and CHIP case manager immediately upon release and receive all necessary screening and diagnostic services as soon as practicable following release.

3. **Q: If a carceral facility furnishes the required services to eligible juvenile beneficiaries but elects not to enroll in and bill Medicaid and CHIP for the services, is this sufficient?**

   A: Yes. Section 1902(a)(84)(D) of the Act specifies that state Medicaid programs are required to have a plan in place and, in accordance with such plan, provide for the required screening, diagnostic, and targeted case management services for an eligible juvenile who is within 30 days of their scheduled date of release from a public institution following adjudication. Section 2102(d)(2) specifies that a separate CHIP must also provide screening, diagnostic, and case management services, including referrals, as covered under the CHIP state plan (or waiver of such plan) to children who are within 30 days of their release and generally provides that the provision should be implemented "in the same manner" as described in section 1902(a)(84)(D). State Medicaid and CHIP programs are required to provide for such services during the statutory pre- and/or post-release period. The state Medicaid and CHIP agency may provide for such coverage by ensuring that carceral facilities furnish the required services, consistent with Medicaid and CHIP requirements, to eligible juveniles. In these instances, the requirements in sections 1902(a)(84)(D) and 2102(d)(2) may be satisfied even if the carceral facility does not enroll in and submit a claim to the state Medicaid and CHIP agency for furnishing the services.

   Although carceral providers do not have to enroll in and bill Medicaid and CHIP in these instances, states should carefully consider the potential impact on access to Medicaid and CHIP services post-release. Specifically, in accordance with sections 1902(a)(78), 1902(kk)(7), and 2107(e)(1)(D) and (G) of the Act, providers who order, refer, prescribe, or certify eligibility for Medicaid and CHIP services must be enrolled in the program in order for claims for such services to be payable.[4] This means that if an unenrolled carceral provider orders, refers, prescribes, or certifies eligibility for post-release services, and a community Medicaid or CHIP provider furnishes those services pursuant to such order, referral, prescription, or certification, Medicaid federal financial participation (FFP) may be unavailable for such post-release services due to the lack of an order, referral, prescription, or certification from a Medicaid- or CHIP-enrolled provider.

   We remind states that existing benefit rules require services to be properly authorized in order for FFP to be available. For example, certain benefits authorized under section 1905(a) of the Act, such as physical and occupational therapy, require that services be "prescribed by" a physician or other licensed practitioner of the healing arts within their scope of practice under state law. *See* 42 C.F.R. 440.110(a) and (b). The processes by which states and providers ensure compliance with these existing requirements may be

[4] The requirement for a provider to be enrolled in Medicaid or CHIP to order, refer, prescribe or certify eligibility for Medicaid or CHIP services only applies where the services require an order, referral, prescription, or certification in order to be covered under Medicaid or CHIP.

helpful in ensuring that post-release services are eligible for FFP, even when the carceral provider is not enrolled in Medicaid.

CMS recommends that states maintain clear documentation within their internal operational plan required under section 5121 of the CAA, 2023, indicating which carceral facility/facilities are furnishing services but not enrolling in or billing Medicaid and/or CHIP. States that are implementing coverage via a section 1115 reentry demonstration and are utilizing their Implementation Plan as their internal operational plan should maintain this information in an appendix to the Implementation Plan that is maintained at the state and made available to CMS upon request.

CMS may request additional information from the state, including but not limited to the internal operational plan and supplemental documentation regarding each facility where the state determines services have been furnished but providers are not enrolled in or billing Medicaid and CHIP for pre-release services.