

# National Criminal Justice Reform Activities Important to the SUD Field

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# Work to Improve Policies Governing the Criminal Justice System

- Efforts to improve access to health care, including SUD and MH care
  - Recent guidance by CMS on Medicaid and the justice-involved population
    - Suspension vs. termination of Medicaid
    - When are matching federal Medicaid funds available?
  - Work nationally to improve continuity of care during transitions
  - Focus in Congress on improving access to SUD care
    - Authorizing and funding CARA
- Work to reduce discrimination facing people who have been involved in the criminal justice system
  - Work by the Obama administration and around the country to reduce criminal record barriers
  - Focus by Congress on reforming certain sentencing and corrections policy

# CMS's Focus on the Criminal Justice Population

- Recognition of the growing importance of Medicaid for justice-involved individuals
- Confusion about when federal Medicaid matching funds (FFP) apply for people in different custodial arrangements/settings
- Questions about when and how justice-involved people can be enrolled in Medicaid
  - Most states continue to terminate rather than suspend Medicaid during incarceration
- CMS reentry guidance released in April 2016 through a SHO letter

# CMS's Recent Guidance on Medicaid and Justice-Involved People

- Incarcerated people CAN be screened for Medicaid eligibility and enrolled in coverage:
  - The inmate exclusion provision of the law precludes federal Medicaid reimbursement for health care services provided to incarcerated people but not screening for Medicaid eligibility/enrollment in appropriate coverage.
  - Medicaid screening and enrollment can occur during a period of incarceration.
  - State Medicaid agencies must accept enrollment or renewal applications submitted during the time of a person's incarceration.
  - If the incarcerated individual meets all of the Medicaid eligibility criteria, the state must enroll, or renew the enrollment of, the individual.

# CMS's Recent Guidance on Medicaid and Justice-Involved People (*cont'd*)

- States can suspend, instead of terminate, an incarcerated person's Medicaid eligibility:
  - Instead of terminating an incarcerated individual's Medicaid eligibility, states may 1) place the individual in a suspended eligibility status during the period of incarceration or 2) suspend coverage by establishing markers and edits in the claims processing system to deny claims for excluded services.
- Medicaid suspensions should be promptly lifted when the suspension status no longer applies:
  - CMS emphasizes that when this temporary suspension process is used, the suspension must be promptly lifted when the individual is released from incarceration or admitted under the inpatient care exception.

# CMS's Recent Guidance on Medicaid and Justice-Involved People (*cont'd*)

- Federal Medicaid dollars (Federal Financial Participation or (“FFP”)) ARE available for covered Medicaid services for a number of justice-involved individuals, including:
  - People who are on parole;
  - People who are on probation;
  - People who have been released to the community pending trial, including those under pre-trial supervision;
  - People who are living at home under home confinement;
  - People who are living *voluntarily* in a detention center for a temporary period of time after his/her case has been adjudicated and arrangements are being made for a transfer to the community; and
  - People who are receiving care that falls under the inpatient exception to the general coverage exclusion for inmates.

# CMS's Recent Guidance on Medicaid and Justice-Involved People (*cont'd*)

- FFP MAY BE available for covered Medicaid services for people residing in correctional halfway houses who have “freedom of movement and association” while living in the facility.
  - The CMS guidance defines “freedom of movement and association” as allowing halfway house residents to:
    - work outside the facility in employment positions that are also available to people not under criminal justice supervision;
    - use community resources, such as libraries, grocery stores, recreation and educational facilities at will, and;
    - seek health care treatment in the community, just as other Medicaid enrollees are permitted to do.

# CMS's Recent Guidance on Medicaid and Justice-Involved People (*cont'd*)

- FFP NOT available for care provided to:
  - Incarcerated individuals in prisons and jails, regardless of whether care is provided by the institution or through a health care management entity under contract with the correctional institution or the government (except for services provided inpatient in a medical institution, as discussed).
  - People incarcerated in residential Re-entry Centers, operated by the federal Bureau of Prisons (“BOP”).
  - Individuals who are involuntarily residing in a residential mental health or substance use disorder treatment facility, operated by law enforcement authorities (directly or by contract to a private entity).
  - People who are receiving care in hospitals, nursing facilities, or other medical institutions run primarily or exclusively for incarcerated individuals.

# Strengthening Continuity of Coverage and Care for People in the Criminal Justice System

- States and localities are developing policies and practices that support Medicaid eligibility screening and enrollment at all stages of the criminal justice system—goal of supporting seamless Medicaid coverage
- Growing focus on creating systems that provide continuous access to care and support people moving between the criminal justice system and the community
- Models that promote effective linkage with care:
  - Peers as community health workers enrolling individuals in health insurance and doing a warm handoff with community-based health care
  - Partnerships with corrections, payors and MH/SUD service providers
    - In-reach possibilities despite challenges with how to fund because of the current Medicaid inmate exclusion provision
- Need for community health care (including FQHCs, health homes, innovation initiatives) to fully include and meet the needs of justice-involved individuals and to support greater use of diversion

# Critical Importance of Good Access to MH and SUD Care for Justice-Involved People

- Ensuring there is a strong continuum of MH and SUD care, adequate infrastructure and capacity, and meaningful access to care
  - Implementation and enforcement of the final Medicaid/parity rule
    - Need to ensure that there is a match between the services and medications their program participants need, what is covered by insurance, and what is available in the community
    - <http://lac.org/resources/state-profiles-healthcare-information-for-criminal-justice-system/>
  - Focus on expanding coverage SUD MAT for justice-involved individuals
    - Passage of CARA by both chambers of Congress; conference process to reconcile differences in the bills; simultaneous work toward strong funding
    - Continued work needed to eliminate discriminatory policies/practices on MAT use in the criminal justice system

# Criminal Justice Reform: Eliminating Barriers Facing People with Criminal Histories

- Continued focus on reentry services through the Second Chance Act but huge need to address collateral consequences of a criminal history
- Focus on “banning the box” at the federal level and in states and cities around the country
  - Move beyond employment to education and housing
  - Additional need for strong anti-discrimination protections
- Additional guidance on housing admission and eviction policies
  - Focus on improving access to housing for people with SUD/those in recovery must include discussion of the role of a criminal record
- AG’s work to improve access to identification upon release
- Continued work by the Federal Interagency Reentry Council

# Criminal Justice Reform: Examining Sentencing and Corrections Policy

- Focus on reforming our sentencing and corrections policies
  - Reducing mass incarceration
  - Significant focus on link between untreated addiction, involvement in the criminal justice system, and the prevalence of drug crime-related mandatory minimum sentences
    - Strong bipartisan agreement that solutions are needed; lack of cohesion on best mechanisms
  - Update on federal sentencing and corrections reform legislation
  - Areas of focus on state criminal justice reform efforts nationally

# Questions and Discussion

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