

MEDICAID AND THE CRIMINAL-LEGAL SYSTEM: PRETRIAL SERVICES

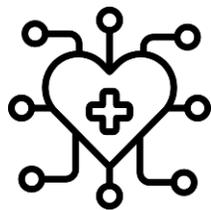
From assessing risk to determining appropriateness for diversion, pretrial programs have significant influence over their clients' ability to hold a job, remain housed, or access SUD treatment. This role is particularly difficult given the failures of safety-net systems to address physical and mental health challenges many systems-involved individuals face.



While public health and public safety have historically been separated, both systems increasingly recognize that cross-sector collaboration can help improve individual and community health and well-being. Partnering with healthcare providers offers pretrial agencies more options for community-based services and by extension, the ability to strengthen communities and families that are disproportionately impacted by the criminal-legal system.

This white paper describes recent Medicaid policy developments that will affect how healthcare is delivered in criminal-legal contexts and offers present opportunities for partnerships that can help improve individuals' lives and community safety.

MEDICAID'S ROLE IN THE CRIMINAL-LEGAL SYSTEM



Medicaid is the health insurance program for low-income individuals and individuals who qualify based on certain financial and medical conditions. However, the Social Security Act forbids Medicaid from paying for most services while an individual is an “inmate of a public institution,” including jails, prisons, and juvenile justice facilities. This means that people lose access to Medicaid with every booking. Upon release, it can take weeks or months for Medicaid agencies to reinstate medical and pharmacy benefits which impedes timely access to care.

The Consolidated Appropriations Act of 2023 made substantial changes to how Medicaid operates for incarcerated juveniles. Beginning in 2025, states must provide Medicaid's screening and diagnostic benefits to sentenced juveniles thirty days before release from a jail, prison, juvenile justice facility or other “public institution.” It also requires thirty days of targeted case management before and after release. The law allows states to opt to maintain Medicaid benefits for pretrial juveniles.

At the same time, the federal government is approving plans to extend Medicaid benefits into carceral settings before release. California will offer eligible beneficiaries targeted services 90 days before release from a jail, prison or juvenile justice facility. This will fundamentally change the relationship between jail and community systems. Many states have submitted waivers to change their state Medicaid plan to cover services for people

during incarceration. These waivers will improve access to services that impact health and justice. State- and federal-level Medicaid policies can improve your opportunities for collaborating with health partners, and your input is crucial to ensure that you can rely on Medicaid systems to sustainably screen and treat people in your programs.



Examples of submitted waivers pending federal approval:

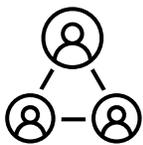
- **Kentucky:** Would provide **SUD treatment** to eligible incarcerated members throughout period of incarceration (including pretrial) and enroll eligible members into a Medicaid program thirty days prior to release.
- **Utah:** Would provide **full set of Medicaid State Plan** benefits to eligible members thirty days prior to release. Eligibility criteria includes chronic physical or behavioral health condition, mental illness, or opioid use disorder.
- **Arizona:** Focused on members at **high risk of experiencing homelessness**, waiver would provide Medicaid-reimbursable reentry services (case management, coordinating housing, linkages to physical and behavioral providers) to members thirty days prior to release.

Source: [State Policies Connecting Justice-Involved to Medicaid Coverage and Care, Kaiser Family Foundation](#)

RESOURCES FOR PRETRIAL SERVICES

As the industry leader of health strategy for systems-involved populations, COCHS has identified ways that specialty court professionals can take advantage of these opportunities and prepare for collaboration with Medicaid as policies change.

Funding for pretrial services and enhanced screening: Health and well-being depend not only medical care, but access to basic needs like housing, food, and employment. Pretrial programs play an important role in identifying these needs through a variety of screenings. When these screenings are accomplished before booking, pretrial services could coordinate with Medicaid providers to fund these screenings and connect to Medicaid-funded alternatives to incarceration. Pretrial agencies could be reimbursed for services or staff time spent on the administration of such programs through a variety of Medicaid benefits or reimbursement programs.



Action item: Use resources like the nonprofit [Kaiser Family Foundation](#) state waiver tracker to familiarize yourself with waivers and amendments in your state and how **other states** are using Medicaid to provide similar services.

Risk assessments: Current risk assessment tools generate important data to inform release conditions and needed services. However, screening measures are often unstandardized and underrecognize SUD/ODU as risk factors. Evidence-based tools, such as the [ASAM Criteria](#), may be Medicaid-reimbursable. Using screening tools that meet Medicaid standards can lead to reimbursement for time spent administering the questionnaires and improved fit to services.

- **Action item:** Contact your [state Medicaid agency](#) to determine which tools are available for Medicaid reimbursement and align your screening procedures with reimbursable activities. Partner with community providers that are offering these screenings already.

Identify opportunities for cross-sector support: Medicaid can also facilitate connections to other community-based services and resources. Medicaid reimburses for a wide range of services for work coordinating across organizations (as privacy policies allow). For example, pretrial services staff often serve the role of care manager as they connect individuals to multiple programs that may support their reentry and recovery. Understanding when and where an individual could be better placed in a different community setting is essential to integrating your work into the broader community health ecosystem.

- **Action items:** Establish a relationship with a [Community Action Agency](#) in your area. CAAs are federally funded organizations that often serve as a hub for non-profit organizations that work on behalf of low-income residents. These types of organizations are often interested in partnering with other sectors to meet their community's needs. With partners like the CAA, you can also apply for funding from a variety of federal agencies through SAMHSA to better understand options for diversion by using the [Sequential Intercept Model](#).

THE FUTURE

Many people are stuck in a feedback loop of poor health outcomes and frequent incarceration. Pretrial services can play a key role in breaking this cycle by partnering with the healthcare sector and incorporating approved Medicaid programs. COCHS is ready to help you prepare for these important conversations. As criminal-legal and healthcare systems come together to meet this challenge, we aim for a future where everyone can be healthy and safe.

